VOL. 63 – NO. 47 NOVEMBER 11, 2016

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Resolution 21-631, Rent Control Hardship Petition Limitation Congressional Review Emergency Declaration Resolution of 2016
- Office of Contracting and Procurement proposes regulations to identify the types of contracts that are appropriate for use in District procurements
- Department on Disability Services schedules a public hearing on the Rehabilitation Services Administration's proposed policies for case records and protection and use of personal information
- Department of Energy and Environment announces funding availability for the 2017 Washington DC Electric Vehicle Grand Prix program
- Department of Health proposes regulations to ban the production, packaging, and labeling of edible Medical Marijuana products designed to appeal to children
- Executive Office of the Mayor establishes the Office of Victim Services and Justice Grants (Mayor's Order 2016-171)

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

All documents published in the *District of Columbia Register (Register)* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

Viewing the DC Register

The Office of Documents and Administrative Issuances publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C. Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C. Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register*. News services are encouraged to publish all or part of the *Register*.

Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act*. The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

A RESOLUTION

21-631

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Rental Housing Act of 1985 to limit the amount of any hardship petition conditional rent increase to 5% of the rent charged, and to require that any rent adjustment be repaid by a housing provider to a tenant within 21 days of a conditional increase being amended.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Rent Control Hardship Petition Limitation Congressional Review Emergency Declaration Resolution of 2016".

Sec. 2. (a) The District's rent control regime is established by the Rental Housing Act of 1985. Approximately 79,000 housing units are subject to the law, which account for about 50% of the rental housing stock in the District. For units subject to rent control, annual rent increases are limited to a maximum of 10% for most tenants, and 5% for seniors and individuals with disabilities.

(b) However, under the hardship petition process, a housing provider can apply to the Rent Administrator at the Department of Housing and Community Development to raise rents by more than the standard increase, in order to achieve a 12% rate of return on the housing provider's investment in the building. The hardship petition requires the housing provider to submit a schedule of income and expenses, which the Rent Administrator can use to calculate a new rent based on the 12% rate of return.

(c) If a hardship petition is not decided within 90 days, the housing provider may automatically start collecting the entire rent for which the housing provider originally applied. As hardship petitions are rarely decided within the 90-day time period, conditional increases are frequently granted that result in rent increases of anywhere from 5% to 100%, or possibly even more.

(d) These rent increases place a significant burden on low-income renters, increasing the likelihood of displacement and homelessness. For example, tenants of a building in Ward 7 were charged a 34% increase and were threatened with eviction if they did not pay the rent increase. Tenants were forced to file a lawsuit challenging the increase based on numerous housing code violations, and the dispute was prolonged for more than 4 years. During this time the higher rents were required to be paid into a court-mandated escrow account.

(e) Although a conditional increase may ultimately be reversed, it is often too late for tenants who have been displaced by rent increases that housing providers were ultimately not authorized to charge. More than 88 hardship petitions were filed between 2007 and 2015, significantly raising the

ENROLLED ORIGINAL

rent on thousands of District residents.

(f) On March 17, 2015, permanent legislation, the Rent Control Hardship Petition Limitation Amendment Act of 2015, Bill 21-146, was introduced by Councilmember Bonds along with Councilmembers Silverman, Nadeau, and Cheh. The bill was referred to the Committee on Housing and Community Development (the "Committee"), and a hearing on the bill was held on Tuesday, May 26, 2015.

(g) After a wait of 4 months, the Committee and the Legal Aid Society of the District of Columbia, which had requested the same documents by FOIA, received from the Department of Housing and Community Development data on the past 9 years of hardship petitions. The Legal Aid Society analyzed the approximately 2400 pages of data, upon which informed policy decisions were made in support of the permanent version of this bill, which the Committee is moving for first reading at the November 1st legislative meeting.

(h) Without swift action by the Council to counter opportunities for abuse of the hardship petition process, additional tenants will likely be priced out of their homes. This legislation would limit the conditional rent increase to 5% of the existing rent following the 90-day deliberation period of the hardship petition process until its final resolution.

(i) On July 12, 2016, the Council approved an emergency measure, the Rent Control Hardship Petition Limitation Emergency Amendment Act of 2016, effective August 18, 2006 (D.C. Act 21-483; 63 DCR 10760). The emergency legislation will expire November 16, 2016. The associated temporary legislation, the Rent Control Hardship Petition Limitation Temporary Amendment Act of 2016, D.C. Act 21-492, will not complete its 30-day congressional 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)) before the expiration of the emergency legislation.

(j) This congressional review emergency is necessary to prevent an anticipated gap in the law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Rent Control Hardship Petition Limitation 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

B21-937	Closing of a Public Alley in Square 653, S.O. 15-26384, Act of 2016
	Intro. 10-31-16 by Councilmember Allen and referred to the Committee of the Whole
B21-938	Department of Motor Vehicles Reciprocity Sticker Amendment Act of 2016
	Intro. 11-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

PROPOSED RESOLUTIONS

PR21-1011	Science Advisory Board Dr. Jeanne Jordan Confirmation Resolution of 2016
	Intro. 11-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-1012	Science Advisory Board Dr. Marie N. Fidelia-Lambert Confirmation Resolution of 2016 Intro. 11-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
PR21-1013	Science Advisory Board Dr. Namandje Bumpus Confirmation Resolution of 2016 Intro. 11-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
PR21-1014	Commission on the Arts and Humanities Cicie Sattarnilasskorn Confirmation Resolution of 2016 Intro. 10-20-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
PR21-1015	Real Property Tax Appeals Commission Mr. Edwin Dugas Confirmation Resolution of 2016 Intro. 11-2-16 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 ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT HEARING ON

The Department of General Services Contracting and Personnel Management

Thursday, December 1, 2016
at 11:00 a.m.
in Room 104 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Thursday, December 1, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public oversight hearing on the Department of General Services Contracting and Personnel Management. The proceedings will begin at 11:00 a.m. in Room 104 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the hearing is to discuss and to hear testimony regarding the circumstances surrounding the Department of General Services' (DGS) evaluation and award of Solicitation Nos. DCAM-16-CS-0074 and DCAM-16-CS-0084, the separation of two DGS employees associated with the awards, the resignation of the agency director, Christopher Weaver.

Due to the sensitive and confidential nature of the disciplinary and personnel matters to be discussed, the hearing will be closed to the public pursuant to section 504(b) and section 375 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period XXI. The Committee will hear witnesses and accept written testimony by invitation only.

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:

PR 21-1014, the "Commission on the Arts and Humanities Cicie Sattarnilasskorn Confirmation Resolution of 2016"

Wednesday, November 16, 2016
10:50 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, November 16, 2016 at 10:50 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-1014, the "Commission on the Arts and Humanities Cicie Sattarnilasskorn Confirmation Resolution of 2016" would confirm the appointment of Ms. Cicie Sattarnilasskorn as a member of the Commission on the Arts and Humanities for a term to end June 30, 2019.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:50 a.m. on Tuesday, November 15, 2016. Witnesses should bring 15 copies of their written testimony to the roundtable. 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
SUBCOMMITTEE ON LOCAL BUSINESS DEVELOPMENT AND UTILITIES
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004 REVISED

COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE OF THE WHOLE: SUBCOMMITTEE ON LOCAL BUSINESS DEVELOPMENT AND UTILITIES

ANNOUNCES A PUBLIC ROUNDTABLE ON

Small Business Saturday, Made in DC implementation, and other Small Business Support

on

Thursday, November 17, 2016, 2 p.m.
Steadfast Supply Co.
1331 4th St SE, Washington, DC 20003

Councilmember Charles Allen, Chairperson of the Subcommittee on Local Business Development and Utilities, announces a public roundtable on Small Business Saturday, the Made in DC implementation, and other small business supports provided by the Department of Small and Local Business Development (DSLBD). The roundtable will be held at 2:00 p.m. on Thursday, November 17, 2016 at Steadfast Supply Co., located at 1331 4th St SE, Washington, DC 20003. **This notice has been revised to reflect the change in location.**

The purpose of the roundtable is to discuss the District's Small Business Saturday initiative, and DSLBD's implementation of the Made in DC Program Establishment Act of 2016 (D.C. Law 21-0135) and its other small business support efforts.

The Subcommittee invites the public to testify. Those who wish to testify are asked to contact Ms. Jamie Gorosh, Legal Fellow with the Subcommittee, via email at jgorosh@dccouncil.us or at (202) 741-0929 to provide your name, address, telephone number, organizational affiliation and title (if any), by close of business Tuesday, November 15, 2016. Persons wishing to testify are encouraged to bring 15 copies of written testimony to the roundtable. If electronic testimony is submitted by the close of business on November 15, 2016, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to jgorosh@dccouncil.us or to the Subcommittee on Local Business Development and Utilities, 1350 Pennsylvania Avenue, N.W., Suite 406, Washington, D.C. 20004. The record will close at 5:00 p.m. on November 22, 2016.

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. 21-258: Request to reprogram $944,969 of Fiscal Year 2017 Local funds budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on November 2, 2016. This reprogramming ensures that DOC has adequate funding for officers clothing, ammunition inmates' supplies, and contractual obligations for psychological services for inmates.

RECEIVED: 14 day review begins November 3, 2016

Reprog. 21-259: Request to reprogram $1,929,030 of Fiscal Year 2017 Special Purpose Revenue funds budget within the Office of Unified Communications (OUC) was filed in the Office of the Secretary on November 2, 2016. This reprogramming is needed to provide support and maintenance of critical telephone and mobile data computing equipment and software.

RECEIVED: 14 day review begins November 3, 2016

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
10/28/2016

****RESCIND**

Notice is hereby given that:

License Number: ABRA-094562 **License Class/Type: C Tavern**

Applicant: Rockfish, LLC

Trade Name: Stonefish Grill & Lounge

ANC: 2B05

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

1050 17TH ST NW, WASHINGTON, DC 20036

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

12/12/2016

A HEARING WILL BE HELD ON:

12/27/2016

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11:30 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Monday:	11:30 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Tuesday:	11:30 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Wednesday:	11:30 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Thursday:	11:30 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Friday:	11:30 am - 3 am	11:30 am - 3 am	6 pm - 3 am
Saturday:	11:30 am - 3 am	11:30 am - 3 am	6 pm - 3 am

	Hours Of Sidewalk Cafe Operation	Hours Of Sales Sidewalk Cafe
Sunday:	5 pm - 11 pm	5 pm - 11 pm
Monday:	11:30 am - 11 pm	11:30 am - 11 pm
Tuesday:	11:30 am - 11 pm	11:30 am - 11 pm
Wednesday:	11:30 am - 11 pm	11:30 am - 11 pm
Thursday:	11:30 am - 11 pm	11:30 am - 11 pm
Friday:	11:30 am - 11 pm	11:30 am - 11 pm
Saturday:	5 pm - 11 pm	5 pm - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/11/2016

Notice is hereby given that:
License Number: ABRA-096484 **License Class/Type: C Tavern**
Applicant: 319 Pennsylvania Ave, LLC
Trade Name: The Stanton
ANC: 6B01

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

319 PENNSYLVANIA AVE SE, Washington, DC 20003

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

12/27/2016

A HEARING WILL BE HELD ON:

1/9/2017

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

ENDORSEMENT(S): Entertainment Sidewalk Cafe

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

	Hours Of Sidewalk Cafe Operation	Hours Of Sales Sidewalk Cafe
Sunday:	4 pm - 2 am	4 pm - 2 am
Monday:	4 pm - 2 am	4 pm - 2 am
Tuesday:	4 pm - 2 am	4 pm - 2 am
Wednesday:	4 pm - 2 am	4 pm - 2 am
Thursday:	4 pm - 2 am	4 pm - 2 am
Friday:	12 pm - 3 am	12 pm - 3 am
Saturday:	12 pm - 3 am	12 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Posting Date:	November 11, 2016
Petition Date:	December 27, 2016
Hearing Date:	January 9, 2017
Protest Date:	March 8, 2017

License No.:	ABRA-104505
Licensee:	Whole Foods Market Group, Inc.
Trade Name:	Whole Foods Market
License Class:	Retailer's Class B Full-Service Grocery
Address:	600 H Street, N.E.
Contact:	Andrew Kline: (202) 686-7600

WARD 6 ANC 6C SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled on March 8, 2017 at 1:30pm.

NATURE OF OPERATION
A market that will serve hot and cold meals which includes salads, sandwiches, pizza, sushi, baked goods, and non-alcoholic beverages.

HOURS OF OPERATION INSIDE PREMISES AND FOR SUMMER GARDEN
Sunday through Saturday 8:00 am – 10:30 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES AND FOR SUMMER GARDEN
Sunday through Saturday 9:00 am – 10:30 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: November 4, 2016
Petition Date: December 19, 2016
Hearing Date: January 2, 2017
Protest Date: March 1, 2017

License No.: ABRA-104505
Licensee: Whole Foods Market Group, Inc.
Trade Name: Whole Foods Market
License Class: Retailer's Class B Full-Service Grocery
Address: 600 H Street, N.E.
Contact: Andrew Kline: (202) 686-7600

WARD 6 ANC 6C SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled on March 1, 2017 at 1:30pm.

NATURE OF OPERATION
A market that will serve hot and cold meals which includes salads, sandwiches, pizza, sushi, baked goods, and non-alcoholic beverages.

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HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES AND FOR SUMMER GARDEN
Sunday through Saturday 9:00 am – 10:30 pm

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES
REHABILITATION SERVICES ADMINISTRATION

NOTICE OF PUBLIC HEARING

Proposed Policies

Monday, December 12, 2016, 10:00 am to 12:00 pm
D.C. Department on Disability Services
Rehabilitation Services Administration
250 E Street, SW
Joy Evans Conference Room, First Floor
Washington, DC 20024

Pursuant to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, and its implementing federal regulations, the D.C. Rehabilitation Services Administration (RSA) will hold a public hearing on **Monday, December 12, 2016**, to obtain input on the following proposed RSA policies:

- **Case Record**
- **Informed Choice**
- **Case Closure**
- **Protection, Use and Release of Personal Information**

Prior to the hearing, the public will have **30 calendar days** to submit comments on the proposed policies. The policies are available for review in accessible format on the Agency's website at **www.dds.dc.gov**.

The purpose of the hearing is to ensure that recommendations are received from consumers, service providers, advocacy organizations, and other interested individuals on how the agency can better achieve the following:

- Address changes resulting from the implementation of the Workforce Innovation and Opportunity Act;
- Provide necessary information to support person-centered decision making in the selection of services and providers; and
- Provide information related to the protection, use and release of personal information.

Persons who wish to testify should contact Ms. Linda Grimes, not later than 4:45 pm on **November 28, 2016**, and provide the following: name; address; telephone number; organizational affiliation(s); accommodation need(s), if any; and two (2) copies of the proposed testimony. Ms. Grimes can be reached via email at linda.grimes@dc.gov or via telephone at (202) 442-8670 or 711 Relay. Testimony shall be no more than ten (10) minutes, depending on the number of persons who wish to testify.

Persons who wish to submit written comments may do so by U.S. Postal Service or by email:

Linda Grimes
D.C. Department on Disability Services
Rehabilitation Services Administration
250 E Street, SW, 6th Floor
Washington, DC 20024
linda.grimes@dc.gov

Comments sent via email must be received by 4:45 pm on **December 7, 2016**, and mailed documents must be postmarked by the same date. All questions should be directed to Linda Grimes, 202-442-8670, 711 Relay, Monday through Friday, 8:30 am – 4:30 pm or sent to or linda.grimes@dc.gov**.**

Persons who require accommodations to participate in the public hearing should contact Linda Grimes **not later than November 28, 2016. Requests can be submitted either via email or mail to:**

Linda Grimes
D.C. Department on Disability Services
Rehabilitation Services Administration
250 E Street, SW, 6th Floor
Washington, DC 20024
linda.grimes@dc.gov

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

The D.C. Historic Preservation Review Board will hold a public hearing to consider applications to amend the historic district designations of the following properties in the D.C. Inventory of Historic Sites and in the National Register of Historic Places:

Case No. 13-08: Downtown Historic District amendment (boundary change/expansion)
Square 404, Lots 31, 811, 812, 813, 816 and 817; Square 405, Lots 16 and 26 (part); Square 428, Lot 20 (part); Square 453, Lots 43, 52, 54, 59, 802, 803, 804, 805 and 830; Square 454, Lots 46 (part), 50 and 880; Square 486, Lots 9 and 833/7000 (part)
Applicant: D.C. Preservation League
Affected Advisory Neighborhood Commission: 2C

Case No. 17-02: National Mall Historic District
Reservations 2 and 332, and Parcel 316, Lots 6 and 7
National Park Service
Affected Advisory Neighborhood Commissions: 2C and 2A

Case No. 17-03: Washington Monument and Grounds Historic District
Reservation 2
National Park Service
Affected Advisory Neighborhood Commissions: 2A

The will also hold a public hearing to consider applications to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 13-22: The Scheele-Brown Farmhouse
2207 Foxhall Road NW
Square 1341, Lot 855
Affected Advisory Neighborhood Commission: 3D

Case No. 17-01: Carnegie Institute of Washington Atomic Physics Observatory
5241 Broad Branch Road NW
Square 2288, Part of Lot 813
Applicant: D.C. Preservation League
Affected Advisory Neighborhood Commission: 3G

The hearing for all three will take place at **9:00 a.m. on Thursday, December 15, 2016**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650,

Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

For each property, a copy of the historic designation application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates a property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for

assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.), hereby gives notice of the adoption of an amendment to Chapter 95 (Medicaid Eligibility) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF is the single state agency responsible for the administration of the State Medicaid program under Titles XIX and XXI of the Social Security Act in the District. This proposed rulemaking would amend Chapter 95 (Medicaid Eligibility) by adding a new Section 9511 (Supplemental Security Income-Based Methodology for Certain non-MAGI Eligibility Groups) that details Supplemental Security Income (SSI)-based methodologies used to determine income for individuals whose eligibility is determined under certain non-modified adjusted gross income (non-MAGI) eligibility categories pursuant to 42 C.F.R. § 435.601. The non-MAGI eligibility categories, whose income is determined using SSI-based income methodologies, are individuals who are in the aged or disabled (AD) program; individuals enrolled in the Qualified Medicare Beneficiary (QMB) program; individuals enrolled in the QMB Plus program; individuals with long term care medical needs; individuals receiving Medicaid through the Katie Beckett eligibility group; and medically needy individuals who are not subject to MAGI-based income methodology.

