

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-256, Washington Metropolitan Area Transit Authority Safety Regulation Emergency Amendment Act of 2015
- D.C. Council schedules a public hearing on Bill 21-231, Commemorative Flag Request and Statehood Fund Amendment Act of 2015
- D.C. Council schedules a public hearing on Bill 21-377, Repeal of Outdated and Unnecessary Audit Mandates Amendment Act of 2015
- Executive Office of the Mayor and the Office of the City Administrator solicit comments on the Draft Open Data Policy
- Commission on the Arts and Humanities announces funding availability for the Fiscal Year 2017 DC Heritage Grant Program
- Department of Energy and Environment announces funding availability for the RiverSmart Innovation Grants
- D.C. Public Library formulates guidelines for issuing permits to members of the public for private use of D.C. public libraries
- Public Service Commission approves Potomac Electric Power Company's electric service rate schedule updates for the District of Columbia

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 §§2-501 *et seq.* (2012 Repl.).

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

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ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

A21-254 Office of the Attorney General Personnel and Procurement Clarification Emergency Amendment Act of 2015 [B21-524] 000518 - 000519

A21-255 Vending Regulations Emergency Amendment Act of 2015 [B21-532] 000520 - 000523

A21-256 Washington Metropolitan Area Transit Authority Safety Regulation Emergency Amendment Act of 2015 [B21-533] 000524 - 000525

A21-257 Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Congressional Review Emergency Act of 2015 [B21-535] 000526 - 000529

A21-258 Microstamping Implementation Emergency Amendment Act of 2015 [B21-536] 000530 - 000531

RESOLUTIONS

Res 21-345 Early Learning Quality Improvement Network Congressional Review Emergency Declaration Resolution of 2016 000532 - 000533

Res 21-346 Higher Education Licensure Commission Congressional Review Emergency Declaration Resolution of 2016 000534 - 000536

Res 21-347 Truancy Referral Congressional Review Emergency Declaration Resolution of 2016 000537 - 000538

Res 21-348 Ward 5 Paint Spray Booth Conditional Moratorium Congressional Review Emergency Declaration Resolution of 2016 000539 - 000540

Res 21-349 Grocery Store Restrictive Covenant Prohibition Congressional Review Emergency Declaration Resolution of 2016 000541 - 000542

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

RESOLUTIONS CONT'D

Res 21-350 Wage Theft Prevention Correction and Clarification Congressional Review Emergency Declaration Resolution of 2016.....000543

Res 21-351 ABLE Program Trust Establishment Congressional Review Emergency Declaration Resolution of 2016.....000544

Res 21-352 Gas Station Advisory Board Congressional Review Emergency Declaration Resolution of 2016..... 000545 - 000546

Res 21-353 N Street Village, Inc. Tax and TOPA Exemption Clarification Congressional Review Emergency Declaration Resolution of 2016.....000547

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -
 Bills B21-571 and B21-576 and Proposed Resolutions PR21-518, PR21-519, PR21-522, and PR21-524..... 000548 - 000549

COUNCIL HEARINGS

Notice of Public Hearings -

B21- 112 Notary Public Fee Enhancement Amendment Act of 2015.....000550

B21-231 Commemorative Flag Request and Statehood Fund Amendment Act of 2015.....000550

B21-377 Repeal of Outdated and Unnecessary Audit Mandates Amendment Act of 2015000551

B21-422 UDC DREAM Amendment Act of 2015 (Reconvened)000552

Notice of Public Roundtables -

Far Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project..... 000553

New Communities Initiative & The Right to Return000554 - 000555

Commission on Fashion Arts and Events Confirmation Resolutions of 2015

PR21-479 Kristopher Johnson-Hoyle 000556 - 000557

PR21-480 Jacqueline Rodgers-Hart..... 000556 - 000557

PR21-481 Brandon Andrews 000556 - 000557

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

COUNCIL HEARINGS CONT'D

Notice of Public Roundtables - cont'd

District of Columbia Boxing and Wrestling
Commission Confirmation Resolutions of 2015

PR21-489	Adam Weers	000556 - 000557
PR21-490	Andrew Huff	000556 - 000557
PR21-492	Kim Lockett	000556 - 000557

OTHER COUNCIL ACTIONS

Notice of Reprogramming Requests -

21-159	Request to reprogram \$3,400,000 of Capital funds budget authority and allotment within the Office of the Deputy Mayor for Planning and Economic Development (DMPED)	000558
21-160	Request to reprogram \$3,854,290 of Fiscal Year 2016 Local funds budget authority from the Workforce Investment (WI) to the Office of the Mayor (EOM), the Council of the District of Columbia (Council), the Office of Planning (OP), the Department of Human Resources (DCHR), the Deputy Mayor for Health and Human Services (DMHHS), the Real Property Tax Appeals Commission (RPTAC), and the Department of Public Works (DPW)	000558

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

Bodega - ANC 5C - Substantial Changes	000559
Capitol Market - ANC 5E - Class Change	000560
Hilton Garden Inn - DC/US Capitol - ANC 6C - New	000561
Homewood Suites Convention Center - ANC 6E - New	000562
Just Chicken - ANC 1B - New - RESCIND	000563
L8 - ANC 2C - Change of Hours	000564
Matchbox - ANC 6B - Substantial Change	000565
Park Market - ANC 1A - Substantial Changes	000566
Policy - ANC 2B - Substantial Change	000567
Rite Aide #6734 - ANC 3B - New - RESCIND	000568
Sudhouse - ANC 1B - Class Change	000569
The 51 st State Tavern - ANC 2A - Entertainment Endorsement	000570
The Liberator - ANC 2C - New	000571

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING

- Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), Ch. 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), to add Sec. 1939 (Companion Services), to establish reimbursement guidelines for companion service providers.....000572 - 000577
- Public Library, DC - Amend 19 DCMR (Amusements, Parks, and Recreation), Ch. 8 (Public Library), to add Sec. 820 (Permits), to provide guidelines for issuing permits.....000578 - 000580
- Public Library, DC - Amend 19 DCMR (Amusements, Parks, and Recreation), Ch. 8 (Public Library), Sec. 821 (Revenue Generating Activity), to set the rules for revenue generating activity for DC Public Libraries000581 - 000582

PROPOSED RULEMAKING

- Health, Department of - Amend 17 DCMR (Business, Occupations, and Professionals), Ch. 55 (Practical Nursing), Sec. 5514 (Scope of Practice), to eliminate provision that prohibits licensed practical nurses from administering hypnotics..... 000583
- Transportation, District Department of / Department of Motor Vehicles - Extension of comment period for Proposed Rulemaking amending 18 DCMR (Vehicles and Traffic), Ch. 3 (Cancellation, Suspension, or Revocation of Licenses), Ch. 7 (Motor Vehicle Equipment), Ch. 22 (Moving Violations), Ch. 26 (Civil Fines for Moving and Non-Moving Infractions), and Ch. 99 (Definitions) published on December 11, 2015 at 62 DCR 15865 000584

EMERGENCY AND PROPOSED RULEMAKING

- Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), Ch. 9 (Medicaid Program), Sec. 938 (Increased Reimbursement for Eligible Primary Care Services), to grant permanent authority to continue enhanced Medicaid reimbursement rates for specific primary care services.....000585 - 000588

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY AND PROPOSED RULEMAKING CONT'D

Health Care Finance, Department of - Amend 29 DCMR
(Public Welfare), Ch. 50 (Medicaid Reimbursement
for Personal Care Services), Sec. 5015 (Reimbursement),
to increase reimbursement rates for personal care service
providers000589 - 000591

**NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS**

2016-001 Re-Establishment – Metropolitan Washington
Regional Ryan White Planning Council000592 - 000597

2016-002 Appointments and Reappointments – Metropolitan
Washington Regional Ryan White Planning
Council (26 Members)000598 - 000599

2016-003 Appointments – The Mayor's Bullying Prevention
Task Force (Eleanor Canter, Willa Jones,
Chris Obermeyer, Kanya Shabazz, Monee Wright,
Audrey Williams, and Preston Mitchum)000600 - 000601

2016-004 Delegation – Authority to Director of the Department
of Employment Services Related to Private Employer
Transit Benefit Programs000602 - 000603

2016-005 Delegation – Authority to the Director of the District
Department of Transportation000604 - 000606

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

Administrative Hearings, Office of -
Commission on Selection and Tenure of Administrative
Law Judges - Seeking Comments Regarding Reappointment
of Administrative Law Judges:
Bernard H. Weberman 000607 - 000608
Eli B. Bruch000609 - 000610
Leslie Meek000611 - 000612

Alcoholic Beverage Regulation Administration -
ABC Board's Calendar - January 20, 2016000613 - 000615
ABC Board's Investigative Agenda - January 20, 2016.....000616 - 000617
ABC Board's Legal Agenda - January 20, 2016000618
ABC Board's Licensing Agenda - January 20, 2016..... 000619

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Arts and Humanities, Commission on the -
 Notice of Funding Availability - Fiscal Year 2017
 DC Heritage Grant Program..... 000620

Consumer and Regulatory Affairs, Department of -
 Board of Accountancy Meeting - January 22, 2016..... 000621

Scheduled Meetings of Professional Boards and
 Commissions - January 2016 000622

Elections, Board of -
 Certification of ANC/SMD Vacancy - 6B09 000623

Monthly Report of Voter Registration Statistics -
 As of December 31, 2015..... 000624 - 000633

Energy and Environment, Department of -
 Notice of Funding Availability - RiverSmart
 Innovation Grants..... 000634 - 000635

Health Benefit Exchange Authority, DC -
 Executive Board Public Meeting - January 13, 2016..... 000636

Judicial Disabilities and Tenure, Commission on -
 Reviews of Superior Court Judges Judith Macaluso,
 Curtis von Kann, Zinora Mitchell-Rankin, and
 Henry Greene 000637 - 000638

KIPP DC Public Charter Schools - Request for Proposals -
 Customized Canvas Assessment Module..... 000639

Lee Montessori Public Charter School - Request for Proposals -
 Project Management Consulting Services..... 000640

Mayor, Executive Office of the and Office of the City Administrator -
 Draft Open Data Policy - Notice of Solicitation for
 Comments 000641

Public Charter School Board, DC -
 2016 Board Meeting Schedule 000642

Public Employee Relations Board - Opinions - See page 000737

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Public Service Commission - Notice of Final Tariffs -
 FC 1017 - In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia (Approval of PEPCO’s electric service rate schedule updates for the District of Columbia)000643 - 000644

PEPRAD 2015-01 - PEPCO’S Residential Aid Discount Compliance Reports and Filings and FC NO. 1120, Investigation into the Structure and Application of Low Income Assistance for Electricity Customers in the District of Columbia (Approval of Pepco’s Residential Aid Discount Surcharge Rider update).....000645 - 000646

Retirement Board, DC -
 Investment Committee Closed Meeting - January 21, 2016 000647
 Open Board Meeting - January 21, 2016 000648

Sentencing and Criminal Code Revision Commission, D.C. -
 Meeting Agenda - January 19, 2016 000649

Taxicab Commission, DC -
 Special Commission Meeting - January 20, 2016..... 000650

Two Rivers Public Charter School -
 Intent to Award a Sole Source Contract -
 Lindamood-Bell In-School Tutoring Services 000651

Washington Convention and Sports Authority (t/a Events DC) -
 2016 Public Meeting Schedule..... 000652

Water and Sewer Authority, DC -
 Audit Committee Meeting - January 28, 2016..... 000653
 Environmental Quality and Sewerage Services Committee Meeting - January 21, 2016..... 000654
 Finance and Budget Committee Meeting - January 28, 2016 000655
 Governance Committee Meeting - January 13, 2016..... 000656
 Human Resources and Labor Relations Committee Meeting - January 13, 2016 000657
 Water Quality and Water Services Committee Meeting - January 21, 2016..... 000658

Zoning Adjustment, Board of - Cases -
 19091 Embassy of the Kyrgyz Republic -
 Notice of Proposed Rulemaking000659 - 000660
 19161 1537 6th Street NW, LLC - ANC 6E - Order000661 - 000663

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Zoning Commission - Cases -

05-28N	K. Hovnanian Parkside Holdings, LLC - Order	000664 - 000665
11-03D	Wharf 5 Hotel REIT Leaseholder, LLC - Order	000666 - 000669
15-04	Comstock Sixth Street, LLC - Order	000670 - 000699
15-07	MRP Realty - Order	000700 - 000721
15-23	SQ700 Trust, LLC - Order	000722 - 000736

Public Employee Relations Board - Opinions -

1468	PERB Case No. 14-N-02, National Association of Government Employees, Local R3-08 v. District of Columbia Homeland Security and Emergency Management Agency	000737 - 000744
1555	PERB Case No. 13-U-03, American Federation of Government Employees, Local 1000 AFL-CIO v. District of Columbia Department of Employment Services.....	000745 - 000748
1556	PERB Case No. 15-U-22, District of Columbia Fire and Emergency Medical Services Department and American Federation of Government Employees, Local 3721	000749 - 000755

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-254

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 6, 2016

To amend, on an emergency basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to require the Attorney General for the District of Columbia to issue personnel rules for employees of that office; and to amend the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to require the Attorney General for the District of Columbia to issue rules to govern procurement conducted by that office.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of the Attorney General Personnel and Procurement Clarification Emergency Amendment Act of 2015".

Sec. 2. Section 404 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-604.04), is amended by adding a new subsection (a-1) to read as follows:

"(a-1)(1) The Attorney General shall issue rules and regulations to implement the provisions of titles VII, VIII, IX, IX-A, XI, XII, XIII, XIII-A, XIV-A, XVI-A, XVII, XIX, XXIV, XXVII, and XXXI of this act for employees under the jurisdiction of the Attorney General.

"(2) The rules and regulations promulgated pursuant to subsection (a) of this section shall apply to employees under the jurisdiction of the Attorney General unless the Attorney General has issued a superseding rule or regulation."

Sec. 3. Section 108b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is amended as follows:

(a) Designate the existing text as subsection (a).

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

"(b)(1) The Attorney General shall issue rules to govern the procurement of goods and services for the Office of the Attorney General.

"(2) The rules promulgated pursuant to section 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 1-371; D.C. Official Code § 2-361.06),

ENROLLED ORIGINAL

shall apply to procurement of goods and services for the Office of the Attorney General unless the Attorney General has issued a superseding rule or regulation.”.

Sec. 4. Fiscal impact statement.

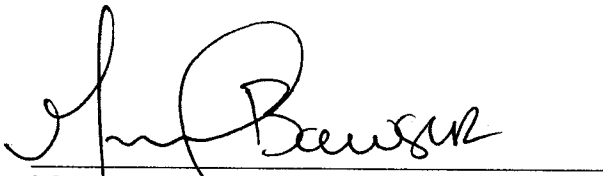
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 6, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-255

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 6, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Vending Regulations Emergency Amendment Act of 2015".

Sec. 2. The Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.01 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 37-131.02) is amended as follows:

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

(A) Paragraph (2) is amended by striking the word "and"

(B) Paragraph (3) is amended by striking the period and inserting the phrase "; and" in its place.

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

"(4) A person or entity authorized to vend from public space without a license pursuant to subsection (d) of this section."

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

"(d) The Mayor may establish by regulation exemptions from the licensure requirement for a person, entity, or categories of persons or entities to vend from public space without a basic business license when the public interest would be served by establishing such an exemption."

(b) Section 9 (D.C. Official Code § 37-131.08) is amended as follows:

(1) The existing text is designated as subsection (a).

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

"(b) Any person who violates any of the provisions of this act or any regulations issued pursuant to this act shall, upon conviction, be subject to a fine not to exceed the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisonment not to exceed 90 days, or both, for each violation."

Sec. 3. Chapter 5 of Title 24 of the District of Columbia Municipal Regulations is amended as follows:

(a) A new section 573.8 is added to read as follows:

ENROLLED ORIGINAL

“573.8 No person shall sell or offer to sell any ticket from the sidewalks, streets, or public spaces anywhere in the District of Columbia for any excursion, musical or theatrical performance, opera, sporting event, circus, or any entertainment of any kind; provided, that sales of tickets on public space for sightseeing bus excursions shall comply with the provisions of §§ 573.5, 573.6, and 573.7.”.

(b) A new section 573A is added to read as follows:

“573A Vending: Ticket Sales

“573A.1 Notwithstanding § 573, the DCRA Director in consultation with the Metropolitan Police Department and after consultation with any associated entertainment venue may establish a Ticket Resale Zone (TRZ) on a sidewalk, street, or other public space within which the sale of tickets may be authorized by the DCRA Director after approval from DDOT pursuant to § 501.2(b). A TRZ shall not be established within 1000 feet of an entertainment venue if the establishment thereof is objected to by the venue operator.

“573A.2 The Director of DCRA shall establish a TRZ by publishing a notice in the *D.C. Register* setting forth the location of the TRZ. The notice shall be published at least seven (7) days before the zone will be used for ticket sales.

“573A.3 The Director of DCRA may rescind the designation of an area as a TRZ by publishing a notice of rescission in the *D.C. Register*; provided, that the DDOT Director may rescind the designation of an area as a TRZ before publication of such a notice by posting notices of rescission at the TRZ.

“573A.4 DCRA may issue Vending Site Permits authorizing persons holding Class D Vending Licenses for ticket sales to sell tickets in a TRZ according to the provisions of this chapter.

“573A.5 A Vending Site Permit authorizing the sale of tickets from a TRZ shall specify the:

- “(a) Date(s) on which ticket sales are authorized;
- “(b) Time(s) during which ticket sales are authorized; and
- “(c) Ticket Resale Zone at which ticket sales are authorized.

“573A.6 In order to obtain a Vending Site Permit, a person holding a Class D Vending License for ticket sales shall, by the fifteenth (15th) day of any calendar month, submit, on a form prescribed by the Director of DCRA, a request for any dates that the person desires Vending Site Permits to sell tickets in a TRZ for the following month.

“573A.7 If requests from licensees for Vending Site Permits exceed the number of available permits for a TRZ for a particular date and time, DCRA shall assign the available spaces through a lottery. DCRA shall publish the results of the lottery on the DCRA website.

“573A.8 The venue associated with a TRZ shall, upon request, be granted one (1) Vending Site Permit for any requested event if the request is submitted by the fifteenth (15th) day of the previous calendar month or at the discretion of DCRA.

“573A.9 A person may sell or offer to sell tickets from a TRZ if:

“(a) The person holds a Class D Vending License for ticket sales or is the venue associated with the TRZ;

“(b) The person conspicuously displays his or her Vending Site Permit and Class D Vending License for ticket sales or an identification card provided to a venue by DCRA;

ENROLLED ORIGINAL

“(c) The person has been issued a Vending Site Permit by DCRA authorizing him or her to sell tickets from the TRZ;

“(d) The person is buying, selling, or offering to buy or sell tickets pursuant to the terms of the Vending Site Permit; and

“(e) The person is buying, selling, or offering to buy or sell tickets for an event scheduled to begin within six (6) hours of the time of sale.

“573A.10 To conduct a sale in a TRZ, a ticket sale licensee must, in addition to operating in compliance with § 573A.9, provide a receipt to the non-licensee on a form prescribed by the Director of DCRA. If both the buyer and seller are licensees, each shall provide a receipt to the other party.

“573A.11 An unlicensed person may sell tickets to a license holder who is operating in a TRZ in accordance with this chapter.

“573A.12 Subject to the hearing provisions of § 573A.13, the Director of DCRA may summarily suspend the Vending Site Permit of a person who violates §§ 573A.9 or 573A.10, and may further determine, in his or her reasonable discretion after providing notice to the person and an opportunity to be heard, that the person whose Vending Site Permit has been suspended shall for up to two (2) years be ineligible for a Vending Site Permit or any similar successor license or permit.

“573A.13 A licensee may appeal a suspension of a Vending Site Permit pursuant to § 573A.12 by:

“(a) Requesting a review from the Director of DCRA, or his or her delegate, which shall be provided within three (3) business days of receipt of a hearing request. The licensee may appeal any decision reached by DCRA in the review to the Office of Administrative Hearings; or

“(b) Requesting a hearing with the Office of Administrative Hearings, which shall be provided within three (3) business days of receipt of a hearing request.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Vending Regulations Amendment Act of 2015, passed on 2nd reading on December 15, 2015 (Enrolled version of Bill 21-113), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

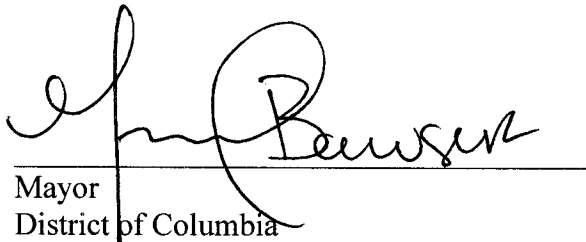
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 6, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-256

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 6, 2016

To amend, on an emergency basis, the Washington Metropolitan Area Transit Authority Safety Regulation Act of 1997 to authorize the Mayor to transfer funds to the Metropolitan Washington Council of Governments for the formation of an independent interstate entity to replace the joint state oversight agency responsible for the regulation of Washington Metropolitan Area Transit Authority rail safety, and to require any proposal or agreement to form an independent interstate legal entity to be approved by the Council.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Washington Metropolitan Area Transit Authority Safety Regulation Emergency Amendment Act of 2015”.

Sec. 2. The Washington Metropolitan Area Transit Authority Safety Regulation Act of 1997, effective September 23, 1997 (D.C. Law 12-20; D.C. Official Code § 9-1109.01 *et seq.*), is amended by adding a new section 8a to read as follows:

“Sec. 8a. Formation of a replacement independent interstate legal entity.

“(a) Notwithstanding any other provision of law and pursuant to the authority and requirements set forth in section 20021(a) of the Moving Ahead for Progress in the 21st Century Act, approved July 6, 2012 (126 Stat. 709; 49 U.S.C. § 5329), to enable the Metropolitan Washington Council of Governments (“COG”) to assist the District in the formation of an independent interstate legal entity to replace the Tristate Oversight Committee as the joint state oversight agency authorized by this act, the Mayor is authorized to transfer funds by contract, grant, sub-grant, or other available means to COG. The authority under this section shall include the transfer of federal funds received by the District for expenses related to the formation of the replacement independent interstate legal entity, and any matching funds required from the District to receive and spend such federal funds.

“(b) Any agreement or proposal to form an independent interstate legal entity to replace the joint state oversight agency authorized by this act shall be submitted to the Council for approval.”

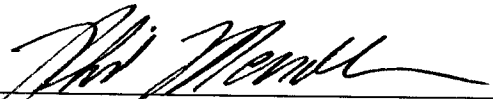
Sec. 3. Fiscal impact statement.

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

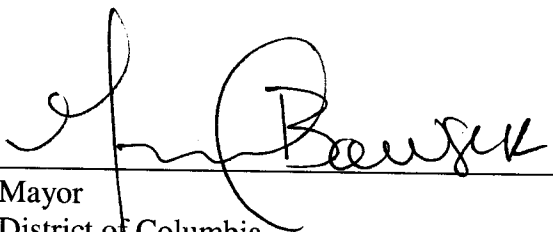
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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 6, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-257

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 6, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Congressional Review Emergency Act of 2015".

Sec. 2. Pursuant to section 817 of the Omnibus Appropriations Act, 2009, approved March 13, 2009 (123 Stat. 699; D.C. Official Code § 47-369.02), the Fiscal Year 2015 budgets for the following agencies shall be adjusted by the following amounts:

TITLE II – DISTRICT OF COLUMBIA FUNDS – SUMMARY OF EXPENSES

\$57,612,000 is added from local funds; to be allocated as follows:

Financing and Other

The appropriation for Financing and Other is increased by \$57,612,000 in local funds; to be allocated as follows:

(1) Emergency and Contingency Reserve Funds. - \$57,612,000 is added to be available in local funds.

Sec. 3. In accordance with Title II – Summary of Expenses of the Fiscal Year 2015 Budget Request Act of 2014 allowing General Funds to be increased by proceeds from one-time transactions, the Council authorizes budget authority to expend \$17,700,000 of unallocated, one-time funds received by the Office of Tax and Revenue related to the settlement payment in the *District of Columbia v. Expedia, Inc., et al.* (Nos. 14-CV-308, 14-CV-309) case. These funds shall be spent in accordance with section 5.

ENROLLED ORIGINAL

Sec. 4. Remaining Fiscal Year 2015 unexpended revenue of \$28,287,881 shall be carried over into Fiscal Year 2016 as fund balance. This revenue shall be spent in accordance with section 5.

Sec. 5. Pursuant to section 817 of the Omnibus Appropriations Act, 2009, approved March 13, 2009 (123 Stat. 699; D.C. Official Code § 47-369.02), the Fiscal Year 2016 budgets for the following agencies shall be adjusted by the following amounts:

TITLE II – DISTRICT OF COLUMBIA FUNDS – SUMMARY OF EXPENSES

\$28,288,000 is added from local funds; and \$5,000,000 is increased in enterprise and other funds; to be allocated as follows:

Economic Development and Regulation

The appropriation for Economic Development and Regulation is increased by \$4,492,000 in local funds; to be allocated as follows:

(1) Department of Employment Services. - \$4,492,000 is added to be available from local funds.

Public Safety and Justice

The appropriation for Public Safety and Justice is increased by \$14,214,000 in local funds; to be allocated as follows:

(1) Metropolitan Police Department. - \$5,864,000 is added to be available from local funds;

(2) Department of Forensic Sciences. - \$8,024,000 is added to be available from local funds; and

(3) Office of the Chief Medical Examiner. - \$326,000 is added to be available from local funds.

Human Support Services

The appropriation for Human Support Services is increased by \$3,776,000 in local funds; to be allocated as follows:

(1) Department of Parks and Recreation. - \$2,526,000 is added to be available from local funds; and

(2) Children and Youth Investment Trust Corporation. - \$1,250,000 is added to be available from local funds.

Public Works

The appropriation for Public Works is increased by \$806,000 in local funds; to be allocated as follows:

(1) Department of Public Works. - \$806,000 is added to be available from local funds.

ENROLLED ORIGINAL

Financing and Other

The appropriation for Financing and Other is increased by \$5,000,000 in local funds; to be allocated as follows:

(1) Convention Center Transfer – Dedicated Taxes. - \$5,000,000 is added to be available from local funds.

Enterprise and Other Funds

The appropriation for Enterprise and Other Funds is increased by \$5,000,000 in local funds; to be allocated as follows:

(1) Washington Convention and Sports Authority. - \$5,000,000 is added to be available from local funds.

Sec. 6. Metropolitan Police Department body-worn cameras funded by any funds made available in Fiscal Year 2016 shall not be worn until rules are approved by the Council pursuant to section 3003 of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), or by an act of the Council.

Sec. 7. Funds to incentivize a neighborhood camera initiative to encourage businesses, property owners, and churches to install security cameras made available in Fiscal Year 2016 shall not be issued until parameters governing the initiative are approved by an act of the Council.

Sec. 8. Program evaluation.

The Office of Performance Management within the Office of the City Administrator shall conduct, in consultation with the Department of Employment Services, a rigorous, high-quality evaluation of both the Career Connection Program and the LEAP Academy. The Office of Performance Management shall issue a report to the Council detailing the study design for this evaluation by October 9, 2015. The report shall include plans for continuous monitoring and oversight of program activities, a list of outcome metrics to be collected, how the data will be collected, how existing administrative data from across the government will be incorporated, and how the evaluation will be built into the startup of the program.

Sec. 9. 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. 10. Effective date.

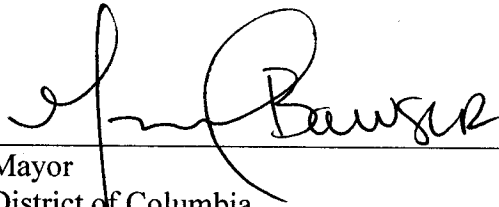
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 6, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-258

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 6, 2016

To amend, on an emergency basis, the Firearms Control Regulations Act of 1975 to extend to January 1, 2018, the date for implementation of the microstamping requirement for semiautomatic pistols.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Microstamping Implementation Emergency Amendment Act of 2015".

Sec. 2. The Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.*), is amended as follows:

(a) Section 408(b) (D.C. Official Code § 7-2504.08(b)) is amended by striking the phrase "January 1, 2016" wherever it appears and inserting the phrase "January 1, 2018" in its place.

(b) Section 503 (D.C. Official Code § 7-2505.03) is amended by striking the phrase "January 1, 2016" wherever it appears and inserting the phrase "January 1, 2018" in its place.

Sec. 3. Applicability.

This act shall apply as of January 1, 2016.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

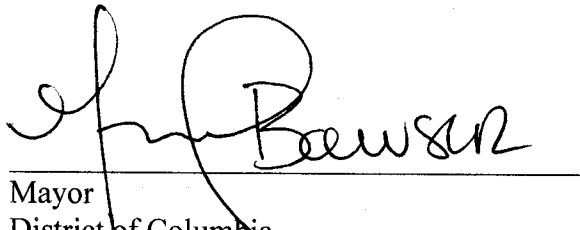
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 6, 2016

ENROLLED ORIGINAL

A RESOLUTION

21-345

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

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

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Early Learning Quality Improvement Network Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The District of Columbia leads the nation in providing high-quality pre-K to 3- and 4-year olds. In order to ensure that the District’s youngest children are prepared when they enter our pre-K programs, a need exists to increase the quality child care and services that our 0-3 year old population receives.

(b) Currently, 3,542 children ages 0-3 years receive child care subsidy in the District of Columbia, and of those children, 38% come from families with no income, 63% come from families whose incomes are under 100% of the federal poverty level (“FPL”), and 75% come from families whose incomes are under 130% of the FPL. These are generally the District’s most vulnerable residents who need comprehensive services and a continuity of care to ensure that they are poised to succeed when they enter pre-K and kindergarten.

(c) In order to address the needs of the population discussed in subsection (b) of this section and their families, the Office of the State Superintendent of Education (“OSSE”) is creating a pilot Early Learning Quality Improvement Network (“QIN”) composed of child development facilities that will serve as hubs to provide quality improvement technical assistance and comprehensive services to licensed child development centers and licensed child development homes. The child development centers and child development homes will provide low-income infants and toddlers high-quality, full-day, full-year comprehensive early learning and development services, including health, mental health, nutrition, and family engagement support, and a continuum of care.

(d) The pilot QIN will allow the District to demonstrate the effectiveness of an evidence-based model of infant and toddler child care to support children’s learning and development outcomes. Federal studies of use of the Early Head Start standards have shown improved cognitive skills and social development by the age of 3 years. Thus, better preparation

ENROLLED ORIGINAL

of the District's youngest children will allow them to be more successful later in school, as well as lead to long-term positive social and educational outcomes.

(e) Under current District law, children receiving child care subsidy are not guaranteed continuity of care, as their subsidy status is linked to their guardian's employment status. Thus, if a parent loses his or her job, his or her child will lose subsidy and thus child care. This disruption is particularly detrimental to these children, as they are often the population with the greatest need for consistency and continuity. Thus, a need exists to allow the children in the pilot QIN to continue to receive child care subsidy, and therefore child care, in spite of the employment status of their guardian.

(f) In August 2014, OSSE applied for a federal Department of Health and Human Services grant to support the QIN. This federal grant requires recipients to provide continuity of care for children participating in the QIN. To date, OSSE has heard from the HHS that we are in the fundable range and thus anticipate receiving the federal grant, thereby further elevating the need for this legislation.

(g) Additionally, the federal HHS grant requires recipients to provide children enrolled in the QIN free child care and comprehensive services. Under current District law, this is not possible. While a child's family may receive subsidy to cover his or her child care, the law still requires the parent to pay for a portion of the child care based on a sliding scale adjusted for the guardian's income level. Therefore, in order to fulfill the requirement of the federal grant, as well as to ensure that the District's most vulnerable population has access to complete and comprehensive health, mental health, nutrition, and family engagement services, a need exists for the children included in the pilot QIN to be exempt from the payment requirement sections of the Day Care Policy Act of 1979.

(h) The permanent version of legislation to implement the QIN, the Early Learning Quality Improvement Network Amendment Act of 2015, enacted December 17, 2015 (D.C. Act 21-231; 62 DCR 16261), was passed by the Council on December 1, 2015 and signed by the Mayor on December 17, 2015. It awaits transmittal to Congress for a 30-day review period.

(i) As the permanent version of the legislation made its way through the legislative process, on October 6, 2015, the Council passed this legislation on an emergency and temporary basis. The emergency legislation will expire on January 25, 2016 and the temporary legislation is projected to become law on January 29, 2016.

(j) This congressional review emergency is necessary to prevent a gap in the law. There are 400 children enrolled in QIN and it is important that this program continues for those families.

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 Early Learning Quality Improvement Network Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-346

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Education Licensure Commission Act of 1976 to change the name of the Education Licensure Commission to the Higher Education Licensure Commission, to extend authority to the commission to require institutions physically located outside the District of Columbia offering postsecondary degree-granting or non-degree-granting online programs or courses to District of Columbia residents physically in the District to be licensed in the District, to permit members of the commission to serve in a hold-over capacity for no more than 180 days after expiration of their second full consecutive term, to provide the commission with the authority to enter into reciprocity agreements with regards to online courses, and to authorize the commission to impose alternative sanctions for violations of provisions of the act or regulations promulgated under the authority of the act; to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to increase the annual compensation of members of the Higher Education Licensure Commission from \$4,000 to \$8,000; to amend the State Education Office Establishment Act of 2000 to designate the Office of the State Superintendent of Education the state portal agency for state authorization reciprocity; and to amend the Office of Administrative Hearings Establishment Act of 2001 to make a conforming amendment.

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

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

(b) The rapid growth of distance education has brought to the forefront the need to provide a coherent and comprehensive structure that focuses on consumer protection and security while maintaining the unique features of online distance learning. Students in online distance education programs require stronger protections because they are completing their courses and

ENROLLED ORIGINAL

programs outside of the visibility of traditional oversight and monitoring structures. Many other states have already taken the step to protect their residents, and the District must move forward to keep up with best practices in post-secondary licensing.

(c) Since the current Education Licensure Commission law does not specifically require schools outside of the District offering online distance education programs to District residents to be licensed, District residents are left unprotected against unethical practices by false or misleading postsecondary entities. Therefore, a need exists to protect District residents who may be unable to assess the legitimacy, quality, or legality of a post-secondary educational institution.

(d) Currently, over 100 postsecondary institutions outside of the District are already providing distance education to District residents and have inquired with the Education Licensure Commission about getting licensed. Until the changes proposed in this emergency legislation are made, there is no guidance that the Education Licensure Commission can provide to these institutions, and there are no basic standards or safeguards that the Education Licensure Commission can require of these institutions.

(e) Furthermore, District-based postsecondary institutions that are engaging in distance education in other jurisdictions must navigate multiple state licensing requirements that are both cumbersome and costly. The changes in this emergency legislation will allow the Education Licensure Commission to enter into reciprocity agreements with other jurisdictions regarding licensing online distance education programs, which would result in ensuring security and consumer protections while making the process and costs for providing distance education far less involved.

(f) The Education Licensure Commission has already entered into a State Authorization Reciprocity Agreement (“SARA”), per authority provided by the Education Licensure Commission Temporary Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-239; 62 DCR 4510) (“Temporary Act”). That Temporary Act expired on October 24, 2015, and the Council passed emergency and temporary legislation (D.C. Law 21-158 and D.C. Law 21-172) to ensure the Education Licensure Commission could maintain the SARA while the permanent legislation worked its way through the process.

(g) This emergency legislation is necessary to prevent a gap in the law as the most recent emergency legislation is set to expire on January 14, 2016, but the temporary legislation is not projected to become law until January 21, 2016.

(h) Without this emergency legislation, private and public higher education institutions in the District, including the University of the District of Columbia (“UDC”), will have to pay fees to each state to conduct online learning programs in their respective states. This is extremely expensive and burdensome for the District’s institutions of higher learning. Thus, this emergency legislation, through the SARA, will save both UDC and the District’s private higher education institutions in the District tens of thousands of dollars in fees in the coming months.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-347

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes to clarify that, for purposes of determining whether the referral of a minor student 14 years of age through 17 years of age to the Court Social Services Division of the Superior Court of the District of Columbia and to the Office of the Attorney General Juvenile Section for the accrual of 15 unexcused absences during School Year 2015-2016 is required, the term unexcused absence may mean an unexcused full school day absence.

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

Sec. 2. (a) Over the past 5 years, the Council of the District of Columbia has passed 3 laws: the Safe Children and Safe Neighborhoods Educational Neglect Mandatory Reporting Amendment Act of 2010, effective October 26, 2010 (D.C. Law 18-242; 57 DCR 7555); the South Capitol Street Memorial Amendment Act of 2012, effective June 7, 2012 (D.C. Law 19-141; 59 DCR 3083); and the Attendance Accountability Amendment Act of 2013, effective September 19, 2013 (D.C. Law 20-17; 60 DCR 14501); with the goal of reducing chronic truancy.

(b) In particular, the Attendance Accountability Amendment Act of 2013 requires educational institutions to refer a minor student 14 through 17 years of age to the Court Social Services (“CSS”) Division of the Superior Court of the District of Columbia and to the Office of the Attorney General (“OAG”) Juvenile Section after the student has accrued 15 unexcused absences within a school year. The goal of this mandate was to facilitate interagency coordination and to ensure that students who continuously miss full days of school receive the services and interventions that they need.

(c) However, students who miss more than 20% of the school day, and thus are not “present,” as defined by section 2199 of Title 5-A of the District of Columbia Municipal Regulations, are being counted as absent. Because many of the District’s high schools operate on a block schedule, this results in a student being considered absent if he or she misses one period of the school day even though he or she may be present the rest of the school day. If this

ENROLLED ORIGINAL

occurs on 15 or more days, the student is referred to CSS and OAG, as the statute requires a referral after 15 unexcused absences. Thus, a student may be referred to CSS or OAG even though he or she has not been chronically truant but instead has been chronically tardy. This has resulted in over-referrals to CSS, thereby saturating the system and diverting limited resources away from those students and families that are truly in need of CSS or OAG intervention.