This rulemaking also amends Chapter 95 (Medicaid Eligibility) by: repealing the existing definitions section (Subsection 9500.99); creating a new definitions section (Section 9599); moving the definitions currently located in Subsection 9500.99 to the new Section 9599; and adding new definitions for the terms AmeriCorps/VISTA income, deduction, deemed income, earned income tax credit (EITC), exclusion, federal benefit rate, and TANF underpayments.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 15, 2016 at 63 DCR 005735. No comments were received and no substantive changes have been made. The Director has adopted these rules as final on October 6, 2016, and they shall become effective on the date of publication of this rulemaking in the *D.C. Register*.

Chapter 95, MEDICAID ELIGIBILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 9511 is added to read as follows:

9511 SUPPLEMENTAL SECURITY INCOME-BASED METHODOLOGY FOR CERTAIN NON-MAGI ELIGIBLITY GROUPS

9511.1 The Department shall determine financial eligibility for Medicaid using a Supplemental Security Income (SSI)-based methodology pursuant to 42 C.F.R. Section 435.601 for the following non-modified adjusted gross income (non-MAGI) eligibility groups:

(a) Individuals who are aged sixty-five (65) years or older, or disabled (AD);

(b) Individuals enrolled in the Qualified Medicare Beneficiary (QMB) program;

(c) Individuals enrolled in the QMB Plus program;

(d) Individuals with long-term medical needs;

(e) Individuals receiving Medicaid through the Katie Beckett eligibility group; and

(f) Individuals, described in Subsection 9500.15, who are medically needy.

9511.2 The following income requirements shall apply to the non-MAGI eligibility groups set forth under Subsection 9511.1:

(a) AD - Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the federal poverty level (FPL);

(b) QMB program - Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the FPL. For applicants and beneficiaries that have income up to three hundred percent (300%) of the FPL, the Department shall disregard income in excess of one hundred percent (100%) of the FPL;

(c) QMB Plus program – Applicants and beneficiaries shall have income at or below one hundred percent (100%) of the FPL, and shall be entitled to full Medicaid coverage and benefits under the QMB program;

(d) Long-term care - Applicants and beneficiaries shall have income at or below three hundred percent (300%) of the SSI Federal Benefit Rate (FBR);

(e) Katie Beckett eligibility group - Applicants and beneficiaries shall have income at or below three hundred percent (300%) of the SSI FBR; and

(f) Medically Needy - Applicants and beneficiaries shall use a medically needy (MN) spend-down process, in which the Department shall deduct

the amount of medical expenses incurred by the individual or family or financially responsible relatives that are not subject to payment by a third party from countable income. The District shall disregard countable earned and unearned income in an amount equal to the difference between fifty percent (50%) of the FPL, and the District's medically needy income limit (MNIL) for a family of the same size, except the disregard for a family of one (1) will be equal to ninety-five percent (95%) of the disregard for a family of two (2).

9511.3 The SSI-based income methodology shall use monthly gross countable income to determine financial eligibility for Medicaid, which shall be calculated in accordance with Subsection 9511.11. The methodology under Subsection 9511.11 shall incorporate the following:

(a) Countable earned income as set forth under Subsection 9511.4;

(b) Countable unearned income as set forth under Subsection 9511.5;

(c) Exclusions of gross countable income as set forth under Subsection 9511.6;

(d) Deeming of income calculations as set forth under Subsection 9511.7; and

(e) General income deductions and exclusions as set forth under Subsection 9511.10.

9511.4 An individual’s countable earned income shall include:

(a) Wages, salaries, tips, overtime, and bonuses;

(b) Net income from a business or self-employment;

(c) Payments for services performed in a sheltered workshop or work activities center;

(d) Royalties earned by an individual in connection with any publication of his or her work and any honoraria received for services rendered; and

(e) Any other earnings from a job or work in which the individual receives payment.

9511.5 An individual’s countable unearned income shall be defined as all other income which does not coincide with income delineated under Subsection 9511.4 and which is not excluded under 20 C.F.R. § 416.1124, and shall include but not be limited to:

(a) Social Security benefits;

(b) Interest, dividends, and other income from investments;

(d) Department of Veterans Affairs benefits;

(e) Railroad retirement and civil service retirement benefits;

(f) Annuities and pensions from government or private sources;

(g) Workers' compensation, unemployment insurance benefits, and black lung benefits;

(h) Prizes, settlements, and awards, including court-ordered awards;

(i) Proceeds of life insurance policies;

(j) Gifts and contributions;

(k) Child support and alimony payments;

(l) Inheritances in cash or property;

(m) Rental income; and

(n) Strike pay and other benefits from unions.

9511.6 An individual's gross countable income shall exclude the following income or payments:

(a) Children's earnings (earnings from an unmarried child who is living with a person who provides care or supervision, or earnings from a child who is a student in college or vocational training);

(b) Adoption subsidy;

(c) AmeriCorps/VISTA income received under the National and Community Service Trust Act of 1993, effective September 21, 1993 (107 Stat. 787; 12 U.S.C. §§ 12501 *et seq.*), as amended by the Serve America Act of 2009, effective April 21, 2009 (123 Stat. 1463; 42 U.S.C. §§ 12501 *et seq.*);

(d) Child nutrition payments;

(e) Payments received under the Domestic Volunteer Service Act of 1973, effective October 1, 1973 (87 Stat. 396; 42 U.S.C. §§ 4950 *et seq*.), as amended by the Domestic Volunteer Service Act Amendments of 1984, effective May 21, 1984 (98 Stat. 189; 42 U.S.C. §§ 4951 *et seq*.), as amended by the National and Community Service Trust Act of 1993, effective September 21, 1993 (107 Stat. 899; 12 U.S.C. §§ 12501 *et seq*.), as amended by the Serve America Act of 2009, effective April 21, 2009 (123 Stat. 1581; 42 U.S.C. §§ 12501 *et seq*.);

(f) Earned income tax credits;

(g) Educational benefits (for example, Department of Education (DOE) Bureau of Indian Affairs Benefits, DOE Title IV Benefits, DOE Perkins Vocational and Applied Technology Education Act, DOE work study wages, and other any education benefits work study);

(h) Energy assistance payments;

(i) Foster care payments;

(j) Housing assistance provided by the federal or District of Columbia government or non-profit organizations;

(k) Incentive payments for prenatal and well-baby care, and from the work incentive programs for current or former recipients of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, effective August 22, 1996 (110 Stat. 2105; 42 U.S.C. §§ 1305 *et seq*.);

(l) Non-cash benefits in the form of a voucher, commodity, or service;

(m) Jury duty payments;

(n) Money received by a third party for an applicant, beneficiary, or community spouse, unless an applicant, beneficiary, or community spouse has or will have access to the funds;

(o) Money received by an applicant, beneficiary, or community spouse, on behalf of any third party;

(p) Nutrition payments;

(q) Rehabilitation Service Administration (RSA) payments received under the Rehabilitation Act of 1973, effective September 26, 1973 (87 Stat. 355; 29 U.S.C. §§ 701 *et seq*.);

(r) Reimbursements received from an individual or organization to cover past, current, or future expenses, if all the following conditions are met:

(1) The reimbursement is for actual expenses;

(2) The reimbursement is earmarked to cover those expenses; and

(3) The reimbursement is paid or documented separately from any other payment such as wages;

(s) Payments received from roommates to cover their share of household expenses such as rent and utilities and which are paid by the applicant or beneficiary to the landlord or utility company;

(t) Senior Community Service Employment Program (SCSEP) income received under the Older Americans Act of 1965, approved July 14, 1965 (79 Stat. 218; 42 U.S.C. §§ 3001 *et seq*.), as amended by the Older Americans Act Amendments of 2000, approved November 13, 2000 (114 Stat. 2226; 42 U.S.C. §§ 3001 *et seq*.), as amended by the Older Americans Act Amendments of 2006, approved October 17, 2006 (120 Stat. 2522; 42 U.S.C. §§ 3001 *et seq*.);

(u) TANF underpayments received;

(v) Training income, such as training expense allowances and stipends;

(w) Utility allowances received through a federal or District government housing assistance program; and

(x) Other uncommon unearned income exclusions required under federal statute.

9511.7 With the exception of individuals with long-term medical needs and Katie Beckett eligibility group applicants and beneficiaries, the following deeming of countable earned and unearned income shall apply to the individual pursuant to Section 1614(f) of the Social Security Act (42 U.S.C. § 1382c(f)):

(a) For an individual with a spouse who is ineligible for SSI benefits and is living with the individual, the income of an ineligible spouse shall be deemed to the individual and counted towards the individual's gross countable income;

(b) For a child under the age of eighteen (18) that lives with a parent(s), the income of the parent(s) is deemed to the child and counted towards the child's gross countable income, unless deeming is determined to be

inequitable pursuant to the circumstances described in Section 1614(f)(2)(B) of the Social Security Act (42 U.S.C. § 1382c(f)(2)(B)); and

(c) For an individual who is an alien that meets citizenship requirements described under Subsection 9503.2, the individual's income and resources shall be deemed to include the income and resources of the individual's sponsor and the sponsor's spouse.

9511.8 The Department shall only consider the income and assets of the child applying for or currently receiving Medicaid through the Katie Beckett eligibility group in calculating income under Subsection 9511.3. The parents' income and resources shall not be deemed to be income and assets of the Katie Beckett eligibility group applicant or beneficiary.

9511.9 The Department shall determine the income and resources of individuals with long-term medical needs applying for or currently receiving Medicaid pursuant to Chapter 98 (Financial Eligibility for Long Term Care Services) of Title 29 DCMR.

9511.10 General income deductions and exclusions may apply as follows:

(a) Individuals with unearned income may deduct up to twenty dollars ($20) as an unearned income deduction from their gross countable unearned income. If an individual has less than twenty dollars ($20) of unearned income in a month and also has earned income in that month, the remainder of the twenty dollar ($20) exclusion shall reduce the amount of the earned income;

(b) An individual with earned income may deduct up to sixty-five dollars ($65) as an earned income deduction from their gross countable earned income;

(c) One half of the remaining earned income in a month may be deducted; and

(d) Exclusions from general earned income may include:

(1) Earned income tax credit payments (effective January 1, 1991) and child tax credit payments;

(2) Up to thirty dollars ($30) of earned income or sixty dollars ($60) of unearned income in a calendar quarter if it is infrequent or irregular;

(3) Earned income of blind or disabled student children up to the student earned income exclusion (SEIE) monthly limit, but not

more than the SEIE yearly limit as determined by the U.S. Social Security Administration;

(4) Earned income of disabled individuals used to pay impairment-related work expenses;

(5) Earned income of blind individuals used to meet work expenses; and

(6) Any earned income used to fulfill an approved plan to achieve self-support (PASS).

9511.11 When applying SSI-based methodology to determine financial eligibility for Medicaid, an individual's countable income shall be calculated as follows:

(a) All countable unearned income sources, as determined under Subsection 9511.5, shall be added to deemed income, if any, as determined under Subsection 9511.7;

(b) If the individual has up to twenty dollars ($20) of an unearned income deduction as determined under Subsection 9511.10(a), the amount of unearned income (up to twenty dollars ($20)) shall be deducted from the amount derived under paragraph (a) of this subsection. This derived amount shall be the net unearned income;

(c) The individual's countable gross earned income, as determined under Subsection 9511.4, shall be added to deemed income, if applicable, as determined under Subsection 9511.7;

(d) If the household has earned income, the earned income deduction, if applicable as determined under Subsection 9511.10(b), shall be deducted from the amount calculated in paragraph (c) of this subsection. If a portion of the unearned income deduction was unused because the unearned income was less than twenty dollars ($20), as determined under Subsection 9511.10(a), the remaining amount shall be subtracted from paragraph (c) of this subsection;

(e) Sixty-five dollars ($65) shall be deducted from the amount derived from paragraph (d) of this subsection. If paragraph (d) of this subsection is not applicable as determined under Subsection 9511.10(b), then sixty-five dollars ($65) shall be deducted from the amount derived in paragraph (c) of this subsection;

(f) One half of the remaining earned income, as described under Subsection 9511.10(c), shall be deducted from the amount determined under

paragraph (e) of this subsection. The exclusions to general earned income, delineated under Subsection 9511.10(d), shall then be applied. This amount shall be the net earned income; and

(g) The household's total net unearned income derived in paragraph (b) of this Subsection shall be added to the total net earned income derived under paragraph (f) to determine the household's total gross income. This amount shall be the non-MAGI countable income.

9511.12 Each applicant described under Subsection 9511.1 shall report at the time of application all earned and unearned income, as described in this section, to the Department, including any income that the applicant receives periodically (less frequently than once a month) or anticipates receiving prior to the time of renewal. Each current Medicaid beneficiary described under Subsection 9511.1 shall continually report any new or significant changes of earned or unearned income to the Department.

9511.13 Recipients of SSI and state supplemental payments (SSP) are categorically eligible for Medicaid. The income of recipients of SSI and state supplemental payments (SSP) shall be determined pursuant to 20 C.F.R. Part 416 and in accordance with the District's Section 1634 of the Social Security Act Agreement with the federal Social Security Administration (SSA). The methodology set forth in this section shall not be applied when determining income of recipients of SSI and SSP.

Section 9500, GENERAL PROVISIONS, is amended by repealing Subsection 9500.99.

A new Section 9599, DEFINITIONS, is added to read as follows:

9599 DEFINITIONS

9599.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Alien - An individual who is not a Citizen or National of the United States pursuant to 8 U.S.C. § 1641 and § 101(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a).

AmeriCorps/VISTA income - income given to volunteers in the Volunteers in Service to America (VISTA) program.

Applicant - An individual who is seeking an eligibility determination for Medicaid through an application submission or a transfer from another insurance affordability program.

Application - The single streamlined form that is used by the District of Columbia in accordance with 42 C.F.R. § 435.907(b) or an application described in § 435.907(c)(2) of this chapter submitted on behalf of an individual.

Authorized Representative - Legally authorized individual or entity able to consent on behalf of a prospective applicant.

Beneficiary - An individual who has been determined eligible and is currently receiving Medicaid.

Budget Period - The monthly or annual period in which financial eligibility for Medicaid is determined.

Certification Period - Medicaid eligibility is determined for a twelve-month period. This period is called a certification period.

Cost Sharing - When patients pay out-of-pocket for a portion of health care costs not covered by health insurance, including but are not limited to, copays, deductibles, and coinsurance.

Custodial Parent - A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or if there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights pursuant to 42 C.F.R § 435.603(iii)(A)-(B).

Deduction - income that is subtracted from countable earned and unearned income.

Deemed income - the amount of another person's income that is considered to belong to the applicant/recipient.

Deemed Newborn - A child under the age of one (1) who is automatically eligible for Medicaid pursuant to 42 C.F.R. § 435.117.

Deferred Action for Childhood Arrivals (DACA) - Certain individuals who were brought to the U.S. as children are as described pursuant to the Memorandum from Janet Napolitano, Secretary of Homeland Security, to David V. Aguliar, Acting Commissioner, U.S. Customs and Border Protection; Alejandro Mayorkas, Director, U.S., Citizenship and Immigration Services; John Mortan, Director, U.S. Immigration and Customs Enforcement (June 15, 2012) (on file with the U.S. Department of Homeland Security.

Department - For the purposes of this chapter, the term "the Department" shall refer to the Department of Health Care Finance (DHCF) or its designee.

Dependent Child - A natural or biological, adopted or step-child who is under the age of eighteen (18), or is age eighteen (18) and a full-time student in secondary school (or equivalent vocational or technical training).

Earned Income Tax Credit (EITC) - a federal tax credit for working individuals who have low to moderate income.

Eligibility determination - An approval or denial of eligibility in accordance with 42 C.F.R. § 435.911 as well as a renewal or termination of eligibility in accordance with 42 C.F.R. § 435.916.

Emergency medical condition - A medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity including severe pain so that the absence of immediate medical attention could reasonably be expected to result in one of the following: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of a bodily organ or part.

Exclusion - income that is not counted when determining gross countable income.

Fair Hearings - an administrative procedure that gives applicants and beneficiaries the opportunity to contest adverse decisions regarding eligibility and benefit determinations.

Family - The individuals for whom a tax filer claims a deduction for a personal exemption under § 151 of the Code for the taxable year, which may include the tax filer, the tax filer's spouse, and dependents. 26 U.S.C. § 36B(d)(1)(2012).

Family size - The number of persons counted as members of an individual's household for purposes of MAGI Medicaid eligibility. When counting a household that includes a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

Federal benefit rate - the monthly payment rate that the SSA determines for an eligible individual to receive a Federal SSI benefit.

Federal Poverty Level (FPL) - A measure of income levels updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 U.S.C. Section 9902(2), as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 C.F.R. § 435.603(h).

Household Composition - Determined by individuals living together and their relationships to one another. The composition of the household determines an individual's family size.

Household Income - The MAGI-based income of every individual included in an applicant or beneficiary's household.

Indian - Means any individual who is a member of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. §§ 1601 *et seq*.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Institution - Means Institution and Medical institution, as defined in 42 C.F.R. § 435.1010.

Lawfully Present - Aliens described at 42 C.F.R. Section 152.2 (1),(3)-(7); aliens in a valid nonimmigrant status, as defined in 8 U.S.C. § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. § 1101(a)(17)); aliens granted an administrative stay of removal under 8 C.F.R. Section 241; aliens lawfully present in American Samoa under the immigration laws of American Samoa; and aliens who are victims of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, approved October 28, 2000 (Pub. L. 106-386, as amended; 22 U.S.C. § 7105(b)).

Limited or no-English proficiency - As defined by D.C. Official Code § 2-193 (2012 Repl.) as the inability to adequately understand or to express oneself in the spoken or written English language.

Long-term services and supports - Nursing facility services, a level of care in any institution equivalent to nursing facility services; home and community-based services furnished under a waiver or State plan under Sections 1915 or 1115 of the Act; home health services as described in § 1905(a)(7) of the Act and personal care services described in § 1905(a)(24) of the Act.