(d) Chronic truancy is inherently different from chronic tardiness. Chronic truancy involves continual and complete absence from school, often signaling other issues, whether they be social, emotional, mental, familial, or academic, in a child's life and thus necessitates a myriad of interventions from various District agencies. Chronic tardiness, on the other hand, may signal that a student needs aid in getting to school but does not necessitate serious intervention, such as referral to CSS and OAG.

(e) Without this immediate change, chronic truancy and chronic tardiness will continue to be conflated, thereby resulting in students who are not truly truant being identified as such and leading to their involvement with the juvenile justice system. While schools should work with youth who display a pattern of chronic tardiness, such behavior does not rise to the level of requiring a referral to the courts or to OAG. Thus, on October 6, 2015, the Council passed the Truancy Referral Emergency Amendment Act of 2015, effective October 22, 2015 (D.C. Act 21-180; 62 DCR 14004) (the "emergency legislation") to clarify that for the purposes of CSS and OAG referral, an educational institution may ignore the "80/20" rule and consider an unexcused absence to be an unexcused full school day absence.

(f) On November 3, 2015, the Council passed the Truancy Referral Temporary Amendment Act of 2015, enacted on November 23, 2015 (D.C. Act 21-208; 62 DCR 15600) (the "temporary legislation"). On December 4, 2015, the temporary legislation was transmitted to Congress for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)).

(g) The emergency legislation will expire on January 20, 2016; however, the temporary legislation is not expected to become law until January 29, 2016. A congressional review emergency is necessary to ensure that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation becomes law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Truancy Referral Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-348

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to institute a moratorium on the issuance of permits for the construction or operation of automobile paint spray booths in Ward 5; provided, that the moratorium shall not apply to permits for automobile paint spray booths that meet certain conditions.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Ward 5 Paint Spray Booth Conditional Moratorium Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) It is necessary to place a moratorium on the issuance of permits to construct and the issuance and renewal of permits to operate automobile paint spray booths within Ward 5 that do not meet certain standards.

(b) This emergency legislation addresses the immediate and longstanding concerns of residents who are adversely affected by the noxious and possibly injurious fumes emanating from already existing paint spray booth operators. Not all operators are in compliance with current law and even those that are, due to the low threshold of certain regulations, persistently pollute the air with such fumes.

(c) There are several pending automobile paint spray booth permit applications in Ward 5 under consideration before the District Department of the Environment. The possible granting of these permits will exacerbate the problem by adding new operators within a ward with an already high concentration of such operators.

(d) The effects of the noxious and possibly injurious fumes emanating from automobile paint spray booths have a negative impact on property values within the ward as well as the quality of life of its residents.

(e) The Council previously enacted the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; 61 DCR 9968). One of the purposes of this law is to combat toxic odors. Despite that enactment, however, the complaints from residents due to such odors caused by automobile paint spray booths remain frequent and steady.

(f) Approval of emergency legislation was necessary to avoid these unintended effects. Therefore, on October 6, 2015, the Council passed the Ward 5 Paint Spray Booth Conditional Moratorium Emergency Act of 2015, effective October 27, 2015 (D.C. Act 21-189; 62 DCR 14227) (the “emergency legislation”).

ENROLLED ORIGINAL

(g) On November 3, 2015, the Council passed the Ward 5 Paint Spray Booth Conditional Moratorium Temporary Act of 2015, enacted November 23, 2015 (D.C. Act 21-210; 62 DCR 15605) (the “temporary legislation”).

(h) The emergency legislation will expire on January 25, 2016; however, the temporary legislation is not expected to become law until January 29, 2016. A congressional review emergency is necessary to ensure that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation becomes law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Ward 5 Paint Spray Booth Conditional Moratorium Congressional Review Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-349

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to establish that it shall be unlawful for the owner or operator of a grocery store to impose a restrictive land covenant or use restriction on the sale, or other transfer, or lease of real property used as a grocery store that prohibits the subsequent use of the property as a grocery store.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Grocery Store Restrictive Covenant Prohibition Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) In late 2014, it was reported that the Safeway at 4865 MacArthur Boulevard was offered for sale. In previous store and property sales, Safeway required that a purchaser of its property agree to a covenant prohibiting reuse of the property for a similar or analogous use; that is, that the property may not be used as a grocery store or retail food establishment of any kind. This type of restriction is harmful to residents. And, in the Macarthur Boulevard instance, it is harmful to the residents of the neighborhood as the next closest grocer is approximately 2.5 miles away.

(b) Restrictive covenants and other use restriction policies related to grocery stores are harmful and limit a community’s access to fresh food.

(c) Maintaining a grocery store within an urban neighborhood is vital, particularly since many residents rely heavily on walking as a means of access to fresh food.

(d) Seniors and low-income residents especially rely on food retailers in close proximity to their homes as they often face mobility challenges or have limited access to vehicles.

(e) A lack of stores offering healthy food options leads to unhealthy food choices and related health problems.

(f) These restrictive covenants are contrary to the American standard of a free market and open competition.

(g) As development in the District continues and the city sees continued population increases, it is vital that every neighborhood has access to essential grocery-store services. Restrictive covenants undermine food-services competition and the advent of revitalized communities with large and small retailers, including independent butchers and bakeries.

(h) The circumstances described in this section underscore the need for the Council to act to prohibit such restrictive covenants and prevent the creation of food deserts in the District.

ENROLLED ORIGINAL

(i) Further, this congressional review emergency legislation is necessary to ensure that there is no gap between when the Grocery Store Restrictive Covenant Prohibition Emergency Act of 2015 expires and when the Grocery Store Restrictive Covenant Prohibition Temporary Act of 2015 becomes effective.

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 Grocery Store Restrictive Covenant Prohibition Congressional Review Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-350

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to clarify and improve the laws prohibiting wage theft and the enforcement of those laws.

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

Sec. 2. (a) There existed a need to amend the amendments made by the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), to clarify when certain provisions shall take effect, clarify who may bring an action on behalf of an employee, amend criminal penalties, clarify when amounts in the Wage Theft Prevention Fund may be spent, authorize the Mayor to issue rules, and clarify how the Mayor shall make certain information available to manufacturers.

(b) In late 2015, the Council enacted the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2015, effective October 27, 2015 (D.C. Act 21-188; 62 DCR 13764) ("emergency legislation"), which addressed the above-referenced issues. The emergency legislation expires on January 22, 2016.

(c) Temporary legislation, the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2015, enacted on November 23, 2015 (D.C. Act 21-209; 62 DCR 15602), was transmitted to Congress on December 4, 2015, for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and is not projected to become law until January 29, 2016.

(d) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Wage Theft Prevention Correction and Clarification Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-351

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to establish a qualified ABLÉ Program, to be known as the ABLÉ Program Trust, pursuant to the requirements of the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 to exempt from income taxation the earnings on deposits made to an ABLÉ Program Trust by an eligible individual to assist the individual with certain expenses related to the individual's blindness or disability.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "ABLE Program Trust Establishment Congressional Review Emergency Declaration Resolution of 2016".

Sec. 2. (a) In October 2015, the Council enacted the ABLÉ Program Trust Establishment Emergency Act of 2015, effective October 19, 2015 (D.C. Act 21-161; 62 DCR 13725) ("emergency legislation"), and the ABLÉ Program Trust Establishment Temporary Act of 2015, enacted October 22, 2015 (D.C. Act 21-175; 62 DCR 13993) ("temporary legislation"), to enable District residents with a disability to establish an ABLÉ account of up to \$100,000 in accordance with the federal Stephen Beck Jr., Achieving a Better Life Experience Act of 2014, which mandated that states provide people with disabilities and their families the opportunity to create tax-exempt savings accounts.

(b) The emergency legislation expires on January 17, 2016. The temporary legislation was transmitted to Congress on November 5, 2015, for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and is not projected to become law until January 21, 2016 (and permanent legislation, which was transmitted to Congress on December 7, not until February 1, 2016).

(c) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

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 ABLÉ Program Trust Establishment Congressional Review Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-352

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Retail Services Station Act of 1976 to provide that certain prohibitions on discontinuing or converting to another use a full service retail service station shall not apply to a retail service station for which an application was on file with the Zoning Commission between May 2, 2015 and August 1, 2015.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Gas Station Advisory Board Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) In October 2014, the Council enacted the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Amendment Act of 2014, effective May 2, 2015 (D.C. Law 20-271; 62 DCR 1884) (“Act”).

(b) Part 2 of Title II of the Act increased the prohibitions against conversion of a full-service retail service stations by adding the prohibition that such a station cannot be discontinued or be converted into any other use without a waiver.

(c) It is important to protect the integrity of doing business in and with the District by protecting those businesses that were in the process of converting their property or business into a non-service station enterprise before the Act became law.

(d) In October 2015, the Council enacted the Gas Station Advisory Board Emergency Amendment Act of 2015, effective October 29, 2015 (D.C. Act 21-190; 62 DCR 14230) (“emergency legislation”), and the Gas Station Advisory Board Temporary Amendment Act of 2015, enacted November 24, 2015 (D.C. Act 21-212; 62 DCR 15610) (“temporary legislation”), which addressed the issue regarding businesses in the process of converting before the effectiveness of the Act.

(e) The emergency legislation expires on January 27, 2016. The temporary legislation is not projected to become law until January 29, 2016.

(f) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

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 Gas Station Advisory Board Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-353

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend section 47-1096 of the District of Columbia Official Code to clarify the exemption from the tenant opportunity to purchase requirements of the property owned by N Street Village, Inc., located at 1301 14th Street, N.W.; and to amend the N Street Village, Inc. Tax and TOPA Exemption Act of 2014 to make a conforming amendment.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "N Street Village, Inc. Tax and TOPA Exemption Clarification Congressional Review Emergency Declaration Resolution of 2016".

Sec. 2. (a) In October 2014, the Council enacted the N Street Village, Inc. Tax and TOPA Exemption Amendment Act of 2014, effective March 11, 2015 (D.C. Law 20-229; 62 DCR 4500) ("Act").

(b) The applicability clause in the Act inadvertently included the entire bill, but the TOPA exemption did not need to be subject to funding.

(c) In October 2015, the Council enacted the N Street Village, Inc. Tax and TOPA Exemption Clarification Emergency Amendment Act of 2015, effective October 27, 2015 (D.C. Act 21-191; 62 DCR 14232) ("emergency legislation"), and the N Street Village, Inc. Tax and TOPA Exemption Clarification Temporary Amendment Act of 2015, enacted on November 23, 2015 (D.C. Act 21-211; 62 DCR 15608) ("temporary legislation"), which remedied the above-referenced issue.

(d) The emergency legislation expires on January 25, 2016. The temporary legislation is not projected to become law until January 29, 2016.

(e) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

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 N Street Village, Inc. Tax and TOPA Exemption Clarification Congressional Review Emergency Amendment 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**

B21-571 Closing of a Public Alley in Square 697, S.O. 15-26230, Act of 2016

Intro. 1-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B21-576 Presidential Primary Ballot Access Amendment Act of 2016

Intro. 1-8-16 by Councilmembers Evans and Bonds and referred to the Committee on Judiciary

PROPOSED RESOLUTIONS

PR21-518 Commission on Fathers, Men, and Boys Silas H. Grant, Jr.
Confirmation Resolution of 2016

Intro. 1-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-519 Commission on Fathers, Men, and Boys Jelani Murrain Confirmation
Resolution of 2016

Intro. 1-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-522 Department of Public Works Christopher Shorter Confirmation
Resolution of 2016

Intro. 1-4-16 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Transportation and the Environment

PR21-524 Far Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project
Approval Resolution of 2016

Intro. 1-5-16 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Finance and Revenue

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 21- 112, Notary Public Fee Enhancement Amendment Act of 2015
Bill 21-231, Commemorative Flag Request and Statehood Fund Amendment Act of 2015

on

Monday, February 22, 2016
11:00 a.m., Hearing Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-112, the “Notary Public Fee Enhancement Amendment Act of 2015” and Bill 21-231, the “Commemorative Flag Request and Statehood Fund Amendment Act of 2015.” The hearing will be held at 11:00 a.m. on Monday, February 22, 2016 in Hearing Room 120 of the John A. Wilson Building.

The stated purpose of **Bill 21-112** is to increase the fee charged by a notary public to \$6.00, and to require the Mayor to increase the schedule of fees charged by a notary public whenever the license fee that a notary public is required to pay is increased. The stated purpose of **Bill 21-231** is to allow individuals to purchase a flag that has been flown at the John A. Wilson Building to commemorate a special occasion or to honor an individual or group, to require the Secretary of the District of Columbia to issue an accompanying authentication certificate, and to require the Secretary to develop a process, form, and fee.

Those who wish to testify are asked to email the Committee of the Whole at cw@dccouncil.us, or call Evan Cash, Committee Director, at (202) 724-8196, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, February 18, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on February 18, 2016, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of Bill 21-112 and Bill 21-231 can be obtained can be obtained on <http://lims.dccouncil.us>, or through the Legislative Services Division (Room 10) of the Secretary of the Council’s office.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on March 7, 2016.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING**

on

Bill 21-377, Repeal of Outdated and Unnecessary Audit Mandates Amendment Act of 2015

on

**Monday, February 8, 2016
11:00 a.m., Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-377, the "Repeal of Outdated and Unnecessary Audit Mandates Amendment Act of 2015." The hearing will be held at 11:00 a.m. on Monday, February 8, 2016 in room 120 of the John A. Wilson Building.

The stated purpose of Bill 21-377 is to repeal outdated and unnecessary mandates for audits and other reports required of the Office of the District of Columbia Auditor. The Auditor supports the Council of the District of Columbia by reviewing and auditing the accounts of District agencies and making recommendations to the Council regarding the economy, efficiency, and accountability of the District government. The Auditor is currently required to complete at least 20 statutory audits each year. Many of the statutes requiring these audits date back to before the Home Rule Act of 1973 and the creation of the Chief Financial Officer in 1995. As a result, many of the statutory audits performed by the Auditor are no longer necessary or duplicative of other reviews or audits.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or email Evan Cash, Committee Director at (202) 724-8196, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, February 4, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on February 4, 2016 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on February 22, 2016.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

RECONVENED

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING**

on

Bill 21-422, UDC DREAM Amendment Act of 2015

on

**Thursday, February 18, 2016
1:30 p.m., Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-422, the “UDC DREAM Amendment Act of 2015.” The hearing will be held at 1:30 p.m. on Thursday, February 18, 2016 in Hearing Room 123 of the John A. Wilson Building.

The hearing was initially convened, pursuant to public notice, on Tuesday, October 27, 2015. That proceeding was recessed until a future date and is being reconvened on February 18, 2016 to hear testimony regarding Bill 21-422. The stated purpose of Bill 21-422 is to allow District residents, regardless of their federal immigration status, to pay in-state tuition rates and to receive local financial aid for attendance at any University of the District of Columbia school or campus provided that the resident meets certain graduation and District residency requirements.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Christina Setlow, Deputy Committee Director at cow@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, February 16, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on February 16, 2016 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of Bill 21-422 can be obtained on <http://lims.dccouncil.us>, or through the Legislative Services Division (Room 10) of the Secretary of the Council’s office.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on March 3, 2016.

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

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON THE MATTER OF

Far Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project

Wednesday, January 20, 2016

10:00 a.m.

Room 120 - John A. Wilson Building

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, January 20, 2016 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The Far-Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed \$22 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of the bonds to assist the Far Southeast Family Strengthening Collaborative, Inc. in the financing, refinancing or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project includes the acquisition, development, construction and renovation of an existing facility located on Martin Luther King Jr. Avenue, S.E., as well as an approximately 10,800 square foot addition to the facility.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, January 19, 2016. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004**

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
ANNOUNCES A PUBLIC ROUNDTABLE OF THE COMMITTEE
ON THE ISSUE OF
NEW COMMUNITIES INITIATIVE & THE RIGHT TO RETURN**

on

Thursday, January 28, 2016, at 1:00 PM
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Community Development, will hold a public roundtable on the issue of New Communities Initiative and the right to return. The public hearing will be held on Thursday, January 28, 2016, at 1:00 PM in Room 412 of the John A. Wilson Building.

The New Communities Initiative (NCI) is a District of Columbia government effort that began in 2005 with the goal of revitalizing and rebuilding specific communities that have experienced high levels of disinvestment, crime and poverty. The NCI approach is two-fold: 1) to improve the living conditions of residents in the District, particularly those living in public and other subsidized housing, by providing access to quality affordable housing options; and 2) to empower residents by improving their access to workforce and economic development opportunities, educational opportunities, and health and wellness initiatives. NCI's challenge and opportunity is to manage the physical transformation of public and subsidized housing while also preventing displacement, preserving affordability, and acting as a catalyst for additional affordable development in ways that other mixed-income projects and initiatives have struggled.

The New Communities Initiative (NCI) seeks to build new affordable housing with wraparound services adjacent to decaying complexes in order to provide tenants new homes that would simultaneously instigate mixed-income development. A key principle of NCI is the right of existing residents to return. To date, though, eligibility requirements to return to redeveloped properties have varied and are often stricter than the requirements to enter traditional public housing, which can complicate NCI's goals to prevent displacement in its redevelopment efforts. The roundtable seeks to clarify such issues in order to establish a safety net for our public housing residents against displacement and to clarify the tenants' responsibilities as contributing members of the community and city.

Those who wish to testify are requested to telephone the Committee on Housing and Community Development, at (202) 724-8900, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on January 27, 2016. Those who wish to sign up other individuals for testimony are encouraged to inform those individuals to contact the committee clerk for confirmation. Persons wishing to testify are encouraged to submit 15 copies of written testimony. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Community Development, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, February 11, 2016.

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

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

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

- **PR21-479, the “Commission on Fashion Arts and Events Kristopher Johnson-Hoyle Confirmation Resolution of 2015”**
- **PR21-480, the “Commission on Fashion Arts and Events Jacqueline Rodgers-Hart Confirmation Resolution of 2015”**
- **PR21-481, the “Commission on Fashion Arts and Events Brandon Andrews Confirmation Resolution of 2015”**
- **PR21-489, the “District of Columbia Boxing and Wrestling Commission Adam Weers Confirmation Resolution of 2015”**
- **PR21-490, the “District of Columbia Boxing and Wrestling Commission Andrew Huff Confirmation Resolution of 2015”**
- **PR21-492, the “District of Columbia Boxing and Wrestling Commission Kim Lockett Confirmation Resolution of 2015”**

**Friday, January 22, 2016, 10:00 A.M.
JOHN A. WILSON BUILDING, ROOM 120
1350 PENNSYLVANIA AVENUE, N.W.
Washington, DC 20004**

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public roundtable by the Committee on Business, Consumer, and Regulatory Affairs on PR21-479, the “Commission on Fashion Arts and Events Kristopher Johnson-Hoyle Confirmation Resolution of 2015”, PR21-480, the “Commission on Fashion Arts and Events Jacqueline Rodgers-Hart Confirmation Resolution of 2015”, PR21-481, the “Commission on Fashion Arts and Events Brandon Andrews Confirmation Resolution of 2015”, PR21-489, the “District of Columbia Boxing and Wrestling Commission Adam Weers Confirmation Resolution of 2015”, PR21-490, the “District of

Columbia Boxing and Wrestling Commission Andrew Huff Confirmation Resolution of 2015”, and PR21-492, the “District of Columbia Boxing and Wrestling Commission Kim Lockett Confirmation Resolution of 2015”.

The public roundtable is scheduled for Friday, January 22, 2016 at 10:00 a.m. in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

Individuals and representatives of organizations who wish to testify at the public roundtable are asked to contact Ms. Faye Caldwell, Special Assistant to the Committee on Business, Consumer, and Regulatory Affairs, at (202) 727-6683, or via e-mail at fcaldwell@dccouncil.us and furnish their name, address, telephone number, e-mail address and organizational affiliation, if any, by the close of business Wednesday, January 20, 2016. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Monday, January 25, 2016. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 21-159: Request to reprogram \$3,400,000 of Capital funds budget authority and allotment within the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on January 11, 2016. This reprogramming is needed to provide DMPED with sufficient funding to cover the defeasance of Tax Exempt General Obligation (GO) Bonds issued for the Grimke School.

RECEIVED: 14 day review begins January 12, 2016

Reprog. 21-160: Request to reprogram \$3,854,290 of Fiscal Year 2016 Local funds budget authority from the Workforce Investment (WI) to the Office of the Mayor (EOM), the Council of the District of Columbia (Council), the Office of Planning (OP), the Department of Human Resources (DCHR), the Deputy Mayor for Health and Human Services (DMHHS), the Real Property Tax Appeals Commission (RPTAC), the Department of Public Works (DPW) was filed in the Office of the Secretary on January 11, 2016. This reprogramming will fund several critical agency expansions and initiatives.

RECEIVED: 14 day review begins January 12, 2016

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
 Petition Date: February 29, 2016
 Hearing Date: March 14, 2016

License No.: ABRA-100950
 Licensee: MB, LLC
 Trade Name: Bodega
 License Class: Retailer’s Class “B” Grocery Store
 Address: 2409 Franklin Street, N.E.
 Contact: Mahlet Fiseha: 202-269-3623

WARD 5

ANC 5C

SMD 5C07

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

NATURE OF SUBSTANTIAL CHANGES

Applicant requests a Change of Hours of operation and alcoholic beverage sales as well as a Class Change from a Retailer “B” Grocery to a Retailer “A” Liquor Store.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday Closed, Monday through Saturday 7:00am to 7:00pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday 9:00am to 10:00pm, Monday through Saturday 7:00am to 10:00pm

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

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016

License No.: ABRA-091021
Licensee: Capitol Market, LLC
Trade Name: Capitol Market
License Class: Retailer's Class "B" Grocery Store
Address: 2501 N. Capitol Street, N.E.
Contact: Efre Terfaldel: 202-667-1279

WARD 5

ANC 5E

SMD 5E09

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

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Class Change from a Retailer "B" Grocery to a Retailer "A" Liquor Store.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9:00am to 10:00pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016
Protest Hearing: May 11, 2016

License No.: ABRA-101381
Licensee: MHF NOMA Operating IV LLC
Trade Name: Hilton Garden Inn - DC/US Capitol
License Class: Retailer's Class "C" Hotel
Address: 1225 First Street, N.E.
Contact: Matthew T. Minora: 202-625-7700

WARD 6 ANC 6C SMD 6C06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on May 11, 2016 at 1:30 pm.

NATURE OF OPERATION

New full-service hotel with a bar, restaurant and room service serving American cuisine. DJs and live bands will perform from time to time for weddings and other private events. Total Occupancy Load of 204 rooms. Summer Garden with seating for 60 patrons.

HOURS OF OPERATON

Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Saturday 10 am - 2 am

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

Sunday through Saturday 10 am - 2 am

HOURS OF ENTERTAINMENT INSIDE PREMISES

Sunday through Saturday 10 am - 2 am

HOURS OF ENTERTAINMENT FOR SUMMER GARDEN

Sunday through Thursday 10 am - 12 am, Friday and Saturday 10 am - 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016
Protest Date: May 11, 2016

License No.: ABRA-101373
Licensee: MHF DC Operating IV LLC
Trade Name: Homewood Suites Convention Center
License Class: Retail Class "C" Tavern
Address: 465 New York Avenue, N.W.
Contact: Matthew T. Minora: 202 625-7700

WARD 6

ANC 6E

SMD 6E04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on May 11, 2016 at 1:30 pm.

NATURE OF OPERATION

New Tavern. The establishment is a 197 room extended-stay hotel offering a business center, fitness center, and other amenities. Receptions in the lobby offering complimentary beer and wine for hotel guests are planned four to five times per week. Total Occupancy Load is 150.

HOURS OF OPERATON

Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 4 pm - 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND****

Posting Date: **January 1, 2016
Petition Date: **February 16, 2016
Hearing Date: **February 29, 2016
Protest Date: **April 27, 2016

License No.: ABRA- 100896
Licensee: Gladstone Dainty
Trade Name: Just Chicken
License Class: Retailer’s Class “C” Tavern
Address: 926-928 U Street, N.W.
Contact: Cynthia Simms: (202) 821-3043

WARD 1

ANC 1B

SMD 1B02

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 **April 27, 2016 at 1:30 pm.

NATURE OF OPERATION

Tavern serving American Cuisine with a Total Occupancy Load of 40 seats. Request made for Entertainment Endorsement.

HOURS OF OPERATION

Sunday through Saturday 12 am – 12 am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Monday through Thursday 9 am – 2 am, Friday and Saturday 9 am – 3 am

HOURS OF LIVE ENTERTAINMENT

Monday through Thursday 6 pm – 2 am, Friday and Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016
License No.: ABRA-099695
Licensee: 727 Concepts, LLC
Trade Name: L8
License Class: Retailer's Class "C" Nightclub
Address: 727 15th Street, N.W.
Contact: Arman Amirshahi: (301) 346-0001

WARD 2 ANC 2C SMD 2C01

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, service, and consumption.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 10 am - 2 am, Friday & Saturday 10 am - 3 am

PROPOSED HOURS OF OPERATION

Sunday through Saturday 8 am - 4 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am - 2 am, Friday & Saturday 8 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
 Petition Date: February 29, 2016
 Hearing Date: March 14, 2016

License No.: ABRA-079276
 Licensee: Matchbox Capitol Hill, LLC
 Trade Name: Matchbox
 License Class: Retailer’s Class “C” Restaurant
 Address: 521 8th Street, S.E.
 Contact: Kayla Brown: (407) 506-0514

WARD 6 ANC 6B SMD 6B03

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

NATURE OF SUBSTANTIAL CHANGE

Applicant requests renovations for an expansion of 1600 square feet with addition of 45 interior dining seats, 14 bar/counter seats, and six exterior patio seats.

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

Sunday through Thursday 11:00am to 2:00am, Friday and Saturday 11:00am to 3:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016

License No.: ABRA-094178
Licensee: S& G, Inc.
Trade Name: Park Market
License Class: Retailer’s Class “B” Grocery Store
Address: 3400 13th Street, N.W.
Contact: Jeff Jackson: 202-251-1566

WARD 1

ANC 1A

SMD 1A04

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

NATURE OF SUBSTANTIAL CHANGES

Applicant requests a Change of Hours of operation and alcoholic beverage sales as well as a Class Change from a Retailer “B” Grocery to a Retailer “A” Liquor Store.

CURRENT HOURS OF OPERATION

Sunday through Saturday 8:00am to 10:00pm

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9:00am to 10:00pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9:00am to 12:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016

License No.: ABRA-076804
Licensee: The Griffin Group, LLC
Trade Name: Policy
License Class: Retailer's Class "C" Restaurant
Address: 1904 14th Street, N.W.
Contact: Raj Multani: (202) 387-7654

WARD 2 ANC 2B SMD 2B09

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

NATURE OF SUBSTANTIAL CHANGE

Applicant is seeking to add dancing to existing Entertainment Endorsement.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am - 2 am, Friday & Saturday 8 am - 3 am.

CURRENT HOURS OF ENTERTAINMENT ENDORSEMENT

Sunday through Thursday 6 pm - 2 am, Friday & Saturday 6 pm - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: January 8, 2016
 Petition Date: February 22, 2016
 Roll Call Hearing Date: March 7, 2016
 Protest Hearing Date: May 4, 2016

License No.: ABRA-101379
 Licensee: Rite Aide of Washington D.C., Inc.
 Trade Name: Rite Aide #6734
 License Class: Retailer’s Class “A”
 Address: 2251 Wisconsin Avenue, N.W.
 Contact: M. T. Minora: 202-625-7700

WARD 3 ANC 3B SMD 3B02

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

NATURE OF OPERATION

New Retailer “A”. Retail Store offering a convenient one-stop shopping experience where customers can purchase a broad array of household goods and beauty aids in our general merchandise sections and shop in the following specialized departments: Pharmacy, One-Hour Photo, Prepackaged food and drink, Alcoholic Beverages.

HOURS OF OPERATION

Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7am - 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016

License No.: ABRA-075284
Licensee: Axis Bar & Grill, LLC
Trade Name: Sudhouse
License Class: Retailer's Class "C" Restaurant
Address: 1340 U Street, N.W.
Contact: Allison Farouidi: (703) 474-2822

WARD 1 ANC 1B SMD 1B12

Notice is hereby given that this licensee has applied for a Substantial Change to his 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

Request a Class Change from Class CR license to Class CT license. Total number of seats is 90. Total Occupancy Load is 105.

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 11am - 2am, Friday & Saturday 11am- 3am

CURRENT HOURS OF ENTERTAINMENT

Sunday through Thursday 6pm - 1:30am, Friday & Saturday 6pm - 2am

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

Sunday 11am - 2am, Monday through Thursday 11:30am - 2am, Friday & Saturday 11:30 am- 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016

License No.: ABRA-071333
Licensee: 51st, LLC
Trade Name: The 51st State Tavern
License Class: Retailer's Class "C" Tavern
Address: 2512 L Street, N.W.
Contact: Joseph Englert: (202) 203-0983

WARD 2 ANC 2A SMD 2A03

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 an Entertainment Endorsement. Entertainment to include a DJ and acoustic guitar playing.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 10 am - 2 am, Monday through Thursday 3 pm - 2 am, Friday 3 pm - 3 am and Saturday 11:30 am - 3 am

PROPOSED HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 6 pm - 12 am, Friday & Saturday 6 pm - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 15, 2016
Petition Date: February 29, 2016
Hearing Date: March 14, 2016
Protest Date: May 11, 2016
License No.: ABRA-101496
Licensee: The Liberator, LLC
Trade Name: The Liberator
License Class: Retailer's Class "C" Restaurant
Address: 477 H Street, N.W.
Contact: Stephen O'Brien: 202-625-7700

WARD 2

ANC 2C

SMD 2C02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 4:30 pm on May 11, 2016.

NATURE OF OPERATION

Multi-level restaurant and bar featuring a fusion of modern Irish and European cuisines with a seating capacity for 370 patrons. Total Occupancy Load of 470. Requesting an Entertainment Endorsement.

HOUR OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3am

ENTERTAINMENT

Sunday through Thursday 6 pm – 1 am and Friday & Saturday 6 pm – 2 am

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.)), 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 a new Section 1939, entitled “Companion 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 Medicaid reimbursement of new companion services to be provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and the conditions of participation for providers. Companion services are intended to provide non-medical assistance and supervision at home or in the community to support a person’s goals, desires, and needs as identified in the person’s Individual Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools.

The current 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. Neither the ID/DD Waiver approved by CMS in 2012, nor the prior ID/DD Waiver approved by CMS in 2007, included “Companion Services” as this type of service, formerly known in 2004 as “Adult Companion Services,” and then set forth at 29 DCMR § 944, was repealed in 2008 by a final rulemaking published in the *D.C. Register* at 55 DCR 002858 (March 21, 2008). Companion Services are included in the amendment to the current ID/DD Waiver, which was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). 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 October 2, 2015, at 62 DCR 013085. The emergency and proposed rulemaking was adopted on September 14, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remains in effect until January 12, 2016, or the publication of these final rules in the *D.C. Register*, whichever occurs first. No comments were received and no substantive changes were made to the emergency and proposed rulemaking.

The DHCF Director adopted these rules as final on January 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:

A new Section 1939, COMPANION SERVICES, is added to read as follows:

1939 COMPANION SERVICES

- 1939.1 The purpose of this section is to establish standards governing the eligibility for Medicaid reimbursement of companion services for people enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish the conditions of participation for providers of companion services.
- 1939.2 Companion services provide non-medical assistance and supervision to support a person's goals, desires, and needs as identified in the person's Individual Support Plan (ISP), and reflected in his or her Person-Centered Thinking and Discovery tools. Goals may be related to the person's safety, promotion of independence, community integration, and/or retirement.
- 1939.3 To be eligible for Medicaid reimbursement of companion services, the services shall be identified in the person's ISP, Plan of Care and Summary of Supports for each person enrolled in the Waiver, and each person shall:
- (a) Demonstrate a need for non-medical support and supervision at home or in the community; and
 - (b) Have the service recommended by the person's support team, after having considered the appropriateness of other waiver services and the staffing ratio, if any, in the person's home.
- 1939.4 Companion services may be provided in a person's home or in the community.
- 1939.5 To be eligible for Medicaid reimbursement, companion services cannot be provided at the same time as In-Home Supports, Periodic Supported Living, Personal Care Services, Respite, Host Home, and/or Behavioral Supports Non-Professional.
- 1939.6 To be eligible for Medicaid reimbursement, companion services may be provided outside of regular Monday to Friday daytime hours when supervision or other non-medical support is necessary to ensure the person's safety; provided, however, that companion services may not be used outside of regular Monday to Friday daytime hours in combination with Residential Habilitation or 24-Hour Supported Living or 24-Hour Supported Living with Transportation Services.
- 1939.7 To be eligible for Medicaid reimbursement, companion services shall not:

- (a) Exceed eight (8) hours per twenty-four (24) hour day;
- (b) Exceed forty (40) hours per week when used with Residential Habilitation, 24-Hour Supported Living, and 24-Hour Supported Living with Transportation Services, or when used in combination with Personal Care Services or any other Waiver day or vocational support services, including but not limited to Day Habilitation, Employment Readiness, Supported Employment, Small Group Supported Employment, or Individualized Day Supports as part of a person's traditional Monday to Friday day/vocational programming time; and
- (c) Include the provider/employee's transportation time to or from the person's home, or the provider employee's break time.

1939.8 In order to be reimbursed by Medicaid, companion services may be provided in a residential setting at the same ratio as is required of a direct support professional for that setting.

1939.9 In order to be reimbursed by Medicaid, each provider of companion services shall:

- (a) Be a Waiver provider agency;
- (b) Be certified by the Department on Disability Services (DDS) as a Companion Provider Agency per the DDS Provider Certification Review (PCR) Policy;
- (c) Provide verification of passing the DDS PCR for in-home support, supported living, or respite services for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia if applicable; and
- (d) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1939.10 To be eligible for Medicaid reimbursement, the provider shall:

- (a) Use the DDS-approved Person-Centered Thinking and Discovery tools to develop a support plan, based upon what has been identified as important to and for the person. For people who receive companion services during

waking hours, this should include a flexible list of proposed leisure and recreational activities at home and in the community, based upon the person's interests. The support plan must be completed within first week of service, and reviewed and revised quarterly, or more frequently, as needed; and

- (b) Participate in the person's support team meeting, at the person's preference.

1939.11 In order to be eligible for Medicaid reimbursement each provider/ employee rendering companion services shall:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the person for whom they are providing supports;
- (c) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (d) Complete competency-based training in:
 - (1) Communication with people with intellectual disabilities;
 - (2) Infection control procedures consistent with the requirement of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 C.F.R. § 1910.1030; and
 - (3) Emergency procedures; and incident management;
- (e) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
- (f) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (g) Have the ability to communicate with the person to whom services are provided;
- (h) Be able to read, write, and speak the English language;
- (i) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and

- (j) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).

1939.12 An employee may not provide Medicaid reimbursable companion services to a person if he or she is the person's relative; legal guardian; or is otherwise legally responsible for the person.

1939.13 Medicaid reimbursable companion services shall be authorized in accordance with the following provider requirements:

- (a) The DDS shall provide a written service authorization before the commencement of services;
- (b) The service name and provider delivering services shall be identified in the ISP;
- (c) The ISP shall document the amount and frequency of services to be received; and
- (d) The provider shall submit each quarterly review to the person's DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1939.14 In order to be eligible for Medicaid reimbursement each provider of companion services shall comply with Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, except that progress notes as described in § 1909.2(m) shall be kept on a daily basis.

1939.15 In order to be eligible for Medicaid reimbursement each provider shall comply with the requirements under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1939.16 Medicaid reimbursable companion services shall be billed at the unit rate. Companion services shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Medicaid reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

- (a) The reimbursement rate for companion provided at a one-to-one ratio shall be eighteen dollars and eighty-eight cents (\$18.88) per hour billable in

units of fifteen (15) minutes at a unit rate of four dollars and seventy-two cents (\$4.72).

- (b) Companion services provided in a small group of no more than one-to-three shall be reimbursed at eleven dollars and sixty four cents (\$11.64) per person, per hour, billable at a unit rate of two dollars and ninety-one cents (\$2.91).

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF FINAL RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); and Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of amendment of Chapter 8 (Public Library) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR), by the addition of a new Section 820.

The Board of Library Trustees, through D.C. Official Code § 39-105 (2012 Repl.), designated the Chief Librarian/Executive Director to establish rules and manage the day-to-day operations of the library. On June 29, 2015, the Chief Librarian/Executive Director of the District of Columbia Public Library (“DCPL”) approved the adoption of the proposed new section to the District of Columbia Public Library Regulations regarding Permits, to Chapter 8, Title 19 DCMR. The proposed section will provide the DCPL the ability to issue permits in accordance with Fiscal Year 2016 Budget Support Act of 2015.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 6, 2015 at 62 DCR 14352 to amend the rules to reflect the current policies at the DCPL. One comment was received from ANC 3C Commissioners. DCPL considered and addressed the comments, and determined that changes were not necessary.

These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 8, PUBLIC LIBRARY, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add a new section as follows:

Section 820, PERMITS, is amended to read as follows:

820 PERMITS

820.1 The Board of Library Trustees or designee may issue permits to members of the public for private use of DCPL property after payment of a fee reasonably determined to cover the costs that will be incurred by DCPL.

- 820.2 The Chief Business Officer or designee may issue permit conditions, guidelines or policies and require their acceptance by the permit holder prior to the issuance of a permit, provided that the conditions are:
- (a) Approved by the Board of Library Trustees or designee;
 - (b) Made available to the public on DCPL's website; and,
 - (c) Included on the permit application.
- 820.3 The Chief Business Officer or Designee shall be responsible for keeping records and compiling reports detailing the permits issued.
- 820.4 Revenue generated from the issuance of permits shall be deposited into the DCPL Revenue Generating Activities Fund, and spent prior to the end of the fiscal year in which it was received.
- 820.5 Permits are non-transferable and cannot be resold or reassigned.
- 820.6 Permit holders are required to obtain and maintain liability insurance in an amount determined by the DCPL Risk Manager.
- 820.7 The following activities are prohibited on DCPL property:
- (a) Campaign events and activities;
 - (b) Gambling;
 - (c) Possession or use of illegal substances;
 - (d) Possession or use of explosives, firecrackers or firearms;
 - (e) Weapons of any type;
 - (f) Use of alcohol without prior written consent from the Chief Librarian/ Executive Director or use of alcohol that violates DCPL Order No. 404-07-2015.
- 820.8 Permit holders may solicit donations subject to the District of Columbia Charitable Solicitation Act, approved July 10, 1957 (71 Stat 278; D.C. Official Code §§ 44-1701 *et seq.*)
- 820.9 DCPL reserves the right to revoke or temporarily suspend a permit, or change a permit location. DCPL may deny, cancel or revoke a permit in cases where a permit holder:

- (a) Violates District law or DCPL rules and policies;
- (b) Poses a risk to the health, safety or welfare of the public; or,
- (c) Disrupts DCPL operations.

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF FINAL RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); and Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; codified at D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of the amendment of Chapter 8 (Public Library) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR), by adding a new Section 821.

The Board of Library Trustees, through D.C. Official Code § 39-105 (2012 Repl.), designated the Chief Librarian/Executive Director to establish rules and manage the day-to-day operations of the library. On June 29, 2015, the Chief Librarian/Executive Director of the District of Columbia Public Library (“DCPL”) approved to adopt the proposed new Section 821 to the District of Columbia Public Library Regulations regarding revenue generating activity, to Chapter 8, Title 19 DCMR. The proposed section will provide the DCPL the ability to conduct revenue generating activity in accordance with Fiscal year 2016 Budget Support Act of 2015.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on November 6, 2015 at 62 DCR 14355 to amend the rules to reflect the current policies at the DCPL. One comment was received from ANC 3C Commissioners. DCPL considered and addressed the comments, and determined that changes were not necessary.

These rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 8, PUBLIC LIBRARY, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended as follows:

Section 821, REVEUNE GENERATING ACTIVITY, is amended to read as follows:

821 REVENUE GENERATING ACTIVITY

821.1 For the purpose of this section, “revenue generating activity” shall be defined as operations conducted by DCPL that produce income by providing services that benefit the public, but need not relate to library services.

- 821.2 Revenue generating activities shall be approved by the Board of Library Trustees or designee in writing prior to execution of the activity.
- 821.3 Revenue from revenue generating activities shall be deposited in the DCPL Revenue Generating Activities Fund established pursuant to D.C. Official Code § 39-105(a)(15).
- 821.4 All funds deposited into the Revenue Generating Activities Fund shall be spent prior to the end of the fiscal year in which it was received.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendment to Chapter 55 (Practical Nursing) 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 amendment is to eliminate the provision in 17 DCMR Chapter 55, Subsection 5514.4(c)(4), that prohibits licensed practical nurses from administering hypnotics. The current prohibition hinders the expedient provision of nursing services in the workplace by requiring a registered nurse to administer hypnotics. Depending on the setting, such a requirement is not always practical. The Board of Nursing finds that licensed practical nurses are competent to administer these drugs.

Chapter 55, PRACTICAL NURSING, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 5514, SCOPE OF PRACTICE, Subsection 5514.4(c), is amended to read as follows:

5514.4 A practical nurse shall not:

...

- (c) Administer the following medications:
 - (1) Investigational or toxins;
 - (2) Antineoplastic agents;
 - (3) Anesthesia or conscious sedation;
 - (4) Oxytocics; or
 - (5) Medications by way of intrathecal or epidural route.

All persons desiring to comment on the subject 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 to the Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. In addition, comments may be sent to Van.Brathwaite@dc.gov, (202) 442-4899. Copies of the proposed rules may be obtained from the Department of Health at the same address during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays.

**DEPARTMENT OF MOTOR VEHICLES
DISTRICT DEPARTMENT OF TRANSPORTATION**

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The Directors of the Department of Motor Vehicles and the District Department of Transportation are extending the public comment period on the proposed rulemaking to adopt amendments to Chapter 3 (Cancellation, Suspension, or Revocation of Licenses), Chapter 7 (Motor Vehicle Equipment), Chapter 22 (Moving Violations), Chapter 26 (Civil Fines for Moving and Non-Moving Infractions), and Chapter 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR), to help achieve the goal by the year 2024 of zero fatalities and serious injuries to travelers of the District's transportation system. The original thirty (30) day public comment period, scheduled to end on January 9, 2016, is being extended until February 1, 2016.

The proposed rules were published in the *D.C. Register* at 62 DCR 15865 on December 11, 2015. All comments received by Monday, February 1, 2016 will be considered.

A copy of the proposed rulemaking is available at either of the following links: <http://dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=5771905> or www.ddot.dc.gov.

All persons interested in commenting on the subject matter in the subject proposed rulemaking may file comments in writing, not later than Monday, February 2, 2016, with Samuel D. Zimbabwe, Associate Director, District Department of Transportation, 55 M Street, S.E., 5th Floor, Washington, D.C. 20003 and David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. An interested person may also send comments electronically to publicspace.policy@dc.gov. Copies of the proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at www.ddot.dc.gov.

Electronic submission is preferred.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2012 Repl. & 2015 Supp.)) and Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 938 (Increased Reimbursement for Eligible Primary Care Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rule will grant permanent authority to continue enhanced Medicaid reimbursement rates for specific primary care services, such as evaluation and management (E&M) services and immunization administration, provided by primary care services providers enrolled in the fee-for-service (FFS) program who meet specific eligibility requirements. Additionally, this rule will extend these enhanced rates when the same services are provided by Psychiatrists, Obstetricians and Gynecologists (OB\GYNS), and Advanced Practice Registered Nurses (APRNs) who meet the program's eligibility requirements.

The Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub.L. 111-152, 124 Stat. 1029), required the Medicaid program to increase reimbursement for specific primary care services furnished by certain primary care physicians to one hundred percent (100%) of the Medicare fee schedule in calendar years 2013 and 2014. DHCF, through the approval of a subsequent State Plan Amendment, extended the enhanced payment rates through the end of FY 2015. However, neither the ACA, nor the subsequent extension by the District, authorized enhanced payment rates to other types of physicians and providers who deliver these same primary care services, such as psychiatrists, OB/GYNS and APRNs, practicing under their own license.

In the interest of promoting access to primary care services across the District of Columbia, these rules authorize a permanent extension for increased Medicaid reimbursement for specific primary care services furnished by certain primary care physicians that include OB/GYNs and psychiatrists, as well as APRNs as eligible providers. These rules are subject to approval of the corresponding State Plan Amendment by the Council of the District of Columbia (Council) and the federal Centers for Medicare and Medicaid Services (CMS). For FY 2016, the estimated cost of extending the increased rates for these services is approximately \$1,200,000.

Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving primary care services. This emergency and proposed rulemaking will ensure permanent access to specific primary care services for District residents receiving evaluation and management (E&M) services, furnished by certain qualified primary care providers.

The Notice of Emergency and Proposed Rulemaking was adopted on December 31, 2015, and will become effective on January 1, 2016 if the corresponding State Plan amendment has been approved by CMS with an effective date of January 1, 2016 or the effective date established by CMS, whichever is later. The emergency rules shall remain in effect for one hundred and twenty (120) days, until April 29, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to adopt this proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 938, INCREASED REIMBURSEMENT FOR ELIGIBLE PRIMARY CARE SERVICES, is amended to read as follows:

938 INCREASED REIMBURSEMENT FOR ELIGIBLE PRIMARY CARE SERVICES

938.1 Except as provided in Subsection 938.2, primary care services eligible for enhanced reimbursement under the Healthcare Common Procedure Coding System (HCPCS) shall include evaluation and management (E&M) services billed under thirty-eight (38) select codes and Current Procedural Terminology (CPT) vaccine administration codes 90460, 90471, 90472, 90473, and 90474, or their successor codes. DHCF shall publish a list of all eligible codes on its provider website at www.dc-medicaid.com.

938.2 Primary care service providers shall include qualified Primary Care Physicians, Psychiatrists, Obstetricians/Gynecologists (OB\GYNs) and Advanced Practice Registered Nurses (APRNs).

938.3 A primary care physician, OB/GYN or Psychiatrist shall be considered a qualified primary care physician eligible to receive increased reimbursement for certain primary care services, provided the following requirements are met:

(a) The physician has provided DHCF with a written self-attestation on a form prescribed by DHCF that he or she has a specialty designation of family medicine, general internal medicine, pediatric medicine, obstetrics/gynecology or psychiatry which states:

(1) That he or she has Board-certification in family medicine, general internal medicine, pediatric medicine, obstetrics and gynecology or psychiatry; or

(2) He or she has provided E&M and vaccine administration services under the codes described in Subsection 938.1 that equal at least sixty percent (60%) of all the Medicaid services that the physician

bills during either of the following:

- (i) The most recently completed calendar year; or
- (ii) The month prior to the month that DHCF receives the self-attestation form referenced in this Subsection for a primary care services provider enrolled in Medicaid for less than a full calendar year.

938.4 An Advanced Practice Registered Nurse (APRN) delivering services within his or her scope of practice, shall receive increased reimbursement for eligible primary care services, provided the APRN has provided DHCF with a written self-attestation on a form prescribed by DHCF that states that he or she has provided E&M and vaccine administration services under the codes described in Subsection 938.1 that equal at least sixty percent (60%) of all the Medicaid services billed by the APRN during either of the following:

- (a) The most recently completed calendar year; or
- (b) The month prior to the month that DHCF receives the self-attestation form referenced in this subsection, for a primary care services provider enrolled in Medicaid for less than a full calendar year.

938.5 A primary care services provider who previously submitted a self-attestation form to DHCF and was eligible to receive the enhance primary care rates in FY 15 need not submit a new form.

938.6 Except as provided in Subsection 938.7, reimbursement under this rule shall commence from the date that DHCF receives the self-attestation form from an eligible provider, as described in Subsections 938.3 through 938.5.

938.7 Reimbursement for eligible services provided on or after January 1, 2016, shall be made in accordance with the corresponding State Plan Amendment as approved by the Centers for Medicare and Medicaid Services (CMS), provided an eligible primary care services provider who is participating in Medicaid on the effective date of these rules has submitted the self-attestation form, as described in Subsections 938.3 through 938.6.

938.8 An eligible primary care services provider, who has submitted a self-attestation form as required in Subsections 938.3 through 983.5, shall be obligated to inform DHCF in writing of any changes that alter the provider's eligibility for reimbursement under this rule.

938.9 For eligible primary care services rendered by a primary care services provider, as described in this rulemaking, FFS Medicaid reimbursement shall be made at the lower of the providers' billed charges or the applicable reimbursement rate,

as defined in Subsections 938.10 and 938.11.

- 938.10 The applicable rate for primary care services furnished for the period beginning with the effective date of the corresponding State Plan Amendment as approved by the CMS through the last date of the calendar years shall be the Medicare Part B schedule rate that is applicable to a non-facility site of service in effect on the first day of the same calendar year.
- 938.11 The applicable rate for eligible vaccine administration services shall be the Regional Maximum Administration Fee in effect for the calendar year in which the services were furnished.
- 938.12 For eligible primary care E&M services, the applicable rates for services furnished on or after January 1, 2016 shall be identified on the DHCF provider website at www.dc-medicaid.com.
- 938.13 For eligible vaccine administration services, the applicable rates for services furnished on or after January 1, 2016 shall be identified on the DHCF provider website at www.dc-medicaid.com.
- 938.14 DHCF shall publish the applicable rates for eligible primary care and vaccine administration services each calendar year on its provider website at www.dc-medicaid.com.
- 938.15 The eligibility of each primary care services provider shall be subject to verification that the provider has complied with the requirements set forth in this rule.
- 938.16 An eligible primary care services provider, who is found in violation of this rule, shall be subject to the requirements set forth in Chapter 13 of Title 29 DCMR, entitled Medicaid Program: Administrative Procedures.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (“DHCF”), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 5015 of Chapter 50 (Medicaid Reimbursements for Personal Care Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”).

These emergency and proposed rules amend the previously published standards governing reimbursement of providers of personal care services under the District of Columbia State Plan for Medical Assistance by increasing the rates for services rendered by a personal care aide (“PCA”) to comply with the Living Wage Act of 2006 (“Living Wage Act”), effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)). These rules increase the previous living wage rates by eight cents (8¢) per hour, or two cents (2¢) per fifteen (15) minute increment. This adjustment was made to comply with the Department of Employment Services’ recent increases to the living wage rate effective January 1, 2016. These rules also authorize DHCF to publish a notice in the *D.C. Register* of future changes to the reimbursement rate.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of personal care services. Based upon current reimbursement requirements, payments to home care providers are not adequate to ensure compliance with the Living Wage Act of 2006. By taking emergency action, this rule will ensure that providers of personal care services are compensated for providing personal care services in accordance with the Living Wage Act of 2006. Therefore, in order to ensure that the beneficiaries’ health, safety, and welfare are not threatened by the lapse of access to personal care services provided by qualified and equitably paid providers, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 31, 2015 and will become effective for services rendered beginning January 1, 2016. The emergency rules shall remain in effect for one hundred and twenty (120) days, or until April 29, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 5015, REIMBURSEMENT, is amended to read as follows:

5015 REIMBURSEMENT

- 5015.1 For dates of services beginning October 27, 2015 through December 31, 2015, each provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty five cents (\$3.45) per fifteen (15) minutes for services rendered by a personal care aid (PCA), shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 5015.2 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 5015.3 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s).
- 5015.4 Each Provider shall maintain adequate documentation substantiating the delivery of allowable services provided in accordance with the PCA service authorization and the beneficiary's plan of care for each unit of service submitted on every claim.
- 5015.5 Reimbursement for PCA services, when provided through the D.C. Medicaid program's State Plan PCA benefit, shall not exceed eight (8) hours per day, seven (7) days a week, and shall be limited to the amount, duration, and scope of services set forth in the PCA Service Authorization and the plan of care, as described in Section 5003.
- 5015.6 Claims for PCA services submitted by a Provider in any period during which the beneficiary is an in-patient at another health care facility including a hospital, nursing home, psychiatric facility or rehabilitation program shall be denied except on the day when a beneficiary is admitted or discharged.
- 5015.7 When a beneficiary is discharged from a health care facility to the beneficiary's home and requires PCA services on the date of discharge, the number of PCA hours on that day shall be authorized in accordance with the beneficiary's discharge plan.
- 5015.8 Claims for PCA service submitted by a Provider for any hour in which the beneficiary was receiving Adult Day Health Program (ADHP) services under the § 1915(i) State Plan Option, or other similar service in which PCA services are provided concurrently to the beneficiary shall be denied.

- 5015.9 If a beneficiary is also receiving ADHP services on the same day that PCA services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.
- 5015.10 Each Provider shall agree to accept as payment in full the amount determined by DHCF as Medicaid reimbursement for the authorized services provided to beneficiaries. Providers shall not bill the beneficiary or any member of the beneficiary's family for PCA services.
- 5015.11 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.
- 5015.12 All reimbursable claims for PCA services shall include the National Provider Identification (NPI) numbers for the:
- (a) Provider;
 - (b) Physician or Advanced Practice Registered Nurse (APRN)who ordered the PCA services;
 - (c) The staffing agency, if applicable; and
 - (d) PCA who provided the PCA services, regardless of whether the PCA is an employee of the Provider or is from another staffing agency.
- 5015.13 Pursuant to 42 C.F.R. § 424.22(d), the Department shall deny PCA service claims or recoup paid claims when Provider records or other evidence indicate that the primary care physician or APRN ordering a beneficiary's treatment has a direct or indirect financial relationship, compensation, ownership or investment interest as defined in 42 C.F.R. § 411.354 in the Provider billing for the services, unless the financial relationship, compensation, ownership or investment interest meets an exception as defined in 42 C.F.R. § 411.355.
- 5015.14 Claims resulting from marketing by a staffing agency (including face-to-face solicitation at doctors' offices, home visits, requests for beneficiary Medicaid numbers, or otherwise directing beneficiaries to any Medicaid Provider) shall not be reimbursed.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D. Senior Deputy Director/Medicaid Director, Department of Health Care Finance, 441 4th Street, North West, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-001
January 8, 2016**SUBJECT:** Re-Establishment — Metropolitan Washington Regional Ryan White Planning Council**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2) and (11) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(2) and (11) (2014 Repl.), and pursuant to §§ 2602(a)(1) and (b)(1) of the Public Health Service Act, as amended by § 101 of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, approved August 18, 1990, 104 Stat. 576, 42 U.S.C. 300ff-12(a)(1) and (b)(1), it is hereby **ORDERED** that:

I. DESIGNATION OF REGION

For the purposes of this Order, the Metropolitan Washington Region (“**Region**”) shall be defined as the following political jurisdictions: the District of Columbia; the City of Alexandria, Virginia; the City of Falls Church, Virginia; the City of Fairfax, Virginia; the City of Manassas, Virginia; the City of Manassas Park, Virginia; the City of Fredericksburg, Virginia; the following counties in the Commonwealth of Virginia: Arlington County, Loudoun County, Fairfax County, Prince William County, Stafford County, Clarke County, Culpepper County, Fauquier County, Warren County, King George County, and Spotsylvania County; the following counties in the State of Maryland: Prince George’s County, Charles County, Calvert County, Montgomery County, and Frederick County; and the following counties in the State of West Virginia: Berkeley County and Jefferson County.

II. RE-ESTABLISHMENT

There is hereby re-established for the Region a Metropolitan Washington Regional Ryan White Planning Council (“**Council**”).

III. DUTIES

The Council shall:

- a. Establish priorities for the allocation of funds within the Region, including how best to meet such priorities and additional factors that a grantee should consider in allocating funds under a grant based on the factors set forth in section 2602(b)(4)(C) of the Public Health Service Act (42 U.S.C. § 300ff-12(b)(4)(C));
- b. Develop a comprehensive plan for the organization and delivery of health services that is compatible with existing District, state, and local plans regarding the provision of health services to individuals with HIV/AIDS and that meets the requirements of section 2602(b)(4)(D) of the Public Health Service Act (42 U.S.C. § 300ff-12(b)(4)(D));
- c. Assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the Region, and, at the discretion of the Council, assess the effectiveness, either directly or through contractual arrangements, of the services offered in meeting the identified needs;
- d. Participate in the development of the state-wide coordinated statement of need initiated by the District of Columbia Department of Health (DOH);
- e. Determine the size and demographics of the population of individuals with HIV/AIDS as well as the size and demographics of the estimated population of individuals with HIV/AIDS who are unaware of their HIV status;
- f. Determine the needs of the HIV/AIDS population, with particular attention to individuals who know their HIV/AIDS status and are not receiving HIV-related services, disparities in access and services among affected subpopulations and underserved communities, and individuals with HIV/AIDS who do not know their HIV status;
- g. Establish methods for obtaining input on community needs and priorities;
- h. Coordinate with federal grantees that provide HIV-related services within the Region; and
- i. Issue an annual report of activities to the Mayor.

IV. COMPOSITION

- a. The Council shall consist of the following thirty-three (33) members.
 1. Thirty (30) public members appointed by the Mayor, who shall include representation from the following categories, as required by section 2602

of the Public Health Service Act (42 U.S.C. § 300ff-12(b)(2)):

- A. Health care providers, including federally qualified health centers;
- B. Community-based organizations serving populations affected by HIV/AIDS and AIDS service organizations;
- C. Social services providers, including providers of housing and services to the homeless;
- D. Mental health and substance abuse providers;
- E. Local public health agencies;
- F. Hospital planning or health care planning agencies;
- G. Affected communities, including individuals living with HIV/AIDS, members of a Federally-recognized Indian tribe as represented in the population, individuals co-infected with hepatitis B or C, and historically underserved groups and sub-populations;
- H. Non-elected community leaders (especially representatives from communities or populations most impacted by HIV/AIDS, based on social and geographic distribution);
- I. Grantees under subpart II of Part C of Title XXVI of the Public Health Service Act (42 U.S.C. §§ 300ff-51 *et seq.*);
- J. Grantees under section 2671 of the Public Health Service Act (42 U.S.C. § 300ff-71) or, if none are operating in the Region, organizations with a history of serving children, youth, women, and families living with HIV and operating in the Region;
- K. Grantees of other federally-funded HIV programs, including, but not limited to, providers of HIV prevention services and, if present in the Region, a representative of each of the following:
 - i. A grantee under Part F: Special Projects of National Significance of the Public Health Service Act (42 U.S.C. § 300ff-101);
 - ii. AIDS Education and Training Centers (AETCs);
 - iii. HIV/AIDS Dental Reimbursement Program, the Housing Opportunities for Persons with AIDS (HOPWA) program of the U.S. Department of Housing and Urban

Development (HUD), and other federal programs if they provide treatment for HIV/AIDS, such as the Veterans Health Administration; and

- L. Individuals or representatives of individuals formerly incarcerated in a federal, District, state, or local prison and released within three (3) years before appointment with HIV/AIDS as of the date of release.
2. The following three (3) government members:
- A. One (1) non-voting representative from the District of Columbia Department of Health Care Finance;
 - B. One (1) non-voting representative from the District of Columbia Department of Behavioral Health; and
 - C. One (1) voting representative of the District of Columbia Department of Health, the agency administering the program under Part B of Title XXVI of the Public Health Service Act (42 U.S.C. § 300ff-21 *et seq.*).
- b. The membership of the Council shall reflect the demographics of the population of individuals with HIV/AIDS in the Region.
- c. Not less than thirty-three percent (33%) of the Council shall be individuals who are receiving HIV-related services pursuant to a grant under section 2601(a) of the Public Health Service Act (42 USCS § 300ff-11(a)), are not officers, employees, or consultants to any entity that receives amounts from such a grant, and do not represent any such entity. For purposes of the preceding sentence, an individual shall be considered to be receiving such services if the individual is a parent of, or a caregiver for, a minor child who is receiving such services. With respect to membership on the Council, this subsection shall not be construed as having any effect on entities that receive funds from grants under any parts of B through F of Title XXVI of the Public Health Service Act (42 USCS §§ 300ff-21 through 300ff-101) but do not receive funds from grants under section 2601(a) of the Public Health Service Act (42 USCS § 300ff-11(a)), on officers or employees of such entities, or on individuals who represent such entities

V. CONFLICT OF INTEREST

- a. The Council shall develop and publish procedures to guard against conflicts of interest for its members. These procedures shall guarantee that no member of the Council shall participate in any way in consideration of, or making decisions on, grants to his or her own organization or to any organization offering the same or similar services. This prohibition extends to any member of the Council having a

family member who is an officer or employee in an organization being considered for a grant. The conflict of interest procedures of the Council shall also ensure compliance with section 2602(b)(5)(A) and (B) of the Public Health Service Act (42 U.S.C. § 300ff-12(b)(5)(A) and (B)).

- b. Each member of the Council shall sign a conflict of interest statement delineating his or her economic or other relationships (for example, contracts, employment, grants, etc.) with entities that may be affected or benefit by Council decisions. If a conflict of interest arises for any Council member, the member shall immediately disclose the conflict and recuse himself or herself from deliberation and debate and from making recommendations and from participating in the decision-making process related to any matter related to the conflict of interest.

VI. TERMS

- a. Each public member of the Council shall be appointed for a term of two (2) years; provided, the initial appointments to the Council shall be staggered such that fifteen (15) of the public members shall be appointed for terms of three (3) years and fifteen (15) of the public members shall be appointed for terms of two (2) years.
- b. District government officials shall serve while employed in their official positions, and shall serve at the pleasure of the Mayor.
- c. Members may be appointed to fill unexpired terms as vacancies occur.

VII. ORGANIZATION

- a. The following individuals shall serve as co-chairs of the Council:
 1. A government member of the Council designated by the Mayor, who shall serve as the Governmental Co-Chair; and
 2. A member of the Council who is not an employee of the District of Columbia or of any other governmental entity, who shall be selected by the members of the Council to serve for a two (2) year term as the Community Co-Chair.
- b. The Council may adopt bylaws and rules of procedure for the conduct of its meetings or other activities as it deems necessary to perform its duties as enumerated in section III.

VIII. MEMORANDUM OF AGREEMENT:

The December 18, 1990 memorandum of agreement between the Mayor of the District of Columbia and the County Executive of Prince George's County, Maryland, designated

pursuant to the provisions of Title I of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 is incorporated by reference herein.

IX. ADMINISTRATION

Administrative support for the Council shall be provided by the Department of Health to the extent that funds are available through appropriation or other public health agencies. Other agencies of the District of Columbia government and surrounding jurisdictional governments shall cooperate with the Council as appropriate.

X. COMPENSATION

Members of the Council shall serve without compensation. However, reasonable expenses of the Council may be reimbursed, when approved in advance by the Director of the Department of Health, or his or her designee, subject to the availability of appropriations for that purpose, and shall become obligations against funds designated for that purpose.

XI. RESCISSIONS


Mayor's Orders 2008-75, dated May 16, 2008, 2010-35, dated February 12, 2010, and 2012-63, dated April 30, 2012, are hereby rescinded.

XII. EFFECT

This Mayor's Order supersedes all previous Mayor's Orders to the extent of any inconsistency therein.

XIII. EFFECTIVE DATE: This Order shall become effective immediately.


MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor’s Order 2016-002
January 08, 2016

SUBJECT: Appointments and Reappointments — Metropolitan Washington Regional Ryan White Planning Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2), (11) (2014 Repl.), and pursuant to §§ 2602(a)(1) and (b)(1) of the Public Health Service Act, as amended by § 101 of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, approved August 18, 1990, 104 Stat. 576, 42 U.S.C. 300ff-12(a)(1) and (b)(1), it is hereby **ORDERED** that:

- 1. The following persons are appointed to the Washington Metropolitan Regional Ryan White Planning Council (hereinafter referred to as “Council”), for the term to end November 5, 2017:

**LAKISA BLOCKER
BRITTANY NASH
SCOTT SANDERS
ANTHONY THOMAS
ANDREA THOMAS
BETELHEM MEKONNEN**

- 2. The following persons are reappointed to the Council for a term to end November 5, 2017, rescinding their term end of April 30, 2016 in Mayor’s Order 2014-108, dated May 7, 2014:

**SHARON COKER
MARTHA CAMERON
GUY SHIELDS
JULIO FONSECA
ALIS MARACHELIAN**


- 3. The following persons are appointed to the Council for the term to end November 5, 2018:

SARCIA ADKINS	GWEN ANDERSON
RUBY CORADO	KENNETH CHANDLER
THOMAS DECKER	CALIE EDMONDS
CHARLES GRANT	RANDY KIER


PAM KUROWSKI
MERIAM MIKRE
BETH TADESSE

RICARDO LUMPKIN
MEGHAN SULLIVAN
CHRISTINE TEAGUE

3. MICHAEL KHARFEN is reappointed to the Council as an *ex officio* voting member and shall serve at the pleasure of the Mayor.
4. This Mayor's Order supersedes all previous appointment Mayor's Orders to the Council.
5. EFFECTIVE DATE: This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-003
January 12, 2016

SUBJECT: Appointments – The Mayor's Bullying Prevention Task Force

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and pursuant to section 3 of the Youth Bullying Prevention Act of 2012, effective September 14, 2012, D.C. Law 19-167, D.C. Official Code § 2-1535.02 (2013 Supp.), and in accordance with Mayor's Order 2012-150, dated September 20, 2012, as amended by Mayor's Order 2014-053, dated March 7, 2014, it is hereby **ORDERED** that:

1. The following persons are appointed to the Mayor's Bullying Prevention Task Force ("**Task Force**"), for terms to end September 19, 2017:

ELEANOR CANTER as an advocate community representative, replacing Judith Sandalow;

WILLA JONES as a school mental health professional member, replacing Zillah Wesley;

CHRIS OBERMEYER as a teacher community representative, replacing Monica Shah;

KANYA SHABAZZ as a parent or legal guardian member, replacing Andrew Barnett;

MONEE WRIGHT as a youth community representative, replacing Isabel Mendez Aristondo;

AUDREY WILLIAMS as an administrator from an educational institution or agency member, replacing Jessica Wodatch; and,


PRESTON MITCHUM as a direct service provider community representative, replacing Adam Tenner.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-004
January 12, 2016

SUBJECT: Delegation — Authority to Director of the Department of Employment Services Related to Private Employer Transit Benefit Programs

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) and (6) of the District of Columbia Home Rule Act of 1978, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2) and (6) (2014 Repl.), and by title III-A of the Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014, D.C. Law 20-142, D.C. Official Code § 32-151 *et seq.*, it is hereby **ORDERED** that:

1. The Director of the Department of Employment Services (“**DOES**”) is delegated the Mayor’s authority to :
 - a. Implement and enforce the provisions of title III-A of the Sustainable DC Omnibus Amendment Act of 2014 (D.C. Official Code § 32-151 *et seq.*), and the regulations issued thereunder, including the authority to impose civil fines and penalties 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 § 2-1801.01 *et seq.*); and
 - b. Issue rules to implement and otherwise carry out the purposes of title III-A of the Sustainable DC Omnibus Amendment Act of 2014 (D.C. Official Code § 32-151 *et seq.*), as authorized by section 303 of the Sustainable DC Omnibus Amendment Act of 2014 (D.C. Official Code § 32-153).
2. The Director of DOES may further delegate any of the authority delegated under this Order to any subordinates under his or her jurisdiction.
3. This order supersedes any previous Mayor’s Orders to the extent of any inconsistency.

4. EFFECTIVE DATE: This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-005
January 12, 2016

SUBJECT: Delegation — Authority to the Director of the District Department of Transportation

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), it is hereby **ORDERED** that:

1. The authority vested in the Mayor by section 4(a) of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.23(a) (2012 Repl. and 2015 Supp.)), section 11 of the District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.10 (2012 Repl. and 2015 Supp.)), and section 6026a of the Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 10-1181.06 (2012 Repl. and 2015 Supp.)), is delegated to the Director of the District Department of Transportation (“**DDOT**”).
2. Mayor's Order 2004-46, dated March 22, 2004 (51 DCR 4128), “Delegation of Authority Pursuant to D.C. Law 6-42, the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985”, amended by Mayor's Order 2006-61 dated June 14, 2006 (53 DCR 5684), “Delegation and Transfer of Authority pursuant to D.C. Law 16-51, the District Department of the Environment Establishment Act of 2005”, is further amended as follows:
 - a. Paragraph 2 is amended by striking the phrase “the Department of Health and the District Department of the Environment” and inserting the phrase “the Department of Health, the District Department of the Environment, and the District Department of Transportation” in its place.
 - b. A new paragraph 4a is added to read as follows:
 - “4a. For the purposes of this Mayor's Order, the laws administered by the District Department of Transportation include the following:

- (a) The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.* (2012 Repl. and 2015 Supp.));
 - (b) An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.* (2012 Repl. and 2015 Supp.));
 - (c) The District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.* (2012 Repl. and 2015 Supp.));
 - (d) The District of Columbia Public Space Utilization Act, approved October 17, 1968 (82 Stat. 1166; D.C. Official Code § 10-1121.01 *et seq.* (2012 Repl. and 2015 Supp.));
 - (e) Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.* (2012 Repl. and 2015 Supp.)); and
 - (f) The Abatement of Dangerous Conditions on Public Space Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 10-1181.01 *et seq.* (2012 Repl. and 2015 Supp.)).”
3. All adjudicated cases involving enforcement authority delegated or transferred to DDOT pursuant to this Order under the jurisdiction of the Office of Administrative Hearings prior to this Mayor's Order shall continue to be within the jurisdiction of the Office of Administrative Hearings, pursuant to the Office of Administrative Hearings Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.* (2012 Repl. and 2015 Supp.)).
4. The Director of DDOT may further delegate any of the authority delegated to him or her under this Order to any subordinates under his or her jurisdiction.
5. This Order shall supersede all previous Mayor's Orders to the extent of any inconsistency.

6. EFFECTIVE DATE This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

**DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Bernard H. Weberman.

This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Weberman’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Weberman has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his two-year term on June 30, 2016.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Weberman’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before February 8, 2016. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges
Office of Administrative Hearings
District of Columbia Government
441 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams
Chief Administrative Law Judge Eugene A. Adams
James W. Cooper, Esq.
Nadine C. Wilburn, Esq.
Joseph N. Onek, Esq.

**DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Eli B. Bruch.

This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Bruch’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Bruch has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his two-year term on June 22, 2016.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Bruch’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before February 8, 2016. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

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The members of the Commission are:

The Honorable Yvonne Williams
Chief Administrative Law Judge Eugene A. Adams
James W. Cooper, Esq.
Nadine C. Wilburn, Esq.
Joseph N. Onek, Esq.

**DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Leslie Meek.

This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Meek’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Meek has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of her two-year term on June 22, 2016.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Meek’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before February 8, 2016. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges
Office of Administrative Hearings
District of Columbia Government
441 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams
Chief Administrative Law Judge Eugene A. Adams
James W. Cooper, Esq.
Nadine C. Wilburn, Esq.
Joseph N. Onek, Esq.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JANUARY 20, 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 # 15-PRO-00117; S & B Market, LLC, t/a MLK Mini Market, 3333
Martin Luther King, JR Ave SE, License #95905, Retailer B, ANC 8C
**Substantial Change (Class Change from Class "B" Grocery to Class "A"
Liquor Store)**

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00114; Bardo, LLC, t/a Bardo, 25 Potomac Ave SE, License
#100646, Retailer DT, ANC 6D
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00113; Dean & Deluca of Georgetown, Inc., t/a Dean & Deluca
3276 M Street NW, License #93723, Retailer DR, ANC 2E
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00115; Beletesh, Ltd, t/a Serv-u-Liquors, 1935 9th Street NW
License #60026, Retailer A, ANC 1B
Application to Renew the License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00121; Colorado & Cohen, LLC, t/a Bullfrog Bagels, 317 7th
Street SE, License #100249, Retailer CR, ANC 6B
Application for a New License

Board's Calendar
January 20, 2016

- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-CMP-00484; AED, LLC, t/a Rustik Tavern, 84 T Street NW
License #85617, Retailer CT, ANC 5E
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-CMP-00399; Atsede Corporation, t/a Nile Market and Kitchen
7815 Georgia Ave NW, License #60432, Retailer CR, ANC 4B
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-CMP-00499; The New Brookland Café, LLC, t/a B Café et
Brookland Café, 3740 12th Street NE, License #83121, Retailer CR, ANC 5B
No ABC Manager on Duty
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-AUD-00052; GBP, LLC, t/a Tackle Box, 3245 M Street NW
License #84952, Retailer CR, ANC 2E
Failed to File Quarterly Statements (4th Quarter 2014)
- Show Cause Hearing (Status)** **9:30 AM**
Case # 14-CMP-00737; Taste International, Inc., t/a Taste, 1812 Hamlin Street
NE, License #86011, Retailer CT, ANC 5C
**Noise Violation, Failed to Post Window Lettering, Substantial Change
without the Board's Approval (Increase in Occupancy), No ABC Manager
on Duty, Trade Name Change Without Board's Approval**
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-251-00080; Green Island Heaven and Hell, Inc., t/a Green Island
Café/Heaven, 2327 18th Street NW, License #74503, Retailer CT, ANC 1C
Violation of Settlement Agreement
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-CMP-00355; Stoney's LLC, t/a Stoney's, 1433 P Street NW, License
#75613, Retailer CR, ANC 2F
Substantial Change without the Board's Approval
- Show Cause Hearing (Status)** **9:30 AM**
Case # 15-AUD-00089; 3566 14th Street, LLC, t/a La Dulce Noche, 3566 14th
Street NW, License #92426, Retailer CR, ANC 1A
Failed to Provide Invoices for Purchased Alcoholic Beverages

Board's Calendar
January 20, 2016

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00417; Mama Chuy DC, Inc., t/a Mama Chuy DC, 2650
Georgia Ave NW, License #86892, Retailer CR, ANC 1B
No ABC Manager on Duty

Show Cause Hearing* **10:00 AM**
Case # 15-CMP-00414; Yetenbi, Inc., t/a Noble Lounge (Formerly-Yetenbi
Restaurant), 1915 9th Street NW, License #85258, Retailer CT, ANC 1B
**No ABC Manager on Duty, Substantial Change without Boards Approval
(Increase in Occupancy)**

Show Cause Hearing* **11:00 AM**
Case # 15-CMP-00284; Ultimo, LLC, t/a Divino Grill (Formerly-Ultimo
Lounge), 1633 17th Street NW, License #93308, Retailer CR, ANC 2B
**No ABC Manager on Duty, Failed to Post Pregnancy Sign, Failed to Post
Legal Drinking Age Sign**

Show Cause Hearing* **11:00 AM**
Case # 15-CMP-00315; Prospect Dining, LLC, t/a Chinese Disco, 3251
Prospect Street NW, License #78058, Retailer CR, ANC 2B
Failed to Obtain a Cover Charge Endorsement

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Show Cause Hearing* **1:30 PM**
Case # 15-CMP-00272; Lucky 7, LLC, t/a Lucky 7 Liquors, 2314 Rhode Island
Ave NE, License #90270, Retailer A, ANC 5C
No ABC Manager on Duty, Failed to Post Window Lettering

Contested Fact Finding Hearing* **2:30 PM**
Case # 15-CMP-00761 and # 15-CMP-00761(a); Boyermarketing, LLC, t/a
Odessa, 1413 K Street NW, License #100813, Retailer CN, ANC 2F
Fitness for Licensure

Protest Hearing* **4:30 PM**
Case # 15-PRO-00103; Silkari East, Inc., t/a Kouzina Authentic Greek
Restaurant, 3234 Prospect Street NW, License #99818, Retailer CR, ANC 2E
Application for a New License

***The Board will hold a closed meeting for purposes of deliberating these
hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JANUARY 20, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On January 20, 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#15-AUD-00104 Sudhouse, 1340 U ST NW Retailer C Restaurant, License#: ABRA-075284

2. Case#15-CC-00120 Shadow Room, 2131 K ST NW Retailer C Nightclub, License#: ABRA-075871

3. Case#15-CMP-00810 Cobalt/ 30 Degrees/Level One, 1639 - 1641 R ST NW Retailer C Tavern, License#: ABRA-071833

4. Case#15-CMP-00781 Thai Chili, 701 7TH ST NW Retailer C Restaurant, License#: ABRA-071065

5. Case#15-CMP-00870 Medaterra, 2614 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-026206

6. Case#15-CMP-00808 R F D Washington, 810 7TH ST NW Retailer C Tavern, License#: ABRA-060583

7. Case#15-CMP-00780 La Molienda, 3568 14TH ST NW Retailer C Restaurant, License#: ABRA-060398

8. Case#15-251-00214 Macombo Lounge, 5335 GEORGIA AVE NW Retailer C Nightclub, License#: ABRA-000771

-
9. Case#15-251-00229 The Fireplace, 2161 P ST NW Retailer C Tavern, License#: ABRA-014419
-
10. Case#15-251-00215 The Brixton, 901 U ST NW Retailer C Tavern, License#: ABRA-082871
-
11. Case#15-AUD-00102 Big Chair Coffee & Grill, 2122 Martin Luther King Jr. AVE SE Retailer C Restaurant, License#: ABRA-085903
-
12. Case#15-251-00221 Echostage, 2135 QUEENS CHAPEL RD NE Retailer C Nightclub, License#: ABRA-090250
-
13. Case#15-CMP-00809 LUCKY 7 LIQUOR, 2314 RHODE ISLAND AVE NE Retailer A Retail - Liquor Store, License#: ABRA-090270
-
14. Case#15-CC-00126 Casa Luca, 1099 NEW YORK AVE NW Retailer C Restaurant, License#: ABRA-091894
-
15. Case#15-CC-00134 Penn Branch Liquor, 3228 PENNSYLVANIA AVE SE Retailer A Retail - Liquor Store, License#: ABRA-094079
-
16. Case#15-CMP-00768 & Pizza, 1005 E ST NW Retailer C Restaurant, License#: ABRA-094712
-
17. Case#15-CMP-00804 grk Fresh Greek, 1140 19TH ST NW Retailer C Restaurant, License#: ABRA-094847
-
18. Case#15-CMP-00733 Sugar, 2121 K ST NW Retailer C Tavern, License#: ABRA-098866
-
19. Case#15-CMP-00734 DC Grill Express, 1917 18th ST NW Retailer C Restaurant, License#: ABRA-099452

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, JANUARY 20, 2016 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Settlement Agreement, between HRH Services, LLC t/a The Ailibi and ANC 6C, dated January 5, 2016. *The Alibi*, 237 2nd Street, N.W., Retailer CR, License No.: 97969*

2. Review of Resolution from ANC 2E, dated January 6, 2016, regarding Settlement Agreement Template as a protocol for reviewing CR and DR license applications.