Lawful Permanent Resident (LPR) - One who was lawfully admitted for permanent residence in accordance with the immigration laws of the United States, such status not having changed since admission. A legalized alien under IRCA whose status has been adjusted from LTR to LPR by INS.

Medicaid - Means the program established under Title XIX and Title XXI of the Social Security Act, 42 U.S.C. §§ 1396 *et seq*. and Title 29 DCMR, Chapter 9.

Medically Needy - Individuals, as described in 42 U.S.C. § 1396a(a)(10)(A)(ii), who meet non-financial eligibility determination factors but who have incomes over the Medicaid threshold.

Modified adjusted gross income (MAGI) - Income calculated using the financial methodologies used to determine modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B) and 42 C.F.R. § 435.603.

U.S. National - A person who is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the U.S.

Non-MAGI - Eligibility Groups described at 42 C.F.R. § 435.603 for which MAGI–based methods do not apply.

Parent - A person who has a natural or biological, adopted, or step-child.

Pregnant woman - A female during pregnancy and the post-partum period, which begins on the date the pregnancy ends, extends sixty (60) calendar days, and then ends on the last day of the month in which the 60-day period ends.

Qualified Alien - An alien described in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1641, as amended (PRWORA), and non-citizens required to be eligible by § 402(b) of the PRWORA, as amended, and non-citizens not prohibited by § 403 of PRWORA, as amended including qualified non-citizens subject to the five (5) year bar identified in 8 U.S.C. § 1613.

Qualified Plan - Profit-sharing, money purchase, defined benefit plans, 401K, and other retirement plans that allow a tax-favored way to save for retirement. Employers may deduct contributions made to the plan on behalf of their employees. Earnings on these contributions are generally tax free until distributed at retirement.

Renewal - Annual review to evaluate continued eligibility for Medicaid.

Satisfactory Immigration Status - An immigration status which does not make the alien ineligible for benefits under the applicable program (See § 121(d)(1)(B)(i)(III)) of IRCA, 42 U.S.C.A. § 1320b-7, note).

Self-employed Simplified Employee Pension (SEP) - A written plan that allows individuals to make contributions toward their own retirement and their

employees' retirement without getting involved in a more complex qualified plan.

Sibling - Each of two or more children or offspring having one or both natural, biological, adopted, or step-parents in common.

SIMPLE - An employer sponsored retirement plan offered for small businesses that have one hundred (100) employees or less.

State - Includes any of the fifty (50) constituent political entities of the United States and the District of Columbia.

TANF underpayments - TANF payments to a recipient that are lower than the TANF payments the recipient is eligible to receive.

Tax dependent - Tax dependent has the same meaning as the term "dependent" under Section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under § 151 of the Internal Revenue Code for a taxable year.

Verification plan - the plan describing the verification policies and procedures adopted by the Department in accordance with 42 C.F.R. §§ 435.940-435.965, and § 457.380.

Well-established religious objections - The applicant is a member of a recognized religious sect or division of the sect and adheres to the tenets or teachings of the sect or division and for that reason is conscientiously opposed to applying for or using a national identification number.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in Section 101(a) of the Title 25, D.C. Code Enactment and Related Amendments Act of 2001, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a) (2012 Repl.)), and in accordance with 23 DCMR § 303.1, hereby gives notice of the intent to amend Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR), by creating a new Section 311 (Langdon Park Moratorium Zone).

The proposed rules would place a three (3) year limit on the number of class CN and CX retailer licenses issued in Langdon Park, as well as prohibit the approval of new Entertainment Endorsements for class CR and CT retailer licenses. The limitation on the aforementioned on-premises retailer licenses and entertainment endorsements shall be known as the Langdon Park Moratorium Zone (LPMZ). The moratorium would extend approximately six hundred feet (600 ft.) in all directions from 2122 24th Place, N.E.

Background

A. Moratorium Requests

The Board received several requests for a moratorium on certain liquor licenses in the Langdon Park neighborhood. The Advisory Neighborhood Commission (ANC) 5C submitted a resolution for a moratorium requesting that the Board forgo issuing any new class CT or CN retailer licenses; stop granting new entertainment endorsements to class CR and CX retailer licenses; and prohibit current licensed establishments from expanding onto adjoining spaces, properties, or lots except for purposes of increasing on-site parking. The ANC requested that the moratorium remain in effect for five (5) years and encompass a one thousand eight hundred foot (1,800 ft.) radius from 2266 25th Place, N.E.

Several large nightclubs, taverns and multipurpose facilities (collectively referred to as "nightlife establishments") currently exist in Ward 5, including Aqua Restaurant, Karma (formerly called The Scene), Echostage, Stadium, and Bliss. ANC 5C noted that these nightlife establishments, as well as others in the area have had an adverse impact on the community's residential parking needs, pedestrian safety, real property values, and peace, order, and quiet, including noise. ANC 5C is particularly concerned about persons who frequent these nightlife establishments parking in the nearby residential neighborhoods; thereby, resulting in property owners not being able to park in front of their homes. ANC 5C is also concerned about the criminal activity associated with the existing nightlife establishments (*e.g.*, thefts, assaults, and burglaries) and public intoxication. Lastly, ANC 5C suggests that the nightlife establishments in the area have had an adverse effect on the health and safety of the community stemming from public urination and the accumulation of litter and trash.

The Langdon Park Community Association (LPCA), a non-profit community-based organization comprised of residents of the Langdon Park neighborhood, submitted a resolution to the Board requesting a moratorium on class CT/DT, CN/DN, and CX/DX retailer licenses, and class CR/DR retailer licenses with entertainment endorsements. The LPCA also requested that the Board prohibit existing establishments from expanding onto adjoining spaces, properties, or lots except for the sole purpose of increasing on-site parking. The LPCA requested that the moratorium last for five (5) years and cover six hundred feet (600 ft.) from 2122 24th Place, N.E.[1] Like ANC 5C, LPCA is concerned about the adverse impact nightlife establishments are having on real property values, public health and safety, and the peace, order, and quiet of the community.

The Greater Woodridge-Gateway Leaders' Group (Leaders' Group), consisting of the presidents of the (a) North-Woodridge Community Association; (b) Woodridge Civic Association; (c) Woodridge – South Community Association; (d) Langdon Park Community Association; and (e) Gateway Civic Association submitted a joint resolution requesting a moratorium on class CT/DT, CN/DN, CX/DX retailer licenses, and class CR retailer licenses with entertainment endorsements, and a prohibition against using adjacent sites for anything other than parking. The Leaders' Group requested that the moratorium cover a one thousand eight hundred foot (1,800 ft.) radius from 2266 25th Place, N.E. The Leaders' Group is concerned about the existing nightlife establishments in the area, which they contend have been an undue burden on the community for several years. They noted numerous instances of club patrons fighting, shootings, stabbings, and other criminal activity, including theft and property damage.

The Leaders' Group also noted that the nightlife establishments have had an adverse impact on the community's peace, order, and quiet, including noise and litter. They also contend that because of the lack of parking, patrons frequenting the nightlife establishments in the area tend to park in the neighborhoods, thereby preventing residents from parking in front of their homes. The Leaders' Group also expressed concern about the negative effect the existing nightlife establishments have had on real property values. They contend that the nightlife establishments, and the criminal activity associated with them, have caused persons outside of the Langdon Park community to believe that the neighborhood is unsafe and undesirable. This, the Leaders' Group argues, has made it difficult for residents to sell their homes.

Lastly, the Board received a signed petition with over fifty signatures from Langdon Park community residents, asking it to enact a moratorium, for not less than five (5) years, and not less than a one thousand eight hundred foot (1,800 ft.) radius from 2135 Queens Chapel Road, N.E., for class CT, CN, CX, and CR retailer licenses with entertainment endorsements. The petitioners also requested that the Board prohibit existing establishments from utilizing adjoining spaces except for purposes of increasing on-site parking. The signatories to the petition expressed their concern regarding criminal activity, noise, parking, and real property values.

B. <u>Testimony Received at and/or in Response to the Board's Public Hearing on the Langdon Park Moratorium Zone Request</u>

[1] LPCA's initial Petition for a Moratorium requested that the Board impose a moratorium in the area covering one thousand eight hundred feet (1,800 ft.) from 2266 25th Place, N.E. The LPCA subsequently amended the moratorium area to comply with D.C. Official Code §§ 25-352(b) and (d).

The Board received written and oral testimony from numerous individuals and groups concerning the Langdon Park Moratorium Zone request. Below is a summary of the testimony received:

Walter DeLeon, ANC 5C Commissioner

Walter DeLeon, ANC 5C Commissioner, testified on behalf of the ANC. Commissioner DeLeon testified that a moratorium is necessary in order to address the overconcentration of "warehouse nightclubs" in the area. According to Commissioner DeLeon, the nightlife establishments have had, and continue to have, an adverse impact on the community's peace, order, and quiet. Noise from the establishments is a major concern for residents because it can be heard by residents living nearby.

Additionally, the proliferation of nightlife establishments has posed extreme traffic problems on the community, particularly along Bladensburg Road, N.E., New York Avenue, N.E., and Queens Chapel Road, N.E. Lastly, Commissioner DeLeon testified to the criminal activity stemming from patrons frequenting the nightclubs, taverns and multipurpose facilities, including automobile thefts, burglaries, and robberies.

Shirley Rivens Smith

Ms. Rivens Smith, a forty-five (45) year resident of the Woodridge community testified in support of the Langdon Park moratorium. Ms. Rivens Smith's testimony focused on two significant community concerns: parking and public safety. According to Ms. Rivens Smith, public transportation is limited in Ward 5. Patrons seeking to fraternize at the nightclubs, taverns, or restaurants in the area are forced to drive there; thus, increasing traffic congestion and placing a strain on parking in the neighborhood.

Ms. Rivens Smith testified that the nightlife establishments have very little on-site parking. As a result, patrons are forced to pay twenty dollars ($20) to forty dollars ($40) to park on a private lot or park for free in the neighborhoods. Patrons parking in the neighborhoods have posed significant concerns for residents. According to Ms. Rivens Smith, some residents, particularly seniors, do not leave their homes when the nightlife establishments are operating because they fear that they will not have a parking space when they return.

Ms. Rivens Smith also testified about the potential for criminal activity associated with these nightlife establishments. Unlike other areas in the District (*e.g.*, U Street and Adams Morgan), Ms. Rivens Smith noted that there is very limited police presence in the vicinity where the nightlife establishments are located. This is a concern because altercations that start inside of the nightlife establishments tend to pour out into the community. She believes that this would not occur if there were more police officers detailed to the area when the establishments are operating.

Kevin Mullone, Langdon Park Community Association, President

Kevin Mullone, on behalf of the LPCA, testified in support of the moratorium request. Mr. Mullone testified that the area along Queens Chapel and Bladensburg roads has been an area of concern for residents for some time. Prospective owners tend to open their nightlife establishments in that area because the rent is low and the venues are large. Mr. Mullone expressed particular concern regarding the underdeveloped industrial area abutting Langdon Park and Woodridge South, which he argues are ripe for nightclub owners. He and his neighbors do not want to endure any additional large-scale nightclubs.

Regarding the existing nightlife establishments, Mr. Mullone testified that traffic and parking are already concerns for the community. During the weekend, thousands of people flood the area; thereby, adding to the existing strains on traffic and parking. As a result of the increased number of cars frequenting the area when the nightlife establishments are operating, MPD officers are used to direct traffic. Patrons routinely park in the neighborhoods, adversely affecting the peace, order, and quiet of residents in their homes and monopolizing the limited parking spaces that are available.

Lastly, Mr. Mullone testified about the public safety concerns associated with nightlife establishments. He stated that the Langdon Park community is considered to be unsafe because of the criminal activity associated with the nightclubs. Mr. Mullone supports the redevelopment of the area, but he, along with his neighbors, do not support any redevelopment that would include new nightlife establishments.

Frances Penn

Frances Penn, a forty (40)-year resident of the Woodridge community serves as the Vice President of the Woodridge South Community Association (WCSA) and Chairperson of the Fifth District Citizens' Advisory Council. Ms. Penn testified in support of a moratorium on any additional liquor licenses with entertainment along Queens Chapel Road, N.E. She testified that the Fifth District has the most industrial land in the District and that this area is popular among nightclub owners. Although Ms. Penn understands why this area would attract club owners, she and her neighbors are concerned about the problems associated with nightclubs, including loud noise, overcrowding, cars flooding the area, property damage, and public safety.

Ms. Penn further testified that there are currently four clubs within one block of each other – Karma, Stadium, Echostage, and Bliss. According to Ms. Penn, over seven thousand (7,000) people flood the community when all four of these establishments are operating at the same time. She contends that this influx of people has resulted in overcrowding, criminal activity, and persons parking in the residential neighborhoods. These additional people add to the increased noise from cars, fumes, public urination, unpleasant odors, public drinking, and intoxication.

Carlos Davis, Woodridge South Community Association, President

Carlos Davis, President of the Woodridge South Community Association (WSCA), echoed his colleague, Frances Penn, in support of a moratorium along the Queens Chapel/Bladensburg Road corridor. Mr. Davis also testified to the adverse impact that the existing nightlife establishments are having on the peace, order, and quiet of residents in the Woodridge community, and how

additional nightlife establishments would exacerbate the problem. Specifically, the additional nightclubs and nightlife entertainment would not aid in increasing the overall value of the community, but would further depreciate the value of real estate. According to Mr. Davis, the present nightclubs and marijuana cultivation centers are making it difficult for the community to experience the revitalization that other parts of the District are experiencing, and that additional nightclubs would further impede their ability to revitalize their neighborhood.

Martha Ward

Martha Ward is a sixty-seven (67)-year resident of the Woodridge Community, where she is a member of the WSCA and serves as Vice Chairperson of the Fifth District Citizens' Advisory Council. Ms. Ward testified in support of the Langdon Park moratorium request. Ms. Ward is particularly concerned about the potential for new nightlife establishments opening in an area that already has four (4) nightclubs in close proximity. She testified that the community has suffered numerous adverse effects from the existing establishments including, but not limited to, loud noise, music blaring, car fumes, and public drinking. According to Ms. Ward, trash and litter are also negative consequences associated with the nightclubs in the area, as well as public urination.

Ms. Ward further testified to the limited parking options in the area; thereby, resulting in persons parking in the neighborhood. She stated residents are frequently disturbed at night when patrons return to the neighborhood to retrieve their vehicles. Ms. Ward indicated that there is loud talking and car doors slamming, all of which disturb residents. Lastly, she testified about criminal activity associated with nightlife establishments including, but not limited to, burglaries and assaults.

Anthony Quinn

Anthony Quinn testified in support of a liquor license moratorium in Langdon Park based upon his personal experience with the existing nightclubs. The existing establishments create a substantial amount of noise which disturbs him and his family. He has observed persons having sex and drinking alcoholic beverages in public.

Mr. Quinn also has concerns about parking. He relayed one incident in particular in which someone blocked his car; preventing him from leaving his home. He contacted the police who subsequently determined that the car was stolen. It took the police five (5) hours to remove the car.

Yolanda Odunsi

Yolanda Odunsi, a thirteen (13)-year resident of the Langdon Park community, testified in support of the moratorium request. Ms. Odunsi testified about the adverse impact on peace, order, and quiet that the existing nightclubs in the area have had on the community. Specifically, she testified regarding the significant amount of litter that she routinely sees during her morning walks, as well as the inappropriate flyers advertising parties at local nightclubs.

Traffic and parking is a significant concern for Ms. Odunsi as well. She has to alter her route home in the evenings in order to avoid traffic. According to Ms. Odunsi, doing so has added ten (10) to fifteen (15) minutes to her commute time, increased her travelling expenses for gas, and reduced the amount of time that she would ordinarily have to spend with her son.

Dolores Bushong

Dolores Bushong, a twenty-four (24)-year resident of the community, had enjoyed the new developments in her neighborhood with the arrival of nearby grocery stores and restaurants. She, however, is not pleased with the number of nightlife establishments in the area. Ms. Bushong frequently hears music and bass thumping from the nightclubs located on Queens Chapel Road, N.E. This noise has prevented her from fully enjoying her home. She argues that there are enough nightlife establishments in the area and that a moratorium needs to be put into place to prevent future ones from opening in the community.

Drew Hubbard, Woodridge Civic Association, President

Drew Hubbard, testifying on behalf of the Woodridge Civic Association, expressed his support for the moratorium on liquor licenses in Langdon Park. Mr. Hubbard testified that the existing nightclubs have had an extreme adverse impact on traffic in the area. The criminal activity associated with the establishments is also of concern to Mr. Hubbard, including but not limited to assaults, public intoxication, vehicle thefts, sexual assaults, and vandalism. He also testified to the amount of trash and litter resulting from persons frequenting these nightlife establishments. Mr. Hubbard is concerned that additional nightclubs and taverns would exacerbate the communities' existing problems.

Ida B. Springfield

Ida Springfield, a forty (40)-year resident of the Langdon Park/Woodridge community, submitted written comments supporting a liquor license moratorium in Langdon Park. Ms. Springfield expressed concern about the Queens Chapel/Bladensburg roads corridor, and parts of New York Avenue, becoming a haven for nightclubs due to the low rent and inexpensive warehouses. Ms. Springfield stated that the existing nightlife establishments bring in thousands of people on the weekends; creating traffic and parking problems for residents. Ms. Springfield noted that persons frequenting the nightclubs routinely loiter in the neighborhoods; disturbing residents' peace, order, and quiet of their homes. Finally, she expressed concern about the community's tarnished image held by outsiders who believe the neighborhood is unsafe because of the nightclubs.

Lola Jones, Matthew Goedecke, and Marshall Cusaac

Lola Jones, Matthew Goedecke, and Marshall Cusaac have lived in the Langdon Park/Woodridge community for thirty (30), twenty-five (25), and eight (8) years, respectively. They each submitted written testimony supporting the moratorium request. They expressed their concerns about the undeveloped areas in the Langdon Park community attracting additional nightclub owners who locate there due to the inexpensive real estate. They are upset about the

large number of people who travel to the area to go to these nightlife establishments; creating traffic and parking problems for the community. They also expressed concerns about persons loitering in the neighborhoods and the criminal activity associated with the nightlife establishments. Ms. Jones recalled the five (5) instances her car was struck by intoxicated persons leaving the clubs.