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JANUARY 20, 2016 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review updated information concerning upstream ownership change. There will be no change in Washington Wholesale parent company listed as applicant or in the company operations. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Washington Wholesale Liquor Company*, 2800 V Street NE, Wholesaler A, License No. 060518.
-

2. Review Application for Manager's License. *Erica L. Johnson*-ABRA 101488.
-

***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.**

DC COMMISSION ON THE ARTS AND HUMANITIES**NOTICE OF FUNDING AVAILABILITY****Fiscal Year 2017 DC Heritage Grant Program**

The DC Commission on the Arts and Humanities (DCCAH) announces the availability of the Heritage Grant Program for fiscal year 2017. The Heritage Grant Program is a general operating support program for arts, humanities and arts education organizations founded on or before January 1, 2009 that are headquartered in the District of Columbia and whose sole function is exhibition or presentation in the arts and humanities or arts education with at least seven (7) years of programming in DC.

DCCAH provides grants, programs and educational activities that encourage diverse artistic expressions and learning opportunities, so that all District of Columbia residents and visitors can experience the rich culture of our city.

Eligible applicants must have received funding through the DCCAH Arts Education and/or City Arts and/or Grants-in-Aid program(s) at least once during FY14, FY15 and/or FY16. Applicants must also be a registered organization in good standing with the DC Department of Consumer and Regulatory Affairs (DCRA), Corporation Division, the Office of Tax and Revenue (OTR), the Internal Revenue Service (IRS), and the Department of Employment Services (DOES).

All eligible applications are reviewed through a competitive process. Evaluation criteria are based on 1) Arts, Humanities and/or Arts Education Content, 2) Assessed DC Impact and Engagement, and 3) Organizational Capacity and Sustainability.

The Request for Applications (RFA) will be available electronically beginning January 29, 2016 on our website at <http://dcarts.dc.gov/>. Applicants must apply online.

The deadline for applications is February 26, 2016.

For more information, please contact:

Steven Scott Mazzola
Director of Grants
DC Commission on the Arts and Humanities
200 I (EYE) St. SE,
Washington, DC 20003
(202)724-5613
Steven.mazzola@dc.gov.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**DC Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**January 22, 2016
9:00 AM**

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 5, 2016 at 9:00 a.m.

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

January 2016

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Cynthia Briggs	Board of Accountancy	22	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	20	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	22	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	4	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	12	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	7	11:00am-1:00 pm
Avis Pearson	Board of Professional Engineering	21	9:00 am-1:30 pm
Leon Lewis	Real Estate Commission	12	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	19	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 6B09

Petition Circulation Period: **Tuesday, January 19, 2016 thru Monday, Feb. 8, 2016**
Petition Challenge Period: **Thursday, Feb. 11, 2016 thru Thursday, Feb. 18, 2016**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

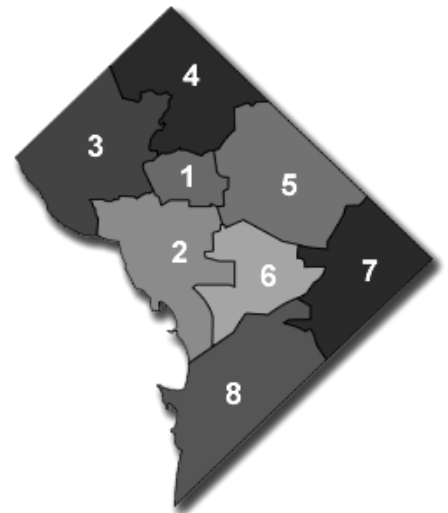
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	40,860	2,657	678	144	113	10,687	55,139
2	26,640	5,250	202	175	92	9,511	41,870
3	34,343	6,361	346	137	86	10,213	51,486
4	44,983	2,127	505	79	117	8,334	56,145
5	48,019	2,092	545	90	149	8,367	59,262
6	49,512	6,328	489	195	149	12,254	68,927
7	45,182	1,208	396	35	108	6,389	53,318
8	41,322	1,165	369	28	128	6,744	49,756
Totals	330,861	27,188	3,530	883	942	72,499	435,903
Percentage By Party	75.90%	6.24%	.81%	.20%	.22%	16.63%	100.00%

**DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF DECEMBER 31, 2015**

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY

ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
<http://www.dcboee.org>



D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,320	29	9	3	5	219	1,585
22	3,556	339	27	16	10	935	4,883
23	2,508	183	42	15	5	681	3,434
24	2,268	243	32	14	6	717	3,280
25	3,321	382	51	9	5	980	4,748
35	3,030	192	48	16	1	767	4,054
36	3,942	251	65	8	10	1,014	5,290
37	3,074	133	54	9	9	718	3,997
38	2,650	121	55	13	10	676	3,525
39	3,937	204	78	6	11	941	5,177
40	3,765	198	96	11	13	1,039	5,122
41	3,240	178	63	14	15	995	4,505
42	1,672	71	33	2	7	443	2,228
43	1,635	57	19	5	4	354	2,074
137	942	76	6	3	2	208	1,237
TOTALS	40,860	2,657	678	144	113	10,687	55,139

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	730	170	10	10	9	473	1,402
3	1,437	367	17	10	9	630	2,470
4	1,560	468	5	12	3	703	2,751
5	1,881	573	10	13	7	677	3,161
6	2,069	831	20	9	14	1,147	4,090
13	1,142	221	5	3	1	363	1,735
14	2,535	425	19	15	7	826	3,827
15	2,664	330	23	20	8	788	3,833
16	3,256	393	24	15	10	830	4,528
17	3,975	548	32	25	9	1,221	5,810
129	2,074	336	14	14	4	785	3,227
141	2,010	264	13	15	8	574	2,884
143	1,307	324	10	14	3	494	2,152
TOTALS	26,640	5,250	202	175	92	9,511	41,870

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,199	384	16	3	2	543	2,147
8	2,285	617	28	4	7	720	3,661
9	1,062	494	6	11	6	450	2,029
10	1,658	392	14	7	6	619	2,696
11	3,093	889	39	19	8	1,206	5,254
12	424	178	2	1	2	180	787
26	2,560	311	22	10	4	781	3,688
27	2,331	259	21	11	1	569	3,192
28	2,168	485	33	8	5	694	3,393
29	1,252	245	12	6	7	380	1,902
30	1,250	213	13	4	4	277	1,761
31	2,234	312	20	4	8	533	3,111
32	2,509	294	21	3	4	564	3,395
33	2,649	300	27	7	5	625	3,613
34	3,059	382	31	19	4	907	4,402
50	1,963	251	14	5	6	445	2,684
136	703	96	6	3	1	255	1,064
138	1,944	259	21	12	6	465	2,707
TOTALS	34,343	6,361	346	137	86	10,213	51,486

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,010	68	29	7	4	358	2,476
46	2,643	85	36	5	10	502	3,281
47	2,845	145	37	5	11	691	3,734
48	2,597	131	29	6	5	516	3,284
49	783	44	17	0	5	180	1,029
51	3,128	509	25	7	5	601	4,275
52	1,204	163	5	0	2	211	1,585
53	1,151	69	20	1	4	231	1,476
54	2,244	76	25	1	5	446	2,797
55	2,312	73	18	3	9	416	2,831
56	2,834	88	34	7	7	603	3,573
57	2,289	67	36	6	12	426	2,836
58	2,107	52	17	4	3	345	2,528
59	2,454	83	28	7	6	398	2,976
60	1,949	63	20	3	4	567	2,606
61	1,478	50	11	1	2	247	1,789
62	3,047	115	27	2	3	355	3,549
63	3,321	120	53	3	11	616	4,124
64	2,168	61	17	9	4	313	2,572
65	2,419	65	21	2	5	312	2,824
Totals	44,983	2,127	505	79	117	8,334	56,145

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,017	182	69	10	5	922	5,205
44	2,618	219	27	8	14	630	3,516
66	4,278	101	40	4	7	520	4,950
67	2,833	96	20	2	8	385	3,344
68	1,760	150	26	7	8	351	2,302
69	1,986	68	14	2	11	253	2,334
70	1,402	72	20	1	3	204	1,702
71	2,299	66	25	1	9	309	2,709
72	4,031	111	29	7	13	671	4,862
73	1,818	82	28	6	5	322	2,261
74	4,122	208	58	8	10	822	5,228
75	3,292	181	55	13	7	731	4,279
76	1,319	64	13	1	4	259	1,660
77	2,553	103	20	4	11	436	3,127
78	2,776	88	33	5	10	456	3,368
79	1,914	73	17	3	11	334	2,352
135	2,878	183	41	6	9	527	3,644
139	2,123	45	10	2	4	235	2,419
TOTALS	48,019	2,092	545	90	149	8,367	59,262

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	3,933	473	42	15	9	1,058	5,530
18	4,398	332	42	18	11	971	5,772
21	1,121	60	13	3	1	263	1,461
81	4,371	363	39	10	17	883	5,683
82	2,413	244	28	11	8	554	3,258
83	4,208	540	35	21	10	1,101	5,915
84	1,892	406	22	6	7	517	2,850
85	2,615	511	23	14	9	708	3,880
86	2,076	259	27	6	7	443	2,818
87	2,647	240	20	3	11	545	3,466
88	2,043	274	14	4	8	489	2,832
89	2,436	632	22	12	5	726	3,833
90	1,545	252	14	7	9	468	2,295
91	3,864	374	37	17	13	920	5,225
127	3,753	273	47	16	7	779	4,875
128	2,262	207	32	8	7	610	3,126
130	726	281	7	2	2	258	1,276
131	1,841	441	12	17	5	582	2,898
142	1,368	166	13	5	3	379	1,934
TOTALS	49,512	6,328	489	195	149	12,254	68,927

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,418	86	13	2	4	251	1,774
92	1,551	39	11	1	6	236	1,844
93	1,452	42	19	2	4	207	1,726
94	1,950	49	17	0	3	291	2,310
95	1,497	43	15	0	2	255	1,812
96	2,237	67	20	1	7	348	2,680
97	1,410	38	17	1	4	193	1,663
98	1,767	45	22	1	4	241	2,080
99	1,303	40	14	2	3	211	1,573
100	2,093	41	15	2	4	244	2,400
101	1,529	24	15	1	5	167	1,741
102	2,303	55	20	0	6	312	2,696
103	3,341	77	36	4	12	520	3,990
104	2,725	72	22	4	10	385	3,218
105	2,301	62	20	3	4	365	2,755
106	2,722	53	17	1	9	387	3,189
107	1,560	48	13	1	4	224	1,850
108	1,075	28	7	1	0	118	1,229
109	896	34	4	1	1	88	1,024
110	3,626	92	22	5	6	407	4,158
111	2,511	62	24	0	6	393	2,996
113	1,968	58	20	1	2	240	2,289
132	1,947	53	13	1	1	306	2,321
TOTALS	45,182	1,208	396	35	108	6,389	53,318

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of DECEMBER 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	1,949	58	10	0	6	279	2,302
114	3,019	103	27	1	19	515	3,684
115	2,663	69	19	6	6	613	3,376
116	3,741	92	35	5	10	591	4,474
117	1,878	42	18	1	7	305	2,251
118	2,484	62	27	1	4	397	2,975
119	2,678	105	35	0	11	516	3,345
120	1,793	32	18	2	3	284	2,132
121	2,989	69	26	1	9	434	3,528
122	1,544	38	14	0	8	212	1,816
123	1,992	108	26	5	10	303	2,444
124	2,378	56	15	1	3	323	2,776
125	4,129	98	31	1	9	672	4,940
126	3,289	103	31	2	11	613	4,049
133	1,180	35	10	0	2	162	1,389
134	1,935	39	22	1	3	272	2,272
140	1,681	56	5	1	7	253	2,003
TOTALS	41,322	1,165	369	28	128	6,744	49,756

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 11/30/2015 and 12/31/2015

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	329,056	26,807	3,512	851	939	72,018	433,183
Board of Elections Over the Counter	198	9	0	0	2	60	269
Board of Elections by Mail	110	17	1	1	2	40	171
Board of Elections Online Registration	129	44	5	1	0	35	214
Department of Motor Vehicle	1,704	331	19	21	2	541	2,618
Department of Disability Services	4	0	0	0	0	1	5
Office of Aging	0	0	0	0	0	1	1
Federal Postcard Application	0	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	0
Department of Corrections	6	0	0	0	0	2	8
Department of Human Services	16	1	0	0	0	3	20
Special / Provisional	1	0	0	0	0	0	0
All Other Sources	9	1	0	0	0	5	15
+Total New Registrations	2,177	403	25	23	6	688	3,322

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	518	35	10	2	2	134	701
Administrative Corrections	12	3	0	0	25	282	322
+TOTAL ACTIVATIONS	530	38	10	2	27	416	1,023

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	248	16	2	2	0	94	362
Moved Out of District (Deleted)	62	10	2	0	0	36	110
Felon (Deleted)	0	0	0	0	0	1	1
Deceased (Deleted)	14	0	0	0	0	1	15
Administrative Corrections	823	97	8	15	4	185	1,132
-TOTAL DEACTIVATIONS	1,147	123	12	17	4	317	1,620

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	548	126	25	31	10	257	
- Changed From Party	-303	-63	-26	-7	-36	-563	
ENDING TOTALS	330,861	27,188	3,530	883	942	72,499	435,903

**DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY**

RiverSmart Innovation Grants

The Department of Energy and Environment (“DOEE”) is seeking eligible entities, as defined below, to protect and improve the District’s water resources. Its rivers and streams travel through and under many beautiful neighborhoods and parks and ultimately end in the Chesapeake Bay. In order to receive funding, proposed projects must benefit one or more of the District’s waterbodies, directly or indirectly.

For background to related DOEE programs and details on this grant opportunity, please visit doee.dc.gov/release/riversmart-innovation-grant. The amount available for the project in this RFA is approximately \$140,000.00. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 1/15/2016, the full text of the Request for Applications (“RFA”) will be available online at DOEE’s website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download from DOEE’s website, www.doee.dc.gov. Select “Resources” tab. Cursor over the pull-down list; select “Grants and Funding;” then, on the new page, cursor down to the announcement for this RFA. Click on “Read More,” then download and related information from the “attachments” section.

Email a request to riversmart.innovation16@dc.gov with “Request copy of RFA 2016-1520-SWMD” in the subject line;

Pick up a copy in person from the DOEE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Emily Rice at (202) 535-2679 to make an appointment and mention this RFA by name; or

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, “Attn: Emily Rice RE:2016-1520-SWMD” on the outside of the letter.

The deadline for application submissions is 2/29/2016, at 4:30 p.m. Five hard copies must be submitted to the above address **OR** a complete electronic copy must be e-mailed to riversmart.innovation16@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies

-Universities/educational institutions; and

-Private Enterprises.

For additional information regarding this RFA, please contact DOEE as instructed in the RFA document, at riversmart.innovation16@dc.gov.

HEALTH BENEFIT EXCHANGE AUTHORITY**NOTICE OF PUBLIC MEETING****Executive Board of the Health Benefit Exchange Authority**

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be held at 1225 I Street, NW, 4th Floor, Washington, DC 20005 on **Wednesday, January 13, 2016 at 5:30 pm**. The call in number is 1-877-668-4493, Access code 734 680 347.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

**DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE**

**Judicial Tenure Commission Begins Reviews Of Judges
Judith N. Macaluso, Curtis von Kann,
Zinora Mitchell-Rankin, And Henry F. Greene**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Judith N. Macaluso**, of the Superior Court of the District of Columbia, who is retiring and has requested a recommendation for an initial appointment as a Senior Judge. In addition, the Commission is reviewing the qualifications of **Judges Curtis von Kann, Zinora Mitchell-Rankin, and Henry F. Greene** of the Superior Court of the District of Columbia, who have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Macaluso, von Kann, Mitchell-Rankin, and Greene which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **March 4, 2016**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

The members of the Commission are:

Hon. Gladys Kessler, Chairperson
Jeannine C. Sanford, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Hon. Joan L. Goldfrank
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler
Chairperson

KIPP DC PUBLIC CHARTER SCHOOLS
REQUEST FOR PROPOSALS

Customized Canvas Assessment Module

KIPP DC is soliciting proposals from qualified vendors for a Customized Canvas Assessment Module. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on January 22, 2016. Questions can be addressed to adam.roberts@kippdc.org.

LEE MONTESSORI PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Project Management Consulting Services**

Lee Montessori Public Charter School invites all interested parties to submit proposals to provide project management consulting services for site control and financing and/or pre-development and development management services for a new facility. Renovation of this 48,000 sq. ft. commercial property, located on Evarts Street, will require phased in construction and has an anticipated delivery date of August 1, 2016. The complete RFP can be obtained by contacting rfp@bhope.org, please indicate which RFP you are requesting.

**EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE CITY ADMINISTRATOR**

NOTICE OF SOLICITATION FOR COMMENTS

Draft Open Data Policy

The Executive Office of the Mayor and the Office of the City Administrator encourage members of the public to participate in crafting the forthcoming open data policy by submitting comments and ideas to increase openness and transparency in government.

The administration has developed a draft open data policy that seeks to establish a strong open data policy for the District government based on the following principles:

1. **Transparency.** Government is most accountable to the public when it is most transparent to scrutiny. Accountable government is effective government.
2. **Collaboration.** Government is smarter, more responsive, and more innovative in proportion to the diversity of informed public input it receives.
3. **Openness.** In order to maximize transparency and opportunities for public input and collaboration, government should make openness routine and treat it as a smart investment.
4. **Discoverability.** In order to realize the benefits of openness, government should make its data easy to discover and use.

Given these principles, it is critical that the policy itself be developed and strengthened collaboratively and transparently, and in a spirit of openness with the public. To that end, the draft policy is being made available for a period of public engagement and feedback ahead of its formal issuance. We encourage members of the public to provide their feedback.

The draft policy is available online at <https://drafts.dc.gov>. This website allows the public to provide comments about the policy overall and also to provide annotations on specific sections, provisions, and individual words in the document.

Comments must be received by February 15, 2016.

Please submit comments by one of the following methods:

Online: <https://drafts.dc.gov>

E-mail: open@dc.gov

Mail: Open Data Policy Comments, 200 I Street SE, Suite 500, Washington, DC 20003

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTICE OF 2016 BOARD MEETING SCHEDULE**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice, of PCSB’s intent to hold a public meeting at 6:30pm on the following dates:

Monday, January 25, 2016

Monday, February 22, 2016

Monday, March 21, 2016

Monday, April 18, 2016

Tuesday, April 19, 2016

Monday, May 16, 2016

Monday, June 20, 2016

Monday, July 18, 2016

Monday, August 15, 2016

Monday, September 19, 2016

Monday, October 24, 2016

Monday, November 14, 2106

Monday, December 12, 2016

For questions, please call 202-328-2660. An agenda for each meeting will be posted 48 hours in advance of the meetings on www.dcpsb.org. The location for all meetings is currently to be determined.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code,¹ of its final tariff action to approve the Potomac Electric Power Company’s (“Pepco” or “Company”) tariff amendment that updates the Company’s Rate Schedules for Electric Service in the District of Columbia.² The Commission issued a Notice of Proposed Tariff (“NOPT”), which was published in the *D.C. Register* on November 27, 2015, giving notice of the Commission’s intent to act on Pepco’s proposed tariff amendments.³ No comments were received on the NOPT.

2. Pepco’s proposed tariff amendment updates the retail transmission rates included in the Rider Standard Offer Service “to reflect the current Federal Energy Regulatory Commission (‘FERC’) approved wholesale transmission rates, which went into effect [on] June 1, 2015.”⁴ Pepco states that the “updated Network Integrated Transmission Service rate is based on the data in the 2014 FERC Form 1 for Pepco, which was filed with the FERC on April 16, 2015.”⁵ According to Pepco, the filed wholesale transmission rate for the Pepco Zone effective June 1, 2015 is \$26,521 per megawatt-year for Network Integrated Transmission Service, which is currently reflected in Attachment H-9 of the PJM Open Access Transmission Tariff.⁶ This \$26,521 per megawatt-year rate must be adjusted in order to derive the \$27,518 per megawatt-year rate overall wholesale transmission rate for load in the Pepco Zone. Those adjustments are detailed in Attachment D in Pepco’s filing.⁷

3. The Network Integrated Transmission Service rate reflects a rate of \$22,566 per megawatt-year, which is net of the Schedule 12 Transmission Enhancement Charges due to projects within the Pepco Zone.⁸ In addition, the load in the Pepco Zone is responsible for

¹ D.C. Code §§ 2-505 and 34-802 (2001).

² *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Letter from Dennis P. Jamouneau, Assistant General Counsel, Legal Services, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed August 6, 2015 (“Pepco Letter”).

³ 62 DCR 15539-15540 (Nov. 27, 2015)

⁴ Pepco Letter.

⁵ Pepco Letter.

⁶ Pepco Letter.

⁷ Pepco Letter. Attachment D.

⁸ Pepco Letter. Attachment E.

Schedule 12 Transmission Enhancement Charges due to transmission projects outside of the Pepco Zone and the rate for these projects is \$4,952 per megawatt-year.⁹ Combining these two rates results in an overall wholesale transmission rate for load in the Pepco Zone of \$27,518 per megawatt-year. After calculating the retail transmission revenue requirement, Pepco has reflected the revised retail rates for the Transmission Service Charge for each rate class on its revised tariff pages.¹⁰

4. Pepco proposes to amend the following thirteen (13) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Seventy-Seventh Revised Page No. R-1
Seventy-Seventh Revised Page No. R-2
Seventieth Revised Page No. R-2.1
Forty-Sixth Revised Page No. R-2.2
Twenty-First Revised Page No. R-41
Twenty-First Revised Page No. R-41.1
Twenty-First Revised Page No. R-41.2
Twenty-First Revised Page No. R-41.3
Twenty-First Revised Page No. R-41.4
Twenty-First Revised Page No. R-41.5
Twenty-First Revised Page No. R-41.6
Twenty-First Revised Page No. R-41.7
Twenty-First Revised Page No. R-41.8

5. The Commission, at its regularly scheduled open meeting held on January 6, 2016, took action approving Pepco's proposed tariff amendment that updates the Company's Rate Schedules for Electric Service in the District of Columbia by revising the Company's retail transmission rates, for Rider Standard Offer Service, consistent with the current FERC approved wholesale transmission rates. This amendment will become effective upon publication of this Notice of Final Tariff in the *D.C. Register* and shall be reflected in the billing cycle beginning February 1, 2016.

⁹ Pepco Letter. Attachment D.

¹⁰ Pepco Letter. Attachment A. Pepco indicates that Attachment A also shows the "corresponding retail transmission revenue requirements." Pepco indicates that Attachment B provides the "Proposed Rider 'SOS' containing the revised retail rates for Transmission Service" as well as "the updated Rider 'SOS' showing additions and deletions from the current Rider 'SOS.'" Finally, Pepco indicates that Attachment C provides "[w]orkpapers showing the details of the rate design calculations."

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

PEPRAD 2015-01 - THE POTOMAC ELECTRIC POWER COMPANY'S
RESIDENTIAL AID DISCOUNT COMPLIANCE REPORTS AND FILINGS

and

FORMAL CASE NO. 1120, IN THE MATTER OF THE INVESTIGATION INTO THE
STRUCTURE AND APPLICATION OF LOW INCOME ASSISTANCE FOR
ELECTRICITY CUSTOMERS IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 2-505 under and in accordance with section 34-802 of the District of Columbia Code,¹ of its final rulemaking action to approve the Potomac Electric Power Company's (Pepco or Company) updated Rider "RADS" – Residential Aid Discount Surcharge (Rider Update).²

2. On March 2, 2015, Pepco, in accordance with the Residential Aid Discount Subsidy Stabilization Amendment Act of 2010 ("the Act of 2010"),³ and Order No. 15986,⁴ filed its annual update to the Rider RADS. The Rider RADS is the means by which Pepco recovers the generation subsidy for the RAD Program.⁵ In its Rider Update, Pepco states that the Rider "RADS" surcharge collections in 2013 and 2014 resulted in an over-collection. As a result of the over-collection, the RADS surcharge will decrease from the current surcharge of \$0.000294 to a new surcharge of \$0.000159.⁶ The Rider "RADS" true-up calculation for January 2013 through December 2014 is shown in Attachment B of the Rider Update.⁷ The revised Rider "RADS" tariff pages are provided as Attachment A of the Rider Update.⁸ The relevant tariff page currently reads:

¹ D.C. Code § 2-505 (2015) and D.C. Code § 34-802 (2015).

² *Formal Case No. 945, In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices ("Formal Case No. 945")* and *Formal Case No. 813, In the Matter of the Application of Potomac Electric Power Company for an Increase in its Retail Rates for the Sale of Electric Energy, ("Formal Case No. 813")*, Letter to Ms. Brinda Westbrook-Sedgwick, Commission Secretary, from Peter Meier, Vice President Legal Services, re: *Formal Case Nos. 945 and 813*, filed March 2, 2015 (hereinafter referred to as "Rider Update"). This filing revised and replaced the Pepco rider update filed February 4, 2015.

³ D.C. Code §§ 8-1773-1774 (2015).

⁴ *Formal Case Nos. 945 and 813*, Order No. 15986, rel. September 20, 2010.

⁵ *F.C. No. 1053*, Order No. 14712, rel. January 30, 2008.

⁶ *Formal Case No. 945 and 813*, Rider Update at 1.

⁷ *Formal Case No. 945 and 813*, Rider Update, Attachment B.

⁸ *Formal Case No. 945 and 813*, Rider Update, Attachment A.

**ELECTRIC-- P.S.C. of D.C. No. 1
Fourth Revised Page No. R-46**

The amended tariff page, containing the proposed revisions, will read:

**ELECTRIC-- P.S.C. of D.C. No. 1
Fifth Revised Page No. R-46**

3. According to its tariff, Pepco's surcharge rate for its Rider RADS will be updated annually to be effective January of each year to reflect any over or under collection of the RAD Surcharge for the RAD Subsidy and to reflect any changes in income eligibility criteria.⁹ A Notice of Proposed Tariff ("NOPT") was published in the *D.C. Register* on September 25, 2015, inviting public comment on the updated Rider RADS.¹⁰ No comments were filed in response to the NOPT and the Commission is satisfied that the surcharge proposed by Pepco complies with Order Nos. 15986 and D.C. Code Sections 8-1773 and 8-1774. Subsequently, the Commission approved Pepco's Application by Order No. 18061. The updated Rider RADS surcharge is effective upon publication of this Notice.

⁹ *F.C. No. 945 and F.C. No. 813, Application, Attachment A - Proposed Tariff.*

¹⁰ *62 D.C. Reg. 12907-12908 (September 25, 2015).*

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

January 21, 2016
10:00 a.m.

DCRB Board Room
900 7th Street, N.W.
Washington, D.C 20001

On Thursday, January 21, 2016, at 10:00 a.m., the District of Columbia Retirement Board (DCRB) will hold a closed investment committee meeting regarding investment matters. In accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e), the investment committee meeting will be closed to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

The meeting will be held in the Board Room at 900 7th Street, N.W., Washington, D.C 20001.

For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF OPEN PUBLIC MEETING

January 21, 2016
1:00 p.m.

900 7th Street, N.W.
2nd Floor, DCRB Boardroom
Washington, D.C. 20001

The District of Columbia Retirement Board (DCRB) will hold an Open meeting on Thursday, January 21, 2016, at 1:00 p.m. The meeting will be held at 900 7th Street, N.W., 2nd floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the Open Board meeting is outlined below.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.reaves@dc.gov.

AGENDA

- | | | |
|-------|-----------------------------------|-----------------|
| I. | Call to Order and Roll Call | Chairman Bress |
| II. | Approval of Board Meeting Minutes | Chairman Bress |
| III. | Chairman's Comments | Chairman Bress |
| IV. | Executive Director's Report | Mr. Stanchfield |
| V. | Investment Committee Report | Ms. Blum |
| VI. | Operations Committee Report | Mr. Ross |
| VII. | Benefits Committee Report | Mr. Smith |
| VIII. | Legislative Committee Report | Mr. Blanchard |
| IX. | Audit Committee Report | Mr. Hankins |
| X. | Other Business | Chairman Bress |
| XI. | Adjournment | |

D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION**NOTICE OF PUBLIC MEETING**

The Commission meeting will be held on Tuesday, January 19, 2016 at 5:00 p.m. The meeting will be held at 441 4th Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

For additional information, please contact: Mia Hebb, Staff Assistant, at (202) 727-8822 or mia.hebb@dc.gov

Meeting Agenda

1. Review and Approval of the Meeting Minutes from November 17, 2015 - Action Item, Judge Weisberg.
2. Introduction of New Staff Members – Informational Item, Barb Tombs-Souvey.
 - a. Robel Maru – Database Manager.
 - b. Matthew Graham – Research Analyst.
3. Posting of Criminal Code Revision Documents – Action Item, Judge Weisberg.
4. Discussion of “Criminal Code Reform Commission Amendment Act of 2015,” Informational Item, Judge Weisberg.
5. Discussion and Approval of the Criminal Code Revision Project’s Approach to Revising Property Offenses - Action Item, Richard Schmechel.
6. Next Meeting – February 16, 2016.
7. Adjourn

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION**

NOTICE OF SPECIAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold a Special Commission Meeting on Wednesday, January 20, 2016 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2032. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the Special Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers. Time and agenda permitting, nonregistered speakers may be allowed 2 minutes to address the Commission. To register, please call 202-645-6002 no later than 3:30 p.m. on January 19, 2016. Registered speakers will be called first, in the order of registration. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

- I. Call to Order
- II. Commission Communication
- III. Commission Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

**TWO RIVERS PUBLIC CHARTER SCHOOL
INTENT TO AWARD A SOLE SOURCE CONTRACT**

Lindamood-Bell In-School Tutoring Services

Two Rivers Public Charter School intends to enter into a sole source contract with Lindamood-Bell Learning Processes for learning center on campus services using proprietary Lindamood-Bell instructional materials and Lindamood-Bell staff. The cost of this contract will be approximately \$70,000. The decision to sole source is because Lindamood-Bell is the exclusive licensed center in the District of Columbia that provides in-school learning centers staffed by Lindamood-Bell staff using Lindamood-Bell materials. Lindamood-Bell instructional materials are currently used by Two Rivers staff and additional capacity outside Two Rivers staff is needed for the remainder of the 2015-2016 school year.

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF 2016 PUBLIC MEETING SCHEDULE

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled the following meetings for 2016:

January 14
February 11
March 10
April 14
May 12
June 9
July 14
September 8
October 13
November 10
December 8

Meetings are held in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 10:00 a.m. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, January 28, 2016 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dcwater.com.

DRAFT AGENDA

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|----|---------------------------------------------------------------|------------------|
| 1. | Call to Order | Chairman |
| 2. | Summary of Internal Audit Activity -
Internal Audit Status | Internal Auditor |
| 3. | Executive Session | Chairman |
| 4. | Adjournment | Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Sewerage Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, January 21, 2016 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|----|-------------------------------|------------------------------------------------|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Assistant General Manager,
Plant Operations |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Chief Engineer |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Chief Engineer |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Emerging Items/Other Business | |
| 7. | Executive Session | |
| 8. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Finance and Budget Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, January 28, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | | |
|----|---------------------------------------|------------------------------|
| 1. | Call to Order | Chairman |
| 2. | December 2015 Financial Report | Director of Finance & Budget |
| 3. | Agenda for February Committee Meeting | Chairman |
| 4. | Adjournment | Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, January 13, 2016 at 9:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | |
|------------------------------------------------|---------------------------------|
| 1. Call to Order | Chairperson |
| 2. Government Affairs: Update | Government Relations
Manager |
| 3. Update on the Compliance Monitoring Program | TBD |
| 4. Update on the Workforce Development Program | Contract Compliance Officer |
| 5. Emerging Issues | Chairperson |
| 6. Agenda for Upcoming Committee Meeting (TBD) | Chairperson |
| 7. Executive Session | |
| 8. Adjournment | Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Human Resources and Labor Relations Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, January 13, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dewater.com.

DRAFT AGENDA

- | | |
|----------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Union Presidents | |
| 4. Other Business | |
| 5. Executive Session | Committee Chairperson |
| 6. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, January 21, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- 1. Call to Order Committee Chairperson
- 2. Water Quality Monitoring Assistant General Manager, Consumer Ser.
- 3. Action Items Assistant General Manager, Consumer Ser.
- 4. Emerging Issues/Other Business Assistant General Manager, Consumer Ser
- 5. Executive Session
- 6. Adjournment Committee Chairperson

BOARD OF ZONING ADJUSTMENT
NOTICE OF PROPOSED RULEMAKING

BZA Application No. 19091

The Board of Zoning Adjustment of the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of its intention to not disapprove, the following:

Application of the Embassy of the Kyrgyz Republic, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the construction of a rear deck at an existing embassy in the D/R-3 District at premises 2360 Massachusetts Avenue N.W. (Square 2507, Lot 50).

Pursuant to notice, a public hearing was held on September 22, 2015, after which the Board voted to not disapprove the application. Following the vote, the Office of Zoning discovered that the notice of proposed rulemaking submitted to the Office of Documents and Administrative Issuances had never been published. This application has been rescheduled to February 2, 2016 for the Board of Zoning Adjustment to again consider whether to not disapprove the application based upon any comments received in response to this notice. In recognition of the public notice already given and the public hearing already heard, good cause exists for an abbreviated comment period as permitted by D.C. Official Code § 2-505 (a).

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

In order to review exhibits in the case, follow these steps:

- Visit the OZ website at www.dcoz.dc.gov
- Under “Featured Services”, click on “Case Records”.
- Enter the BZA application number indicated above and click “Go”.
- The search results should produce the case. Click “View Details”.
- On the right-hand side, click “View Full Log”.
- This list comprises the full record in the case. Simply click “View” on any document you wish to see, and it will open a PDF document in a separate window.

In order to review the transcript or view a video of the hearing follow these steps:

- Follow the first four steps above.
- On the left hand side choose the transcript or video you wish to view.

Final rulemaking action shall be taken not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register*.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than fifteen (15) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Clifford Moy, Secretary to the Board of Zoning Adjustment, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format to bzasubmissions@dc.gov. Mr. Moy may be contacted by telephone at (202) 727-6311 or by email at clifford.moy@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19161 of 1537 6th Street NW, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to construct three flats in the R-4 District at premises 1537-1541 6th Street, N.W. (Square 478, Lots 56, 57, and 58).

HEARING DATES: December 22, 2015

DECISION DATE: December 22, 2015

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (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”) 6E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. ANC 6E submitted a letter in support of the application dated December 21, 2015, which the Board accepted into the record. The ANC’s letter indicated that at a duly noticed and scheduled public meeting on December 1, 2015, at which a quorum was in attendance, the ANC voted 4-1-1 in support of the application. (Exhibit 28.)

The Applicant included in its submission nine letters of support for the application from adjacent neighbors to the north and south of the property. (Exhibit 23.) A letter in support of the application was submitted by another nearby neighbor. (Exhibit 25.)

The Office of Planning (“OP”) submitted a timely report and testified at the hearing in support of the application. (Exhibit 27.) The District Department of Transportation filed a report expressing no objection to the approval of the application. (Exhibit 26.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the strict application of the off-street parking requirements under § 2101.1, to construct three flats in the R-4 District. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 2101.1, the Applicant has

BZA APPLICATION NO. 19161
PAGE NO. 2

met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, 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 the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 10D**.

VOTE: 3-0-2 (Marcie I. Cohen, Marnique Y. Heath, Jeffrey L. Hinkle to APPROVE; Frederick L. Hill, not present, not voting; 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: January 4, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

**BZA APPLICATION NO. 19161
PAGE NO. 3**

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28N**

Z.C. Case No. 05-28N

K. Hovnanian Parkside Holdings, LLC

(Parkside Townhomes - PUD Minor Modification @ Square 5041)

September 10, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on September 10, 2015, and approved an application from K. Hovnanian Parkside Holdings, LLC (“Applicant”) for a minor modification to an approved planned unit development (“PUD”) for the Parkside Townhomes of the Parkside PUD. The application requested approval for a minor modification of a condition of approval in Z.C. Order Nos. 05-28A and 05-28G concerning the timing of the submission of a building permit application for the property (Square 5041, Lots 852-915) (“Property”).

FINDINGS OF FACT

By Z.C. Order No. 05-28, the Commission approved an application for review and approval of a first-stage PUD and PUD-related Map Amendment for the Property. The first-stage PUD consisted of 15.5 acres of land east of the Anacostia River in Ward 7. The initial Parkside PUD approved 10 “building blocks” consisting of residential, mixed-use, commercial, and retail buildings containing approximately 3,000,000 square feet of gross floor area. Three of these building blocks, Blocks A, B, and C secured second-stage approval in Z.C. Case No. 05-28A. Block A was approved for 98 housing units and Blocks B and C were approved for 112 townhouses. Block A has since been built and is fully operational. The second-stage approval for Blocks B and C was subsequently modified in Z.C. Case No. 05-28G when the number of townhouses was reduced to 100. At the same time, the Applicant clarified that the income restrictions on 42 of the townhomes was applicable only to the first-time purchasers. In Z.C. Case No. 05-28G, the Commission granted a minor modification of the façade design approved for the townhomes on Blocks B and C.

Pursuant to Condition No. 11 of Z.C. Order No. 05-28A and Condition No. C(5) of Z.C. Order No. 05-28G, the Applicant was required to file for building permits for Blocks B and C by July 6, 2015. The Applicant filed applications for the 39 townhomes on Block B prior to July 6, 2015; however, it did not file applications for the 61 townhomes on Block C prior to that date. Accordingly, the Applicant sought approval of a minor modification of the condition to allow an additional six months to file for building permits for the townhomes on Block C.

By letter dated September 2, 2015, the Office of Planning (“OP”) submitted a report in support of the minor modification. OP noted that the modifications were consistent with the Zoning Regulations and Zoning Map and that they were not inconsistent with the initial approval by the Commission.

Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for a minor modification on the Commission's Consent Agenda for its public meeting of September 10, 2015. At that meeting, the Commission approved the modification as a minor modification.

Z.C. ORDER NO. 05-28N
Z.C. CASE NO. 05-28N
PAGE 2

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modifications are minor and consistent with the intent of the Commission's prior approvals. The Commission further concludes that the proposed modifications are in the best interest of the District of Columbia and are consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of the modification is not inconsistent with the Comprehensive Plan. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of a minor modification to modify Condition No. 11 of Z.C. Order No. 05-28A to read as follows:

The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 05-28. Within such time, an application must be filed for a building permit for the construction of one of the buildings to be located on Blocks A, B, or C and construction must start within three years of the date of the effective date of this Order. The filing of the building permit application will vest this Order as to the building being constructed. An application for the final building permit completing the development of the PUD approved herein must be filed within 42 months of the date of issuance of the certificate of occupancy of the first building.

Similarly, Condition No. C(5) of Z.C. Order No. 05-28G shall be modified to read as follows:

The PUD has been vested pursuant to the issuance of Building Permit No. B0905238 and the start of construction on Block A prior to October 3, 2011. An application for the final building permit completing the development of Blocks B and C approved herein must be filed within 42 months of the issuance of the final Certificate of Occupancy of Block A.

On September 10, 2015, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt; Marcie I. Cohen, not present, not voting).

In accordance with the provisions of 11 DCMR 3028.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-03D
Z.C. Case No. 11-03D
Wharf 5 Hotel REIT Leaseholder, LLC
(Modification to Consolidated Planned Unit Development)
October 19, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 19, 2015. At the meeting, the Commission considered an application from Wharf 5 Hotel REIT Leaseholder, LLC ("Applicant") for minor modifications to an approved planned unit development and related map amendment. (See Z.C. Order Nos. 11-03 and 11-03B, collectively, the "PUD.") The modifications were requested to allow refinements to the Parcel 5 portion of the approved PUD. Because the modifications were deemed minor, a public hearing on the request was not required pursuant to the Commission's Consent Calendar procedures, 11 DCMR § 3030. The Commission further determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. The first-stage PUD and related map amendment were originally approved in Z.C. Order No. 11-03, dated October 17, 2011, effective December 16, 2011.
2. The Commission approved the second-stage PUD for Parcel 5 by Z.C. Order No. 11-03B, dated May 13, 2013, effective June 21, 2013.
3. The Southwest Waterfront project is a public-private partnership between the District of Columbia and Hoffman-Struever Waterfront, LLC ("HSW"), which entered into a land disposition agreement for its development. HSW has assigned all its rights, approvals and contracts for Parcel 5 to Wharf 5 Hotel REIT Leaseholder, LLC.
4. The project site fronts on the Washington Channel in Southwest Washington and is generally bounded on the northwest by the Maine Avenue Fish Market and Case Bridge (part of the highways comprising the 14th Street Bridge), Maine Avenue to the northeast, Washington Channel to the southwest, and on the southeast by N Street, S.W. and 6th Street, S.W.
5. Pursuant to the first-stage PUD approval, the entire project will include an aggregate density of 3.87 floor area ratio ("FAR"), which excludes the private streets in the project area, or approximately 3,165,000 square feet of gross floor area. Proposed uses will include approximately 1,400 mixed-income and market-rate residential units, with 160,000 square feet of the gross residential space set aside for households earning no more than 30% and 60% of the Metropolitan Statistical Area Median Income ("AMI"); approximately 925,000 square feet of office space; a luxury hotel with a total of 278 guest rooms, and two additional hotels with approximately 405 rooms; approximately

Z.C. ORDER NO. 11-03D
Z.C. CASE NO. 11-03D
PAGE 2

- 300,000 square feet devoted to retail uses; a minimum of 100,000 square feet devoted to cultural activities; and more than 10 acres of parks and open space on the land side. The riparian area will feature four public or public use piers, as well as approximately 80,000 square feet of maritime related commercial, recreational, and service development.
6. The modifications requested in the subject application relate to the building identified in the approved PUD as Parcel 5. As set forth in Z.C. Order No. 11-03B, Parcel 5 will be developed with an extended-stay and limited service hotel combination with approximately 405 rooms. The ground floor will include retail/service uses. The mass of the building consists of a one-story base with a U-shaped hotel tower configuration above, rising to a maximum building height of 110 feet in eight to nine stories.
 7. The modifications proposed relate to interior space and square footage adjustments within the building envelope; penthouse and pool changes on the rooftop; and minor building façade adjustments within the interior elevated courtyard. The minor adjustments were made to the design and program to accommodate the change in the hotel brands from Starwood Element and Starwood Aloft to a Hyatt House and Canopy by Hilton (still extended-stay and lifestyle hotels, respectively). The building height remains approximately 110 feet. None of the changes modify the surrounding exterior footprint of the building. The building is still below the permitted FAR. Based on the additions and deletions of the program, the overall building area was reduced by approximately 5,852 square feet in comparison to what was approved in the second-stage PUD.
 8. The requested minor modification will have no detrimental impact upon the PUD. Aside from the minor modification noted in Finding No. 7, the overall project that was approved has not changed in any fashion. The use, height, density, and gross floor area of the PUD have not changed. The overall design and programming of the PUD has not changed, and the project amenities and community benefits of the project likewise have not changed and will continue to be provided as part of the PUD.
 9. The Office of Planning (“OP”) submitted a report dated October 9, 2015 (“OP Report”), in support of the Application. (Exhibit [“Ex.”] 9.) The OP report stated that the proposed minor modifications would slightly alter the exterior design but maintain the overall massing and use mix of the building. OP found that the proposed changes would be of little or no consequence and are not inconsistent with the original Order for the project, and represent improvements to the project with little or no potentially negative impact. OP therefore recommended that they be approved as minor modifications to the PUD.
 10. The Gangplank Slipholders Association (“Association”), a party to the original application, filed a letter dated October 9, 2015, in support of the proposed modifications. (Ex 8.) Notwithstanding the requested modifications, the Association noted that the hotel building would remain below the permitted density, and would maintain the approved

Z.C. ORDER NO. 11-03D
Z.C. CASE NO. 11-03D
PAGE 3

height of 110 feet. The Association also noted that all of the proposed minor modifications would have little or no effect on the exterior as shown on the plans previously approved by the Commission.

11. Advisory Neighborhood Commission (“ANC”) 6D did not submit a formal written recommendation to the Commission. ANC Single Member District (“SMD”) 6D04 Commissioner Andy Litsky submitted a letter dated October 9, 2015, in which he noted that the ANC was not able to provide a formal recommendation because the scheduling of consideration of the requested modifications conflicted with the ANC’s summer recess. Commissioner Litsky supported the modifications, which he noted were necessary to accommodate the requirements of the particular hotel operators who will occupy and manage the property once it is constructed. Commissioner Litsky noted that the modifications do not impact the overall footprint nor the exterior design of the building and provide even more efficient use of space and greater circulation in the open public areas adjacent to the great steps.
12. There were no parties in opposition to the application.
13. The Commission took final action to approve the application at its public meeting held on October 19, 2015.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and is consistent with the intent of the previously approved PUD. Further, the Commission concludes that approval of the requested modifications is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Map. Approval of the modifications to the approved PUD is not inconsistent with the District of Columbia Comprehensive Plan (10-A DCMR). Further, the modifications do not impact material elements of the PUD, including permitted use, height, gross floor area, or project amenities or benefits.

The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP. OP recommended approval of this application as a minor modification, and the Commission concurs in this recommendation.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The ANC did not submit a formal written recommendation to the Commission.

Z.C. ORDER NO. 11-03D
Z.C. CASE NO. 11-03D
PAGE 4

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for Modifications to the subject PUD, such that Condition No. A.1 of Z.C. Order No. 11-03B is modified to read as follows with the additional text shown in bold and underlined:

1. The PUD shall be developed with an extended-stay and limited-service hotel with retail and service uses, substantially in accordance with the architectural plans prepared by SmithGroup JJR Architects, dated February 8, 2013, and marked as Exhibit 17A in the record, as revised by Exhibit 34A, **and as revised by the plans dated September 19, 2015, marked as Exhibit 6 of the record in Z.C. Case No. 11-03D** (collectively, the “Plans”), and as modified by the guidelines, conditions, and standards herein.

On October 19, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-04**

Z.C. Case No. 15-04

Comstock Sixth Street, LLC

(Consolidated PUD and Related Map Amendment @ Square 3788, Lot 814)

December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 30, 2015, to consider applications for a consolidated planned unit development (“PUD”) and related zoning map amendment filed by Comstock Sixth Street, LLC (“Applicant”). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On March 4, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and related zoning map amendment to rezone Lot 814 in Square 3788 (“Property”) from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District.
2. The application provides for the development of a new residential use for the Property, in the form of 40 one-family row dwellings (“Project”). Each dwelling will contain three bedrooms and approximately 2,205 to 2,282 square feet of gross floor area, including a garage for one vehicle. Additional surface parking for approximately 17 vehicles will be provided throughout the Property. The Project’s density will be 0.49 floor area ratio (“FAR”); the lot occupancy will be approximately 17%; and the maximum building height will not exceed three stories or 40 feet. The Property will be extensively landscaped and will provide various outdoor amenities for residents, including a landscaped mews, seating areas, and a small playground. The Property will be accessed by a private road owned by and maintained by a future Homeowners Association (“HOA”). The project also includes a paved and lighted pedestrian and bicycle path across the northern portion of the Property (“Pedestrian Path”), which will allow access from the Property and points south to the Fort Totten Metrorail station, Metrobus stops along South Dakota Avenue, and other residential neighborhoods to the north.
3. By report dated April 3, 2015, the District of Columbia’s Office of Planning (“OP”) recommended that the application be set down for a hearing. At its public meeting held on April 15, 2015, the Commission voted to schedule a public hearing on the application.

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 2

4. The Applicant submitted a prehearing statement for the Project on May 22, 2015 (Exhibit ["Ex.,"] 16-16K) and a hearing was timely scheduled for the matter. A description of the Project and the notice of public hearing in this matter were published in the *D.C. Register* on June 12, 2015. The notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission ("ANC") 5A, the ANC in which the Property is located, on June 5, 2015.
5. The parties to the case were the Applicant, ANC 5A, and the Concerned Citizens of North Michigan Park ("Concerned Citizens").
6. The Commission convened a hearing on July 30, 2015, which was concluded that same evening. As a preliminary matter, the Commission evaluated the party status request filed by the Concerned Citizens, and granted the request. (Ex. 25, 29.) Ms. Belinda Bell, Ms. Andrea Moore, and Mr. Clarence Moore testified on behalf of the Concerned Citizens.
7. At the hearing, the Applicant presented the following witnesses in support of its application: Mr. John Dapogny on behalf of the Applicant, Mr. Daniel Van Pelt of Gorove/Slade Associates, Inc., and Mr. Jeremy Potter of W.C. Ralston Architects. Mr. Van Pelt was recognized as an expert in the field of transportation analysis.
8. Karen Thomas, Development Review Specialist at OP, and Ryan Westrom and Anna Chamberlin of the District Department of Transportation ("DDOT") testified in support of the application with certain comments and conditions.
9. Five persons testified at the public hearing in support of the application, and six persons testified in opposition to specific components of the application, specifically regarding the use of the proposed Pedestrian Path.
10. The record was closed at the conclusion of the hearing, except to receive additional submissions from ANC 5A (a list of specific projects to which the Applicant's proffered financial contributions would be dedicated), DDOT (minimum street dimensions), and the Applicant. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.
11. On September 4, 2015, the Applicant submitted a post-hearing filing in response to comments and questions from the Commission made at the public hearing. (Ex. 48-48D.) The post-hearing filing included the following: (i) revised and additional drawings showing revised end-unit side elevations and plans showing relocated windows, rear elevations with revised garage doors, playground details, downspout plan and images and updated plan for the Pedestrian Path showing visibility from end to end; (ii) relevant materials from the hearing record of Z.C. Case No. 04-11 regarding the

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 3

- private roads in that development; (iii) a construction management agreement; (iv) a proposed memorandum of understanding (“MOU”) with the homeowner’s association for the Emerson Park townhouse development regarding maintenance, landscaping and construction-related issues; (v) information on garbage cans at the Property; and (vi) information regarding the Applicant’s commitment to install a security camera along the Pedestrian Path in coordination with the public-private “Capital Shield” program.
12. On September 4, 2015, the Applicant also submitted its draft findings of fact and conclusions of law. (Ex. 49.)
 13. On September 14, 2015, the Concerned Citizens submitted their response to the Applicant’s post-hearing filing. (Ex. 50.)
 14. On September 15, 2015, ANC 5A submitted a copy of the agreement it reached with the University of the District of Columbia Foundation. (Ex. 51.)
 15. At its public meeting held on September 21, 2015, the Commission took proposed action to approve with conditions the PUD and related map amendment. By rule, the record was left open to receive the Applicant’s list of proffers and draft conditions, and the parties’ responses thereto. The Commission also left the record open to receive further analysis from the Applicant regarding circulation for the project to mitigate impacts of vehicle traffic on the existing transportation network. The Commission also requested further clarification regarding certain of the financial contributions proposed as public benefits.
 16. On September 28, 2015, the Applicant submitted its list of proffered public benefits and draft conditions. (Ex. 53.)
 17. On October 5, 2015, the Applicant submitted its analysis of traffic impacts and alternatives regarding circulation to mitigate potential traffic impacts, and additional information regarding community benefits. Attached to the submission was a letter from the Emerson Park HO, Inc. stating that it was opposed to vehicular traffic on the project’s bike and pedestrian path. (Ex. 54.)
 18. On October 7, 2015, ANC 5A submitted a report providing further information regarding the proposed distribution of funds through the Friends of Fort Totten Mews organization. (Ex. 55).
 19. On October 13, 2015, the Concerned Citizens requested a 60-day time extension to submit a response to the Applicant’s October 5th post-hearing submission. (Ex. 56.)

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 4

20. On October 13, 2015, the Applicant submitted its final list of proffers and draft conditions. (Ex. 57.)
21. On October 13, 2015, ANC 5A requested an extension to submit a response to the Applicant's October 5, 2015 post-hearing submission. (Ex. 58.) The request was granted by the Chairman and the time was extended until October 19th.
22. On October 20, 2015, the Applicant submitted a statement opposing the Concerned Citizens' request for a 60-day extension. (Ex. 59.)
23. On October 29, 2015, the Applicant submitted an update regarding its dialogue with the parties regarding the pedestrian/bike path and adding vehicular access to it. (Ex. 60.)
24. On November 5, 2015, the Concerned Citizens submitted a response to the Applicant's update regarding its dialogue with the parties. (Ex. 61.)
25. On November 6, 2015, the Applicant submitted an update regarding its meeting with the Department of Energy and Environment ("DOEE"). (Ex. 62.)
26. The application was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Home Rule Act. Through a delegated action taken on October 30, 2015, the Executive Director of the NCPC found that the PUD would not be inconsistent with the Comprehensive Plan for the National Capital nor other federal interests.
27. At a public meeting held on November 9, 2015, the Commission partially granted the Concerned Citizens' request for a time extension to respond to the Applicant's October 5, 2015, post-hearing submission. The Commission granted an extension of 57 days from Concerned Citizens' initial request, on October 13th, so that the Concerned Citizens response was due on December 11th, the Applicant's response was due December 14th, and the Commission would consider the filings at its December 14th meeting.
28. On December 11, 2015, the Applicant and the Concerned Citizens submitted a joint statement that contained a revised benefits and amenities package that included an escrow agreement. The statement requested that the Commission re-open the record to receive the submission, explicitly authorize the escrow agreement as is required by 11 DCMR § 2409.2, and approve the changes to the benefits and amenities package. The submission also included as Attachment B, supplemental terms added to the Construction Management Plan originally submitted as Exhibit 48C. (Ex. 64.)

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 5

29. The Commission took final action to approve the application on December 14, 2015. The Commission re-opened the record to receive the joint statement submitted by the Applicant and the Concerned Citizens, authorized the escrow arrangement contained therein, and approved the revised benefits and amenities package.

The Property and Surrounding Area

30. The Property consists of approximately 182,600 square feet of land area and is irregularly shaped with frontage of approximately 60 feet on 6th Street, N.E. to the south. The Property was formerly used for outdoor storage by the Thos. Somerville plumbing supply company, and is now primarily vacant, with one brick and metal warehouse building at the southwest corner. The Property's topography includes a 30-foot difference in elevation from the east property line to the leveled area where the proposed residential development will be located. A wooded area with significant grade changes surrounds the Property's northern and eastern boundaries. The Property is located at the end of a north-south portion of 6th Street, N.E., just east of the rail and Metrorail lines. A private extension of 6th Street, N.E., has been constructed along the Property's western edge.
31. The Property is located in the northeast quadrant of the District and is bounded to the north by the Emerson Park townhouse development, to the west by the Capital Area Food Bank, and to the south and east by semi-detached dwellings fronting on 6th Place, N.E. and 7th Street, N.E. The Emerson Park development was approved as a PUD and zoning map amendment by the Commission in Z.C. Order No. 04-11, dated April 11, 2005, and effective on May 20, 2005, and includes 75 individually-owned row dwellings. Farther northeast, east, and southeast of the Property are detached and semi-detached one-family residences in the R-2 Zone District.
32. The Property is located in Fort Totten, an established neighborhood in the northeast quadrant of the District with a solid housing stock and direct access to the Metrorail's Green, Red, and Yellow lines at the Fort Totten Metrorail station, which is located approximately a half mile north of the Property. Fort Totten and the surrounding area contain a housing mix of single-family homes, duplexes, and multi-family dwellings.

Previous Zoning Commission Approval

33. The Commission approved a similar row dwelling project for the Property pursuant to Z.C. Order No. 06-26, dated February 12, 2007, and effective on October 12, 2007. The approval granted in Z.C. Order No. 06-26 lapsed in 2009. The present application proposes development of the Property with a residential development similar to the previously approved project in terms of residential use, density, and neo-traditional

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 6

development principles, but with a more efficient layout and improved architectural treatments.

Existing and Proposed Zoning

34. The Property is presently split-zoned, with the western portion of the Property located in the FT/C-M-1 Zone District and the eastern portion of the Property located in the R-2 Zone District. Residential uses are not permitted in the C-M Zone Districts; therefore, a rezoning of the Property is necessary to permit residential use.
35. The R-2 Zone District consists of those areas that have been developed with one-family semi-detached dwellings, and is designed to protect them from encroachment by denser types of residential development. (11 DCMR § 300.1.) The maximum permitted height in the R-2 Zone District is 40 feet and three stories. (11 DCMR § 400.1.) There is no maximum density imposed in R-2 Zone Districts; however, lot occupancy is limited to 40% for residential uses, which can result in a building density of up to 1.2 FAR. (*See* 11 DCMR §§ 402.4 and 403.2.) Calculated at a permitted density of 1.2 FAR, the R-2 portion of the Property alone would permit a density of approximately 131,602 square feet.
36. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter-of-right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.) Overall, the C-M-1 portion of the Property alone allows for approximately 218,796 square feet of non-residential uses, at 40 feet in height.
37. Pursuant to 11 DCMR § 2101.1, parking for one-family dwellings in all districts is one parking space for each residential dwelling unit. The project includes 40 parking spaces (one for each residential dwelling) plus 17 additional parking spaces located throughout the Property, and therefore complies with the parking requirements of the Zoning Regulations. The individual driveways for the row dwellings are dimensioned to allow for parking of one additional vehicle without projecting into the private access road. Loading facilities are not required for the proposed residential use and are not provided.

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 7

38. The Applicant proposes to rezone the Property to the R-4 Zone District in connection with this application. The R-4 Zone District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for one or two more families. Little vacant land is included within the R-4 Zone District, since its primary purpose is the stabilization of remaining one-family dwellings. (11 DCMR §§ 330.1-330.2.)
39. The maximum permitted matter-of-right height in the R-4 Zone District is 40 feet and three stories and 60 feet as a PUD. (11 DCMR §§ 400.1 and 2405.1.) There is no maximum density imposed for matter-of-right projects in the R-4 Zone District, but density is limited to 1.0 FAR as a PUD. (11 DCMR §§ 402.4 and 2405.2.) Lot occupancy is limited to 60% for residential use. (11 DCMR § 403.2.) Row dwellings are a permitted use as a matter of right.

Description of the PUD Project

40. The Applicant proposes to remove the debris and residue that presently cover the Property and construct a new residential row dwelling development that includes ample parking and new landscaped areas. The row dwellings will be situated in three rows fronting upon landscaped areas with a private road providing vehicular access to the rear of the dwellings where the individual garage entrances are located. New sidewalks with pedestrian amenities will be provided at the front of the row dwellings, and significant new green spaces and outdoor amenities will be provided throughout the Property. Consistent with Chapter 26 of the Zoning Regulations, the Project will dedicate 10% of the residential gross area (a total of four dwellings as Inclusionary Zoning (“IZ”) units, two of which will be set aside for eligible low income households earning up to 50% of the Metropolitan Washington, DC, area median income (“AMI”) and two of which will be set aside for eligible moderate-income households earning up to 80% of the AMI. In addition, the Applicant will dedicate a fifth dwelling to be set aside in perpetuity as affordable for eligible moderate income households earning up to 80% of the AMI.
41. The row dwellings will be grouped in three lines organized in an east-west configuration in the center of the Property in order to minimize visual impacts to surrounding properties and disturbance of the existing grades on the Property. Each dwelling will front on a landscaped common area and will have a rear-loaded, integrated one-car garage, plus a driveway in front of the garage capable of accommodating a second vehicle. Each dwelling will contain between approximately 2,205 square feet and 2,282 square feet of gross floor area, and will rise to a height of three stories and not more than 40 feet. Seventeen additional surface parking spaces will be provided throughout the Project on the perimeter of the Property.

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 8

42. The Project will be fully integrated into the experience and appearance of the existing residential community surrounding the Property. The architectural treatment will be neo-traditional in style, similar to the Emerson Park development bordering the Property to the north, and the recently constructed duplexes bordering the Property to the east. As with those developments, the materials palette for the Project will consist generally of masonry and siding; however, the Project will contain cementitious siding as opposed to vinyl, and significantly more masonry throughout, including the entire ground level belt coursing on all elevations, the entirety of several front elevations, and the entirety of the side-facing units fronting the Capital Area Food Bank.
43. Central to the Project is the extensive use of landscaping, particularly since the Property is presently occupied by concrete slab given its past use for heavy storage. The southern two lines of row dwellings will front on a heavily landscaped mews, which will also be a primary location for the Project's storm water management filtering and retention systems. The northernmost of the three lines of row dwellings will front to the north and upon additional landscaped areas, including a small playground and storm water filtration systems. Lighting will be provided throughout the Project in the form of wall-mounted fixtures on each dwelling unit and as pole-mounted lights, all provided in a traditional design consistent with the Project's architectural motif. The Project will be subject to an HOA, which will ensure consistency of design and upkeep of the dwellings, and will actively maintain the landscaping, open space, and private road.
44. Vehicular access into the Property will be provided from two entrances off of the private extension of 6th Street. A private circular internal road will connect these entrances to provide direct access to the row dwellings. The Pedestrian Path will connect the northern dead-end portion of 6th Street across the Property to the private extension of 6th Street within the Emerson Park development and Emerson Street to the north, so that Project residents and residents to the south can more easily access the Fort Totten Metrorail station and bus stops along South Dakota Avenue.
45. The Project provides a number of environmental benefits and sustainability features, including tree planting and maintenance, extensive landscaping, methods to reduce storm water runoff, and green engineering practices. All of the dwelling units will include water-conserving fixtures; Energy Star lighting, appliances, and exhaust fans; Manual J sizing of HVAC systems; low-VOC paints, primers, adhesives, and sealants; "Green Label" rated carpet; and mold prevention measures. The Project incorporates an infiltration trench, allowing storm water from the Property to be discharged directly back into the water table, achieving one of the primary goals of low impact development design. The Project will also provide approximately 91,300 square feet of pervious surface area, which is five times the pervious surface area of 18,260 square feet that is required by the green area ratio ("GAR") regulations.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 9

Zoning Flexibility Requested

46. The Applicant requests flexibility to permit multiple buildings on a single record lot, pursuant to 11 DCMR § 2516. The Commission is permitted to grant any zoning relief that would normally require a special exception from the Board of Zoning Adjustment and in doing so need not apply the applicable special exception criteria. (11 DCMR §§ 24054.7 and 2405.8.)
47. The Applicant also proposes subdivision into theoretical lots based on the lack of public street frontage for the row dwellings, pursuant to 11 DCMR § 2516.5. Because the proposed row dwellings will not have public street frontage, the Applicant must divide the lots into theoretical building sites. Due to the configuration and topography of the Property, including the extensive slopes along the Property's northern and eastern edges, the development footprint for the overall 4.2-acre site is comparatively tight. The Project incorporates an efficient and clearly organized site plan given these constraints, with the units' front elevations facing toward landscaped areas and their rear/service elevations facing a circular private access road.
48. Pursuant to 11 DCMR § 2405.8, the Applicant requests flexibility from 11 DCMR § 2516.5(b), which requires that the open space in front of the entrance to be equivalent either to the required rear yard or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater. In this case, the open space in front of the entrances to the dwellings are less than the minimum requirement for a rear yard. However, the distance between the fronts of facing dwellings is 42 feet, which is more than twice the minimum required rear yard. Therefore, the Commission finds that the proposed open space at the front of the dwellings will not result in an adverse impact.
49. The Applicant requests flexibility from 11 DCMR § 2516.6(a), which requires that the area of land forming a covenanted means of ingress or egress shall not be included in the area for any theoretical lot or in any required yard. The Applicant excluded areas of ingress and egress in the area of the theoretical lots, resulting in a density of 0.57 FAR. However, a width of two feet of the private access road crosses portions of some of the required rear yards, resulting in a two-foot reduction for those rear yards, which are required to be 20 feet in depth, pursuant to 11 DCMR § 404.1. The Commission finds that this requested relief can be granted without adverse effects on the surrounding neighborhood, since terraces and decks will be provided for each row dwelling for passive recreation, and because the private road will facilitate two-way vehicular movement for residential vehicles and trash services.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 10

50. In addition, the Applicant requests flexibility from 11 DCMR § 2516.6(b), which requires that vehicular ingress or egress to any principal building shall be 25 feet in width. The lots for the proposed dwellings are only 18 feet in width, and therefore it would be impossible for vehicular access to be 25 feet in width. The Commission finds that flexibility from the 25-foot width requirement will not have an adverse impact on the character and future development of the neighborhood, since the common private drive will be 20 feet wide at each curb cut, and because the proposed dimensions are common for alley widths in the District. Moreover, the 18-foot-wide dwellings will adequately support the rear-loaded garages, which is also typical of homes in the R-4 Zone District.
51. In all other respects, the Applicant complies with the general special exception standard of § 3104.1 and the specific requirements of § 2516.

Development Flexibility Requested

52. The Applicant also requests flexibility in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configurations of the buildings;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - c. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - d. To vary the location and arrangement of parking spaces, so long as the number of spaces is not reduced; and
 - e. To vary the final selection of landscaping materials to provide equivalent plant material, depending on market availability.

Project Benefits and Amenities

53. Urban Design, Architecture, Landscaping, and Open Space – § 2403.9(a). The Project will have a positive impact on the visual and aesthetic character of the immediate

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 11

neighborhood and will advance the goals of urban design while enhancing the streetscape. The Project involves sensitive residential infill development of the vacant industrial storage site, which will create a buffer between the residential developments to the north, east, and south of the Property and the Food Bank warehouse and rail tracks to the west. The Property will be developed with 40 new three-bedroom row dwellings of traditional architectural design with varied elevation types, extensive use of masonry, cementitious siding, and articulation. The Project will be pedestrian-focused, with extensive sidewalks, community gathering areas, a playground, landscaping, and the preservation of the Property's existing slopes and topography. Moreover, the Project includes the Pedestrian Path, which will connect the dead-end portion of 6th Street at the northwest corner of the Property to the continuation of 6th Street and Emerson Street to the north, providing a pedestrian and bicycle connection to the Fort Totten Metrorail station, Metrobus routes, and other residential neighborhoods to the north. The combination of these features is significant in their breadth, quality, and value in comparison to what is typically achieved in a matter-of-right project.

54. Site Planning and Efficient and Economical Land Utilization – § 2403.9(b). The Project will replace the vacant, heavy-industrial storage site with 40 new residential units, including affordable units that preserve the Property's existing slopes and contours. The Property will be a high-quality, transit-oriented residential development, given its proximity to the Fort Totten Metrorail station, numerous Metrobus routes, and the meaningful pedestrian and bicycle connection. The new occupants of the 40 units will also add to the market demand for existing neighborhood retail uses and amenities, further invigorating the surrounding community.
55. Housing and Affordable Housing – § 2403.9(f). The Project involves infill construction of 40 new three-bedroom row dwellings with garage parking on a long vacant mixed-zoned site abutting residential uses to the north, east, and south. The row dwellings will be for-sale units subject to an HOA. In compliance with Chapter 26 of the Zoning Regulations, 10% of the residential gross area (a total of four of the row dwellings) will be IZ units, two of which will be reserved for households earning up to 50% of the AMI, and two of which will be reserved for households earning up to 80% of the AMI. The Project also includes a fifth affordable unit, which will be reserved pursuant to § 2409.10 in perpetuity for households earning up to 80% of the AMI. The housing and affordable housing qualify as public benefits of the project because the existing CM matter of right zoning does not permit residential development; thus, but for the project and its PUD-related map amendment, no housing or affordable housing would be provided on the site. The additional affordable unit represents a significant increase in affordability above and beyond the amount required by Chapter 26. Figure 1 indicates the Applicant's affordable housing proffer.

Z.C. ORDER No. 15-04
 Z.C. CASE NO. 15-04
 PAGE 12

Figure 1

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	89,124 sf GFA (100%)	40	Market, IZ, Affordable	N/A	N/A
Market Rate	78,099 sf GFA (87.5%)	35	Market Rate	N/A	N/A
IZ	4,410 sf GFA (5%)	2	50% AMI	For the life of the project	Ownership
IZ	4,410 sf GFA (5%)	2	80% AMI	For the life of the project	Ownership
Affordable/Non-IZ	2,205 sf GFA (2.5%)	1	80% AMI	For the life of the project	Ownership

56. Environmental Benefits – § 2403.9(h). The Applicant will ensure environmental sustainability through the implementation of design features and strategies to enhance the sustainable nature of the Property’s transit-oriented location and to promote a healthy lifestyle for residents. The Project provides a host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), including extensive preservation of the Property’s existing slopes and vegetation; implementation of on-site stormwater runoff controls; soil composition that allows for the infiltration trench to discharge storm water directly to the water table; the provision of 1.68 acres of pervious surface area; and water-conserving Energy Star fixtures, appliances, and lighting in each of the row dwellings. The Applicant also proposes to provide off-site stormwater control maintenance for the Emerson Park development for a period of two years.

57. Transportation Benefits – § 2403.9(c). The Applicant incorporated a number of elements designed to promote effective and safe multi-modal access to and within the Property, convenient connections to public transit services, and on-site amenities. The Project includes an integrated one-car garage for each row dwelling, a driveway in front of each garage capable of accommodating a second vehicle, and 17 additional parking spaces dispersed on the Property for visitors and guests. The row dwellings are efficiently served by an on-site private access road, extensive sidewalks, ADA-accessible ramps, and crosswalks. In addition, the Pedestrian Path will provide a paved, landscaped, and lighted pedestrian and bicycle connection, including installation of a security camera, to points north of the Property, which will facilitate non-vehicular traffic and improve multi-modal access. In addition, the DC Fire and EMS Department (“FEMS”) has confirmed that access to and through the Property is compliant with the DC Fire Code for emergency access and that the Project as proposed will not create any operational concerns. Finally, the Applicant will construct off-site public space

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 13

improvements in coordination with DDOT. The improvements will include four new crosswalks, seven new or modified curb ramps, and one missing sidewalk link, and will be located along Emerson Street, 6th Place, and Gallatin Street.

58. Use of Special Value to the Neighborhood or the District as a Whole - § 2403.9(i): The new single-family, for-sale residential infill construction will revitalize the long-vacant industrial storage facility in a manner consistent with the Comprehensive Plan for the National Capital (the "Comprehensive Plan") and surrounding development patterns. The Applicant will monitor for any vibration caused by construction activities for a period of eight months and offer pre- and post-construction inspections for 10 houses adjacent to the Property's southern boundary, as detailed in Applicant's Construction Management Agreement included in the record. The Applicant will also engage a vibration consultant, at a cost not to exceed \$4,000, to work directly with neighboring residents within SMD 5A08, to undertake a vibration monitoring study, as detailed in Exhibit 60. The Applicant will provide funding in the amount of \$40,000 for repairs to the homes of senior citizens residing in the North Michigan Park neighborhood. The funding shall be provided through an escrow agreement, with the repair projects to be selected and funds to be administered by Concerned Citizens, as detailed in Exhibit 64. Of the \$40,000, at least \$10,000 will be utilized for repairs to seniors' homes along the 4700/4800 block of 6th Street, N.E. In addition, the Applicant will make the following financial contributions:

- a. Contribute \$35,000 to the University of the District of Columbia Foundation, Inc. for the renovation of the Bertie Backus campus on South Dakota Avenue, N.E., which shall also include a provision by the University for use of space by ANC 5A and the community represented by ANC 5A08 within the Backus Campus for at least 60 occasions over a two-year period;
- b. Contribute \$12,500 to help establish the Friends of Totten Mews ("FTM"), which will consist of a board acceptable to the ANC Single Member District ("SMD") Commissioner 5A08. In establishing FTM, the SMD 5A08 Commissioner, a resident of Totten Mews, a resident of Emerson Park, a resident of 6th Street, a resident of 6th Place, a resident of 7th Street, and a resident of Emerson Street will serve to issue block grants via grant application to the community. The grant money will be used to support educational projects, community athletic activities, training, community clean ups, beautifications, and events;
- c. Contribute \$5,000 to the North Michigan Park Civic Association, which will provide support over the next five years to their annual Scholarship Program and Back to School Supply Give-A-Way; and

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 14

- d. Contribute \$10,000 to the Capital Area Food Bank to service providers operating within Ward 5 and ANC 5A specifically.
59. The Commission finds that the proposed benefits and amenities are more than commensurate with the modest level of flexibility requested for the Project. The Commission further finds that the impacts of the Project are favorable and capable of being mitigated or acceptable, in compliance with 11 DCMR § 2403. Construction of the Project provides efficient use of land compatible with uses of the surrounding properties. Given the extensive transportation benefits, the Commission also finds that the Project will not cause adverse traffic impacts and will provide sufficient parking to meet demand, as confirmed by the reports of Gorove/Slade Associates and DDOT.