Overall, Ms. Jones, Mr. Goedecke, and Mr. Cusaac stated that the existing nightlife establishments have had an adverse impact on the peace, order, and quiet of their communities and that they believe adding additional nightlife establishments would exacerbate the problem and not bring any additional value to their communities. For these reasons, they support a liquor license moratorium.

Shaina Ward

Shaina Ward, a two (2)-year resident of the Langdon Park/Woodridge community submitted written testimony in support of the moratorium. She is concerned about the community being neglected and underdeveloped. She believes the community is being overrun by nightlife establishments, which is burdening the community. Ms. Ward noted a variety of problems associated with the existing nightlife establishments, including loitering, traffic, crime, loud noise, and aggressive behavior. She is worried about additional nightclubs opening in the area, thereby, further burdening the community. Therefore, she supports the implementation of a moratorium.

Carole Sneed

Carole Sneed, a two (2)-year resident of the Langdon Park/Woodridge community submitted written testimony supporting the moratorium request which she believes is a "necessity [for providing the] community with much needed relief from an overconcentration of large-scale nightlife and entertainment establishments." Similar to others in the community, Ms. Sneed stated that the nightclub owners are attracted to the area because the rental prices are low and the warehouses are inexpensive. She noted that the existing nightlife establishments flood the neighborhoods with patrons going to the clubs; causing traffic and parking problems. Ms. Sneed also expressed concern regarding loitering and criminal activity associated with the nightlife establishments. In particular, she recalled two shootings she personally witnessed from her bedroom window. For all of these reasons, Ms. Sneed supports the implementation of a moratorium in Langdon Park.

Jonathan Eng

Jonathan Eng is a five (5)-year resident of the Langdon Park/Woodridge community and a real estate agent. Mr. Eng submitted written testimony supporting the moratorium. Mr. Eng stated that in his experience, the current nightclubs have had an adverse effect on real property values. He provided numerous examples of homes staying on the market for an extended period of time and selling well below the original asking prices.

In addition to the adverse effect on real property values, Mr. Eng noted that the nightlife establishments have created significant traffic and parking problems in the community. He also expressed concern about persons loitering in the neighborhoods and engaging in criminal activities, including but not limited to, doing drugs, having sex in public, and generally disturbing the peace. He recalled having to purchase soundproof windows so that he could drown out the noise. Mr. Eng believes that the community would thrive if a liquor license moratorium were put into place.

Mark Lee, D.C. Nightlife Hospitality Association, Executive Director

Mark Lee testified on behalf of the D.C. Nightlife Hospitality Association (DCNHA) in opposition of the Langdon Park moratorium request. Mr. Lee presented two primary arguments why the Board should not grant the moratorium request. First, it is DCNHA's position that barring certain liquor license classes would have a detrimental impact on the hospitality industry. Specifically, Mr. Lee argues that a moratorium on class CT, CN, CX, and CR retailer licenses would be particularly onerous and prevent dining environment enhancements which are popular in other parts of the District. In addition, Mr. Lee suggests prohibiting certain liquor licenses will hinder development in the Langdon Park community.

Secondly, Mr. Lee argues the moratorium proponents' concerns (*i.e.*, crime, noise, traffic, and parking) will not be addressed by implementing a moratorium. Mr. Lee argues that the best way to address these concerns is through the protest hearing process. It is Mr. Lee's position that the Board should address these, and similar appropriateness standard concerns, on a case-by-case basis when new licenses are protested as opposed to issuing a blanket prohibition on liquor licenses.

Board's Decision

The Board took the views of ANC 5C and all other witnesses into consideration. The Board determined that the ANC's proposal to implement a moratorium on certain liquor licenses in the Langdon Park neighborhood is necessary to address the community's ongoing problems with the existing nightlife establishments and to avoid the exacerbation of existing problems. In reaching its decision, the Board gave great weight to the recommendations of ANC 5C as required by Section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3) (2014 Repl.) and D.C. Official Code § 25-609 (2012 Repl.)). After evaluating all of the testimony and comments, the Board finds that ANC 5C's proposal, supported by the LPCA, the Leaders' Group, and the petitioners within the Langdon Park community, is appropriate under at least two appropriateness standards, as required by D.C. Official Code § 25-352(a)(4).

First, with regard to peace, order, and quiet, the testimony presented at the hearing as well as the proposal submitted by ANC 5C revealed that there are significant problems in the Langdon Park/Woodridge communities with regard to peace, order, and quiet, including noise and litter.

The Board notes that residents have the right to the peaceful enjoyment of their homes. For the residents in the Langdon Park and Woodridge communities, their peaceful enjoyment is hindered

by the current nightlife establishments in the area, including Karma, Echostage, Bliss, Stadium, and Aqua Restaurant. The close proximity of these establishments to one another creates a cacophony of noise; thereby, encroaching upon residents' peaceful enjoyment of their homes. Noise from the nightlife establishments (*e.g.*, music), coupled with persons making noise leaving and returning to their cars after a night out, negatively impacts residents in the community. The Board received ample evidence of persons blaring music from their cars and opening and closing car doors.

Second, testimony received by the Board raised significant concerns with parking in the neighborhood as well as vehicular and pedestrian safety. Specifically, the Langdon Park and Woodridge communities have a limited number of public transportation options. As a result, patrons visiting these licensed establishments are forced to drive or take shared car services to get to the nightclubs in the area. This results in hundreds of people transgressing in a confined space; thus, creating significant traffic problems. Additionally, testimony received by the Board revealed that patrons of nightlife establishments are parking in the surrounding neighborhoods due to the limited off-site parking in the area. This, in turn, reduces and thereby reducing the availability of parking for nearby residents.

Lastly, the Board is persuaded by the evidence showing that the existing nightlife establishments have had an adverse impact on the real property values in the area in accordance with D.C. Official Code § 25-113(b)(2), and that adding more establishments would further exacerbate the problem. Mr. Eng, a real estate professional, presented ample evidence of how the nightlife establishments have adversely affected home sales. In this regard, the evidence shows that homes in the Langdon Park and Woodridge communities languish on the market for quite some time and then sell below the asking price.

While the Board is sympathetic to the moratorium supporters' desire to prevent all new class CT/DT, CN/DN, CX/DX retailer licensed establishments from opening in the area and for the moratorium to last five (5) years, the Board does not believe doing so would be in the best interest of economic development and the future of the community. Ward 5 is expanding with new businesses and residential properties. The Mayor and the Council for the District of Columbia have phenomenal plans for the District, including Ward 5. The Board does not want to stifle development by barring certain liquor licenses for a substantial length of time. As Mr. Lee stated in his written testimony, the Board is moving away from imposing moratoriums. The District's alcoholic beverage laws and regulations are capable of addressing many of the proponents' concerns while at the same time respecting business development. The law, however, does not address everything. It is for that reason that District law grants the Board the discretion and authorizes it to impose moratoriums when necessary.

The Board believes a balancing of the communities' desires, coupled with economic development, is necessary. As such, the Board has decided on the following:

1. The number of class CN and CX retailer licenses, collectively, in the Langdon Park Moratorium Zone shall not exceed three (3). The Board acknowledges that more than three (3) CN and CX retailer licenses currently exist in the proposed moratorium zone. Those existing retailer licensed establishments will be exempt;

2. New entertainment endorsements shall not be issued for class CR and CT retailer licenses; and
3. The moratorium shall remain in effect for three (3) years.

For the aforementioned reasons, the Board gives notice, that on September 7, 2016, it adopted the Langdon Park Moratorium Zone Notice of Proposed Rulemaking by a vote of five (5) to zero (0). The Board gives notice of intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*. In accordance with D.C. Official Code § 25-211(b), these proposed rules will be transmitted to the Council for the District of Columbia (Council) for a ninety (90)-day period of review. The Board will not adopt the rules as final prior to the expiration of the ninety (90)-day review period, unless approved by Council resolution.

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new Section 311 to read as follows:

311 LANGDON PARK MORATORIUM ZONE

311.1 The number of retailer's licenses class CN and CX permitted in the Langdon Park Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from the intersection of Bladensburg Road, N.E. and 24th Place, N.E., Washington, D.C., shall not exceed three (3). No new entertainment endorsements for class CR and CN retailer's licenses shall be issued in the moratorium zone.

311.2 The Langdon Park Moratorium Zone is more specifically described as the area bounded by a line beginning at the 2200 block of 24th Place, N.E.; continuing in a northeast direction to the 2200 block of 25th Place, N.E.; continuing east to the 2400 block of Bladensburg Road N.E.; continuing in a southeast direction to the 2800 block of V Street N.E.; continuing southwest along the north side of the 2700 block of New York Avenue, N.E. to the 2000 block of Bladensburg Road, N.E.; continuing in a northwesterly direction to the 2200 block of Adams Place, N.E.; continuing north to the 2100 block of Queens Chapel Road, N.E.

311.3 All hotels, whether present or future, shall be exempt from the Langdon Park Moratorium Zone.

311.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CN or CX within the Langdon Park Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

311.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Langdon Park Moratorium Zone to a new location within the Langdon Park Moratorium Zone.

311.6 A license holder outside the Langdon Park Moratorium Zone shall not be permitted to transfer its license to a location within the Langdon Park Moratorium Zone.

311.7 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.

311.8 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.

311.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in *D.C. Register*.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to martha.jenkins@dc.gov.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF PROPOSED RULEMAKING

The Chief Procurement Officer (CPO) of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the "Act"), hereby gives notice of the intent to adopt the following rulemaking to amend Chapter 24 (Types of Contracts) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking updates Chapter 24 and implements the provisions in the Act that delineate what types of contracts are appropriate for use in District procurements, and the standards governing their formation. The current Chapter 24 contains regulations that are outdated and inconsistent with the Act.

The CPO gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 24, TYPES OF CONTRACTS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:

Section 2400, GENERAL PROVISIONS, is amended to read as follows:

2400 GENERAL PROVISIONS

2400.1 The contracting officer shall use the type of contract, or combination of types of contracts, in accordance with the provisions of this chapter that is most appropriate to the circumstances of each procurement, and that serves the best interests of the District.

2400.2 In accordance with § 501 of the Procurement Practices Reform Act of 2010, D.C. Official Code § 2-355.01, a cost-plus-a-percentage-of-cost type contract shall not be used. Except where a prime contract is a firm-fixed-price contract, a cost-plus-percentage-of-cost type subcontract shall not be used.

Section 2401, SELECTING CONTRACT TYPES, is amended to read as follows:

2401 SELECTING CONTRACT TYPES

2401.1 The contracting officer shall identify the type of contract, or combination of types of contracts, to be used prior to solicitation. The solicitation shall inform bidders of the type of contract, or combination of types of contracts, to be used.

2401.2 In selecting the type of contract to be used, the contracting officer shall consider the following factors:

(a) The type and complexity of the good or service being procured;

(b) Price competition;

(c) The difficulty of estimating performance costs;

(d) The administrative costs to both the contractor and the District;

(e) The urgency of the requirement;

(f) The length of contract performance;

(g) Any concurrent contracts;

(h) The risk involved;

(i) The stability of material or commodity market prices or wage levels;

(j) The contractor's technical capability and financial responsibility; and

(k) Any other factor the consideration of which the contracting officer believes will better inform the choice of contract type.

Section 2402, FIXED-PRICE CONTRACTS, is amended to read as follows:

2402 FIXED-PRICE CONTRACTS

2402.1 Fixed-price contracts may provide for a firm price or, in appropriate cases, an adjustable price.

2402.2 The contracting officer shall use a firm-fixed-price contract when the risk involved is minimal (or can be predicted with an acceptable degree of certainty) and when fair and reasonable prices can be established. However, if a reasonable basis for firm-fixed pricing does not exist, the contracting officer may consider other contract types, or combination of types.

2402.3 Fixed-price contracts providing for an adjustable price may include a price ceiling, a target price (including target cost), or both. Unless otherwise specified in the contract, the price ceiling or target price shall be subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

2402.4 A firm-fixed-price contract shall not provide for a price that is subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

Section 2403, FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS, is amended to read as follows:

2403 FIXED-PRICE CONTRACTS WITH ECONOMIC PRICE ADJUSTMENTS

2403.1 The contracting officer shall not use a fixed-price contract with economic price adjustment unless the contracting officer determines that it is necessary to protect the contractor and the District against significant fluctuations in labor or material costs, or to provide for contract price adjustment in the event of changes in the contractor's established prices.

2403.2 A fixed-price contract with economic price adjustment shall provide for upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

2403.3 An economic price adjustment may be one (1) of the following general types:

(a) Adjustment based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items;

(b) Adjustment based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance; or

(c) Adjustment based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

2403.4 For use of economic price adjustments in procurements by competitive sealed bids, the contracting officer shall follow the procedures set forth in § 1542 of Chapter 15 (Procurement by Competitive Sealed Bidding) of this title.

2403.5 The contracting officer may use a fixed-price contract with economic price adjustment when the following factors are applicable:

(a) There is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance; and

(b) Contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract.

2403.6 Price adjustments based on established catalog prices shall be restricted to industry-wide contingencies. Industry-wide contingencies shall be those affecting a particular industry as a whole, and shall not depend upon circumstances within the contractor's control.

2403.7 Price adjustments based on labor and material costs shall be limited to contingencies beyond the contractor's control.

2403.8 When establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under the economic price adjustment clause.

2403.9 In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

Section 2404, FIXED-PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION, is amended to read as follows:

2404 FIXED-PRICE CONTRACTS WITH PROSPECTIVE PRICE REDETERMINATION

2404.1 The contracting officer may use a fixed-price contract with prospective price redetermination in procurements of quantity production or services for which it is possible to negotiate a fair and reasonable firm-fixed-price for an initial period, but not for subsequent periods of contract performance as provided in § 2404.4 of this chapter.

2404.2 The contracting officer shall not use a fixed-price contract with prospective price redetermination unless all of the following apply:

(a) The contracting officer has determined that the conditions for use of a firm-fixed-price contract are not present and a fixed-price incentive contract would not be more appropriate;

(b) The contractor's accounting system is adequate for price redetermination;

(c) The prospective pricing periods can be made to conform with the operation of the contractor's accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

2404.3 When the contracting officer uses a fixed-price contract with prospective price redetermination, the initial period shall be the longest period for which it is possible to negotiate a fair and reasonable firm-fixed-price. Each subsequent pricing period shall be at least twelve (12) months.

2404.4 A fixed-price contract with prospective price redetermination may provide for a price ceiling based on evaluation of the uncertainties involved in performance and

their possible cost impact. The price ceiling shall provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of provisions for an equitable adjustment or other revision of the contract price under stated circumstances.

Section 2405, COST-REIMBURSEMENT CONTRACTS, is amended to read as follows:

2405 COST-REIMBURSEMENT CONTRACTS

2405.1 The contracting officer may use a cost-reimbursement contract only when:

(a) Uncertainties involved in contract performance either do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract; or

(b) Circumstances prevent requirements from being sufficiently defined to allow for a fixed-price contract.

2405.2 The contracting officer may use a cost-reimbursement contract only when the following circumstances apply:

(a) The contractor's accounting system is adequate for determining costs applicable to the contract;

(b) Appropriate District surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used; and

(c) The use of a cost-reimbursement contract is likely to be less costly than any other type of contract, or it is impractical to obtain goods or services of the kind or quality required without the use of a cost-reimbursement contract.

2405.3 Each cost-reimbursement contract shall contain a clause that:

(a) Indicates that only those costs determined by the contracting officer to be reasonable, allowable, and allocable in accordance with Chapter 33 (Contract Cost Principles) of this title, will be reimbursable; and

(b) Establishes a stated price ceiling.

2405.4 The contracting officer may use a cost-plus-fixed-fee contract when contracting for efforts that might otherwise present too great a risk to the contractor, such as when the contract is for the performance of research, preliminary exploration or a study, and the level of effort is unknown. The contract shall set a maximum allowable fee.

2405.5 A cost-plus-fixed-fee contract may be in either a completion form or term form. When using the completion form, the contracting officer shall describe the scope of work by stating a definite goal or target and specifying an end product. When using the term form, the contracting officer shall describe the scope of work in general terms and obligate the contractor to devote a specified level of effort for a stated time period.

2405.6 When using a cost-plus-fixed-fee contract, the completion form shall be preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work. The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

Section 2406, INCENTIVE CONTRACTS, is amended to read as follows:

2406 INCENTIVE CONTRACTS

2406.1 The contracting officer may use an incentive contract when a firm-fixed-price contract is not appropriate and the required goods or services can be procured at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

2406.2 The contracting officer may use an incentive contract when it is necessary to establish reasonable and attainable targets that are clearly understandable by the contractor, and to provide appropriate incentive arrangements designed to motivate contractor efforts and discourage contractor inefficiency and waste.

2406.3 When predetermined formula-type incentives on technical performance or delivery are included, increases in profit or fee shall be provided only for achievement that surpasses the targets, and decreases shall be provided for to the extent that targets are not met.

2406.4 The contracting officer shall apply incentive increases or decreases to performance targets rather than minimum performance requirements.

2406.5 Incentive contracts may be fixed-price incentive contracts or cost-reimbursement incentive contracts.

2406.6 Cost-reimbursement incentive contracts shall be subject to the provisions of § 2405 of this chapter. Fixed-price incentive contracts shall be subject to the provisions of § 2408 of this chapter.

Section 2407, TYPES OF INCENTIVES, is amended to read as follows:

2407 TYPES OF INCENTIVES

2407.1 Incentive contracts shall include cost incentives, which take the form of a profit or fee adjustment formula. No incentive contract shall provide for other incentives without also providing for a cost incentive.

2407.2 Except for cost-plus-award-fee contracts, incentive contracts shall include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides for the following:

(a) Actual cost that meets the target will result in the target profit or fee;

(b) Actual cost that exceeds the target will result in downward adjustment of the target profit or fee; and

(c) Actual cost that is below the target will result in upward adjustment of the target profit or fee.

2407.3 Technical performance incentives may be considered in connection with specific product characteristics or other specific elements of the contractor's performance.

2407.4 Technical performance incentives shall be designed to tailor profit or fee to results achieved by the contractor, compared with specified target goals. The contract shall be specific in establishing performance test criteria (such as testing conditions, instrumentation precision, and data interpretation) in order to determine the degree of attainment of performance targets.