Comprehensive Plan

60. The Future Land Use Map of the Comprehensive Plan designates the Property for Moderate-Density Residential. The Project is consistent with that designation, particularly because the proposed R-4 zoning classification is specifically identified as a Moderate-Density Residential zone district. In addition, the R-4 Zone District contemplates that little vacant land shall be included within the R-4 Zone District, since its primary purpose shall be the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The Project is located in close proximity to a Metrorail station and numerous Metrobus lines. Given the District's stated policy of channeling new residential growth into areas near transit stations and along bus routes, the PUD and map amendment are consistent with the Comprehensive Plan's designation for the Property.
61. The eastern portion of the Property is designated as Neighborhood Conservation Area and the western portion of the Property is designated as a Land Use Change Area on the Comprehensive Plan Generalized Policy Map. The proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated for Neighborhood Conservation and Land Use Change Areas. The Project will enhance the established semi-detached and rowhouse neighborhood by developing the vacant Property with new for-sale, three-story one-family row dwellings that are compatible with the existing scale and character of the area. The Project will implement dynamic site and architectural design by creating a high-quality new development that supports existing land uses and respects the surrounding community.
62. The Project is consistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities. The Project also furthers numerous policies and objectives of the Comprehensive Plan, as follows below.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 15

- a. *Policy LU-1.3.2: Development Around Metrorail Stations.* The Fort Totten Metrorail station offers a great opportunity for infill development and growth. Consistent with Policy LU-1.3.2, the project will be located in close proximity to the Metrorail station and will redevelop a poorly utilized infill site. By virtue of its transit-oriented location, the project will minimize the necessity for automobile use and will maximize transit ridership while respecting the needs of the surrounding area;
- b. *Policy LU-1.3.3: Design to Encourage Transit Use.* The Project's architecture and site planning will support pedestrian and bicycle access to the Fort Totten Metrorail station and will enhance the safety, comfort, and convenience of passengers walking to the station or transferring to and from local busses;
- c. *Policy LU-1.4.1: Infill Development.* The Project is consistent with the goal of encouraging infill development on vacant land within the city, particularly in areas where there are vacant or underutilized lots that create gaps in the urban fabric and detract from the character of a commercial or residential street. The proposed project complements the established character of the area by building on a large underutilized lot without creating sharp changes in existing development patterns;
- d. *Policy LU-2.1.5: Conservation of Single Family Neighborhoods.* Consistent with Policy LU-2.1.5, the PUD will conserve the District's stable residential neighborhood and will reflect the established character of the one-family dwellings. The Applicant will carefully manage the development of the PUD Site in a manner that preserves open space and maintains the neighborhood scale;
- e. *Policy LU-2.1.11: Residential Parking Requirements.* The Project's proposed parking is responsive to the varying levels of demand associated with the row dwellings and the location of the Property near transit. Parking will be accommodated on the Property in a manner that maintains an attractive environment at the street level and minimizes interference with traffic flow;
- f. *Policy LU-2.2.4: Neighborhood Beautification.* This policy encourages projects to improve the visual quality of the District's neighborhoods. As shown on the project drawings, the project architect designed the dwellings to improve the visual aesthetic of the neighborhood. The design and materials proposed are of a high quality, and the project is focused in the interior of the site to provide a landscaped buffer from surrounding properties. Moreover, the development of the Property will be an improvement to the current site condition and will help to

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 16

revitalize the area. The Project also includes a significant amount of landscaped and open space that will greatly enhance the streetscape and improve the pedestrian experience;

- g. *Policy T-1.4.1: Transit-Oriented Development.* The proposed Project is a textbook example of transit-oriented infill development due to its location near the Fort Totten Metrorail station and nearby Metrobus corridors. It also includes various transportation improvements, such as the construction of new sidewalks, public space improvements, and a direct pedestrian/bicycle connection from the Property to the continuation of 6th Street, Emerson Street and the Metrorail station to the north. The Applicant also proposes to invest in pedestrian-oriented improvements leading from the PUD Site to the Fort Totten Metrorail station and along major bus corridors to encourage transit use by neighborhood residents;
- h. *Policy T-2.3.1: Better Integration of Pedestrian and Bicycle Planning.* As shown on the architectural drawings, the Applicant has carefully considered integrated pedestrian and bicycle safety considerations into the design of the Project and to the development of new roads and sidewalks;
- i. *Policy T-2.4.1: Pedestrian Network and Policy T-2.4.2: Pedestrian Safety.* Consistent with these policies, the Applicant will develop, maintain, and improve pedestrian facilities within the Property and will connect these facilities into the District's sidewalk network. The Project will improve safety and security of pedestrian travel by implementing a variety of techniques including new lighting, crosswalks, sidewalks, and clear lines of sight;
- j. *Policy H-1.1.1: Private Sector Support.* The Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the project will contain 40 new single-family dwellings, five of which will be designated as affordable units. This represents a substantial contribution to the District's housing supply, and the provision of new affordable units at this location is fully consistent with the District's land use policies;
- k. *Policy H-1.1.3: Balanced Growth.* Consistent with this policy, the Applicant will develop new housing on underutilized land, helping to ensure that the city will meet its long-term housing needs, including the need for low- and moderate-density single-family homes;
- l. *Policy H-1.1.5: Housing Quality and Policy H-1.2.1: Affordable Housing as a Civic Priority.* As shown on the architectural drawings, the Project is designed

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 17

to include high-quality materials and design elements. Moreover, five of the residential dwellings will be affordable to households earning up to 50% and 80% of the AMI. Consistent with Policies H-1.1.5 and H-1.2.1, the affordable units will meet the same high-quality architectural standards provided for the market-rate units and will be indistinguishable from the market-rate housing in their exterior appearance. The project also addresses the need for open space and recreational amenities, and respects the design integrity of adjacent properties and the surrounding neighborhood;

- m. *Policy H-1.2.3: Mixed Income Housing.* The proposed development is mixed-income in that it includes a number of affordable housing units dedicated to families earning not more than 50% and 80% of the AMI. Thus, the Project will support the District's policy of dispersing affordable housing throughout the city to mixed-income communities, rather than concentrating such units in economically depressed neighborhoods;
- n. *Policy H-1.3.1: Housing for Families.* The Project will support this policy by constructing a large number of new single-family row dwellings that can accommodate families with children;
- o. *Policy UD-2.2.1: Neighborhood Character and Identity and Policy UD-2.2.5: Creating Attractive Facades.* Consistent with Policies UD-2.2.1 and UD-2.2.5, the Project will strengthen the defining visual qualities of the Fort Totten neighborhood by relating the scale of the infill development to the existing neighborhood context. In addition, as shown on the architectural drawings, the project includes elegant, visually-interesting, and well-designed building facades that eschew monolithic or box-like forms and long blank walls that detract from the quality of the streetscape;
- p. *Policy UD-2.2.7: Infill Development and Policy UD-2.2.8: Large Site Development.* In furtherance of these policies, the Project will avoid overpowering contrasts of scale, height, and density as the infill development occurs. The Applicant will also ensure that the Project is carefully integrated with adjacent sites;
- q. *Policy UD-3.1.1: Improving Streetscape Design and Policy UD-3.1.2: Management of Sidewalk Space.* The Project will improve the appearance and identity of the District's streets through providing new street lights, paved surfaces, landscaped areas, and adjacent building facades. Sidewalks within the Property will promote pedestrian safety, efficiency, and comfort, and will enhance the visual character of the streets within the Property with landscaping and buffer plantings to reduce the impacts of vehicular traffic;

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 18

- r. *Policy UD-3.2.4: Security Through Streetscape Design and Policy UD-3.2.5: Reducing Crime Through Design.* Consistent with these policies, the Applicant will ensure attractive, context-sensitive security measures in the design of the streets, and public spaces within the Property. These measures will include an appropriate mix of bollards, planters, landscaping, and vegetation, rather than incorporating barriers and other approaches that detract from the aesthetic quality of the street. Furthermore, the design of the Property will minimize the potential for criminal activity through the provision of preventative measures such as adequate lighting, clear lines of sight, installation of a security camera along the Pedestrian Path and ready visual access; and
- s. The Project is also consistent with numerous policies set forth in the Environmental Protection Element, including the following:
- *Policy E-1.1.1: Street Tree Planting and Maintenance* – Encourages the planting and maintenance of street trees in all parts of the city;
 - *Policy E-1.1.3: Landscaping* – Encourages the use of landscaping to beautify the city, enhance streets and public spaces, reduce storm water runoff, and create a stronger sense of character and identity;
 - *Policy E-2.2.1: Energy Efficiency* – Promotes the efficient use of energy and a reduction of unnecessary energy expenses;
 - *Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff* – Calls for the promotion of tree planting and landscaping to reduce storm water runoff, including the expanded use of green roofs in new construction; and
 - *Policy E-3.1.3: Green Engineering* – Has a stated goal of promoting green engineering practices for water and wastewater systems.
63. The Project is consistent with numerous policies set forth in the Economic Development Element, which addresses the future of the District's economy and the creation of economic opportunity for current and future District residents. This element places a high priority on stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside of the Central Employment Area. Consistent with policies in this Element, the Project will attract and retain residents who desire a moderate density residential neighborhood with direct access to public transportation and safe pedestrian and bicycle

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 19

facilities. Attracting and retaining residents will further increase the District's tax base and will create additional revenue for the city.

64. The Property is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Comprehensive Plan explains the Upper Northeast Area Element's planning and development priorities. One stated priority is to encourage future development around the Fort Totten Metrorail station, which development to date has not taken full advantage of proximity to the Metro, and provide opportunities for diverse housing types of moderate- and medium-density housing. (See 10A DCMR § 2407.2(i).) The Upper Northeast Area Element also encourages compatible infill development (*Policy UNE-1.1.2*), Metro station development (*Policy UNE-1.1.3*), streetscape improvements (*Policy UNE-1.2.1*), and environmental quality (*Policy UNE-1.2.8*), all of which are policies and goals that the Project will support.
65. In addition, the Upper Northeast Area Element specifically states that the Fort Totten Metrorail station area has strategic importance in plans for the District's growth. (See 10A DCMR § 2417.1.) *Policy UNE-2.7.1* envisions underutilized property in the immediate vicinity of the Fort Totten Metrorail station as a "transit village" combining medium-density housing, ground-floor retail, local-serving office space, new parkland and civic uses, and structured parking. *Policy UNE-2.7.1* states that redevelopment should protect the lower density residences nearby and address traffic congestion and other development impacts. Furthermore, *Policy UNE-2.7.2* calls for improvements to pedestrian access to the Fort Totten Metrorail station. The Commission finds that the Project is consistent with the infill, and transit-oriented development objectives that are part of the Upper Northeast Area Element, and will provide much needed new housing opportunities that protect the nearby lower density residences and increase pedestrian accessibility and safety in the area.

Office of Planning Report

66. By report dated July 20, 2015 (Ex. 26), OP recommended approval of the PUD and related Zoning Map amendment. In its report, OP stated that the Project is "consistent with the goals and objectives of the Comprehensive Plan" and that the "new housing would further the stability of the neighborhood." OP also found that the proposed map amendment to the R-4 Zone District was consistent with the Property's designation on the Future Land Use and Generalized Policy Maps, and that the Project was consistent with a number of policies in the Upper Northeast Area Element of the Comprehensive Plan and with the Ward 5 Works: Ward 5 Industrial Land Transformation Study. The Commission concurs with OP's findings.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 20

DDOT Report

67. By report dated July 20, 2015 (Ex. 27), DDOT stated that it had no objection to the Applicant's request for a PUD and related map amendment, so long as the Applicant incorporate the following mitigation measures:
- a. Provide a full bicycle and pedestrian connection between the 6th Street, N.E. ends, meeting DDOT design standards; and
 - b. Upgrade at least six sidewalk ramps, four crosswalks, and some missing sidewalk links along the path to the Metrorail station.

At the public hearing, the Applicant agreed to both of DDOT's conditions to approval.

68. On August 21, 2015, DDOT submitted a supplemental memorandum (Ex. 47) in response to the Commission's request at the public hearing for DDOT to provide minimum street dimension requirements. DDOT's memorandum indicated the minimum dimensions for private streets, the desirable widths for private streets, and the DDOT standard width needed for streets to be accepted as public rights-of-way. DDOT's memorandum also noted that the Applicant was not proposing to construct a new roadway (public or private) in the location proposed for the Pedestrian Path.

DDOE Report

69. By report dated July 14, 2015 (Ex. 28), DDOE summarized items related to the Property and common issues related to many development projects. The report included DDOE's comments on the Project, provided additional guidance on regulations and other DDOE areas of interest, and recommended areas where the Applicant could exceed guidelines as a public benefit or amenity. At the public hearing, the Commission requested that the Applicant meet with DDOE prior to final action to clarify and confirm the sustainable elements of the Project. The Applicant met with DDOE representatives on November 5, 2015.

ANC Reports

70. On July 30, 2015, ANC 5A submitted a report recommending approval of the PUD and related map amendment. (Ex. 39.) The report noted that at its duly noticed, special meeting, with all six commissioners and the public present, ANC 5A voted 6-0 to support the application and to approve the community benefits package. At the public hearing, Commissioner Angel Alston, the SMD commissioner for ANC 5A08, testified on behalf of the ANC and in support of the Project.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 21

Persons in Support

71. Five persons testified in support of the Project at the public hearing. The Commission also received four letters of support for the Project. (Ex. 31, 35, 44, 45.) The oral and written testimony primarily focused on the Pedestrian Path. Individuals asserted that the area proposed for the Pedestrian Path is currently a “breeding ground for illicit activity,” and needed to be lit, paved, and cleared of debris, as proposed by the Applicant. Individuals testified against vehicular use of the Pedestrian Path or opening the Pedestrian Path as a public or private street, since doing so would increase traffic and parking congestion, noise pollution, and pedestrian accidents, and would decrease property values in the “quiet and peaceful cul-de-sac community.” (Ex. 44, 45.) Individuals also stated that vehicular use of the Pedestrian Path would result in unwanted maintenance costs for lighting, plowing, trash pick-up, and insurance liability. Moreover, project supporters testified generally that the proposed residential redevelopment of the vacant industrial site would be a major improvement to the Property’s current condition.

Persons and Parties in Opposition

72. Ms. Belinda Bell represented the Concerned Citizens as the party in opposition to the application.
73. At the public hearing, Ms. Bell, Ms. Andrea Moore, and Mr. Clarence Moore testified on behalf of the Concerned Citizens in opposition to portions of the Project, specifically regarding the Pedestrian Path. Six individuals also testified at the hearing, specifically regarding the Pedestrian Path. The Commission also received two letters in opposition to the Project. (Ex. 32, 33.)
74. At the public hearing, the Concerned Citizens noted that it was not concerned with the Applicant’s overall proposal to redevelop the Property with 40 new for-sale row dwellings. The Concerned Citizens’ testimony was primarily limited to discussion regarding the development and use of the proposed Pedestrian Path. The Concerned Citizens stated that the Pedestrian Path would have a negative social and economic impact on the neighborhood because it would increase traffic, invite criminal activity, disconnect the street grid, and create unsafe conditions with inadequate access for emergency vehicles to access or evacuate the nearby properties.
75. The Concerned Citizens and other individuals in opposition to the Pedestrian Path claimed that traffic on the streets surrounding the Property was already congested, and that maintaining the Pedestrian Path for foot and bicycle traffic only would significantly worsen the problem. In the alternative, opponents surmised that if the path was open to vehicles as a public or private road, the existing north-south traffic could flow

Z.C. ORDER No. 15-04

Z.C. CASE NO. 15-04

PAGE 22

uninterrupted through a connected street grid, creating convenient access to surrounding streets and alleviating traffic on other small connector streets.

76. In addition, the Concerned Citizens and other opponents argued that the Pedestrian Path would invite criminal activity since it would be isolated from neighborhood activity, and would lack clear lines of sight, creating a “haven for criminals... to hide and attack residents as they use the path.” (Ex. 29, p. 3.) Other persons in opposition expressed concerns over potential property damage and increased traffic that would result from construction activities and vehicles associated with the proposed development.
77. The Concerned Citizens questioned the accuracy of the Applicant’s Transportation Impact Study (“TIS”), prepared by Gorove/Slade Associates and provided to DDOT in compliance with 11 DCMR § 3113.10. (Ex. 24A.) The Concerned Citizens stated that the TIS was “biased and flawed” because it did not reflect the existing traffic flow in the neighborhood, did not accurately demonstrate the impact that the Project would have on the surrounding streets, and was generally inconsistent with a TIS completed for the Property in 2006 as it related to the previously approved PUD. The Concerned Citizens asserted that the Applicant’s TIS did not identify the locations where it measured peak traffic, did not cover the same streets as the 2006 TIS, did not adequately evaluate the impact of vehicular traffic from the Capital Area Food Bank, which did not exist in 2006 and which generates additional and frequent vehicular deliveries, and only evaluated existing conditions and not how the community is changing as a result of other new development.
78. Despite the Concerned Citizen’s claims, the Commission finds that the Project will not have a detrimental impact to the surrounding transportation network, even without a vehicular connection from 6th Street, and that the Pedestrian Path will provide much needed new multi-modal access to the Fort Totten Metrorail station. The Commission finds that the TIS prepared by Gorove/Slade is acceptable and appropriate. The report’s scope was discussed and agreed to with DDOT, and its general methodology follows national and DDOT guidelines on preparation of transportation impact evaluations of site development. The Commission finds that the TIS adequately compares existing conditions to two future scenarios: (i) 2018 background conditions without the Project, and (ii) 2018 conditions with the Project completed. Based on the TIS and testimony presented at the public hearing, the Commission finds that the roadways surrounding the Property currently operate under acceptable conditions during peak hours, and that impacts attributable to the Project will be minimal and will have no significant effects on the surrounding roadway network. The Commission also finds that no study intersections will operate under unacceptable future conditions following construction of the PUD that will not also operate under unacceptable future conditions without the PUD.

Z.C. ORDER No. 15-04
Z.C. CASE No. 15-04
PAGE 23

79. The Commission also finds that the Pedestrian Path will significantly improve existing conditions, increase safety, and deter criminal activity, since the Applicant will pave the path, provide pedestrian-oriented lighting, install a security camera to be capable of monitoring by the Metropolitan Police Department as part of the Capital Shield program and create clear lines of sight to deter illicit behavior. The Commission also concludes that the Project will have no adverse impacts on emergency vehicle access to or evacuation of the Property. As indicated in the letter from DC FEMS, dated May 29, 2015, the Office of the Fire Marshal indicated that the Project is consistent with the requirements of the DC Fire Code and does not present any operational difficulties for FEMS. (Ex. 24D.) As to the suggestion that there should be a new private or public street, the Commission notes that it cannot compel a private person to dedicate land for public purposes. Even the Mayor cannot accomplish such an action without just compensation. If a full street were required to avoid a danger to the public, the Commission would have to take the absence of such a street into consideration when balancing the public benefits of this PUD. Here, no such danger will result.
80. In addition, the Commission concludes that construction of the Project will not result in unmitigated structural damage to nearby properties, or increased traffic and parking, since the Order contains conditions intended to mitigate the effects of the project on the neighboring properties caused by vibration, as well on the transportation network and parking.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the Property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 24

4. The PUD complies with the development standards of the Zoning Regulations. The residential use for the Project is appropriate for the Property. The impact of the Project on the surrounding area and the operation of city services is minimal, and is acceptable given the quality of the public benefits in the Project. Accordingly, the Project should be approved.
5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
6. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the minimal requested development flexibility in accordance with 11 DCMR §§ 2400.3 and 2400.4.
7. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The proposal to rezone the Property from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Repl.)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 5A recommendation for approval and concurs in its recommendation.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 25

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related map amendment from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District for the property located at Lot 814 in Square 3788. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and elevations dated March 3, 2015 (Ex. 6A1 and 6A2), as modified by the architectural plans and elevations dated May 15, 2015 (Ex. 16A), and further modified by the architectural plans and elevations and drawings dated September 1 and 3, 2015 (Ex. 48A) (together, the "Plans") and as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the Plans, the PUD shall be a residential development with 40 one-family row dwellings, each containing a garage for one vehicle and accessed by a private road. Each dwelling shall contain three bedrooms and approximately 2,205 to 2,282 square feet of gross floor area, including the garage. Additional surface parking for approximately 17 vehicles shall be provided throughout the Property. The Project density shall be 0.49 FAR; the lot occupancy shall be 17%; and the maximum building height shall not exceed three stories or 40 feet.
3. The Property shall be extensively landscaped and provide various outdoor amenities for residents, including a landscaped mews, seating areas, and a small playground. The Project shall also include a paved and lighted pedestrian and bicycle path across the northern portion of the Property. The Project shall include the landscaping, seating areas, playground, and paved and lighted pedestrian and bicycle plan as shown on the Plans and as supplemented by Exhibits 24B and 48A.
4. The Applicant shall be permitted to provide multiple buildings on a single record lot, pursuant to the special exception authorized by 11 DCMR § 2516, except that the Applicant is granted flexibility from 11 DCMR §§ 2516.5(b), 2516.6(a), and 2516.6(b).
5. The Applicant shall also have design flexibility with the PUD in the following areas:

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 26

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configurations of the buildings;
- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
- c. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
- d. To vary the location and arrangement of parking spaces, so long as the number of spaces is not reduced; and
- e. To vary the final selection of landscaping materials to provide equivalent plant material, depending on market availability.

B. Public Benefits

1. Affordable Housing.

- a. **For the life of the Project**, the Applicant shall devote 10% of the residential gross floor area of the project to four IZ units, two of which, comprising five percent of the residential gross floor area of the project, shall be set aside for “eligible moderate-income households” as defined at 11 DCMR 2601 and two of which, also comprising five percent of the residential gross floor area of the project, shall be set aside for “eligible low-income households” as defined at 11 DCMR 2601;¹
- b. **For the life of the Project**, the Applicant shall devote one dwelling consisting of 2,205 feet of gross floor area to be set aside as affordable for eligible moderate income households earning up to 80% of the AMI,² and

¹ Although this project must comply with IZ, and therefore a condition to that effect is normally unnecessary, a condition is being added here because such compliance is deemed a public benefit in view of the change from CM-1 zoning. Nevertheless, nothing in this Order shall be construed as permitting anything less than full compliance with IZ as determined by the Zoning Administrator.

² Since this is non-IZ affordable housing, the provisions of §§ 2409.10 and 2409.11 shall apply.

Z.C. ORDER No. 15-04
 Z.C. CASE NO. 15-04
 PAGE 27

- c. The full details of the Applicant’s affordable housing requirement are set forth in Figure 1:

Figure 1

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	89,124 sf GFA (100%)	40	Market, IZ, Affordable	N/A	N/A
Market Rate	78,099 sf GFA (87.5%)	35	Market Rate	N/A	N/A
IZ	4,410 sf GFA (5%)	2	50% AMI	For the life of the project	Ownership
IZ	4,410 sf GFA (5%)	2	80% AMI	For the life of the project	Ownership
Affordable/Non-IZ	2,205 sf GFA (2.5%)	1	80% AMI	For the life of the project	Ownership

2. Environmental Benefits.

- a. **For the life of the Project**, the Applicant shall (i) preserve the Property’s existing slopes and vegetation; (ii) provide a soil composition that allows for the infiltration of trench to discharge storm water directly to the water table; (iii) provide 1.68 acres of pervious surface area; (iv) provide water-conserving Energy Star fixtures, appliances, and lighting in each of the row dwellings; and (v) provide on-site stormwater runoff controls generally as shown on Sheet C9 included at Exhibit 6A of the record and Exhibit 48A of the record; and
- b. **For the first two years after the issuance of a certificate of occupancy for the Project**, the Applicant shall provide storm water control maintenance for the Emerson Park development to the north of the Property.

3. Transportation Benefits. **For the life of the Project**, the Applicant shall provide a landscaped and lighted Pedestrian Path for pedestrians and bicycles, as shown on Sheets L01-02 and C03-04 of Exhibit 6A2; Sheet C-12 of Exhibit 16A; Exhibit 24B; and Sheet C-14 of Exhibit 48A. The Applicant shall also implement sidewalk improvements, which shall include four new crosswalks,

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 28

seven new or modified curb ramps, and one missing sidewalk link along 6th Place, Emerson Street, and Gallatin Street to the north of the Property, in coordination with DDOT.

4. Uses of Special Value to the Neighborhood.
 - a. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall contribute \$35,000 to the University of the District of Columbia Foundation, Inc. with a specific earmark for the renovation of the Bertie Backus campus on South Dakota Avenue, N.E., which shall also include provision by the University for use of space by ANC 5A and the community represented by ANC 5A08 within the Backus Campus for at least 60 occasions over a two-year period;
 - b. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall contribute \$12,500 to help establish the FTM, which will consist of a board acceptable to the ANC Single Member District Commissioner 5A08. In establishing FTM, the ANC 5A08 Commissioner, a resident of Totten Mews, a resident of Emerson Park, a resident of 6th Street, a resident of 6th Place, a resident of 7th Street, and a resident of Emerson Street will serve to issue block grants (via grant application) to the community, which will include support for educational projects, community athletic activities, training, community clean ups, beautifications, and events. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;
 - c. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall contribute \$5,000 to the North Michigan Park Civic Association, which will provide support over the following five years to their annual Scholarship Program and Back to School Supply Give-A-Way. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;
 - d. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall contribute \$10,000 to the Capital Area Food Bank to service providers operating within Ward 5 and within ANC 5A specifically. A certificate of occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are in process of being provided;

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 29

- e. **Prior to the commencement of demolition activities for the Project,** the Applicant shall initiate 10 pre-construction inspections and establish a vibration monitoring plan consistent with the terms of the Construction Management Plan included at Exhibit 48C;
- f. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall comply with the terms of the escrow agreement attached to Exhibit 64 of the record. A Certificate of Occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. If the escrow funds are used for scholarships and school supplies, the Applicant shall provide proof that they have been, or are being used, in a manner consistent with Condition B.4.c of this Order; and
- g. **Prior to the issuance of a Certificate of Occupancy for the Project,** the Applicant shall engage a vibration consultant, at a cost not to exceed \$4,000, to work directly with neighboring residents within SMD 5A08, to undertake a baseline vibration monitoring study related to rail traffic, as detailed in Exhibit 60. A Certificate of Occupancy shall not be issued before the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

C. **Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning from the R-2 and FT/C-M-1 Zone Districts to the R-4 Zone District shall be effective upon the recordation of the covenant discussed in Condition No. C.1, pursuant to 11 DCMR § 3028.9.
3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning

Z.C. ORDER No. 15-04
Z.C. CASE NO. 15-04
PAGE 30

Administrator requests and shall simultaneously file that letter with the Office of Zoning.

4. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-04. Within such time, an application must be filed for a building permit for the construction of the Project as specified in 11 DCMR § 2409.1. Construction of the Project must commence within three years of the effective date of Z.C. Order No. 15-04.
5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 21, 2015, upon a motion by Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on January 15, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-07**

Z.C. Case No. 15-07

MRP Realty

**(Consolidated PUD @ 313-329 H Street, N.E.
Square 777, Lots 24-28, 48, and 813-815)**

December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 8, 2015 to consider an application from MRP Realty (“Applicant”) for review and approval of a consolidated planned unit development (“PUD”) for Lots 24-28, 48, and 813-815 in Square 777 (“Property”). The application proposes a mixed-use development incorporating retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, Hearing, and Post-Hearing submissions

1. The Property consists of Lots 24-28, 48, and 813-815 in Square 777 and is located at 313-329 H Street, N.E. (Exhibit [“Ex.”] 2, 2B.)
2. On March 19, 2015, the Applicant submitted an application to the Commission for the review and approval of a PUD in the C-2-B/HS-H Zone District. The original application included Lots 24-28 and 813-815; Lot 48 was added to the site area prior to the PUD hearing. The Applicant is the contract purchaser of the Property. (Ex. 2, 2B, 19.)
3. The PUD application did not include a PUD-related Map Amendment. (Ex. 14A.)
4. On April 10, 2015, the Office of Planning (“OP”) submitted a setdown report recommending that a public hearing be held on the application. (Ex. 10.) It requested additional information on several items prior to the public hearing:
 - Additional architectural detail and perspectives of the project and its context;
 - A loading management plan and/or more detailed information, necessary to evaluate proposed loading and trash collection from public alley, as vehicular conflicts could occur;
 - Clarification of the affordable housing provision;
 - Detail regarding the specific requested roof relief from the current roof structure regulations, as it appears the proposed includes residential space, not currently permitted. A roof plan conforming to current regulation should be provided;

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 2

- Rationale regarding the residential building projection beyond the property boundary at the north/front elevation;
 - Additional analysis regarding the requested parking relief and Transportation Demand Management (“TDM”) Program;
 - A strengthened LEED rating;
 - A refined amenities package commensurate with the requested flexibility; and
 - The project’s participation in the District’s job/employment program.
5. On April 27, 2015, the Commission set the application down for a public hearing, supporting OP’s request for additional information prior to the public hearing.
 6. The Applicant filed its pre-hearing statement on June 2, 2015, including responses to OP’s comments above. (Ex.12.)
 7. The Commission set the application for a public hearing on September 10, 2015. Notice of the public hearing was published in the *D.C. Register* on July 3, 2015 and was mailed to Advisory Neighborhood Commission (“ANC”) 6C and to owners within 200 feet of the Property on July 14, 2015. (Ex. 14, 15.)
 8. On August 18, 2015, the Applicant requested a postponement of the hearing. It simultaneously amended its application to include Lot 48 in the PUD area. Lot 48 is a 1,328-square-foot lot immediately to the east of the PUD. (Ex. 19.)
 9. The Commission rescheduled the public hearing for October 8, 2015, published notice of the rescheduled hearing in the *D.C. Register* on August 28, 2015, and mailed notice of the rescheduled public hearing to ANC 6C and to all property owners with 200 feet of the Property on August 19, 2015. (Ex. 20-22.)
 10. The Applicant further updated its application with a supplemental pre-hearing statement on September 18, 2015. (Ex. 31-31F.)
 11. A public hearing was conducted on October 8, 2015. The Applicant proffered, and the Commission accepted, Dan Duke as an expert in civil engineering, Erwin Andres as an expert in traffic engineering, and Brandon Robinson, as an expert in architecture. The Applicant’s experts, as well as John Begert, a representative of the Applicant, presented testimony at the public hearing. (October 8, 2015 Transcript [“Tr.”] pp. 6-7.)
 12. In addition to the Applicant, ANC 6C was automatically a party to the proceeding. A full discussion of the ANC’s issues and concerns appears in this Order at findings of fact numbers 65 through 66. Michael Sims and Susan Anderson submitted a request for party

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 3

- status in opposition to the application. They subsequently withdrew their request for party status and submitted a letter in support of the application. (Ex. 29, 35.)
13. At the hearing, the Commission heard testimony and received evidence from OP and the District Department of Transportation (“DDOT”). (Tr., pp. 114-117.)
 14. The Commission also received a report and testimony in support of the application from ANC 6C with conditions. (Ex. 37A.)
 15. A letter of support from the Capitol Place Homeowners Association (“CPHOA”), an immediately abutting neighbor, was also submitted into the record. (Ex. 31E.)
 16. At the conclusion of the hearing, the Commission closed the record except for the Applicant’s post-hearing submission and proposed order as well as responses to the Applicant’s post-hearing submission from OP, DDOT, and ANC 6C. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: additional details of the roof plan, the articulation of the northern façade, window placement on the eastern and western façades; analysis of the proposed palette of materials on the seventh and eighth stories of the southern façade; inclusion of a LEED scorecard; an updated loading management plan; and a building perspective within a broader neighborhood context. (Tr., pp. 133-135.)
 17. The Commission voted to take proposed action at the close of the hearing on October 8, 2015 to approve the application. (Tr., p. 139.)
 18. On October 29, 2015, the Applicant submitted its post-hearing filing with responses to each of the items requested by the Commission. (Ex. 46-46G7.)
 19. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) as required by the District of Columbia Home Rule Act on October 13, 2015. The NCPC Executive Director, by delegated action dated October 30, 2015, found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 48.)
 20. On November 23, 2015, the Commission requested additional information from the Applicant concerning the placement of protective bollards and other measures in the public space south of the project designed to protect adjacent properties.
 21. On December 7, 2015, the Applicant submitted additional information regarding protective measures in the public space south of the project.
 22. On December 14, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 4

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

23. The Property is located in the northeast quadrant of the District of Columbia and contains approximately 15,813 square feet of land area. It is located midblock and is currently vacant. It is bounded by a public alley that ranges from approximately 10 feet wide to 20 feet wide to the south, H Street to the north, a commercial rowhouse to the east, and commercial properties to the west. (Ex. 2, 2A1-2A4.)
24. The Property is located in the C-2-B Zone District and the housing subdistrict of the H Street Overlay. (Ex. 2, p. 5.)
25. The Property is located along the H Street streetcar line and less than one-half mile from Union Station. The Project is an infill development that will improve a vacant and underutilized parcel of land. The PUD site is in Single Member District 6C05 of ANC 6C in Ward 6. (Ex. 2, p. 8.)
26. The Property sits along a commercial corridor and abuts residential rowhouses to its south. Development is proposed for many nearby parcels in the near future, including a 42-unit residential building at the corner of 3rd and H Streets, 26 townhomes built atop condominiums in the 400 block of H Street, and a mixed-use residential and retail building further east at 501 H Street, which will include approximately 30 units and two floors of retail use. (Ex. 2, p. 8.)
27. The Property abuts an alley system to its south. There is a 16-foot-wide north-south alley that dead ends at an east-west alley. The east-west alley is 20 feet wide to the west of the north-south alley and 10 feet wide to the east of it. (Ex. 2A1.)
28. The interior of Square 777 includes townhomes that front the alley system and do not have street frontage. These townhomes are a part of the CPHOA. The CPHOA property shares the southern property line of the Property. (Ex. 2A1.)
29. The Future Land Use Map includes the Property in the Medium-Density Residential and Moderate-Density Commercial land use category. Such designation supports the construction of a high-quality residential project on a site that is currently underutilized. The Project, with a density of 6.0 floor area ratio ("FAR") and a height of 90 feet, is consistent with the future land use designation for the Property. (Ex. 2, p. 20-21.)
30. The Small Area Plan follows up on the progress of the H Street Area Plan, which was the catalyst for millions of dollars of investment in the corridor. The plan breaks H Street into "thematic areas" that are determined by their geographical location. As the western end of H Street, the Property is included in the "Urban Living" subarea. The vision for the Urban Living area is "architecturally distinctive with 4-8 story buildings strengthen

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 5

within a mixed income, walkable, transit-oriented community easily accessible to quality goods and services and work opportunities.” (Ex. 2, p. 26.)

The Project

31. The Applicant proposes to subdivide nine small lots on the south side of H Street to facilitate the development of a mixed-use residential building with ground-floor retail. (Ex. 12, 25A, 31A.)
32. The first floor of the building will include approximately 6,300 square feet of retail use. Floors 2 through 8 will be reserved for 105-135 residential units. (Ex. 31, 31A1-31A4.)
33. Residential access to the building will be from H Street and the alley. The southern access from the alley will provide direct access to a bicycle room on the first floor of the building that can store up to 32 bicycles; it will also provide direct access to the building lobby. (Ex. 31A1-31A4.)
34. The building will have a maximum height of 90 feet along H Street and will step down to 70 feet along the southern façade. The western portion of the building is set back approximately 27 feet, eight inches from the southern property line. As the Property narrows to the east, the garage immediately abuts the southern property line shared with the 20-foot alley. (Ex. 31, 31A1-31A4.)
35. The building incorporates terraces at the second floor, as well as the seventh and eighth floors and provides exterior balconies to the units on the third through sixth floors. (Ex. 31A1-31A4.)
36. The Project will include 30 parking spaces in a below-grade garage along with a second bicycle room that has a maximum capacity of 20 bicycles. The garage will also reserve a 100-square-foot room to be used as storage space for the ANC. (Ex. 31A1-31A4.)
37. A 24-foot loading space will be provided at grade east of the garage entrance. The loading space will be reserved for residential moving trucks no greater than 24 feet in size. All trucks accessing the loading area will be required to do so via 4th Street. (Ex. 31A1-31A4.)
38. The northern façade incorporates retail bays and projections of the residential space to provide articulation along H Street. The façade is a modern design utilizing brick and glass along the retail spaces, with natural stone accents. The residential levels will exhibit a mix of fiber cement panels, brick, and high-pressure laminate panels. (Ex. 31A1-31A4.)
39. The eastern and western facades both abut a private property line. As such, any windows that may be constructed are considered “at risk”. Nevertheless, the Applicant is

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 6

incorporating a series of windows amid metal panels on both facades in order to make the facades visual points of interest. (Ex. 31A1-31A4.)

40. The southern façade is a more traditional façade with warm shades of brick on floors one through six. The seventh and eighth floors, which are both set back, relate to the other three facades with respect to the materials and color palette. (Ex. 31A1-31A4.)