2407.5 The contracting officer may consider delivery incentives when meeting a required delivery schedule is a significant District objective.

2407.6 The contracting officer shall specify in incentive arrangements the application of the reward-penalty structure in the event of District-caused delays, or other delays beyond the control and without the fault or negligence of the contractor or a subcontractor.

Section 2408, FIXED-PRICE INCENTIVE CONTRACTS, is amended to read as follows:

2408 FIXED-PRICE INCENTIVE CONTRACTS

2408.1 A fixed-price incentive contract may be used when the following factors apply:

(a) A firm-fixed-price contract is not suitable;

(b) The nature of the goods or services being procured, and the specific circumstances of the procurement, are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;

(c) If the contract also includes incentives on technical performance or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work;

(d) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(e) Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial contract negotiations.

2408.2 A fixed-price incentive contract shall specify a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula, which shall yield the following results:

(a) If the final cost is less than the target cost, application of the formula will result in a final profit greater than the target profit;

(b) If the final cost is more than the target cost, application of the formula will result in a final profit less than the target profit, or a net loss; or

(c) If the final negotiated cost exceeds the price ceiling, the contractor will absorb the difference as a loss.

2408.3 In a fixed-price incentive contract with a firm target, the price ceiling shall be the maximum that may be paid to the contractor, except for any adjustment made pursuant to other contract clauses.

2408.4 When the contractor completes performance, the contracting officer and the contractor shall negotiate the final cost, and apply the profit adjustment formula to determine final price.

Section 2409, COST-PLUS-AWARD-FEE CONTRACTS, is amended to read as follows:

2409 COST-PLUS-AWARD-FEE CONTRACTS

2409.1 A cost-plus-award-fee contract is a type of cost reimbursement contract and may only be used when the criteria set forth in § 2405.1 of this chapter are satisfied.

2409.2 A cost-plus-award-fee contract may be used when the following factors apply:

(a) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;

(b) The likelihood of meeting the procurement objective will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the District with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(c) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

2409.3 A cost-plus-award-fee contract shall provide for a fee consisting of a base amount fixed at inception of the contract and an award amount that the contractor may earn in whole or in part during performance. Each contract shall state a maximum award amount that may be paid under the contract.

2409.4 The amount of the award fee to be paid shall be determined by the contracting officer's evaluation of the contractor's performance in terms of the criteria stated in the contract.

2409.5 The award fee determination shall be made unilaterally by the contracting officer and shall not be subject to appeal or the contractor's rights under the disputes clause in the contract.

2409.6 A cost-plus-award-fee contract shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the area in which improvement is expected.

Section 2415, DEFINITE-QUANTITY CONTRACTS, is amended to read as follows:

2415 DEFINITE-QUANTITY CONTRACTS

2415.1 The contracting officer may use a definite-quantity contract when it can be determined in advance that a specific quantity of goods or services will be required during the contract period, and the goods or services are regularly available or will be available after a short lead time.

Section 2416, TERM CONTRACTS, is amended to read as follows:

2416 TERM CONTRACTS

2416.1 The contracting officer may use a term contract (either a requirements contract or an indefinite-quantity contract) when the exact quantities of goods or services are not known at the time of contract award. Term contracts shall be subject to the

provisions of this section and § 2103 of Chapter 21 (Required Sources of Goods and Services) of this title.

2416.2 A term contract may also specify maximum or minimum quantities that the District may order under each individual order and the maximum that the District may order during a specified period of time.

2416.3 The contracting officer may use a requirements contract when the contracting officer anticipates recurring requirements but cannot predetermine the precise quantities of goods or services that designated District agencies will need during a definite period.

2416.4 Each agency designated in a requirements contract shall be required to fill all actual purchase requirements for the specific goods or services from the requirements contract.

2416.5 The contracting officer shall include the following in each contract and solicitation for a requirements contract:

(a) A realistic estimate of the total quantity that will be ordered, based on the most current information available; and

(b) A clause stating that the estimate is not a representation to a bidder, offeror, or contractor that the estimated quantity will actually be required or ordered, or that conditions affecting the requirements, will be stable or normal.

2416.6 If feasible, a requirements contract shall state the maximum limit of the contractor's obligation to deliver and the District’s obligation to order.

2416.7 For requirements contracts, the contracting officer shall execute the contract without the obligation of funds. Funds shall be obligated by each agency at the time orders are issued under the contract.

2416.8 The contracting officer may use an indefinite-quantity contract when the contracting officer cannot predetermine, above a specified minimum, the precise quantity of goods or services that will be required during the contract period.

2416.9 An indefinite-quantity contract shall require the District to order and the contractor to furnish at least the stated minimum quantity of goods or services. The contractor shall also be required to furnish, if and as ordered, any additional quantities, not to exceed a stated maximum.

Section 2417, ORDERING UNDER TERM CONTRACTS, is amended to read as follows:

2417 ORDERING UNDER TERM CONTRACTS

2417.1 The contracting officer shall include in the schedule of requirements in each term contract the names of the agency or agencies authorized to issue orders under the contract.

2417.2 Each order placed under a term contract shall contain the following information:

(a) Date of the order;

(b) Contract number and an order number;

(c) Item number, description, quantity, and unit price;

(d) Delivery or performance date;

(e) Place of delivery or performance;

(f) Packaging, packing, and shipping instructions, if any;

(g) Accounting and appropriations data; and

(h) Any other pertinent information.

Section 2420, TIME-AND-MATERIALS CONTRACTS, is amended to read as follows:

2420 TIME-AND-MATERIALS CONTRACTS

2420.1 A time-and-materials contract may be used only when:

(a) It is not possible at the time of executing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence; and

(b) The contracting officer determines, in writing, that no other type of contract is suitable.

2420.2 A time and materials contract shall include a price ceiling that the contractor exceeds at its own risk.

2420.3 A time-and-materials contract shall include direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, profit, and materials required at cost.

2420.4 When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, a time and materials contract may provide for charging material on a basis other than cost if the following factors apply:

(a) The total estimated contract price does not exceed fifty thousand dollars ($50,000), or the estimated price of material charged does not exceed twenty percent (20%) of the estimated contract price;

(b) The material to be charged is identified in the contract;

(c) No element of profit on material charged is included as profit in the fixed hourly labor rates; and

(d) The contract provides that the price to be paid for the material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the District, and that in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

Section 2421, LABOR-HOUR CONTRACTS, is amended to read as follows:

2421 LABOR-HOUR CONTRACTS

2421.1 When materials are not required, the contracting officer may use a labor-hour contract in accordance with the provisions of § 2420 of this chapter.

Section 2425, LETTER CONTRACTS, is amended to read as follows:

2425 LETTER CONTRACTS

2425.1 The contracting officer may use a letter contract when the District's interests require that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definite as possible under the circumstances.

2425.2 A letter contract is always associated with a definitive contract, and a letter contract by itself cannot be the sole document used for a complete procurement.

2425.3 A letter contract shall not commit the District to a definitive contract in excess of the funds available at the time the letter contract is executed.

2425.4 A letter contract shall not be entered into without competition, except as provided for in Chapter 17 (Sole Source and Emergency Procurements) of this title.

2425.5 A letter contract shall not be amended to satisfy a new requirement unless the new requirement is inseparable from the existing contract. Any amendment shall be subject to the same requirements as a new letter contract.

2425.6 When a letter contract is executed, the contracting officer shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause indicating the maximum liability of the District under the letter contract.

2425.7 The maximum liability to the District under a letter contract shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the District's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract pursuant to § 2425.5 of this chapter.

2425.8 The contracting officer shall execute a definitive contract within one hundred and twenty (120) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The contracting officer may extend the letter contract but shall nevertheless execute a definitive contract prior to completion of fifty percent (50%) of the work to be performed.

2425.9 In procurements by other than competitive sealed bids, if the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement regarding price or fee, the contractor shall be required to continue the work and the contracting officer may, with the approval of the Director, determine a reasonable price or fee, subject to review in accordance with Chapter 38 (Protests, Claims, and Disputes) of this title.

2425.10 Prior to the execution of a letter contract, the contracting officer shall ensure that funds are encumbered for obligation in the amount of the maximum District liability for the term of the letter contract.

Section 2499, DEFINITIONS, is amended to read as follows:

2499 DEFINITIONS

2499.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Commercial-type products - a product such as an item, material, component, subsystem or system, sold or traded to the general public in the course of normal business operations at prices based on established catalog or market prices.

Cost - the amount paid or charged for something, excluding the contractor's profit.

Cost-plus-award-fee contract - a cost-reimbursement type contract that provides for a fee consisting of an amount fixed at the beginning of the contract and potential award of additional fee amounts based upon a judgmental evaluation by the contracting officer, sufficient to provide motivation for excellence in contract performance.

Cost-plus-fixed-fee contract **-** a cost-reimbursement type contract which provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

Cost-plus-incentive-fee contract - a cost-reimbursement type contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. After performance of the contract, the fee payable to the contractor is determined in accordance with a negotiated formula.

Cost-reimbursement contract - a contract which provides for payment of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by, the contracting officer.

Definite-quantity contract - a contract that provides for delivery of a definite quantity of specific goods or services for a fixed period, with deliveries to be scheduled at designated locations.

Definitive contract - the contract executed pursuant to letter contract commitment.

Director - the Director of the Office of Contracting and Procurement or the District of Columbia Chief Procurement Officer.

Firm-fixed-price contract - a fixed-price contract that provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor, and provides maximum incentive for the contractor to control cost and perform effectively.

Fixed-price contract with economic price adjustment - a fixed-price contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

Fixed-price contract with prospective price redetermination - a contract type which provides for a firm-fixed-price for an initial period of contract deliveries or performance and for a redetermination of the price for subsequent periods of performance at a stated time or times during performance.

Fixed-price incentive contract - a fixed-price type contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total costs to total target costs. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula.

Incentive contract - a fixed-price or cost-reimbursement type contract which provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

Indefinite-quantity contract - a contract that provides for an indefinite quantity, within written stated limits, of specific goods or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the District to order and the contractor to furnish at least a stated minimum of goods or services.

Labor-hour contract - a contract that is a variant of the time-and-materials contract differing only in that materials are not supplied by the contractor.

Letter contract - a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering goods or performing services

Maximum liability - the amount, not to exceed fifty percent (50%) of the overall contract price ceiling, obligated by a letter contract over which the District cannot be liable if the letter contract is terminated.

Price - the amount the District anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

Price ceiling - an amount established during negotiations or at the discretion of the contracting officer which constitutes the maximum that may be paid to the contractor for performance of a contract.

Requirements contract - a contract that provides for the filling of all actual purchase requirements of designated District agencies for specific goods or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as required.

Target price - an amount established by the contracting officer during negotiations to encourage the contractor to control contract costs. The contractor's final profit varies inversely with the final cost of the contract.

Term contract - a requirements contract or an indefinite-quantity contract.

Time-and-materials contract - a type of contract that provides for the procurement of goods or services on the basis of direct labor hours at specified fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit) and material at cost.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments to the Chief Procurement Officer, 441 4th Street N.W., 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov, or by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be requested at the same address, e-mail, or telephone number as above.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl.)), and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of her intent to adopt the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to ban the use of packaging and labeling designed to appeal to children, to ban the use of the words "candy" and "candies" on the labeling or packing of medical marijuana products, and to prohibit the production of medical marijuana products that appear to be candy or misleading labeling resembling popular brand products that may appeal to children. The purpose of these prohibitions is to reduce or prevent accidental ingestion of medical marijuana by children.

The Director intends to adopt these rules as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 56, GENERAL OPERATING REQUIREMENTS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5607, LABELING AND PACKAGING OF MEDICAL MARIJUANA, is amended as follows:

Subsection 5607.1(a) is amended to read as follows:

5607.1 No medical marijuana shall be dispensed or distributed to a qualifying patient or caregiver unless the container in which it is distributed bears a legible label, firmly affixed, stating:

(a) The name of the cultivation center where the medical marijuana was produced and the manufacture date;

…

Subsection 5607.1(i) is amended to read as follows:

5607.1

…

(i) A statement that the product is for medical use, not for resale or transfer to

another person, containing the following language: "Contains Marijuana. Keep out of the reach of children."

Subsection 5607.10 is redesignated as Subsection 5607.17.

New Subsections 5607.10 - 5607.16 are added to read as follows:

5607.10 A cultivation center or dispensary shall not use the word(s) "candy" or "candies" on the product, packaging, or labeling of any medical marijuana product.

5607.11 A cultivation center or dispensary shall not place any content, image, or labeling that specifically targets individuals under the age of twenty-one (21), including but not limited to, cartoon characters or similar images, on the product, packaging, or a container holding medical marijuana.

5607.12 A cultivation center that produces edible marijuana products or marijuana-infused products shall ensure that all edible marijuana products or marijuana-infused products offered for sale:

(a) Are labeled clearly and unambiguously as medical marijuana;

(b) Are not presented in packaging or with labeling that is appealing to children; and

(c) Have packaging designed or constructed to be significantly difficult for children under five (5) years of age to open, but not normally difficult for adults to use properly.

5607.13 A cultivation center or dispensary shall not use or allow the use of any content, image, or labeling on a medical marijuana product that is offered for sale if the container does not precisely and clearly indicate the nature of the contents or that in any way may deceive a customer as to the nature, composition, quantity, age, or quality of the product.

5607.14 Packaging of edible medical marijuana products or medical marijuana-infused products shall not bear any:

(a) Resemblance to the trademarked, characteristic or product-specialized packaging of any commercially available candy, snack, baked good or beverage;

(b) Statement, artwork or design that could reasonably mislead any person to believe that the package contains anything other an edible medical marijuana product or medical marijuana-infused products; or

(c) Seal, flag, crest, coat of arms, or other insignia that could reasonably

mislead any person to believe that the product has been endorsed, manufactured, or used by any state, county or municipality or any agency thereof.

5607.15 The Director may prohibit a cultivation center or dispensary from selling any medical marijuana product upon a finding by the Director that the product is deceptively labeled or branded in a manner which is misleading about its content or that contains injurious or adulterated ingredients.

5607.16 In addition to the other labeling requirements of this section, all edible marijuana products, and marijuana-infused products shall be labeled in accordance with 16 C.F.R. Part 1700 (2016), Poison prevention packaging; 21 C.F.R. Part 101 (2016), Food Labeling, as specified in Section 1102 of the District Food Code Regulations (Title 25-A DCMR).

Section 5608, INGESTIBLE ITEMS, is amended as follows:

New Subsections 5608.2 - 5608.5 are added to read as follows:

5608.2 Marijuana-infused products that require cooking or baking by the consumer are prohibited.

5608.3 Marijuana-infused products that are especially appealing to children are prohibited.

5608.4 Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

5608.5 A cultivation center shall not process or transfer a marijuana item:

(a) That by its shape, design or flavor is likely to appeal to minors, including but not limited to:

(1) Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or

(2) Products in the shape of an animal, vehicle, person or character;

(b) That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items;

(c) That contains dimethyl sulfoxide (DMSO).

Chapter 99, DEFINITIONS, is amended as follows:

Section 9900, DEFINITIONS, Subsection 9900.1, is amended as follows:

The following terms with the ascribed meaning are added as follows:

Commercially manufactured food- means food prepared and/or processed in a licensed food facility.

Concentrate- means products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a THC concentration greater than ten percent, or a substance obtained by separating cannabinoids from marijuana by:

(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure.

Edible medical marijuana products- means a food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated, but does not include a tincture or a cannabinoid product intended to be placed under the tongue or in the mouth using a dropper or spray delivery method, such as but not limited, to a sublingual spray.

Medical marijuana-infused products- means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable medical marijuana or marijuana concentrates. The term "marijuana-infused products" does include tinctures and topicals.

Tincture- means a solution of alcohol, cannabinoid concentrate, or extract, which may or may not include other ingredients intended for human consumption or ingestion.

Topical- means a cannabinoid product intended to be applied to skin or hair.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002.

Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 905 (2014 Repl.)), Section 6 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03 (2014 Repl.)), and Mayor's Order 2016-077, dated May 2, 2016, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapter 4 (Motor Vehicle Title and Registration) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules, which apply to all pending applications, will clarify the authority of the Director to rescind a personalized identification tag and provide the same process for rejection or rescission of organizational tags as for personalized identification tags.

The Director also gives notice of intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:

Section 423, PERSONALIZED IDENTIFICATION TAGS, is amended as follows:

Subsection 423.13 is amended by inserting the phrase "or rescind the issuance of any tag" after the word "content".

Section 433, ORGANIZATIONAL TAGS, is amended as follows:

A new Subsection 433.9 is added to read as follows:

433.9 The Director shall reject any proposed organizational tag or rescind the issuance of any organizational tag that conveys a message, or displays an image, that is confusing or offensive to the general public.

A new Subsection 433.10 is added to read as follows:

433.10 For the purposes of § 423.9, the Director shall reject or rescind the issuance of any organizational tag with a design or combination of letters or numbers that:

(a) Is vulgar, derogatory, profane, scatological or obscene, with any connotation, in any language;

(b) Connote, in any language, breast, genitalia, pubic area, or buttocks or relate to sexual or eliminatory functions.

(c) Connote, in any language (i) any illicit drug, narcotic, intoxicant, or related paraphernalia; (ii) the sale, user, or purveyor of such a substance; or (iii) the physiological state produced by such a substance;

(d) Refer, in any language, to a race, religion, color, deity, ethnic heritage, gender, sexual orientation, disability status, or political affiliation;

(e) Suggest, in any language, a government or governmental agency;

(f) Suggest, in any language, a privilege not given by law in this state; or

(g) Form, in any language, a slang term, abbreviation, phonetic spelling or mirror image of a word described in this subsection.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024, via email at dmvpubliccomments@dc.gov, or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*.

OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), pursuant to the authority set forth in D.C. Official Code § 42-1117 and § 47-920 (2012 Repl.); Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub.L. 109-356; D.C. Official Code § 1-204.24d (2014 Supp.)); and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000; hereby gives notice of the intent to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendment to Section 336 (Fees) clarifies that no recording fee shall be owed on instruments in which the District is a party or for instruments where the District has a beneficial interest in the instrument.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Section 336, FEES, Subsection 336.2 [RESERVED], is amended by striking "[RESERVED]" and replacing it with the following:

336.2 Where the District of Columbia is a party to an instrument submitted for recordation, or has a beneficial interest in an instrument submitted for recordation, no recordation fee shall be imposed for the recordation of such instrument; provided, that the instrument is being submitted for recordation by the District of Columbia, and is exempt from the tax imposed by D.C. Official Code § 42-1103 and D.C. Official Code § 47-903, or is otherwise not taxable thereunder.

Comments on this proposed rulemaking should be submitted to Sonia Kamboh, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Sonia Kamboh may be contacted by: mail at D.C. Office of Tax and Revenue, 1101 4th Street, S.W., Suite 750, Washington, D.C. 20024; telephone at (202) 442-6500; or, email at sonia.kamboh@dc.gov. Copies of this rule and related information may be obtained by contacting Sonia Kamboh as stated herein.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 08-06G
(Text Amendment – 11 DCMR)
Technical Corrections to Z.C. Order 08-06A

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitles B (Definitions, Rules of Measurement, and Use Categories); C (General Rules); D (Residential House (R) Zones); E (Residential Flat (RF) Zones); F (Residential Apartment (RA) Zones); G (Mixed-Use (MU) Zones); H (Neighborhood Mixed-Use (NC) Zone); I (Downtown (D) Zones); J (Production, Distribution, and Repair (PDR) Zones); K (Special Purpose Zones); U (Use Permissions); X (General Procedures); Y (Board of Zoning Adjustment Rules of Practice and Procedure); and Z (Zoning Commission Rules of Practice and Procedure) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) to make minor modifications and technical corrections to the amendments made by Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016.

A full explanation for the corrections and modification proposed may be found in the Office of Planning report, which appears as Exhibit 1 in this case, and which may be accessed on the Office of Zoning website at http://dcoz.dc.gov. Some corrections recommended by the Office of Planning in that report were already adopted in Z.C. Order Nos. 08-06D and 08-06E; those changes have been omitted from this notice.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold** underlined text and deletions are shown in ~~strikethrough~~ text):

Title 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Chapter 1, DEFINITIONS, § 100, DEFINITIONS, § 100.2, definition of "Continuing Care Retirement Community" is amended to read as follows:

Continuing Care Retirement Community: A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living~~,~~ **and** assisted living facilities, plus a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may **also** include ancillary facilities for the further enjoyment, service or care of the residents. The facility is

restricted to persons sixty (60) years of age or older or couples where either the husband or wife is sixty (60) years of age or older.

Chapter 3, GENERAL RULES OF MEASUREMENT, is amended as follows:

Subsection 318.7 of § 318, RULES OF MEASUREMENT FOR REAR YARDS, is amended to read as follows:

318.7 In the case of a corner lot in the **MU-1, MU-2,** MU-8, MU-9, **MU-15, MU-16,** MU-20, MU-21, **MU-23,** NC-13, and CG-3 zones, a court complying with the width requirements for a closed court as applicable for each zone may be provided in lieu of a rear yard. For the purposes of this section, the required court shall be provided above a horizontal plan beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of court.

Title 11-C DCMR, GENERAL RULES, is amended as follows:

Chapter 7, VEHICLE PARKING, is amended as follows:

Subparagraph (2) of paragraph (b) of § 701.8 of § 701, MINIMUM VEHICLE PARKING REQUIREMENTS, is amended to read as follows:

701.8 Required parking spaces shall be located either:

…[1]

(b) On another lot, subject to the following provisions:

…

(2) The off-site location may be located within a different zone, except that the off-site parking location for a use within any zone other than an R or RF zone ~~may~~ **shall** not be located within an R or RF zone, except ~~in accordance with the provisions of Subtitle D § 1602.2(o) and Subtitle E § 1102.2(j)~~ **parking for Transportation Infrastructure uses as permitted by Subtitle U § 202.1(q)**; and

…

Subsection 714.1 of § 714, SCREENING REQUIREMENTS FOR SURFACE PARKING, is amended to read as follows:

714.1 Screening shall be required for any external surface parking spaces ~~located~~ **except**:

(a) ~~Within a zone other than a PDR zone~~ **On a property located in a PDR zone that does not abut property that is not within a PDR zone**; **or**

[1] The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

(b) ~~In a PDR zone and abutting property that is not within a PDR zone~~ **On a property devoted to residential uses with a maximum of three (3) dwelling units.**~~; and~~

~~(c) Residential uses on lots with a maximum of three (3) dwelling units are not required to be screened~~.

Chapter 10, INCLUSIONARY ZONING, is amended as follows:

A new § 1002.6 is added to § 1002, BONUSES AND ADJUSTMENTS TO INCENTIVIZE INCLUSIONARY UNITS, to read as follows:

1002.6 A development exempted by Subtitle C § 1001.6(a) may, nevertheless, utilize the bonus density and zoning modifications provided for in this section.

Chapter 15, PENTHOUSES, is amended as follows:

Subsection 1500.3 of § 1500, PENTHOUSE GENERAL REGULATIONS, is amended to read as follows:

1500.3 A penthouse may house mechanical equipment or any use permitted within the zone, except as follows:

(a) Penthouse habitable space on a detached dwelling, semi-detached dwelling, rowhouse, or flat shall be limited pursuant to Subtitle C § 1500.4;

(b) Within residential zones in which the building is limited to **thirty-five feet (35 ft.) or** forty feet (40 ft.) maximum, the penthouse use shall be limited to penthouse mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;

(c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9; ~~and~~ **or**

(d) Penthouse habitable space is not permitted on any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east.

A new § 1501.5 is added to § 1501, PENTHOUSE HEIGHT, to read as follows:

1501.5 A chimney or smokestack may be erected to a height in excess of that authorized in the district in which it is located when required by other municipal law or regulation.

Subparagraph (2) of paragraph (c) of § 1502.1 of § 1502, PENTHOUSE SETBACKS, is amended as follows:

1502.1 Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:

…

(c) A distance equal to its height from the side building wall of the roof upon which it is located if:

…

(2) In the R-1 through ~~R-4~~ **R-F** zones, it is on any building not described in Subtitle C § 1502.1(c)(1) that is:

…

Chapter 16, PUBLIC EDUCATION, RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, is amended as follows:

Subsection 1604.2 of § 1604, DENSITY – GROSS FLOOR AREA (GFA) AND FLOOR AREA RATIO (FAR), is amended by correcting a reference in the appended table to zone name from M-3 to MU-3, to read as follows:

1604.2 Public education buildings and structures, public recreation and community centers, and public libraries shall be permitted a maximum floor area ratio as set forth in the following table:

TABLE C § 1604.2: FAR FOR PUBLIC EDUCATION BUILDINGS AND STRUCTURES, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

Zone	Structure	Max. FAR
...		
~~M-3~~ **MU-3**	Public school buildings and	1.8
	All other structures	As permitted by zone
…		

Title 11-D DCMR, RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), is amended as follows:

Subsection 202.2 of § 202, LOT OCCUPANCY, is repealed.

Subsection 203.1 of § 203, COURT, is amended to read as follows:

203.1 Where a court is provided, the court shall have the following minimum dimensions:

TABLE D § 203.1: MINIMUM COURT DIMENSIONS

Type of Structure	Min. Width Open Court	Min. Width Closed Court	Min. Area Closed Court
Single dwelling unit	Not applicable	Not applicable	Not applicable
All other structures	2.5 inches per 1 ft. of height of court, but not less than 6 ft.	2.5 inches per foot of height of court, but not less than 12 ft.	Twice the square of the required width of court dimension based on the height of the court, but not less than 250 **sq.** ft.

Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, is amended as follows:

Section 304, LOT OCCUPANCY, is amended as follows:

Subsection 304.1 is amended to read as follows:

304.1 The maximum permitted lot occupancy in the R-1-A, R-1-B, ~~and~~ R-2, and **R-3** zones shall be **as set forth in the following table:** ~~forty percent (40%).~~

TABLE D § 304.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-1-A	**Places of Worship** **All Other Structures**	**60%** **40%**
R-1-B	**Places of Worship** **All Other Structures**	**60%** **40%**
R-2	**Places of Worship** **All Other Structures**	**60%** **40%**
R-3	**Attached Dwellings** **Places of Worship** **All Other Structures**	**60%** **60%** **40%**

Subsection 304.2 is repealed.

Section 308, PERVIOUS SURFACE, is amended by standardizing the language in §§ 308.1-308.3, to read as follows:

308.1 The minimum **required** percentage of pervious surface ~~requirement~~ of a lot in the R-1-A or R-1-B zones shall be fifty percent (50%).

308.2 The minimum required **percentage of** pervious surface ~~requirement~~ of a lot in the R-2 zone shall be thirty percent (30%).

308.3 The minimum required **percentage of** pervious surface ~~requirement~~ of a lot in the R-3 zone shall be twenty percent (20%).

Section 309, SPECIAL EXCEPTION, is amended by deleting it in its entirety.

Chapter 4, TREE AND SLOPE PROTECTION RESIDENTIAL HOUSE ZONES - R-6 AND R-7, is amended as follows:

Subsection 404.1 of § 404, LOT OCCUPANCY, is amended to read as follows:

404.1 The maximum permitted lot occupancy in the R-6 and R-7 zones shall be **as set forth in the following table:** ~~thirty percent (30%)~~.

TABLE D § 404.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-6	All Structures	30%
R-7	All Structures	30%

Section 406, REAR YARD, §§ 406.2 and 406.3 are repealed (the provisions are stated in 11-D DCMR § 205).

Section 410, SPECIAL EXCEPTION, is repealed.

Chapter 5, FOREST HILLS TREE AND SLOPE RESIDENTIAL HOUSE ZONES - R-8, R-9, AND R-10, is amended as follows:

Subsection 504.1 of § 504, LOT OCCUPANCY, is amended to read as follows:

504.1 The maximum permitted lot occupancy in the R-8, R-9, and R-10 zones shall be **as set forth in the following table:** ~~thirty percent (30%).~~

TABLE D § 504.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-8	All Structures	30%
R-9	All Structures	30%

R-10	**All Structures**	**30%**

Section 510, SPECIAL EXCEPTION, is repealed.

Chapter 6, NAVAL OBSERVATORY/TREE AND SLOPE RESIDENTIAL HOUSE ZONE - R-11, is amended as follows:

Subsection 604.1 of § 604, LOT OCCUPANCY, is amended to read as follows:

604.1 The maximum permitted lot occupancy in the R-11 zone shall be **as set forth in the following table:** ~~thirty percent (30%).~~

TABLE D § 604.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-11	**All Structures**	**30%**

Section 610, SPECIAL EXCEPTION, is repealed.

Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES - R-12 AND R-13, is amended as follows:

Section 704, LOT OCCUPANCY, is amended as follows:

Subsection 704.1 is amended to read as follows:

704.1 The maximum permitted lot occupancy in the R-12 **and R-13** zone**s** shall be **as set forth in the following table:** ~~forty percent (40%).~~

TABLE D § 704.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-12	**Places of Worship** **All Other Structures**	**60%** **40%**
R-13	**Attached Dwellings** **Places of Worship** **All Other Structures**	**60%** **60%** **40%**

Subsection 704.2 is repealed.

Section 709, SPECIAL EXCEPTION, is amended by deleting it in its entirety.

Chapter 8, WESLEY HEIGHTS RESIDENTIAL HOUSE ZONES - R-14 AND R-15, is amended as follows:

Section 804, LOT OCCUPANCY, is amended as follows:

Subsection 804.1 is amended to read as follows:

804.1 The maximum permitted lot occupancy ~~for lots~~ in the R-14 and R-15 **zones shall be thirty percent (30%); except that:** ~~that are less than five thousand square feet (5,000 sq. ft.) shall be forty percent (40%).~~

(a) Structures on lots between five thousand square feet (5,000 sq. ft.) and six thousand six hundred and sixty-seven square feet (6,667 sq. ft.) may occupy up to two thousand square feet (2,000 sq. ft.); and

(b) Structures on lots less than five thousand square feet (5, 000 sq. ft.) may occupy up to forty percent (40%) of the area of the lot.

Subsections 804.2 and 804.3 are repealed.

Chapter 9, SIXTEENTH STREET HEIGHTS RESIDENTIAL HOUSE ZONE - R-16, is amended as follows:

Subsection 904.1 of § 904, LOT OCCUPANCY, is amended to read as follows:

904.1 The maximum permitted lot occupancy in the R-16 zone shall be **as set forth in the following table:** ~~forty percent (40%).~~

TABLE D § 904.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-16	Places of Worship All Other Structures	60% 40%

Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONES - R-17, is amended as follows:

Subsection 1004.1 of § 1004, LOT OCCUPANCY, is amended to read as follows:

1004.1 The maximum permitted lot occupancy ~~for attached dwellings~~ in the R-17 zone shall be **as set forth in the following table:** ~~sixty percent (60%). The maximum permitted lot occupancy for all other structures in the R-17 zone shall be forty percent (40%).~~

TABLE D § 1004.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-17	Attached Dwellings Places of Worship All Other Structures	60% 60% 40%

Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, is amended as follows:

Section 1204, LOT OCCUPANCY, is amended as follows:

Subsection 1204.1 is amended to read as follows:

1204.1. The maximum permitted lot occupancy in the R-19 **and R-20** zone**s** shall be **as set forth in the following table:** ~~forty percent (40%).~~

TABLE D § 1204.1: MAXIMUM LOT OCCUPANCY

Zone	Structure	Maximum Percentage of Lot Occupancy
R-19	Places of Worship All Other Structures	60% 40%
R-20	Attached Dwellings Places of Worship All Other Structures	60% 60% 40%

Subsection 1204.2 is repealed.

A new § 1207.5 is added to § 1207, SIDE YARD, to read as follows:

1207.5 In the R-20 zone, when a single dwelling unit, flat, or multiple dwelling unit development is erected that does not share a common division wall with an existing building, or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.

Title 11-E DCMR, RESIDENTIAL FLAT (RF) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), is amended as follows:

Subsection 203.1 of § 203, COURT, is amended to read as follows:

203.1 Where a court is provided, the court shall have the following minimum dimensions:

TABLE E § 203.1: MINIMUM COURT DIMENSIONS

Type of Structure	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
~~Single dwelling unit~~ **Detached Dwellings Semi-Detached Dwellings Attached Dwellings and Flats**	Not applicable	Not applicable	Not applicable
All other structures	2.5 inches per 1 ft. of height of court, but not less than 6 ft.	Width: 2.5 inches per 1 ft. of height of court, but not less than 12 ft.	Twice the square of the required width of court dimension based on the height of the court, but not less than 250 ft.

Chapter 3, RESIDENTIAL FLAT ZONE – RF-1, is amended as follows:

Subsection 304.1 of § 304, LOT OCCUPANCY, is amended as to read as follows:

304.1 The maximum permitted lot occupancy in the RF-1 zone shall be as set forth in the following table:

TABLE E § 304.1: MAXIMUM LOT OCCUPANCY

STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
Detached dwellings; Semi-detached dwellings; ~~Row~~ **Attached** dwellings and flats; Places of worship	60%
Conversion of a building or structure to an apartment house	**The** ~~Greater~~ **greater** of 60% or the lot occupancy as of the date of conversion
An apartment house that existed prior to 1958 and has been in continuous use as an apartment house	**60%**
All other structures	40%

Section 308, SPECIAL EXCEPTION, is repealed.

Chapter 4, DUPONT CIRCLE RESIDENTIAL FLAT ZONE – RF-2, is amended as follows:

Subsection 404.1 of § 404, LOT OCCUPANCY, is amended to read as follows:

404.1 The maximum permitted lot occupancy in the RF-2 zone shall be as set forth in the following table:

TABLE E § 404.1: MAXIMUM LOT OCCUPANCY

STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
Detached dwellings; Semi-detached dwellings; ~~Row~~ **Attached** dwellings and flats; Places of worship	60%
Conversion of a building or structure to an apartment house	Greater of 60% or the lot occupancy as of the date of conversion
An apartment house that existed prior to 1958 and has been in continuous use as an apartment house	**60%**
All other structures	40%

Section 408, SPECIAL EXCEPTION, is repealed.

Chapter 5, CAPITOL PRECINCT RESIDENTIAL FLAT ZONE – RF-3, is amended as follows:

Subsection 504.1 of § 504, LOT OCCUPANCY, is amended to read as follows:

504.1 The maximum permitted lot occupancy in the RF-3 zone shall be as set forth in the following table:

TABLE D § 504.1: MAXIMUM LOT OCCUPANCY

STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
Detached dwellings; Semi-detached dwellings; Row dwellings and flats; Places of worship	60%
Conversion of a building or structure to an apartment house	Greater of 60% or the lot occupancy as of the date of conversion
An apartment house that existed prior to 1958 and has been in continuous use as an apartment house	**60%**
All other structures	40%

Section 508, SPECIAL EXCEPTION, is repealed.

Chapter 6, RESIDENTIAL FLAT ZONE –RF-4 AND RF-5, is amended as follows:

Section 608, SPECIAL EXCEPTION, is repealed.

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, is amended as follows:

A new § 5000.3 is added to § 5000, GENERAL PROVISIONS, to read as follows:

5000.3 A private garage permitted in an RF zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within twelve feet (12 ft.) of the center line of the alley upon which it opens.

Title 11-F DCMR, RESIDENTIAL APARTMENT (RA) ZONES, is amended as follows:

Chapter 3, RESIDENTIAL APARTMENT ZONES – RA-1, RA-2, RA-3, RA-4, AND RA-5, is amended as follows:

Section 306, SIDE YARD, is amended as follows:

Subsections 306.1 and 306.2 are amended to read as follows:

306.1 **An eight-foot (8 ft.) side yard shall be provided for a detached or semi-detached dwelling.** ~~A minimum side yard shall be established for lots in the RA-1, RA-2, RA-3, RA-4, and RA-5 zones as follows:~~

~~(a) In the RA-1 zone, one (1) side yard shall be provided for all structures unless the structure contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.); and~~

~~(b) In the RA-2, RA-3, RA-4, and RA-5 zones, no side yard shall be required; however, if a side yard is provided, it shall be no less than four feet (4 ft.).~~

306.2 ~~An eight-foot (8 ft.) side yard shall be provided for a detached and semi-detached structure in the RA-1, RA-2, RA-3, RA-4, and RA-5 zones.~~ **For all other buildings:**

(a) In the RA-1 zone, one (1) side yard shall be provided unless the building contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum

distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.); and

(b) In the RA-2, RA-3, RA-4, and RA-5 zones, no side yard shall be required; however, if a side yard is provided, it shall be no less than four feet (4 ft.).