PUD Flexibility Requested

41. Roof Structures: The Applicant sought relief from the penthouse requirements of § 770.6(b) in two respects: one portion of the roof structure is not set back from the exterior wall a minimum of one foot for every foot of its height. It is set back approximately 15 feet, six inches from the exterior wall and is approximately 16 feet, four inches in height. The Applicant also seeks relief from the requirement that the roof structures be of uniform height. The height of a stair is reduced from the otherwise uniform height of the penthouse in order to meet the 1:1 setback requirement. (Ex. 31, 31A1-31A4.)
42. The Applicant also sought flexibility to convert a portion of the penthouse to a residential unit pending the approval of amended penthouse regulations before the Commission in Case No. 14-13. The Commission was reluctant to grant such flexibility; accordingly, the Applicant withdrew its request. (Tr., p. 137.)
43. Loading: The Applicant requested relief from both the residential and retail loading requirements. Pursuant to § 2201.1, the Applicant is required to provide one 30-foot loading berth, one 100-foot loading platform and one 20-foot service and delivery space for its proposed retail uses. It is also required to provide one 55-foot loading berth and one 200-foot loading platform for its residential use. In lieu of these requirements, the Applicant is proposing a 24-foot surface loading space on-site, at the rear of its building. It proffered a loading management plan that will require, among other things, that all retail loading take place on 4th Street via an existing loading berth and all residential loading trucks enter and exit the alley system via 4th Street. (Ex. 31, 31A1-31A4.)
44. Parking: The proposed mix of uses triggers a requirement for 50 parking spaces pursuant to § 2101.1. The Applicant is proposing 30 spaces, which are comprised of a mix of full size and compact spaces. (Ex. 31, 31A1-31A4.)
45. Retail: Subsection 1302.4 requires that at least 50% of the ground-floor gross floor area be dedicated to retail uses. The Applicant dedicates 48.76% of its ground floor to retail uses. The reduction resulted from including an on-site loading area and was determined to be *de minimis*. (Ex. 31, 31A1-31A4.)
46. Rear yard: The Project does not provide the 15-foot rear yard required by § 774.1. Because it abuts an alley, the rear yard may be measured to the centerline of the alley; however, a ten-foot rear yard (as measured to the centerline of the alley) is provided for a

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 7

portion of the southern façade. The rear balconies project into the required rear yard. (Ex. 31, 31A-31A4.)

47. Lot occupancy: Subsection 772.1 imposes a maximum lot occupancy of 80% for residential uses in the C-2-B Zone District. Because residential amenity space is provided on the ground floor of the building, this requirement applies to the ground floor, which occupies 82% of the lot. (Ex. 31, 31A-31A4.)
48. Affordable housing: The Applicant also seeks relief from the affordable housing requirements of § 2603.2. The Applicant proffered to provide eight percent of its residential square footage to affordable units: six percent would be reserved for households with an annual income no greater than 80% of the Area Median Income (“AMI”), one percent would be reserved for households with an annual income no greater than 60% AMI and one percent would be reserved for households with an annual income no greater than 50% AMI. While DHCD can administer both the 50% and 80% AMI units under the inclusionary zoning (“IZ”) program, it cannot administer the 60% AMI unit under the IZ program. It can, however, administer the 60% AMI unit under the affordable unit program. Accordingly, the Applicant seeks relief from the IZ requirements in order to dedicate seven percent of its residential gross floor area to IZ units and one percent of its residential gross floor area to an affordable unit. Both the IZ units and the affordable unit will remain affordable for so long as the project exists. The units provided at deeper affordability levels (50% and 60% AMI) will be reserved for two-bedroom units. (Ex. 46.)

Project Amenities and Public Benefits

49. As detailed in the Applicant’s testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits: (Ex. 2, pp. 28-32; Ex. 45.)
 - (a) Exemplary Urban Design, Architecture, and Open Spaces, through the use of high-quality materials and design that will enhance the unique character of the H Street corridor. It will also enliven both the streetscape and the alleyway with pedestrian and bicycle traffic by introducing more than one building entry, which will create dynamic activity in areas that have long been dormant;
 - (b) Site Planning and Efficient Land Utilization, by replacing a vacant, underutilized site with residential use. The introduction of an eight story residential building is consistent with both the H Street Overlay and the Small Area Plan. Access to the site will be via the alley system and not directly from H Street, thus preserving the fluidity of H Street and maintaining a consistent pedestrian experience. The massing of the building balances its presence along H Street and its adjacency to townhomes. It is a multi-modal site that encourages and facilitates use of bicycles through the introduction of a southern entry directly from the alley to both a bicycle storage area and the building lobby;

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 8

- (c) Housing and Affordable Housing, through the provision of up to 135 residential units and the set aside of eight percent of the residential gross floor area of the PUD as affordable housing units (seven percent of the residential gross floor area will be reserved for inclusionary units while one percent will be reserved for affordable units; the eight percent set aside is generally referred to as being for “affordable housing”). Though the affordable housing requirement sets aside the affordable units for households making a maximum of 80% of the Area Median Income (“AMI”), the Applicant is proposing that one percent of the residential gross floor area be reserved for households with a maximum income of 50% AMI (b)and one percent of the residential gross floor area be reserved for households with a maximum income of 60% AMI. The remaining six percent of the residential gross floor area will be reserved for affordable units reserved for households with a maximum income of 80% AMI. The affordability limits for two percent of the affordable units are deeper than what is otherwise required;
- (d) Street-Engaging Retail Offerings, through preservation of a minimum six-foot depth of views for at least 50% of the area between three and eight feet above grade;
- (e) Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures, through reconstruction of the east-west alley abutting the Property to its south and through the provision of robust transportation demand management and loading management plans. The project will also include a bicycle storage room for 32 bicycles on the first floor of the building in order to encourage bicycle use; and
- (f) Uses of Special Value: through provision of affordable housing at deeper affordability levels, a robust transportation demand management plan and loading management plan, reservation of space for the ANC in its garage, reconstruction of the east-west alley, certifying the project at the LEED-Silver level, working with the CPHOA to mitigate effects of construction and improve landscaping on their property; improving the street tree boxes on the east side of 3rd Street and replacing a street tree on H Street, and the provision of a planter or bollards along the northern façade of 767 3rd Street.

Compliance with PUD Standards

50. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density, and flexibility are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 9

Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement and the OP report.

51. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 6C, and finds that the superior design, site planning, streetscape and alley improvements, housing and affordable housing, uses of special value, and transportation demand and loading management plans all constitute acceptable project amenities and public benefits.
52. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of OP and ANC 6C that the PUD provides significant and sufficient public benefits and project amenities.
53. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel located near Union Station and along a streetcar line.
54. The Commission credits the testimony of OP and ANC 6C that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD process. Further, the Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable.
55. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a comprehensive transportation review that concluded that the PUD would not have adverse effects due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking spaces and the proposed on-site loading space, as well as use of the 4th Street loading space for retail purposes, would not generate adverse impacts on neighboring properties. The Commission credits the Applicant's transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, particularly in light of the robust transportation demand management plan and loading management plan being proffered. The Commission also credits the testimony with DDOT with its conclusion that gating the entrance to the

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 10

loading and parking areas will not be consistent with easing alley maneuvers and thus is not desirable.

Compliance with the Comprehensive Plan

56. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as appropriate for Medium-Density Residential and Moderate-Density Commercial development pursuant to the Future Land Use Map of the District of Columbia. The proposed height and density of the PUD is consistent with this designation.
57. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan:
- (a) The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Capitol Hill Area Element;
 - (b) The project implements Land Use Element policies that designate the area around the Union Station Metrorail station, as well as along the H Street Streetcar route, for future growth and encourage infill development and development near Metrorail stations. The PUD and map amendment bring growth and revitalization to an underutilized lot along a high transit corridor;
 - (c) The project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing and retail uses within walking distance of the Metrorail station and H Street streetcar line and, through its Transportation Demand Management Plan, provides effective incentives to discourage motor vehicle use;
 - (d) The project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that provide deeper affordability limits;
 - (e) The project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves an underutilized parcel of land along a vital corridor in the District of Columbia; and
 - (f) The project implements the Capitol Hill Area Element policies particularly those calling for the revitalization of H Street and providing medium and high density

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 11

residential development with limited ground-floor retail uses between North Capitol Street and 7th Street, N.E.

58. The Commission credits the testimony of the Applicant and OP that the PUD is consistent with and furthers the goals of the Small Area Plan and After the Small Area Plan.

Agency Reports

59. By report dated September 28, 2015 and by testimony at the public hearing, OP recommended approval of the application. OP confirmed that the Project supports the written elements of the Comprehensive Plan and the H Street Strategic Development Plan and would not be inconsistent with Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP concluded that the benefits and amenities of the PUD were acceptable given the development incentives requested. (Ex. 32.)
60. OP specifically noted that the Applicant worked to address the concerns expressed by the Commission and OP at the setdown meeting as well as the ANC and the neighboring CPHOA. (Ex. 32, p. 1.)
61. OP made three recommendations: 1) to break up the potential flatness of the H Street façade; 2) to reduce the busy reading of the façade; and 3) to create a reading of unit masonry such as terra cotta panels or brick. The Applicant considered each of these recommendations and studied their aesthetic effect on the building design. The Applicant ultimately determined that its proposed design better achieved these objectives than the means proposed by OP. (Ex. 32, p. 12.)
62. By report dated September 28, 2015 and by testimony at the public hearing, DDOT concurred with the findings and conclusions of the Applicant's transportation study and raised no objection to the PUD. It conditioned its support on: 1) adhering to the commitments in the proposed transportation demand management plan; 2) providing alley refurbishment for the east-west portion of the alley at the rear of the proposed building; and 3) providing at least nine additional short-term bicycle parking spaces. The Applicant agreed to each of these conditions. (Ex. 33, p. 2.)
63. DDOT acknowledged that the site is constrained in that it is limited to providing vehicular access to its loading and parking from the alley network; access from H Street is not be permissible. Given that the alley is only 10 feet wide, there are constraints in the size of the vehicles that can access the loading area on the property. Accordingly, DDOT agreed that retail loading was best served via the existing loading space on 4th Street. It further agreed with limiting the size of the residential trucks utilizing the on-site loading space to 24-foot trucks. (Ex. 33, p. 4.)

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 12

64. DDOT concluded that the proposed level of parking was appropriate for the number of units proposed given the building's close proximity to transit, the provision of bicycle storage, and the overall available transportation network. (Ex. 33, p. 7)
65. DDOT concluded that the proposed loading plan was appropriate. It stated that a "24-foot loading berth is proposed for trucks serving the residences at the building's rear. Additionally, if a second truck arrives, it can utilize the alley stub at the rear of the building, allowing two trucks to be utilized at one time. The proposed alley loading location is consistent with DDOT's loading requirements." (Ex. 33, p. 4)

Advisory Neighborhood Commission 6C

66. On October 7, 2015, ANC 6C submitted a letter in support of the PUD indicating that at a duly noticed and regularly scheduled monthly meeting on September 10, 2015, with a quorum present, ANC 6C unanimously voted to support the PUD. The ANC supports the mixed-use residential and retail development and noted that the proposed benefits and amenities packages sufficiently mitigated the potential impacts of the Project. (Ex. 37A.) The report noted a number of issues and concerns namely, increased motor vehicle traffic in the alley, alley security, and potential adverse impacts on the residents of Capitol Place located immediately to the south of the project site. The report listed a number of conditions that the ANC believed would adequately address these issues and concerns, and noted that the Applicant agreed to the conditions, and where appropriate, they have been incorporated into this Order. The report indicated that the ANC had delegated Single Member District Commissioner Mark Eckenwiler to represent ANC 6C at the Commission on this matter.
67. On November 16, 2015, Commissioner Eckenwiler submitted a letter responding to the Applicant's list of final proffers and draft conditions. The letter stated the Applicant's proposed loading management condition was deficient insofar as it limited 4th Street alley access to the loading dock by residential moving trucks, but did not similarly restrict movements of trash, recycling, and other trucks; that the restriction of "access" was not sufficiently specific; and in connection with the ANC storage area, that the condition was deficient because it did not require the area to be secure/lockable, did not require the Applicant to provide a key and building access in a reasonable fashion, or require the room to be of sufficient dimensions to be useful as storage space. (Ex. 49.)
68. The Commission has incorporated the comments of Mr. Eckenwiler into the conditions of this Order.

Parties in Support or Opposition

69. The Capitol Hill Restoration Society submitted a letter in opposition to the application stating that the project would have adverse impacts on the adjacent Historic District. (Ex. 38.)

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 13

Persons and Organizations in Support or Opposition

70. CPHOA submitted a letter in support of the application dated September 10, 2015. It noted that MRP engaged in discussions with the CPHOA and offered to install certain improvements and upgrades to the CPHOA's common areas and along the east side of 3rd Street. MRP also committed to a construction management plan in order to minimize disruption to the CPHOA owners. (Ex. 31E.)
71. Michael Sims and Susan Anderson submitted a request for party status in opposition to the application on September 14, 2015 stating that it would adversely affect their loss of quiet enjoyment of their home. They subsequently withdrew their request for party status and submitted a letter of support dated October 6, 2015. The letter stated that MRP committed to implementing a construction management plan and would work with Mr. Sims and Ms. Anderson to provide safeguards, such as bollards or planters, to protect their home from vehicles utilizing the alley. (Ex. 29, 35.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the applicant as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of §§ 1326.2 and 2401.1 of the Zoning Regulations.
4. Proper notice of the proposed PUD was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission. Notice of the inclusion of Lot 48 was provided to all property owners with 200 feet of the Property and was posted on the Property prior to the public hearing date.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 14

mix of residential and commercial uses, capitalizes on the Property's strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia, including strategic development plans.

6. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail office uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, loading, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Moderate-Density Commercial and Medium-Density Residential designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
11. The Commission concludes that the proposed PUD is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 15

13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6C position conditionally supporting approval of the application. The Commission was not persuaded by the ANC's request for a gate along the southern property line to control entrance to the garage and loading area. The Commission agreed with DDOT's testimony that providing such a gate would have adverse impacts on alley circulation. The Commission incorporated the conditions listed in Attachment 1 the ANC's October 7, 2015 letter into this Order. The Commission is not obliged to give "great weight" to the letter submitted by Mr. Eckenwiler on November 16, 2015 because the letter was not approved by ANC 6C at a properly noticed meeting with a quorum. The Commission nonetheless carefully considered the recommendations made in the letter and has incorporated his suggestions into the conditions of this Order.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated Planned Unit Development for the Property for a mixed-use building consisting of 105-135 residential units and approximately 6,300 square feet of ground floor retail, subject to the following conditions:

A. Project Development

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on October 29, 2015, as modified by the guidelines, conditions, and standards herein (collectively, the "Plans"). (Ex. 46G1-46G7.)
2. The Project shall have flexibility from the rear yard, roof structure, lot occupancy, retail, parking and loading requirements as shown on the Plans. The Applicant also shall have the flexibility to dedicate seven percent of its residential gross floor area to units subject to the Inclusionary Zoning Regulations rather than the eight percent required subject to compliance with Conditions D.7 and D.8.

Z.C. ORDER NO. 15-07

Z.C. CASE NO. 15-07

PAGE 16

3. **Prior to issuance of a building permit**, the project architect shall certify that the project utilizes a glazing that minimizes reflectivity on the south-facing windows of the building.
4. **Prior to the issuance of a certificate of occupancy**, the Applicant shall demonstrate that it has:
 - a. Designed and constructed the building to Silver certification or higher under the LEED for Homes Mid-Rise; and
 - b. Achieved a minimum green area ratio (“GAR”) of 0.3.
5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - b. To vary final selection of the exterior materials within the same color palette as the color approved and the same material type as the material approved, based on availability at the time of construction;
 - c. To vary the location of the affordable units so long as the proffered levels of affordable housing remain the same and § 2605.6 is satisfied. Both the affordable units and inclusionary units provided by this Project shall comply with the terms of § 2605.6. The two percent of the residential gross floor area that is reserved for affordable and inclusionary units for households with an Annual Median Income lower than 80% will be reserved as two-bedroom units;
 - d. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - e. To vary the size, location, and design features of the retail spaces to accommodate the needs of specific retail tenants, so long as the retail spaces maintain a minimum six foot depth of view for at least 50% of the area between three and eight feet above grade; and

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 17

- f. To modify the size and location of the ANC storage room so long as it is at least 100 square feet in size with a minimum width of seven feet in any dimension, and is located on site.

B. Parking and Loading Mitigation

1. The Applicant shall implement a Loading Management Plan, the terms of which shall include:
 - a. Vendors and on-site tenants will be required to coordinate and schedule deliveries with a loading coordinator who will be on duty during delivery hours;
 - b. Trucks accessing the on-site loading space will be limited to a maximum of 24 feet in length;
 - c. All tenants will be required to schedule any loading operation conducted using a truck greater than 20 feet in length;
 - d. Deliveries will be scheduled such that the on-site loading space's (or the commercial loading zone on 4th Street) capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading space (or commercial loading zone) is full, that driver will be directed to return at a later time when the loading space will be available so as to not impede the alley that passes adjacent to the loading space;
 - e. Inbound and outbound truck maneuvers will be monitored to ensure that trucks accessing the loading space do not block vehicular traffic along the alley except during those times when a truck is actively entering or exiting the loading space. Those driving the trucks will be instructed to utilize the alley from 4th Street only to access (this includes both ingress and egress) the loading facilities (except that no restriction is placed on public trash trucks). Retail tenants will also be prohibited from delivering directly from H Street and instead use the commercial loading zone available on 4th Street for any curbside deliveries;
 - f. Trucks accessing (this includes both ingress and egress) the loading facilities will utilize the 20-foot-wide, east-west alley stub to wait for those vehicles using the alley to clear before entering the loading area. Once the area surrounding the loading dock is clear, trucks will proceed with their backing maneuver into the loading dock;

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 19

with a one-time annual carsharing membership and application fee, a \$100 SmarTrip card, and a one-time annual Capitol Bikeshare membership to help alleviate the reliance on personal vehicles. These incentives will be included in a move-in transportation package that includes brochures for transit facilities as well as bicycle and car sharing services for the first occupant of each residential unit; and

- e. **Prior to issuance of a certificate of occupancy**, the Applicant will provide four short-term bicycle racks on H Street and two short-term bicycle racks on 4th Street.

C. **Construction**

1. **Prior to issuance of a building permit for the Project**, the Applicant shall enter into a Construction Management Plan (“CMP”) with the Capitol Place Homeowners Association (“CPHOA”). The CMP shall include terms requiring the Applicant to provide the contact information for the construction manager, ensure the public alley is regularly cleaned and maintained and that circulation through the alley will not be obstructed except during the period that the Applicant undertakes utility work in the alley, and confirm that construction workers will be required to park off-site. The CMP shall also require the Applicant to provide an excavation schedule and advance notice of pile driving.
2. **Prior to issuance of a building permit for the Project**, the Applicant shall replace the brick wall located along the Project’s southern property line, within input provided by CPHOA. The Applicant shall provide fencing and/or security during the period any portion of the wall is removed.
3. The Applicant shall provide a decorative planter or bollards similar to those submitted as Exhibit 50 along the northern façade of 767 3rd Street, N.E. (Square 777, Lot 843) so as to protect the home from vehicles maneuvering in the alley. The dimensions and location of the planter and/or bollards shall be finalized during the public space process and is subject to the approval of DDOT’s Public Space Committee.

D. **Benefits and Amenities**

1. **Prior to issuance of a final certificate of occupancy**, the Applicant shall reconstruct the east-west alley abutting the southern property line of the Project, as depicted in Exhibit 46G6. The east-west alley is comprised of both the 20-foot-wide and 10-foot-wide alleys that abut the Property.
2. **Prior to issuance of a final certificate of occupancy**, the Applicant shall clear the drain located in the east-west alley abutting the southern property line of the

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 20

Project as well as the drain located in the north-south alley to the south of the Project.

3. **Prior to issuance of a final certificate of occupancy**, the Applicant shall improve alley lighting by increasing candles of two existing poles to a minimum of three foot-candles.
4. **Prior to issuance of a final certificate of occupancy**, the Applicant shall replace the dead street tree along H Street that is adjacent to the northeastern portion of the Property and located between 3rd and 4th Streets, N.E. This shall be in addition to the street tree improvements outlined in Condition No. D(5).
5. **Prior to issuance of a final certificate of occupancy**, the Applicant agrees to retain a landscape architect for the purpose of creating a master landscape plan for the CPHOA, to be approved by the CPHOA, whose approval is not to be unreasonably withheld.

In coordination with the landscape architect, the Applicant agrees to the following:

- a. Installation of a new irrigation system for the CPHOA (water taps and drains to be determined by CPHOA);
- b. Installation of three new trees in CPHOA;
- c. Replace CPHOA railroad ties for planting beds with decorative concrete;
- d. Installation of three new lights to replace existing lights on CPHOA property;
- e. Installation of a new street tree in front of 769 3rd Street; and
- f. Improve tree boxes on 3rd Street between H and G Streets.

It is understood that the items in paragraphs (a)-(f), along with the retention of the landscape architect, shall not exceed a combined total of \$50,000; CPHOA shall be permitted to prioritize the items in subsections (a)-(f), with the understanding that some items may not be completed due to the stated monetary cap. Paragraphs (a)-(f) shall be completed pursuant to the timeline set forth by the landscape architect in coordination with the CPHOA; these items are not required to be completed prior to issuance of a final certificate of occupancy.

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 21

6. **Prior to issuance of a certificate of occupancy**, the Applicant shall remove the utility pole in the alley and reroute the low voltage wires.
7. **For so long as the project exists:**
 - a. Six percent of the residential gross floor area shall be reserved as inclusionary units for households with an annual gross income no greater than 80% of the Area Median Income (“AMI”) pursuant to the Inclusionary Zoning Regulations;
 - b. One percent of the residential gross floor area shall be reserved as an Inclusionary unit for households with an annual income no greater than 50% of the AMI pursuant to the Inclusionary Zoning Regulations; and
 - c. One percent of the residential gross floor area shall be reserved as an affordable unit for households with an annual gross income that is no greater than 60% of the AMI. The unit shall not be subject to the Inclusionary Zoning Regulations.
8. Those units referred to in D.7 (b) and (c) shall be two-bedroom units.
9. **Prior to the issuance of a certificate of occupancy**, the Applicant shall provide a bicycle room with a minimum capacity of 32 bicycles on the first floor of the building.
10. **Prior to the issuance of a certificate of occupancy**, the Applicant shall provide a 100-square-foot space (with at least seven-foot width in any dimension) on site as a storage area for the ANC. The storage space shall be secure, and accessible to the ANC at reasonable days and hours (including weekends). The Applicant shall provide the ANC with a key or the ability to independently secure the room.

E. **Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (“DCRA”). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

Z.C. ORDER NO. 15-07
Z.C. CASE NO. 15-07
PAGE 22

2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order as such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
3. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-07. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three years of the effective date of Z.C. Order No 15-07.
4. In accordance with the DC Human Rights Act of 1977, as amended, DC 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, familial 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On October 8, 2015, upon the motion of Chairman May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On December 14, 2015, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on January 15, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-23
Z.C. Case No. 15-23
SQ700 Trust, LLC
(Capitol Gateway Overlay District Review @ Square 700, Lot 48)
December 14, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on November 5, 2015, to consider an application filed by SQ700 Trust, LLC ("Applicant") for review and approval of a 13-story residential building on the southern portion of Lot 48¹ in Square 700 ("Property"), pursuant to §§ 1605 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction in the CG Overlay on any lot that abuts M Street, S.E., South Capitol Street, S.E., or is within Square 700. The application also included requests for area variances from: (i) the lot occupancy requirements of 11 DCMR § 634.1 and 1601.1; and (ii) the loading requirements of 11 DCMR § 2201.1. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On September 9, 2015, the Applicant filed an application for review and approval of a new 13-story residential building pursuant to 11 DCMR §§ 1605 and 1610, which apply to new construction on any lot within the Capitol Gateway ("CG") Overlay District with frontage along M Street, S.E., South Capitol Street, S.E., as well as properties within Squares 700 and 701 north of the Ballpark site. The Property is located in Square 700 and consists of Lot 48. The application included requests for area variances from: (i) the lot occupancy requirements of 11 DCMR §§ 634.1 and 1601.1; and (ii) the loading requirements of 11 DCMR § 2201.1.
2. The Applicant filed a prehearing submission in support of the application on October 16, 2015 ("Prehearing Submission"). (Exhibits ["Ex."] 11 and 11A-C.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the CG Overlay regulations and justification for the requested areas of variance relief. The Prehearing Submission also included updated architectural drawings, a Comprehensive Transportation Review ("CTR") Report prepared by Gorove/Slade, and resumes of expert witnesses that might testify in support of the application at the public hearing.
3. The Commission held a hearing on the application on November 5, 2015. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.

¹ Lot 48 was established by plat of subdivision recorded in the records of the D.C. Surveyor on September 17, 2015, consolidating former Lots 43 and 866 in Square 700 into a single record lot.

Z.C. ORDER NO. 15-23

Z.C. CASE NO. 15-23

PAGE 2

4. Witnesses appearing at the hearing on behalf of the Applicant included Amy Phillips of Monument Realty, Brad King of Gensler, and Daniel VanPelt of Gorove/Slade. Mr. King and Mr. VanPelt were recognized by the Commission as experts in their respective fields of architecture and transportation engineering.
5. At the conclusion of the public hearing on November 5, 2015, the Commission indicated support for the overall design and materials of the residential building, but requested that the Applicant take additional steps, including (i) meet with the District Department of Energy and the Environment (“DOEE”) and study whether the building can reach a higher LEED rating; (ii) provide an illustrative rendering showing what will be located on the roof and study whether the roof structure could be set farther back from the south exterior building wall; (iii) consider redesigning the south façade of the building, and consider prohibiting any advertising on this wall; and (iv) consider minimizing the amount of glass on the townhouses, and provide precedent images of illuminated townhouses.
6. The Applicant submitted materials responsive to the Commission's comments on December 3, 2015, including a revised booklet of drawings and LEED Scorecard ("Posthearing Submission") and submitted proposed findings of fact and conclusions of law, pursuant to 11 DCMR § 3026 on December 3, 2015. (Ex. 23, 23A, 24.)
7. At its December 14, 2015 public meeting, the Commission took final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District.

Project Overview

8. The Property, which is rectangular in shape and measures approximately 35,558 square feet, is located in the northern portion of Square 700, with frontage on M Street, South Capitol Street, and Van Street. The Property is currently unimproved and utilized as a temporary seasonal surface parking lot for baseball games.
9. The Applicant proposes to develop the southern portion of the Property with a new 13-story residential building with frontage only on South Capitol Street and Van Street (no frontage on M Street). Three levels of below-grade parking will be provided with access from Van Street. The building will have a maximum height of 130 feet, approximately 176,485 square feet of gross floor area, and a lot occupancy of approximately 88.2%. The building will be primarily masonry and glass, stepping back along South Capitol Street above the 11th floor, consistent with the requirements of the CG Overlay. The building's aesthetic relates to its surroundings in the southeast waterfront, engages the surrounding community context, creates a sense of place for the building's future residents, and connects with the area's growing amenities. These aspects of place are materialized in a

Z.C. ORDER NO. 15-23

Z.C. CASE NO. 15-23

PAGE 3

palette that includes molded brick, glazed brick, granite, and metal panels. The molded brick has a strong tie to the neighborhood's industrial history and is used extensively as a strong masonry frame that ties all the building elements together. This framework allows the two façades at South Capitol and Van Streets to respond to their distinct neighborhoods.

10. As stated by the project architect at the public hearing, the building's South Capitol Street façade is formal and symmetrical, with a vertical expression that book-ends the building with strong brick towers. A metal panel system is used to stitch the two towers together through the courtyard façade, creating a dynamic, modern expression. At the ground level, the brick towers are joined together with townhouse units. These prominent brick and stone silhouettes are evocative of the surrounding neighborhood's traditional row houses. The townhouse expression provides individual identity and human scale, while providing an element of monumentality along South Capitol Street.
11. As further stated by the project architect, the Van Street façade takes its cues from the southeast waterfront neighborhood. This façade uses the same brick framework as the façade along South Capitol, thereby tying the façades together. Projections and niches utilize the modern industrial materials of glazed brick and metal panel systems to establish a dynamic elevation with a modern, industrial design motif. Townhouse units are provided on this façade as well. The building's main entrance is located along Van Street with a through-lobby to tie the South Capitol and Van Street entrances together in an amenity space intended to foster a sense of community for the residents.
12. The building will incorporate a number of elements to enhance its sustainability. The building will qualify for at least LEED-Gold certification/equivalent. The Applicant submitted a revised draft LEED checklist, identifying those elements and features the Applicant may pursue in satisfaction of its sustainability commitment. (Ex. 23-23A.) The building design also satisfies the Green Area Ratio ("GAR") requirements of Chapter 34 of the Zoning Regulations.
13. Pursuant to Z.C. Order No. 15-11, dated July 27, 2015, and effective on August 21, 2015, the Commission reviewed and approved the Applicant's request for a 10-story office building to occupy the northern portion of the Property. While the office building and the residential building are contemplated to operate as separate buildings and will not be connected, they share a single record lot. Access to the parking garage for the office building will be provided under a portion of the residential building.

Description of the Surrounding Area and Zoning Classification

14. The Property is located in the southern portion of Square 700, which is bounded by M Street on the north, South Capitol Street on the west, Van Street on the east, and N Street

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 4

on the south. The Property is bounded to its south by private property (Lot 44), which is improved with a five-story brick self-storage building. An apartment house with ground- and second-floor retail uses has been approved by the Commission for the southern portion of Square 700, fronting on M Street. To the east of the Property across Van Street, in Square 701, the Commission has approved a mixed-use office, retail, and residential project spanning from M Street to N Street, S.E. Nationals Park is located to the immediate south of Square 700, across N Street, S.E.

15. The Property is zoned Capitol Gateway Overlay/Commercial Residential ("CG/CR"), as are all the adjacent properties south of M Street and west of First Street. East of First Street the properties are zoned Southeast Federal Capital Overlay Commercial Residential ("SEFC/CR"), and on the north side of M Street properties are zoned CG/C-3-C.
16. Within the CG Overlay, residential and nonresidential floor area on each individual parcel within the CR Zone District shall not exceed a maximum density of 8.5 floor area ratio ("FAR") on parcels for which a height of 130 feet is permitted by the Height Act of 1910 ("Height Act"), pursuant to 11 DCMR § 1602.1(a). As a result of the Property's frontage on South Capitol Street, 130 feet of height is permitted under the Height Act.
17. Section 1602 of the Zoning Regulations further provides that two or more lots within the CG Overlay may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot. This allocation is accomplished by a combined lot development covenant approved by the District of Columbia and recorded in the land records.
18. In addition to the amount of density that may be transferred in accordance with 11 DCMR § 1602.1(a), the Commission may, at its discretion, grant an additional transfer of density of up to 1.0 FAR to or within Squares 700, 701, and 702, subject to an applicant addressing to the satisfaction of the Commission the objectives and guidelines of 11 DCMR §§ 1601 and 1604-1607, as applicable. To that end, the Applicant submitted this application for Commission review and approval. A combined lot development covenant has been recorded in the land records involving the necessary allocations of use and density to permit non-residential construction on the Property totaling up to 9.5 FAR.

Capitol Gateway Overlay District Design Requirements

The Project Meets the Requirements of 11 DCMR § 1605

19. The project is subject to the requirements of 11 DCMR § 1605 because the new building will have frontage on South Capitol Street within the CG Overlay. The Commission finds that the project meets the requirements of § 1605.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 5

20. As shown in the architectural drawings, the building complies with the requirement that each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet. (11 DCMR § 1605.2.)
21. As shown in the architectural drawings, the building complies with the requirement that any portion of a building or structure that exceeds 110 feet in height shall provide an additional 1:1 setback from the building line along South Capitol Street. (11 DCMR § 1605.3.)
22. The building complies with the requirement that no private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As shown in the architectural drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (11 DCMR § 1605.4.)
23. As shown in the final architectural drawings, the building complies with the requirement that a minimum of 60% of the street wall shall be constructed on the setback line for each new building or structure located on South Capitol Street. (11 DCMR § 1605.5.)

The Project Meets the Requirements of 11 DCMR § 1610

24. Subsections 1610.1(b), 1610.1(c), 1610.1(d), 1610.1(f), and 1610.2 of the Zoning Regulations provide that new construction on a lot located within Square 700 or 701, north of the Ballpark site, on a lot abutting M Street or South Capitol Street, or on any lot that is the recipient of density through the combined lot provisions of 11 DCMR § 1602, requires the review and approval of the Commission. Subsection 1610.3 of the CG Overlay provides that in addition to demonstrating that the proposed building meets the standards set forth in 11 DCMR § 3104, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of 11 DCMR §§ 1610.3(a) through 1610.3(f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.)
25. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District, as set forth in 11 DCMR § 1600.2. The Commission finds that the proposed building meets the requirements of 11 DCMR § 1610 and is consistent with all of the applicable purposes of the CG Overlay.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 6

26. The proposed building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The residential uses contemplated by the project will help foster an appropriate mix of uses within the square and the surrounding area. (§ 1600.2(a).)
27. The CG Overlay provides for the establishment of South Capitol Street as a monumental civic boulevard. As shown in the Architectural Drawings, the design of the building, including the façade treatment and articulation, all further the monumental focus of South Capitol Street. (§ 1600.2(g).)
28. The proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the neighboring property in accordance with the Zoning Regulations and Zoning Map. The Commission finds that the project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (§ 1610.3(a).)
29. The proposed building will help achieve the desired mix of uses in the CG Overlay as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. The Commission finds that the new residential use will help achieve the goals of the CG Overlay. (§ 1610.3(b).)
30. The Commission finds that the height, bulk, and architectural design of the proposed building, as shown in the architectural drawings, will be in harmony with the context of the surrounding neighborhood and will have no effect on the existing street grid. (§ 1610.3(c).)
31. The Commission finds that the proposed building has been sited to minimize conflicts between vehicles and pedestrians. Access to the building's loading and parking facilities along Van Street will help minimize potential conflicts between vehicles and pedestrians. Where the parking and loading operations occur on Van Street, pedestrians will have an uninterrupted sidewalk with similar paving patterns to the typical Van Street sidewalks in public space. The Applicant's CTR Report confirms that the project minimizes negative impacts to public space. (§ 1610.3(d).)
32. The Commission finds that the proposed building's façades have been designed to minimize unarticulated walls adjacent to public spaces through façade articulation. The building offers extensive façade articulation along South Capitol and Van Streets, in that they are distinctly and extensively articulated through irregular patterns, varying setbacks, and a mix of materials and fenestration. The southern, at-risk façade abutting the property to the south is also articulated with masonry banding.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 7

33. The proposed project will be designed with sustainability features and will achieve LEED Gold equivalent/certification, such that the building will not have significant adverse impacts on the natural environment. (§ 1610.3(f))
34. This application was referred to the Office of Planning ("OP") and the District Department of Transportation ("DDOT") for review. (§ 774.6.)

Variance Requests from the Lot Occupancy and Loading Requirements

35. Subsection 1610.7 of the Zoning Regulations states that the Commission may hear and decide any additional requests for special exception or variance relief needed for the Property and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions. Pursuant to this provision, the Applicant requests area variance relief from the lot occupancy and loading requirements of 11 DCMR §§ 634.1, 1601.1, and 2201.1.
36. The test for variance relief is three-part: (1) demonstration that a particular piece of property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.
37. The Commission finds that the Property fronts on three streets within the CG Overlay, including two primary axes which are the subject of extensive design control within the overlay. As such, the Property is exceptional in being in a very prominent location and acts as the "front door" to the near southeast neighborhood. The Property is subject to multiple required setbacks, percentage of street wall requirements, and prohibitions in terms of location of required loading and parking egress. These exceptional conditions establish a complex relationship among the design components within the building, including restricting where the core, service spaces, and parking and loading access may be located.
38. The exceptional nature of the Property is further demonstrated through the history of the Commission's review of the Property in Z.C. Case No. 09-22, wherein the Commission expressed its concurrence with the position of ANC 6D that the Property was uniquely sited and of exceptional importance to the neighborhood and, as such, required exceptional design. Moreover, pursuant to Z.C. Order No. 15-11, the Commission found that the Property was affected by an exceptional situation and condition in approving an office building to be located on the northern portion of the Property. (*See* Z.C. Order No. 15-11, Finding of Fact No. 49.)

Z.C. ORDER NO. 15-23

Z.C. CASE NO. 15-23

PAGE 8

39. The Commission finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in complying with the lot occupancy requirements. The Applicant proposes to have a lot occupancy of 88.2% where a maximum lot occupancy of 80% is permitted. The proposed building will be devoted exclusively to residential uses, and therefore the percentage of lot occupancy is determined at the ground level. As proposed, the ground level incorporates residential units, multiple building entrances (for the multi-family and the townhouse units), a lobby, recreation and service uses, and the parking and loading access points. Given the relatively narrow dimensions of the Property, which acts as a through-lot given the location of the approved office building, in addition to the ground-level operational spaces, building core, and the need to provide vehicular egress from Van Street, the Applicant is unable to provide any open space on the ground floor other than the required setback from South Capitol Street and court niches along Van Street, thus resulting in a lot occupancy of approximately eight percent more than allowed under the Zoning Regulations.
40. The Applicant, upon guidance from DDOT, is consolidating the curb cuts that provide access to the Property to a total of three cuts, leaving a single curb cut for the residential building to provide both parking and loading access. As a result, the loading is required to be provided as an off-shoot from the parking ramp, essentially in the center of the residential building's footprint. This location creates a number of inefficiencies within the building in terms of location of building core, stairways, lobbies, and entrances. Given these operational constraints, the Commission finds that strict compliance with the lot occupancy requirements creates a practical difficulty for the Applicant.
41. The Commission also finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in complying with the loading requirements of 11 DCMR § 2201.1. Subsection 2201.1 requires the following loading facilities: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. Instead of a 55-foot-deep berth, the Applicant will provide a 30-foot-deep berth, thus requiring variance relief. As determined by DDOT, the Van Street right-of-way is too narrow to accommodate the requisite turning radius for a 55-foot truck under safe operations. Therefore, the Commission finds that it is practically difficult for the Applicant to provide a loading berth that accommodates 55-foot trucks.
42. The Commission finds that the requested relief from the lot occupancy requirements can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The proposed 88.2% lot occupancy will not result in any negative impacts on surrounding properties due to the significant setbacks and open courts that are required and will be provided. A significant courtyard garden is provided at the second level of the building (atop the loading area), where many high-rise buildings would typically measure lot occupancy, bringing that level very close to full

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 9

compliance with the maximum occupancy requirement. Furthermore, above the fourth floor of the building, the building footprint further opens to a C-shaped courtyard, which provides an extensive amount of light, air, and open space, well in excess of the requirement.

43. The Commission also finds that the proposed loading facilities will not result in any negative impacts, since they will adequately serve the anticipated loading demand for the Property, given the size of the residential units. The single 30-foot loading berth will be sufficient to accommodate the anticipated amount of residential loading activity at the building. Moreover, the loading facilities will be coordinated through a loading management plan (as set forth in the CTR Report), which will ensure that move-ins and move-outs do not conflict with other residential deliveries to the building.

Office of Planning Report

44. By report dated October 26, 2015, OP recommended approval of the application. (Ex. 12.) In its report, OP noted that the application meets the CG Overlay goals for providing a preferred use, and meets the requirements for building form and massing. OP also noted that the application successfully addresses most of the evaluation criteria of the CG Overlay and recommended approval of the project subject to (i) improved environmental design and detail on the amount of green roof, and (ii) additional information about illumination on townhouses and elimination of internal inconsistencies in the plans. OP noted that it supported the lot occupancy and loading relief requested.
45. As shown in the Posthearing Submission, the Applicant responded to OP's two requests by (i) providing additional drawings showing location and extent of green roof, and (ii) providing rendering of proposed entrance lighting for townhouse units.

DDOT Report

46. By report dated October 26, 2015, DDOT stated that it has no objection to the application. DDOT noted that the Applicant provided a loading management plan that appropriately addressed DDOT's concerns regarding truck backing movements, and that the proposed TDM measures are sufficiently robust to address the impacts expected from the project. The Applicant proposed the following TDM measures: (i) provide 60 long term bicycle parking spaces for the residential building, three more spaces than zoning requires; (ii) unbundle the cost of residential parking from the cost of lease or purchase; (iii) appoint TDM leaders (for planning, construction, and operations) at the residential building. The TDM leaders will work with residents in the building to distribute and market various transportation alternatives and options; and (iv) provide a public transit information screen in the residential lobby showing real-time information on nearby transit services.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 10

47. In addition to the TDM measures, DDOT noted that the Applicant agreed to the following mitigations in Z.C. Order No. 15-11: (i) restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out, and (ii) restrict office and retail employees and retail customers from parking in the residential parking garage. DDOT also noted that the Applicant agreed to a loading management plan in Z.C. Case No. 15-11, as a condition in Z.C. Order No. 15-11, Decision No. 6.

NCPC Report

48. On November 12, 2015, a report from Marcel Acosta, Executive Director of the National Capital Planning Commission ("NCPC"), was received into the hearing record. (Ex. 22.) In that report, Mr. Acosta stated that the proposed building is consistent with the intent and requirements of the CG Overlay District, and would not be inconsistent with the Comprehensive Plan for the National Capital nor affect other federal interests.

ANC Report

49. By reports dated October 19, 2015 and November 4, 2015, ANC 6D reported that at its duly noticed meeting on October 19, 2015, it voted 4-0-2 to support the application. (Ex. 14, 16). The ANC's report noted that it was not opposed to the Applicant's request for variances from the lot occupancy and loading requirements. The ANC encouraged the Applicant to work in concert with other adjacent development projects to ensure that Van Street is paved in an attractive and consistent manner, and that new lighting is installed on Van Street. The ANC report noted that the Applicant agreed not to petition the District to designate any additional Residential Parking Permit ("RPP") blocks on the streets adjacent to the building, and to include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry. The ANC noted its support for the project targeting the guidelines for LEED-Silver, but stated that it would prefer LEED-Gold or Platinum. The report also asserted the ANC's preference to see more residential units designated as affordable to households with a lower income. The ANC also requested that the Applicant reduce the glazing reflectivity on the building's glass facades and add other measures to mitigate the risk to birds. Finally, the ANC report stated that the ANC expected the Applicant to create an effective construction management plan and submit the plan to the ANC before it is enacted.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1605 and 1610 for review and approval by the Commission, and pursuant to 11 DCMR § 1607 for variances from the lot occupancy and loading requirements. The Commission concludes that the Applicant has met its burden of proof.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 11

2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the Property.
3. Pursuant to 11 DCMR §§ 1605.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1605.2 through 1605.5 and 11 DCMR §§ 1610.2 through 1610.7. Pursuant to 11 DCMR § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in 11 DCMR §§ 3103, 634.1, 1601.1, and 2201.1. The Commission concludes that the Applicant has met its burden.
4. The proposed development is within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
5. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in 11 DCMR § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of 11 DCMR § 1605.
6. No person or parties appeared at the public hearing in opposition to the application.
7. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” in § 13(d) of the Advisory Neighborhood Commissions Act of 1975 to encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n. 10 (D.C. 1978). The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D’s recommendation for approval and concurs in its recommendation, and considered the issues and concerns stated in its reports.
8. With respect to the ANC’s request regarding RPP restrictions, the Commission notes the Applicant has agreed not to petition the District to designate additional RPP blocks on the streets adjacent to the building, and to include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry. This commitment has been made a condition of this Order.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 12

9. Regarding the ANC's suggestions that the Applicant take certain actions with respect to the paving of Van Street, and enter into a construction management agreement, neither of these considerations pertain to whether the Applicant has met the design review and variance tests required by the Zoning Regulations. Thus, these issues and concerns ANC's are not legally relevant and are not entitled to great weight.
10. With respect to the ANC's preference for the Applicant to achieve a LEED-Gold or Platinum rating, the Commission notes that the building will qualify for at least LEED-Gold certification/equivalent. This commitment has been made a condition of this Order.
11. As to the ANC's requests regarding modifying the building's glazing to reduce its impact on birds, the Commission finds that the potential adverse effect of the building's glazing on birds will be small because of the building's urban location, the low reflectivity of the glass, and because the glass covers only a small percentage of the building. The Commission therefore does not think it is necessary to include additional mitigation.
12. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive.
13. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1605 and 1610 of the Zoning Regulations.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lot 48 in Square 700.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 13

2. The project shall be built in accordance with the architectural drawings, dated December 3, 2015, as modified by the guidelines, conditions, and standards below. (Ex. 23A).
3. The overall density on the site shall not exceed 9.5 FAR as permitted pursuant to 11 DCMR § 1602, and pursuant to the Commission's approval of this application.
4. The Applicant shall implement the following transportation mitigation measures for the life of the project:
 - a. Restrict northbound left turns on Van Street at M Street and install signage for a right-in, right-out ("RIRO");
 - b. Prohibit office and retail employees and retail customers from parking in the residential parking garage; and
 - c. The Applicant shall not petition the District to designate additional RPP blocks on the streets adjacent to the building, and shall include in all condominium offering materials a statement that the Property is not eligible for RPP and is not on the RPP registry.
5. The Applicant shall implement the following TDM measures for the life of the project:
 - a. Provide 60 long-term bicycle parking spaces for the residential building;
 - b. Unbundle the cost of residential parking from the cost of lease or purchase;
 - c. Appoint TDM leaders for planning, construction, and operations at the residential building, who will work with residents in the building to distribute and market various transportation alternatives and options; and
 - d. Provide a public transit information screen in the residential lobby showing real-time information on nearby transit services.
6. The Applicant shall implement the following loading management measures for the life of the project:
 - a. A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30 foot trucks (not delivery vans);
 - b. All deliveries will be permitted between 7:00 a.m. and 4:00 p.m. seven days per week, except when events occur at Nationals Park. Deliveries cannot be

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 14

- scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries);
- c. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20- Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DOOT Truck and Bus Route Map (godcgo.com/truckandbusmap);
 - d. All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20' in length or larger);
 - e. The dock manager will schedule deliveries to ensure that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time; and
 - f. A flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers.
7. The Applicant shall not place billboard or similar advertising signage on the south elevation of the residential building.
 8. The project shall achieve a number of points equivalent to that required to achieve LEED-Gold certification.
 9. The Applicant shall have flexibility with the design of the project in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;
 - b. To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction; and
 - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals.

Z.C. ORDER NO. 15-23
Z.C. CASE NO. 15-23
PAGE 15

10. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On December 14, 2015, upon the motion of Commissioner Miller, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May; Michael G. Turnbull, not having participated, not voting.)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on January 15, 2016.

Decision and Order
PERB Case No. 14-N-02
Page 2 of 8

in *National Labor Relations Board v. Borg-Warner Corp.*, 356 U.S. 3342 (1975): “Under this standard, the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain.” D.C. Official Code § 1-617.08(b) provides that “all matters shall be deemed negotiable, except those that are proscribed by this subchapter.” The Board has held that this language creates a presumption of negotiability. *Int’l Ass’n of Firefighters, Local 36 v. D.C. Dep’t of Fire and Emergency Services*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).

In April 2005, the Council of the District of Columbia amended D.C. Official Code § 1-617.08 to include subsection (a-1), which states: “An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section.” In *District of Columbia Dep’t of Fire and Emergency Medical Services v. American Federation of Government Employees, Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874, PERB Case No. 06-N-01 (2007), the Board considered one of the first negotiability appeals filed after the April 2005 amendment to D.C. Official Code § 1-617.08. In that case, the Board stated:

[A]t first glance, the above amendment could be interpreted to mean that the management rights found in D.C. Code § 1-617.08(a) may no longer be a subject of permissive bargaining. However, it could also be interpreted to mean that the rights found in D.C. Code § 1-617.08(a) may be subject to permissive bargaining, if such bargaining is not considered as a permanent waiver of that management right or any other management right. As a result, [the Board indicated] that the language contained in the statute is ambiguous and unclear.

Id. at 8. The Board reviewed the legislative history of the 2005 amendment to determine the intent of the Council of the District of Columbia. *Id.* The Board noted that analysis prepared by the Subcommittee on Public Interest stated:

Section 2(b) also protects management rights generally by providing that no “act, exercise, or agreement” by management will constitute a more general waiver of a management right. This new paragraph should not be construed as enabling management to repudiate any agreement it has, or chooses, to make. Rather, this paragraph recognizes that a right could be negotiated. However, if management chooses not to reserve a right when bargaining, that should not be construed as a waiver of all rights, or of any particular right at some other point when bargaining.

Decision and Order
PERB Case No. 14-N-02
Page 3 of 8

Id.

III. Proposals and Analysis

Article 2: Management Rights and Responsibilities

Section A

Management's rights shall be recognized in accordance with the Comprehensive Merit Personnel Act (CMPA) D.C. Official Code Section § 1-617.08 of CMPA established management's rights.

Section B

All matters shall be deemed negotiable except those that are proscribed by D.C. Official Code § 1-617.08.

Section C

This article shall not preclude the Union's rights to bargain over the Impact and Effect of decisions made pursuant to D.C. Official Code § 1-617.08.

HSEMA asserts that it has no duty to bargain with NAGE over management's rights, which D.C. Official Code § 1-617.08 places solely within the discretion of management. (Response at 4). Additionally, HSEMA contends that NAGE's proposal has no direct impact on mandatory subjects of bargaining, and thus does not trigger the duty to bargain. (Response at 4-5). HSEMA calls NAGE's reliance on other union contracts that include management rights language misplaced, as HSEMA is not bound by the conduct of other District agencies. (Response at 5). Further, HSEMA notes that the Board has held that even if parties previously agree to negotiate over management rights, the rights revert to management after the CBA's expiration. *Id.* Finally, HSEMA contends that NAGE's proposal seeks to force HSEMA to "contractually agree to matters that are statutorily mandated by law." *Id.*

NAGE alleges that its proposal "merely provides a citation to management rights as outlined in the D.C. Code, and clarifies the extent of these rights vis-à-vis the Union's right to negotiate over all other issues not identified in the Code." (Appeal at 4). Additionally, its proposal seeks to incorporate the "clearly established principle that a labor union has a right to bargain over the Impact and Effect of the exercise of management rights that are not *de minimis*." *Id.* NAGE maintains that the D.C. Official Code does not prohibit negotiations over whether to cite management rights in a CBA, but instead defines the rights reserved exclusively to management. *Id.* NAGE contends that because its proposal "does not attempt to override, interpret, or address any management right outlined in the Code," the proposal is negotiable. (Appeal at 5).

Decision and Order
PERB Case No. 14-N-02
Page 4 of 8

The Board finds that the proposal is negotiable. D.C. Official Code § 1-617.08(a) protects management's sole right, in accordance with applicable laws, rules, and regulations, to:

- (1) Direct employees of the agencies;
- (2) Hire, promote, transfer, assign, and retain employees in positions within the agency , and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
- (3) Relieve employees of duties because of lack of work or other legitimate reasons;
- (4) Maintain the efficiency of the District government operations entrusted to them;
- (5) Determine:
 - a. The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
 - b. The number, types, and grades of positions of employees assigned to an agency's organization unit, work project, or tour of duty;
 - c. The technology of performing the agency's work; and
 - d. The agency's internal security practices; and
- (6) Take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

NAGE's proposal does not impact HSEMA's sole right to perform any of the activities listed above, nor to seek redress from the Board when it believes its management rights have been violated. *See* D.C. Official Code § 1-605.02(3). Instead, Sections A and B merely restate the rights guaranteed by D.C. Official Code § 1-617.08(a) and (b), and Section C recognizes longstanding Board precedent that an exercise of management rights does not relieve the employer of its obligation to bargain over impact and effect of, and procedures concerning, the implementation of those rights. *See Int'l Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994); *see also American Federation of Government Employees, Local 383 v. D.C. Dep't of Disability Services*, 59 D.C. Reg. 10771, Slip Op. No. 1284, PERB Case No. 09-U-56 (2012).

Article 23: Reduction in Force

Section A

A reduction-in-force will be conducted in accordance with the provisions set forth in the D.C. Official Code § 1-624.02 and Chapter 24 of the DPM.

Section B

The Agency shall provide the Union with a thirty (30) day advance notice when a reduction-in-force includes members of the bargaining unit. The Agency further agrees to, upon request, participate in impact and effects bargaining with the Union concerning the reduction in force.

Decision and Order
PERB Case No. 14-N-02
Page 5 of 8

HSEMA alleges that it is not required to negotiate over RIFs or to include language in the CBA that merely restates the law. (Response at 3). In support of its contention, HSEMA cites to

the Omnibus Personnel Reform Amendment Act of 1997 (“Abolishment Act”) codified in D.C. Official Code § 1-624.08(a), which in pertinent part states that “notwithstanding any other provision of law, regulation, or collective bargaining agreement, either in effect or to be negotiated while this legislation is in effect...each agency head is authorized, within the agency head’s discretion, to identify positions for abolishment.” (Response at 3). HSEMA states that the purpose of the Abolishment Act was to “eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining,” thus allowing DC Government agencies to avoid legal and contractual restrictions on terminations when seeking to abolish a position. (Response at 3; Response Ex. 1). Further, HSEMA points out that D.C. Official Code § 1-624.08(j) states: “Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable.” (Request at 3). HSEMA contends that it cannot “bypass the laws of the District of Columbia to meet its own ends or the ends of the Union,” and that the Board has previously ruled a proposal nonnegotiable based upon violation of the D.C. Code. (Request at 3; citing *American Federation of Government Employees, Local 3721 v. D.C. Fire and Emergency Medical Services Dep’t*, 46 D.C. Reg. 7613, Slip Op. No. 390, PERB Case No. 94-N-04 (1999)).

To the contrary, NAGE asserts that its proposal does not interfere with HSEMA’s right to conduct a RIF. (Appeal at 6). Instead, the proposal identifies ways NAGE and HSEMA can “negotiate and collaborate” on the implementation of RIFs. *Id.* Additionally, NAGE alleges that impact and effect bargaining is a clearly recognized legal right and is not prohibited by statute. *Id.*

Article 23, Section A is negotiable. NAGE’s proposal merely states that RIFs will be conducted in accordance with the law. The proposal does not impact HSEMA’s management rights pursuant to D.C. Official Code § 1-617.08, nor does it attempt to add to or detract from the procedures laid out in D.C. Official Code § 1-624.02. Restating provisions of law in a CBA is not prohibited by the CMPA. Therefore, this portion of the proposal is negotiable.

The first sentence of Article 23, Section B is nonnegotiable. RIFs are a management right under D.C. Official Code § 1-617.08. *Doctors’ Council of DC v. DC Dep’t of Youth and Rehabilitation Services*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013). Generally, a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management rights decisions. *American Federation of Government Employees, Local 1403 v. D.C. Office of the Corporation Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003); *Int’l Brotherhood of Police Officers v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992); *University of the District of Columbia Faculty Ass’n/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 4, PERB Case

Decision and Order
PERB Case No. 14-N-02
Page 6 of 8

No. 82-N-01 (1982) (holding that procedures for implementing the decision to conduct a RIF and its impact and effects are negotiable). However, the Abolishment Act narrowed this duty as it relates to RIFs. *Washington Teachers' Union, Local 6 v. D.C. Public Schools*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at p. 2, PERB Case No. 04-U-25 (2014). The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment. D.C. Official Code § 1-624.08(a)-(i), (k). Further, the Abolishment Act provides: "Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Official Code § 1-624.08(j). As a result, a proposal that would alter RIF procedures is nonnegotiable. *American Federation of Government Employees v. D.C. Water and Sewer Authority*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009); *Fraternal Order of Police/Dep't of Corrections Labor Committee v. D.C. Dep't of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002).

In the instant case, the first sentence of Article 23, Section B of NAGE's proposal imposes additional requirements on the Agency, beyond those required by the Abolishment Act. Section B requires the Union be given 30 days' advance notice before a RIF is carried out. D.C. Official Code § 1-624.02(d) provides for at least 15 days' advance notice of a RIF, to be issued in writing and include information pertaining to the employee's retention standing and appeal rights. The Board finds that NAGE's proposal constitutes an attempt to alter or affect OUC's RIF procedures by requiring an additional 30 day advanced notice to be served on the Union. *AFGE and WASA, supra*, Slip Op. No. 982. Therefore, based on the foregoing, the Board finds that the first sentence of Section B of NAGE's proposal is nonnegotiable.

The second sentence of Article 23, Section B is negotiable. This portion of Section B recognizes longstanding Board precedent that an exercise of management rights does not relieve the employer of its obligation to bargain over impact and effect of, and procedures concerning, the implementation of those rights. *See Int'l Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994); *see also American Federation of Government Employees, Local 383 v. D.C. Dep't of Disability Services*, 59 D.C. Reg. 10771, Slip Op. No. 1284, PERB Case No. 09-U-56 (2012).

ORDER**IT IS HEREBY ORDERED THAT:**

1. The following proposals are negotiable:
 - a. Article 2
 - b. Article 23, Section A

Decision and Order

PERB Case No. 14-N-02

Page 7 of 8

- c. Article 23, Section B, sentence 2
2. The following proposal is nonnegotiable:
 - a. Article 23, Section B, sentence 1
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.**

May 13, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-N-02 was transmitted via File & ServeXpress to the following parties on this the 13th day of May, 2014.

Mr. Robert Shore, Esq.
NAGE
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:)
)
)
American Federation of)
Government Employees, Local 1000)
AFL-CIO)
)
 Complainant,)
)
 v.)
)
District of Columbia)
Department of Employment Services)
 Respondent.)

PERB Case No. 13-U-03

Opinion No. 1555

DECISION AND ORDER

On October 12, 2012, American Federation of Government Employees, Local 1000, AFL-CIO (“Complainant” or “Union”) filed an unfair labor practice complaint (“Complaint”) alleging that the District of Columbia Department of Employment Services (“Respondent” or “DOES”) refused to provide requested bargaining information in violation of D.C. Official Code §§ 1-617.04 (1) and (5). The Board adopts the Hearing Examiner’s finding and recommendation that DOES did not violate D.C. Official Code §§ 1-617.04 (1) and (5) because the underlying unfair labor practice complaint was not filed in a timely manner. No exceptions were filed to the Hearing Examiner’s Report and Recommendation. The Hearing Officer’s recommendation is reasonable, supported by the record and consistent with the Board’s precedents.¹

I. Statement of the Case

This case arises in connection with a grievance filed by the Union following the termination of employee Lori Leggett (“Leggett”). The grievance was referred to arbitration and a hearing was scheduled to be heard by an Arbitrator on June 15, 2012. By letter dated May 21, 2012, the Union requested nine items of bargaining information relevant to the termination of Leggett in anticipation of the scheduled arbitration. The Union asked DOES to provide the information on or before May 29, 2012. By letter dated June 7, 2012, DOES replied to the

¹ *Fraternal Order of Police/Metropolitan Police Department/Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 5485 (2012), Slip Op. No. 991, PERB Case No. 08-U-19 (September 30, 2019); *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 6579 (2012), Slip Op. No. 1118, PERB Case No. 08-U-19 (August 19, 2011); and *American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 52 D.C. Reg. 2474 (2005), Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

Decision and Order
PERB Case No. 13-U-03
Page 2 of 3

information request by providing four of the requested nine items and, for various reasons, declined to provide the remaining items.² That letter was received by the Union on June 12, 2012.³ The case proceeded to arbitration on June 15, 2012 and the grievant's termination was upheld. On October 12, 2012, the instant Complaint was filed by the Union claiming that DOES committed an unfair labor practice (ULP) by failing to provide the requested information in a timely manner. A PERB hearing was held on June 12, 2014.

II. Analysis

PERB Rule 520.4 provides, "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." Time limits for filing appeals with PERB are mandatory and jurisdictional.⁴ The 120 day period begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.⁵ In *Rayshawn Douglas v. American Federation of Government Employees, Local 2725, AFL-CIO*,⁶ the Board held untimely a complaint filed 121 days after the last date stated in the complaint that the violation could have occurred. The complaint alleged that the violation occurred "on or after August 29, 2012" and the complaint was filed on December 28, 2012.

The Hearing Examiner in this case stated: "Based on the record evidence, and particularly noting that the Union knew on June 12, 2012, that the Respondent denied its request for certain necessary and relevant information, the ULP complaint had to be filed on or before October 10, 2012. Since the subject complaint was not filed until October 12, 2012, it was untimely filed." In the letter that the Union received on June 12, 2012, DOES declined to provide requested information that is the object of this complaint. Hence, the Union knew on June 12, 2012 that DOES was not fully complying with the request. The Complaint was filed by the Union on October 12, 2012, or 122 days later. This is outside of the 120 day window. The Hearing Examiner found that the Complaint was untimely.⁷ We agree.

III. Conclusion

Based on the foregoing, and because the Hearing Examiner's recommendation is reasonable, supported by the record and consistent with the Board's precedents, the Union's allegation that DOES violated D.C. Official Code §§ 1-617.04 (1) and (5) is dismissed.⁸

ORDER

² R&R at 2-3.

³ Id.

⁴ *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C.1991). *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320,323 (D.C. 1995).

⁵ *Charles E. Pitt v. District of Columbia Department of Corrections*, 59 D.C. Reg. 5554 (2012), Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (December 24, 2009).

⁶ 60 DC Reg. 16483 (2013), Slip Op. No. 1437, PERB Case No. 13-U-12 (November 8, 2013).

⁷ R&R at 4.

⁸ Because the underlying ULP is found untimely, the Board finds it unnecessary to rule on the merits of the Agency's response to the information request.

Decision and Order
PERB Case No. 13-U-03
Page 3 of 3

IT IS HEREBY ORDERED THAT:

1. Petitioner's unfair labor practice complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon and Ann Hoffman.

November 19, 2015

Washington, D. C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-03, Opinion No. 1555, was served by File & ServXpress on the following parties on this the 19th day of November, 2015.

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/s/ Sheryl Harrington _____

PERB

Government of the District of Columbia
Public Employee Relations Board

_____)	
)	
In the Matter of:)	
)	
District of Columbia Fire and Emergency)	
Medical Services Department,)	PERB Case No. 15-U-22
)	
	Complainant,)	Opinion No. 1556
)	
	and)	
)	Motion for Reconsideration
American Federation of Government)	
Employees, Local 3721,)	
)	
	Respondent.)	
_____)	

DECISION AND ORDER

Before the Board is a Motion for Reconsideration filed on August 5, 2015, by the District of Columbia Fire and Emergency Medical Services Department (“FEMS”). FEMS requests that the Board reconsider the Executive Director’s July 6, 2015 Administrative Dismissal of FEMS’ May 6, 2015 Unfair Labor Practice Complaint against the American Federation of Government Employees, Local 3721 (“Union”). As reasoned herein, the Board affirms the dismissal of FEMS’ Complaint, but on different grounds than those stated in the Administrative Dismissal.

I. Statement of the Case

In 2009, an arbitrator found that a “flex” schedule adopted by FEMS in October 2006 violated the federal Fair Labor Standards Act (“FLSA”). The arbitrator ordered FEMS to pay the employees represented by the Union overtime pay for any hours over 40 worked per week dating back to October 2006, plus liquidated damages and attorneys’ fees. On April 25, 2012, PERB upheld that 2009 Award in *D.C. Fire and Emergency Med. Serv. v. Am. Fed’n of Gov’t Emp., Local 3721*, 59 D.C. Reg. 9757, Op. No. 1258, PERB Case No. 10-A-09 (2012). On August 12, 2012, the Union filed a petition for enforcement with PERB (PERB Case No. 12-E-06), asking the Board to seek enforcement of the 2009 Award and its Order in PERB Case No. 10-A-09 in the D.C. Superior Court.

Decision and Order

PERB Case No. 15-U-22 (Motion for Reconsideration)

Page 2

In 2013, while PERB Case No. 12-E-06 was still pending, FEMS met with the Union, proposed payment amounts consistent with calculations it had generated, and began making payments in accordance with those calculations after the Union demanded that FEMS cease any further delays in complying with the 2009 Award. On March 19, 2015, the Board issued a Decision and Order denying the Union's petition for enforcement, finding that the Union's demand that FEMS begin making payments after FEMS proposed its calculations, and FEMS's making of those payments in accordance with those calculations without objection from the Union constituted an implied-in-fact settlement of the 2009 Award. Alternatively, the Board held that the Union was estopped from seeking more money under the 2009 Award.¹

After the Board issued its Decision and Order in PERB Case No. 12-E-06, FEMS sent an inquiry to the Union asking if it would withdraw a separate grievance that the Union had filed in April 2013, which sought unpaid overtime for time worked over 8 hours during a single shift, dating back to October 2006.² The Union refused to withdraw the grievance.³ FEMS then filed the instant unfair labor practice complaint alleging that the Union's refusal to withdraw its April 2013 grievance constituted bad faith bargaining in violation of D.C. Official Code § 1-617.04(b)(3) in light of the Board's findings in PERB Case No. 12-E-06.⁴ FEMS also filed a request for preliminary relief asking PERB to stay the April 2013 grievance prior to an arbitration hearing that was scheduled to be held in the matter on May 12-13, 2015.⁵

In its Answer, the Union denied that its refusal to withdraw the April 2013 grievance constituted bad faith bargaining.⁶ The Union also filed a Motion to Dismiss, arguing that the Board's findings in PERB Case No. 12-E-06 only concerned the 2009 Award and were not dispositive of the claims in the Union's April 2013 grievance. The Union asserted that FEMS had failed to state a claim upon which relief could be granted and that PERB was without authority to stay the arbitration.⁷

On July 6, 2015, PERB's Executive Director administratively granted the Union's Motion to Dismiss, finding that the Union was correct that the Board's Decision and Order in PERB Case No. 12-E-06 had "no bearing" on the April 2013 grievance.⁸ Further, the Executive Director stated that whereas the 2009 Award was based on the FLSA, the April 2013 grievance was based on the parties' compensation agreement. The Executive Director concluded that "[w]ithout being able to rely on PERB's factual findings in Case No. 12-E-06, FEMS' Complaint in the instant case does not state a viable claim for which relief can be granted."⁹

¹ *Am. Fed'n of Gov't Employees, Local 3721 v. D.C. Fire and Emergency Med. Serv.*, 62 D.C. Reg. 5893, Op. No. 1511, PERB Case No. 12-E-06 (2015).

² Complaint, Exhibit C.

³ Complaint at 5.

⁴ *Id.* at 5-6.

⁵ *Id.* at 7-8. The Board notes that according to n.1 in FEMS' Motion for Reconsideration, the arbitration hearing was held on May 12-13, 2015 as scheduled. Accordingly, FEMS' request for preliminary relief is now moot.

⁶ Answer at 4.

⁷ Motion to Dismiss.

⁸ Administrative Dismissal.

⁹ *Id.*

Decision and Order

PERB Case No. 15-U-22 (Motion for Reconsideration)

Page 3

On August 5, 2015, FEMS filed a Motion for Reconsideration arguing that (1) the Administrative Dismissal erred by failing to take all of the allegations pled in the Complaint as true and/or to view the facts in the light most favorable to FEMS' position, as required by PERB case law, (2) the Administrative Dismissal erred in finding that the 2009 grievance arbitration award at issue in PERB Case No. 12-E-06 was based on the FLSA, but that the Union's April 2013 grievance at issue in this case is based on the parties' compensation agreement, and (3) the Administrative Dismissal erred in finding that PERB Case No. 12-E-06 only concerned the 2009 grievance arbitration award and therefore had "no bearing" on the Union's April 2013 grievance.¹⁰

II. Analysis

The Board has consistently held that a motion for reconsideration cannot be based upon a "mere disagreement" with the initial decision.¹¹ The moving party must provide authority which "compels reversal" of the initial decision.¹²

In its Motion for Reconsideration, FEMS argues that PERB case law required PERB to take "all the allegations pleaded in the Complaint as true and to view the pleadings in the light most favorable" to FEMS' position.¹³ FEMS asserts that since its Complaint alleged that "the same facts and legal claims exist in both the April 2013 grievance and the Respondent's grievance underlying PERB Case Nos. 10-A-09 and 12-E-06," the Administrative Dismissal erred in granting the Union's motion to dismiss because it did not accept that "factual allegation as true."¹⁴

The Board has articulated two seemingly different standards when considering motions to dismiss. In *Hicks v. D.C. Office of the Deputy Mayor for Finance, Office of the Controller & AFSCME, Dist. Council 20*, 41 D.C. Reg. 1749, Slip Op. No. 303, PERB Case No. 71-U-17 (1992), the Board stated that its standard was to take "all of complainant's allegations as true..." even if the parties' pleadings revealed that certain issues of fact were contested.¹⁵ Since *Hicks*, however, the Board's standard has been to view only the "contested facts in the light most favorable to the complainant in [order to determine] whether the complaint gives rise to a violation of the CMPA."¹⁶

¹⁰ Motion for Reconsideration.

¹¹ See *Univ. of the Dist. of Columbia Faculty Ass'n/Nat'l Educ. Ass'n v. Univ. of the Dist. of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26 (2009); see also *Am. Fed'n of Gov't Emp., Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and D.C. Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, Slip Op. No. 969 at ps. 4-5, PERB Case No. 06-U-43 (2003).

¹² *UDC Faculty Ass'n. v. UDC*, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26; see also *AFGE, Local 2725 v. DCRA and OLRCB*, Slip Op. No. 969 at ps. 5, PERB Case No. 06-U-43.

¹³ Motion for Reconsideration at 1-2.

¹⁴ *Id.* at 2

¹⁵ See p. 3.

¹⁶ See *Steele v. Am. Fed'n of Gov't Emp., Local 383*, 61 D.C. Reg. 12373, Slip Op. No. 1492 at p. 3, PERB Case No. 14-U-16 (2014) (citing *Osekre v. AFSCME, Dist. Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623,

Decision and Order

PERB Case No. 15-U-22 (Motion for Reconsideration)

Page 4

Although these two standards appear to be distinct, they are not incongruent in practice. Indeed, the “most favorable” light in which PERB can view factual allegations in a complaint is to view them as true. Additionally, any alleged facts that are uncontested are also deemed to be admitted as true.¹⁷ Therefore, it is reasonable to conclude that the Board’s two stated standards when evaluating motions to dismiss stand for the same principle, but simply articulate that principle in different ways.

To avoid confusion, the Board’s single standard going forward when considering a motion to dismiss will be to view all factual allegations in the complaint as true¹⁸ in order to determine whether the complaint may give rise to a violation of the CMPA for which PERB can grant relief.¹⁹

In this case, FEMS is correct that the Executive Director did not state whether or not she took FEMS’ factual allegations as true. However, that was not a fatal error because, even if FEMS’ factual allegations are true, PERB still cannot grant the relief that FEMS seeks.

D.C. Official Code § 1-605.02(6) allows the Board to review a grievance arbitration award only after it has been issued, and does not grant PERB any authority to stay or intervene in such arbitrations while they are still pending.²⁰ Accordingly, even if it is true that the Board’s findings in PERB Case No. 12-E-06 are dispositive of the Union’s April 2013 grievance, that is for the arbitrator in the April 2013 grievance to determine, not PERB. The Board will be able to review the arbitrator’s award once it is issued, but it cannot stay the arbitration or intervene in the process while it is still pending, as FEMS requests in its Complaint.²¹

Additionally, the Board cannot order the Union to cease pursuing its grievance, as FEMS requests in its Complaint.²² The Board lacks jurisdiction over an allegation in which the very act or conduct that gives rise to the allegation, despite being alleged in the complaint as a violation

PERB Case Nos. 99-U-15 and 99-S-04 (1998)); *see also, e.g.*, (providing Slip Op. Nos. and Case Nos. only) Slip Op. No. 1102 at p. 3, PERB Case No. 08-U-49; Slip Op. No. 1110 at p. 3-4, PERB Case No. 10-U-51; Slip Op. No. 1111 at p. 5-6, PERB Case No. 10-U-49; Slip Op. No. 1112 at p. 8, PERB Case No. 09-U-62; Slip Op. No. 1113 at p. 4, PERB Case No. 08-U-35; Slip Op. No. 1115 at p. 4, PERB Case No. 10-U-03; Slip Op. No. 1116 at p. 4, PERB Case No. 09-U-37; Slip Op. No. 1117 at p. 3, PERB Case No. 10-U-44; Slip Op. No. 1119 at p. 4, PERB Case No. 08-U-38; Slip Op. No. 1131 at p. 3, PERB Case No. 09-U-59; Slip Op. No. 1440 at p. 4, PERB Case No. 13-U-09; and Slip Op. No. 1452 at p. 4, PERB Case No. 14-U-02.

¹⁷ *See* PERB Rule 520.6.

¹⁸ Consistent with U.S. Supreme Court precedent, this standard does not require PERB to accept as true a complaint’s legal allegations, or any allegations that are legally conclusory or speculative. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (holding that “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”); *see also Papasan v. Allain*, 487 U.S. 265, 286 (1986) (holding that on a motion to dismiss, courts “are not bound to accept as true a legal conclusion couched as a factual allegation”).

¹⁹ *See Newell v. D.C. Housing Auth.*, 59 D.C. Reg. 11351, Slip Op. No. 1297, PERB Case No. 12-U-24 (2012) (dismissing complaint on grounds that it failed to state a claim for which relief could be granted).

²⁰ *Gov’t of the D.C., et al. v. AFSCME, Dist. Council 20, Local 2921, et al.*, 60 D.C. Reg. 16011, Slip Op. No. 1429 at p. 10-11, PERB Case No. 12-N-03 (2013).

²¹ *Id.*; *see also* Complaint at 9.

²² Complaint at 9.

Decision and Order

PERB Case No. 15-U-22 (Motion for Reconsideration)

Page 5

of statute, was envisioned and expressly authorized by the parties in their collective bargaining agreement.²³ In such instances, the Board defers resolution of the allegation to the parties' established grievance and arbitration procedures.²⁴ Here, the parties unambiguously negotiated and ratified a grievance and arbitration process in their collective bargaining agreement.²⁵ Accordingly, the Board cannot find that the Union acted in bad faith in violation of the CMPA when it simply availed itself of that process and not chose not to withdraw its grievance.²⁶ As noted above, the Board will be able to review the arbitrator's award once it is issued, but it does not have any authority to order the Union to cease pursuing its grievance while it is still pending.²⁷

Finally, the Board acknowledges that two other statements in the Administrative Dismissal may have been inaccurate. First, it may not be correct that the 2009 Award and the Union's April 2013 grievance are based on different legal authorities. Second, it is also not clear that the Board's Decision and Order in PERB Case No. 12-E-06 has "no bearing" on the Union's April 2013 grievance. However, as noted above, both of those questions are for the arbitrator in the April 2013 grievance to resolve, not PERB. Thus, even if the Executive Director's reasoning in the Administrative Dismissal was inaccurate, her conclusion that FEMS has not stated a claim for which PERB can grant relief was correct.

Accordingly, the Board rejects the Executive Director's reasoning in the Administrative Dismissal, but affirms the dismissal of FEMS' Complaint based upon the grounds stated herein.

²³ *Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at p. 5-6, PERB Case No. 12-U-31 (2013), *aff'd*, *Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Case No. 2013 CA 001289 P(MPA) (D.C. Super. Ct. Apr. 18, 2014); *see also Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. et al*, 59 D.C. Reg. 6039, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41 (2009); and *Am. Fed'n of Gov't Emp., Local 2741 v. D.C. Dep't of Recreation and Parks*, 46 D.C. Reg. 6502, Slip Op. No. 588 at p. 4, PERB Case No. 98-U-16 (1999).

²⁴ *Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1360 at p. 5-6, PERB Case No. 12-U-31; *see also Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. et al*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41.

²⁵ *See Complaint*, Exhibit A at Article 31.

²⁶ *See Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at p. 4-5, PERB Case No. 12-U-31.

²⁷ *Gov't of the D.C., et al. v. AFSCME, Dist. Council 20, Local 2921, et al.*, Slip Op. No. 1429 at p. 10-11, PERB Case No. 12-N-03.

Decision and Order
PERB Case No. 15-U-22 (Motion for Reconsideration)
Page 6

ORDER

IT IS HEREBY ORDERED THAT:

1. FEMS' 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 Ann Hoffman and Yvonne Dixon. Member Keith Washington was not present.

November 19, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-22, Op. No. 1556 was transmitted by File & ServeXpress to the following parties on this the 1st day of December, 2015.

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District of Columbia REGISTER – January 15, 2016 – Vol. 63 - No. 3 000518 – 000755