Section 308, SPECIAL EXCEPTION, is repealed.

Chapter 4, NAVAL OBSERVATORY RESIDENTIAL APARTMENT ZONE – RA-6, is amended as follows:

Section 408, SPECIAL EXCEPTION, is repealed.

Chapter 5, CAPITOL PRECINCT RESIDENTIAL APARTMENT ZONE - RA-7, is amended as follows:

Section 508, SPECIAL EXCEPTION, is repealed.

Chapter 6, DUPONT CIRCLE RESIDENTIAL APARTMENT ZONE – RA-8, RA-9, AND RA-10, is amended as follows:

Section 608, SPECIAL EXCEPTION, is repealed.

Subtitle 11-G DCMR, MIXED-USE (MU) ZONES, is amended as follows:

Chapter 1, INTRODUCTION TO MIXED-USE (MU) ZONES, is amended as follows:

Subsection 101.5 of Section 101, DEVELOPMENT STANDARDS, is amended to read as follows:

101.5 **The** ~~Development~~ **development** standards may be varied or waived by the Board of Zoning Adjustment as a variance or, when permitted in this title, as a special exception. **Relief from the development standards for Height and FAR shall be required as a variance.** Additional zone-specific special exception criterion, if applicable, shall be considered by the Board and are referenced in this subtitle.

Chapter 4, MIXED-USE ZONES – MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, AND MU-10 is amended as follows:

Subsection 402.3 of § 402, DENSITY - FLOOR AREA RATIO (FAR), is amended to read as follows:

402.3 In the MU-10 zone, combined lot development is permitted for the purposes of allocating gross floor area devoted to residential and non-residential uses in

accordance with the provisions of Subtitle ~~G § 100.4~~**C Chapter 12**. Both lots shall be located within the same square, and shall be zoned MU-10.

Subsection 404.1 of § 404, LOT OCCUPANCY, is amended as follows:

404.1 The maximum permitted lot occupancy for residential use in the MU-3 through MU-10 zones shall be as set forth in the following table:

TABLE G § 404.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-3	60%
	60% (IZ)
MU-4	60%
	75% (IZ)
MU-5-A MU-5-B	80%
	80% (IZ)
MU-6	80%
	90% (IZ)
MU-7	75%
	80% (IZ)
MU-8	N/A
MU-9	N/A
MU-10	75%
	80% (IZ)

Chapter 6, DUPONT CIRCLE MIXED-USE ZONES – MU-15, MU-16, MU-17, MU-18, MU-19, MU-20, MU-21, AND MU-22, is amended as follows:

Subsection 604.1 of § 604, LOT OCCUPANCY, is amended to read as follows:

604.1 The maximum permitted lot occupancy for residential use ~~shall be one hundred percent (100%)~~ in the MU-15 through MU-22 zones **shall be as set forth in the following table:**

TABLE G § 604.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-15	**80%**
MU-16	**80%**
	90% (IZ)
MU-17	**60%**
	75% (IZ)

Zone	**Maximum Lot Occupancy for Residential Use**
MU-18	**80%**
MU-19	**80%**
	90% (IZ)
MU-20	**100%**
MU-21	**100%**
MU-22	**75%**
	~~N/A~~ 80% (IZ)

Subsection 609.1 of § 609, SPECIAL EXCEPTION, is amended to read as follows:

609.1 The special exception criteria of Subtitle G, Chapter 12 shall apply to all MU-~~13~~**15** through MU-22 zones.

Chapter 7, CAPITOL INTEREST AND CAPITOL HILL COMMERCIAL MIXED-USE ZONES –MU-23, MU-24, MU-25 AND MU-26, is amended as follows:

Subsection 702.1 of § 702, DENSITY - FLOOR AREA RATIO (FAR), is amended to read as follows:

702.1 The maximum permitted FAR of buildings in the MU-23 through MU-26 zones shall be as set forth in the following table:

TABLE G § ~~603.1~~ **702.1**: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	**Maximum FAR**	
	Total Permitted	**Maximum Non-Residential Use**
MU-23	1.8	N/A
	2.16 (IZ)	
MU-24	1.8	1.5
	2.16 (IZ)	
MU-25	~~2.5~~ **3.0**	3.0
	3.0 (IZ)	
MU-26	~~1.8~~ **2.5**	2.5
	~~2.16~~ (IZ) **2.5(IZ)**	

Subsection 704.1 of § 704, LOT OCCUPANCY, is amended to read as follows:

704.1 The maximum **permitted** lot occupancy for residential use **in the MU-23 through MU-26 zones shall be as set forth in the following table:** ~~shall be eighty percent (80%) in the MU-23 zone and seventy-five percent (75%) in the MU-24, MU-25, and MU-26 zones.~~

TABLE G § 704.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-23	80%
	90% (IZ)
MU-24	60%
	75% (IZ)
MU-25	60%
	75% (IZ)
MU-26	60%
	75% (IZ)

Chapter 9, FORT TOTTEN MIXED-USE ZONES – MU-28 AND MU-29, is amended as follows:

Section 909, SPECIAL EXCEPTION, is amended by re-designating this text as new § 910, SPECIAL EXCEPTION, and § 909 is amended to include new text, so that both sections read as follows:

909 PLAZA

909.1 Within the MU-29 zone, a plaza comprising eight percent (8%) of the lot area shall be provided for development on a lot of greater than ten thousand square feet (10,000 sq. ft.), in accordance with the provisions of Subtitle C, Chapter 17.

909.2 Where preferred use space is required under this chapter and provided, the requirement to provide plaza space shall not apply.

910 SPECIAL EXCEPTION

910.1 The special exception criteria of Subtitle G, Chapter 12 shall apply to all the MU 28 and MU-29 zones.

Subtitle 11-H DCMR, NEIGHBORHOOD MIXED-USE (NC) ZONES, is amended as follows:

Chapter 9, H STREET NORTHEAST NEIGHBORHOOD MIXED-USE ZONES - NC-9 THROUGH NC-17, is amended as follows:

A new § 905.2 is added to § 905, REAR YARD, to read as follows:

905.2 In the NC-13-zone, rear yards shall be measured as follows:

(a) A horizontal plane may be established at twenty-five feet (25 ft.) above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards;

(b) Where a lot abuts an alley:

(1) For that portion of the structure below a horizontal plane described in Subtitle G § 905.2(a), rear yard shall be measured from the center line of the alley to the rear wall of the portion; and

(2) For that portion of the structure above the horizontal plane described in Subtitle G § 905.2(a), rear yard shall be measured from the rear lot line to the rear wall of that portion immediately above the plane; and

(c) Where a lot does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building or other structure.

Chapter 11, USE PERMISSIONS FOR NC ZONES, is amended as follows:

Section 1101, DESIGNATED AND RESTRICTED USES, is amended as follows:

Paragraph (a) of § 1101.2 is amended to read as follows:

1101.2 The NC zone designated uses, for the purposes of this subtitle, are those permitted in the following use groups subject to any conditions of this section:

(a) Animal care **or animal boarding**; …

Paragraph (g) of § 1101.4 is amended to read as follows:

(g) In all NC zones, animal care or **animal boarding** as a matter-of-right designated use shall be limited to:

…

(3) An animal boarding use located in a basement or cellar space subject to the following:

(A) The use shall not be located within twenty-five feet (25 ft.) of a lot within an R, RF, or RA zone. The twenty-five feet (25 ft.) shall be measured to include any space on the lot or within the building not used by the animal boarding use and any portion of a street or alley that separates the use from a lot within an R, RF, or RA

zone. Shared facilities not under the sole control of the animal boarding use, such as hallways and trash rooms, shall not be considered as part of the animal boarding use;

(B) There shall be no residential use on the same floor as the use or on the floor immediately above the animal boarding use;

(C) Windows and doors of the space devoted to the animal boarding use shall be kept closed and all doors facing a residential use shall be solid core;

(D) No animals shall be permitted in an external yard on the premises;

(E) Animal waste shall be placed in a closed waste disposal containers and shall be collected by a licensed waste disposal company at least weekly;

(F) Odors shall be controlled by means of an air filtration or an equivalently effective odor control system; and

(G) Floor finish materials and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor shall be impervious and washable.

Subsection 1105.1 of § 1105, SPECIAL EXCEPTION USES (NC-USE GROUP A), is amended as follows:

Paragraph (a) is amended to read as follows:

(a) Animal care ~~and boarding~~ uses, not meeting the conditions of Subtitle H § 1101.4(~~h~~)**(g)**, subject to the following:

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

(h) Animal boarding uses not meeting the conditions of Subtitle H § 1101.4 (g)(3), subject to the following:

(1) The animal boarding use shall take place entirely within an enclosed building;

(2) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on adjacent properties, including

residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;

(3) The windows and doors of the space devoted to the animal boarding use shall be kept closed, and all doors facing a residential use shall be solid core;

(4) No animals shall be permitted in an external yard on the premises;

(5) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;

(6) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;

(7) Floor finish material, and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;

(8) The Board of Zoning Adjustment may impose additional requirements pertaining to the location of buildings or other structures, entrances and exits; buffers, banners, and fencing, soundproofing, odor control, waste storage and removal (including frequency), the species and/or number of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property; and

(9) External yards or other exterior facilities for the keeping of animals shall not be permitted.

Paragraph (c) of § 1101.1 of § 1106, MATTER-OF-RIGHT USES (NC-USE GROUP B), is amended to read as follows:

1106.1 The following uses in this section shall be permitted as a matter of right subject to any applicable conditions:

…

(c) Animal care and boarding uses subject to the conditions of Subtitle H § 1101.4~~(h)~~ **(g)**;

…

Title 11-I DCMR, DOWNTOWN (D) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, is amended as follows:

Subsection 203.1 of § 203, FRONT BUILD-TO LINE, is amended to read as follows:

203.1 In the D-1-R, D-3, D-4-R, **D-5,** D-5-R, **D-6,** D-6-R, and D-7 zones, at least seventy-five percent (75%) of each newly constructed building wall fronting a street shall be constructed to or within four feet (4 ft.) of the property line between the subject lot and the abutting street right-of-way, to a height of at least fifteen feet (15 ft.) above the higher of the building's measuring point or the level of the curb from which the building is drawing its height, provided the building wall:

…

Subsection 207.2 of § 207, COURT REQUIREMENTS, is repealed.

Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, is amended as follows:

Subsection 517.2 of § 517, HEIGHT (D-3), is amended to read as follows:

517.2 The maximum permitted building height, not including the penthouse, in the D-3 zone, shall be limited to ninety feet (90 ft.) on the portion of the site occupied by a historic landmark or a contributing building within a historic district.

Paragraph (c) of § 524.2 of § 524, DENSITY - FLOOR AREA RATIO (FAR) (D-4), is amended to read as follows:

524.2 The maximum permitted FAR for a building in the D-4 zone shall be 7.8, which can be achieved:

…

(c) If conditions (a) or (b) are not satisfied, through the use of credits pursuant to Subtitle I, Chapters 8 and 9.

Subsection 531.3 of § 531, DENSITY - FLOOR AREA RATIO (FAR) (D-4-R), is amended to read as follows:

531.3 The residential requirement in Subtitle I § 531.2 shall not apply to the following:

(a) A building on Square 342, Lot 810 that has been used as a hostel

since April 7, 2006, that remains in hostel use, and which may be expanded or rebuilt to a maximum 9.5 FAR without a housing requirement; ~~and~~

(b) A building in the D-4-R zoned portion of Square 485~~.~~**; and**

(c) A building on any lot in Square 370 shall be exempt from minimum residential requirements as long as it has a valid construction permit or certificate of occupancy for a hotel.

Chapter 8, GENERATION AND CERTIFICATION OF CREDITS, is amended as follows:

Section 800, INTRODUCTION TO THE CREDIT SYSTEM, amended as follows:

Subsections 800.3 and 800.4 are amended to read as follows:

800.3 Properties that generated allocable gross floor area, either as Transferable Development Rights ("TDR") or Combined Lot Development ("CLD") rights under Chapter 17 of the 1958 Zoning Regulations as the result of the recordation of a covenant required by that chapter, may have those CLD or TDR Rights converted to credits pursuant to Subtitle I § 806 to the extent the Rights were not allocated prior to the effective date of this title to another lot or, also in the case of TDR Rights, to an **entity or** individual for future re-transfer ("Unallocated TDR/CLD Rights"). To be recognized as an Unallocated TDR/CLD Right, the TDR or CLD covenant must have included a declaration binding present and future owners to reserve and maintain in perpetuity the square footage of the uses that generated the TDR/CLD Rights for which conversion is sought.

800.4 Any CLD Right allocated to a lot by a recorded CLD covenant or any TDR Right allocated to a lot or **to** an **entity or** individual pursuant to a certificate of transfer of transferrable development rights made pursuant to the 1958 Regulations ("Allocated TDR/CLD Rights") is fully vested and may be used for the purposes authorized the 1958 Zoning Regulations; provided that the recordation of the covenant or certificate occurred prior to the effective date of this title.

Subsection 800.5 is amended by re-designating and correcting its text as § 800.6 and adding new text to § 800.5, so that both subsections read as follows:

800.5 **Notwithstanding Subtitle I § 800.4, an entity or individual owning Allocated TDR Rights transferred for its use or re-transfer through one or more certificates of transfer of development rights made pursuant to the 1958 Zoning Regulation may, as to each certificate, elect to have all of those rights treated as Unallocated TDR Rights that may be converted to credits pursuant to Subtitle I § 806 if:**

(a) The entity or individual purchased the Allocated TDR Rights for resale for use on a receiving lot as permitted by § 1709.9 of the 1958 Zoning Regulations and the Allocated TDR Rights were not transferred to a lot; or

(b) The entity or individual purchased the Allocated TDR Rights for use on their property and either:

(1) The Allocated TDR Rights were not used to increase development rights on the property; or

(2) The Allocated TDR Rights were used to increase development rights on the property and the building that utilized the development rights is destroyed or demolished; provided that property shall be divested of the development rights attributable to the TDR Rights converted to credits.

800.6 Rules governing the use of credits are set forth in Subtitle I § 90~~1~~**0**.

Paragraphs 801.1(d) and (e) of § 801, ACTIONS THAT GENERATE CREDITS, are amended to read as follows:

801.1 In the D-3 through D-8 zones, credits shall be generated by:

…

(d) The conversion of unallocated transferable development rights (as described in Subtitle I § 800.**3**~~2~~), pursuant to Subtitle I § 806;

(e) The conversion of unallocated combined lot development rights (as described in Subtitle I § 800.**3**~~2~~), pursuant to Subtitle I § 806; and

…

Section 802, GENERATION OF CREDITS BY RESIDENTIAL DEVELOPMENT, is amended as follows:

The introductory paragraph of § 802.1 is amended to read as follows:

802.1 Except as provided in Subtitle I § 802.3, credits may be generated by a residential use in a building for which construction began after January 18, 1991 located in a D-4-R, D-5-R, or D-6-R zone ~~if~~ **to the extent** the residential use did not generate Unallocated or Allocated CLD Rights as described in Subtitle I §§ 800.3 and 800.4, respectively; or by a residential use developed on or after the effective date

of this title in a new or existing buildings **in** all other I zones except D-1-R or D-2 zones**,** where properties may not generate credits.

…

Subsection 802.2 is amended to read as follows:

802.2 One (1) credit shall be generated for each square foot of eligible residential gross floor area (GFA) constructed, except that two (2) credits, **rather than one (1) credit,** shall be generated **for each square foot of eligible GFA** in **each of** the following circumstances:

(a) **For each square foot of eligible GFA reserved for low-income households** ~~For~~ **in** projects subject to Subtitle C, Chapter 10, Inclusionary Zoning~~, two (2) credits shall be developed for each square foot of eligible GFA reserved for low-income households~~;

(b) **For each square foot of eligible GFA reserved for moderate-income households**~~For~~ **in** projects not subject to Subtitle C, Chapter 10, Inclusionary Zoning~~, two (2) credits shall be generated for each square foot of eligible GFA reserved for moderate-income households~~;

(c) **For each square foot of non-residential use converted to residential use** ~~For~~ **in** historic landmarks or contributing buildings in historic districts~~,~~ ~~two (2) credits shall be generated for each square foot of non-residential use converted to residential use~~;

(d) For a building south of Massachusetts Avenue located on a property zoned D-4-R or D-5-R and within Squares 247, 283, 284, 316, 317, 342, 343, 371, 372, 374, 427, 428, 452, 453, 485, 486, 517, or 529; or for the commercial and underdeveloped properties in Square 247 with an approved plan unit development on or before January 18, 1991, for so long as the planned unit development approval remains valid; and

(e) For a building south of H Street zoned D-6-R and within Squares 377 (Lots 36, 37, 42, 806, 828, 829, 847, and 848), 406, 407, 408, 431, 432, 454, 455, 456, 457, 458, 459, 460, and 491.

Paragraphs 803.2(d) and (e) of § 803, GENERATION OF CREDITS BY ARTS USES, are amended to read as follows:

803.2 One (1) credit shall be generated for each square foot of eligible arts GFA or FAER and an additional credit shall be generated for:

…

(d) Each square foot of arts uses listed in Subtitle U §§ ~~720~~**700**.1(a), (h) or (i); and

(e) Each square foot of arts uses listed in Subtitle U §§ ~~720~~**700**.1(c)(5) through (c)(7), (f), or (h), in excess of forty thousand gross square footage (40,000 gsf.) and located on a single record lot.

Section 806, GENERATION AND CERTIFICATION OF CREDITS FOR TDR OR CLD CONVERSION, is amended as follows:

Subsection 806.1 is amended to read as follows:

806.1 Any Unallocated TDR or CLD Rights as described in Subtitle I § 800.3**, or as considered such under Subtitle I § 800.5** shall convert to credits at a rate of one-to-one (1:1).

Paragraphs (a) and (e) of Subsection 806.3 are amended to read as follows:

806.3 A Certificate of Credit Conversion may be requested in writing by the individual or entity that owns the Unallocated TDR or CLD Rights. The request shall be accompanied by:

(a) A copy of the recorded TDR covenant or CLD covenants that acknowledges the generation of the unallocated rights, **or in the case of an Unallocated TDR Rights recognized by Subtitle I § 800.4, the certificate of transfer that acknowledged the transfer of the TDRs sought to be converted**;

…

(e) For TDR's **to be converted from a covenant**, any certificates of transfer or re-retransfer made pursuant to the covenant and a sworn certification that no other allocations have been made other than as described in the certificates;

…

Chapter 9, USE OF CREDITS, is amended as follows:

Subsection 900.3 of § 900, GENERAL REQUIREMENTS AND RESTRICTIONS, is amended to read as follows:

900.3 Credits generated and acknowledged pursuant to Subtitle I, Chapter 8 may be used for the purposes and within the trade areas identified in the following table**.**

TABLE I § 900.3: CREDIT-GENERATION, PURPOSES, AND AREAS OF USE

Action Generating Credit	Section in Subtitle I, Chapter 8 Governing the Generation of the Credit	Purpose for which Credit May be Used	Area(s) in which Credit may be used (see Figure I § 900.2)
Development of residential gross floor area where it is not required or that exceeds a minimum residential requirement of Subtitle I, Chapter 5.	§ 802	Construct non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones	Same trade area in which the credits were generated.
		Reduce the residential requirements of the D-4-R, D-5-R, or D-6-R zones.	Same trade area in which the credits were generated.
Development of arts or arts-related space that exceeds the minimum area requirements of Subtitle I § 607 for such uses in the Downtown Arts Sub-Area.	§ 803	Reduce the Arts sub-area requirements of Subtitle I § 607	Downtown Arts Sub-Area (Subtitle I § 607) of trade area 2
		Construct up to 0.5 FAR non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones	
Historic Preservation rehabilitation	§ 807	Construct non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones up to the limits of Subtitle I, §§ 200.2 and 200.3. Credits cannot reduce residential requirements of the D-4-R, D-5-R, or D-6-R zones	In any trade area
Conversion of transferrable development rights (TDRs) ~~pursuant~~	§ 806	Construct non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones. Credits cannot reduce residential requirements of the D-4-R, D-5-R, or D-6-R zones	In any trade area
Conversion of unallocated combined lot development (CLD) gross floor area	§ 806	Construct non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones	~~Same trade area in which the credits were generated~~ **within which the project that generated the unallocated CLD's is located.**
		Reduce the residential requirements of the D-4-R, D-5-R, or D-6-R zones	
Development of child development center, child development home or certified business enterprise in the Downtown Retail Core, Downtown Arts or Chinatown sub-areas of Subtitle I, Chapter 6.	§ 804	Construct up to 0.5 FAR non-residential gross floor area in excess of the base permitted non-residential density of the D-3 through D-8 zones	Same trade area in which the credits were generated

Title 11-J DCMR, PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, is amended as follows:

Chapter 2, DEVELOPMENT STANDARDS, is amended as follows:

Subsection 202.1 of § 202, DENSITY - FLOOR AREA RATIO (FAR), is amended to read as follows:

202.1 The maximum permitted FAR in the PDR zones shall be as set forth in the following table:

TABLE J § 202.1: MAXIMUM PERMITTED FLOOR AREA RATIO

Zone	Maximum FAR Restricted Uses	Maximum FAR Permitted
PDR-1	2.0	3.5
PDR-2	3.0	4.5
PDR-3	4.0	6.0
PDR-4	1.0	6.0
PDR-5	~~2.0~~ **1.8**	3.5
PDR-6	2.0	3.5
PDR-7	1.0	6.0

Subsection 207.3 of Section 207, TRANSITION SETBACK REGULATIONS, is amended to read as follows:

207.3 Any setback required by this section shall be located on the PDR-zoned lot and shall be extend**ed** as a vertical plane, parallel to the PDR-zoned lot line.

Title 11-K DCMR, SPECIAL PURPOSE ZONES, is amended as follows:

Chapter 2, SOUTHEAST FEDERAL CENTER ZONES - SEFC-1 THROUGH SEFC-4, is amended as follows:

Subsection 203.1 of § 203, HEIGHT (SEFC-1), is amended to read as follows:

203.1 The maximum permitted building height, not including the penthouse, in the SEFC-1 zone shall be one hundred and ten feet (110 ft.), except as set forth below:

(a) A site that has frontage on any portion of New Jersey Avenue, S.E., that is south of and within three hundred twenty-two feet (322 ft.) of M Street, S.E., is permitted a maximum height of one hundred thirty feet (130 ft.); and

(b) For a site within Parcels A, F, G, or H utilizing the bonus density permitted pursuant to **Subtitle K § 202.1** ~~§1803.7 (b)~~, the maximum permitted building height shall be that permitted by the Act to Regulate the Height Act.

Chapter 5, CAPITOL GATEWAY ZONES - CG-1 THROUGH CG-7, is amended as follows:

Subsection 502.6 of § 502, DEVELOPMENT STANDARDS (CG-2), is amended to read as follows:

502.6 The maximum permitted lot occupancy for residential use in the CG-2 zone shall be eighty percent (80%), or ninety percent (90%) ~~if permitted by the~~ **with** Inclusionary Zoning ~~regulations set forth in Subtitle C, Chapter 10~~.

Section 504, DEVELOPMENT STANDARDS (CG-4), is amended as follows:

504.3 The permitted FAR in the CG-4 zone is as follows:

(a) The maximum permitted FAR in the CG-4 zone shall be ~~7.0~~ **6.0** or 7.2 FAR with IZ, with a maximum non-residential FAR of 3.0;

…

504.6 The maximum permitted lot occupancy for residential use in the CG-4 zone shall be seventy-five percent (75%), or ~~one hundred percent (100%)~~ **eighty percent (80%) with** ~~if permitted by the~~ Inclusionary Zoning ~~regulations set forth in Subtitle C, Chapter 10~~.

A new § 505.12 is added to § 505, DEVELOPMENT STANDARDS (CG-5), to read as follows:

505.12 The maximum permitted lot occupancy for residential use in the CG-5 zone shall be seventy-five percent (75%).

Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Chapter 2, USE PERMISSIONS RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Subsection 202.1(l) of § 202, MATTER-OF-RIGHT USES – R-USE GROUPS A, B, AND C, is amended to read as follows:

202.1 The following uses shall be permitted as a matter of right in R-Use Groups A, B, and C subject to any applicable conditions:

…

(l) Private garage, as a principal use, designed to house no more than two (2) motor vehicles and not exceeding four hundred fifty square feet (450 sq. ft.) in area and subject to the requirements of ~~Subtitle D, Chapter 14~~ **Subtitle D, Chapter 50**;

…

Subsection 251.1(b)(3) of § 251, HOME OCCUPATION USES (R), is amended to read as follows:

251.1 The following uses shall be permitted as home occupations. The uses listed under this subsection shall include similar uses in each category subject to the same conditions and requirements of this chapter:

…

(b) The following daytime care uses:

…

(3) Expanded child development home for ten (10) to twelve (12) individuals fifteen (15) years of age less may be permitted as a special exception by the Board of Zoning Adjustment under ~~§ 3104~~ **Subtitle X** and subject to the provisions of ~~§ 203.10~~ **Subtitle U § 251.6**; provided a minimum of thirty-five square feet (35 sq. ft.) of floor area per individual is provided including the basement but excluding any accessory structure;

…

Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, is amended as follows:

A new § 506.8 is added to § 506, SPECIAL EXCEPTION USES (MU-USE GROUP B), to read as follows:

506.8 Any use listed in Subtitle C § 509, USES NOT PERMITTED (MU-USE GROUPS B AND C), shall not be permitted by special exception.

The introduction paragraph of § 507.1 of § 507, MATTER-OF-RIGHT USES (MU-USE GROUP C), is amended to read as follows:

507.1 In addition to the uses permitted by Subtitle U § 501, **and unless specifically prohibited by Subtitle U § 509,** the following uses shall be permitted in MU-Use Group C as a matter of right subject to any applicable conditions:

…

Section 509, USES NOT PERMITTED (MU-USE GROUP C), is amended as follows:

The title of § 509 is amended to read as follows:

509 USES NOT PERMITTED (MU-USE ~~GROUP C~~ GROUPS B AND C)

The introductory paragraph of § 509.1 is amended to read as follows:

509.1 The following uses shall not be permitted in ~~MU-Use Group C~~ **MU-Use Groups B and C** as a matter of right or as a special exception:

…

Subsection 510.1(a) of § 510, MATTER-OF-RIGHT USES (MU-USE GROUP D), is amended to read as follows:

510.1 The following uses shall be permitted in MU-Use Group D as a matter–of-right subject to any applicable conditions:

(a) Any use permitted as a matter of right in any R, RF, or RA zone~~;~~ **and any use permitted as a matter of right for MU-Use Group A;**

…

Subsection 512.1(a) of § 512, MATTER-OF-RIGHT USES (MU-USE GROUP E), is amended to read as follows:

512.1 The following uses shall be permitted in MU-Use Group E as a matter of right subject to any applicable conditions:

(a) Uses permitted as a matter of right in any R, RF, and RA zones, and all uses permitted as a matter of right for MU-Use Group D of this chapter, unless otherwise modified by Subtitle U §**§ 513 and** 514;

…

Title 11-X DCMR, GENERAL PROCEDURES, is amended as follows:

Chapter 6, DESIGN REVIEW, is amended as follows:

Subsection 604.1 of § 604, DESIGN REVIEW STANDARDS, is amended to read as follows:

604.1 The Zoning Commission will evaluate and approve or disapprove a design review application according to the standards of this section and**, if applicable to the zone,** standards set forth in Subtitle K.

Title 11-Y DCMR, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE is amended as follows:

Chapter 4, PRE-HEARING AND HEARING PROCEDURES: APPLICATIONS, is amended as follows:

Subsection 401.2 of § 401, EXPEDITED REVIEW, is amended to read as follows:

401.2 An eligible application is an application for:

(a) A modification to a theoretical subdivision resulting from an addition to a one (1) dwelling unit building pursuant to Subtitle C § ~~305.9~~**305.8**;

(b) An addition to a dwelling or flat or new or enlarged accessory structures pursuant to Subtitle D § ~~1701~~ **5201 or Subtitle E § 5201**; or

(c) A park, playground, swimming pool, or athletic field pursuant to Subtitle **U § 203.1(d).** ~~D § 1603.13(a).~~

Title 11-Z DCMR, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Chapter 7, APPROVALS AND ORDERS, is amended as follows:

Subsection 702.1 of § 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, is amended to read as follows:

702.1 A first-stage ~~or second-stage~~ approval of a planned unit development (PUD) by the Commission shall be valid for a period of one (1) year, unless a longer period is established by the Commission at the time of approval~~, within which time application shall be filed for a building permit~~.

Subsection 703.17(c) of § 703, CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS, is amended to read as follows:

703.17 The Commission may take one (1) of the following actions at a public meeting:

…

(c) For a modification of consequence:

~~(a)~~**(1)** Determine that the request is actually for a modification of significance in which case an application for such a modification must be filed and a hearing held pursuant to Subtitle Z § ~~705~~**704**; or

~~(b)~~**(2)** Establish a timeframe for the parties in the original proceeding to file responses in opposition to or in support of the request and for the applicant to respond thereto; and schedule the request for deliberations.

Subsection 705.8 of § 705, TIME EXTENSIONS, is amended as follows:

705.8 In the event an appeal is filed in a court of competent jurisdiction from an order of the Commission, the time limitations of Subtitle Z §§ ~~705.3 and 705.5~~ **702.2 and 702.3** shall run from the decision date of the court's final determination of the appeal. Unless stayed by the Commission or a court of competent jurisdiction, an applicant may proceed pursuant to the order of the Commission prior to any such final determination.

Chapter 8, SUA SPONTE REVIEW, is amended as follows:

Subsection 800.2 of § 800, SUA SPONTE REVIEW BY ZONING COMMISSION, is amended to read as follows:

800.2 Within ten (10) days after the decision and order of the Board of Zoning Adjustment has become final as provided in Subtitle Y § ~~604.8~~**604.7**, the Commission may, *sua sponte*, determine to review any final decision and order of the Board of Zoning Adjustment and stay the effect of the decision and order pending completion of its review.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF SIXTH EMERGENCY RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to Sections 104 and 105 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.04 and 2-1801.05 (2012 Repl.)), Mayor's Order 1986-38, dated March 4, 1986, and Mayor's Order 2004-46, dated March 22, 2004, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapters 33 (Department of Consumer & Regulatory Affairs (DCRA) Infractions) and 34 (Fire and Emergency Medical Services (EMS) Department Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions), of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to address a gap in the enforcement of compliance with the current District of Columbia Construction Codes, published March 28, 2014 (61 DCR 3251-Part 2), as amended (the "2013 Construction Codes"), since violations of the 2013 Construction Codes would not be subject to notices of violation and enforcement proceedings to the extent that the existing regulations refer to a previous version of the Construction Codes.

Violations of the 2013 Construction Codes pose an immediate and continuing threat to the public health and safety. This emergency rulemaking is limited to changes in the numbering of provisions between the 2013 Construction Codes and the previous version of the Construction Codes, and does not change the substance or classification of infractions. This emergency rulemaking does not apply to violations or infractions committed prior to March 28, 2014, whether the prosecution or adjudication of those violations or infractions is instituted before or after said date. Such violations or infractions will be adjudicated pursuant to the existing Title 16.

This rulemaking extends an emergency rulemaking originally adopted on January 23, 2015, published in the *D.C. Register* February 27, 2015 at 62 DCR 2598; extended May 23, 2015, published July 3, 2015 at 62 DCR 9324; extended on September 20, 2015, published October 16, 2015 at 62 DCR 13547; extended on January 19, 2016, published April 8, 2016 at 63 DCR 5310; and extended on May 18, 2016, published July 8, 2016 at 63 DCR 9412. A Notice of Proposed Rulemaking was published July 3, 2015, at 62 DCR 9270. PR21-921 was introduced on September 29, 2016 to approve the Notice of Proposed Rulemaking.

This sixth emergency rulemaking was adopted on September 15, 2016 to become effective immediately. These emergency rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, expiring January 13, 2017.

Chapter 33, DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS (DCRA) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 3306, BUILDING INSPECTION DIVISION INFRACTIONS, is amended to read

as follows:

3306 BUILDING INSPECTION DIVISION INFRACTIONS

3306.1 CONSTRUCTION INSPECTION INFRACTIONS
The following abbreviations apply to this section: IPMC - International Property Maintenance Code (2012 edition)

3306.1.1 Violation of any of the following provisions shall be Class 1 infraction:

(a) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without required permit);

(b) 12-A DCMR § 105.1 (exceeding scope of permit);

(c) 12-A DCMR § 115.1 (failure to remedy dangerous conditions or remove hazardous materials);

(d) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a 'Stop Work Order');

(e) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);

(f) 12-A DCMR § 115.5 (failure to comply with terms of posted "Unsafe to Use" notice); or

(g) IPMC 302.1 (exterior of property not in clean or sanitary condition).

3306.2 PLUMBING INSPECTION INFRACTIONS

The following abbreviations apply to this section:
IPC- International Plumbing Code (2012 edition)
IPMC- International Property Maintenance Code (2012 edition)

3306.2.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order);

(b) 12-A DCMR § 105.1.6 (HVAC work performed by non-D.C. licensed mechanic);

(c) IPC 424.3; IPMC 505.1 (hot water exceeds 120 degrees° F.);

(d) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);

(e) 12-A DCMR § 105.1.6 (plumbing work performed by non-D.C. licensed plumber); or

(f) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without a permit).

3306.2.2 Violation of the following provisions shall be a Class 2 infraction:

(a) 12-F DCMR §§ 301.3 and 712.3.5, 1101.2 (sump pump discharge into public space);

(b) 12-F DCMR §§ 301.3 and 712.3.5, 1101.2 (discharge of water from sump pump directly to adjacent property); or

(c) IPC 802.1.4 (swimming pool water discharge into public/park space).

3306.2.3 Violation of any of the following provisions shall be a Class 3 infraction:

(a) IPMC 506.2 (obstruction of drains);

(b) IPMC 506.2 (plumbing system not maintained);

(c) IPMC 603.1 (mechanical system not maintained);

(d) 12-F DCMR § 1101.2 (downspout(s) not connected to terminals); or

(e) IPMC 506.2 (main sewer line obstructed).

3306.2.4 Violation of any of the following provisions shall be a Class 4 infraction:

(a) IPMC 505.4 (no hot water at peak demand); or

(b) IPC 604.7 (inadequate water pressure).

3306.3 ELECTRICAL INSPECTION INFRACTIONS

3306.3.1 Violation of any of the following provisions shall be a Class 1

infraction:

(a) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without the required electrical permit);

(b) 12-A DCMR § 105.1 (exceeding scope of permit);

(c) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order); or

(d) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order).

3306.4 BOILER INSPECTION INFRACTIONS
The following abbreviations apply to this section:
IMC- International Mechanical Code (2012 edition)

3306.4.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.8 (failure to comply with terms of a Stop Work Order);

(b) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);

(c) 12-E DCMR §§ 1003.1 and 1003.3 (failure to obtain a boiler Certificate of Inspection);

(d) 12-E DCMR §§ 1003.17.1; 12-A DCMR § 115.5 (violation of conditions of posted Unsafe to Use notice);

(e) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (failure to obtain a boiler installation permit);

(f) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (no installations permit for boiler and/or unfired pressure vessels);

(g) 12-E DCMR § 1001.4; 17 DCMR § 400.2 (operating engineering equipment without proper D.C. engineer's license); or

(h) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (alteration and repair of boilers without required permit).

3306.4.2 Violation of any of the following provisions shall be a Class 2

infraction:

(a) IMC 303.3 and 304.9, 1004.3 (improper location or clearance of a boiler); or

(b) 12-E DCMR § 1018.1 (welder working without a D.C. authorization card).

3306.4.3 Violation of the following provision shall be a Class 3 infraction:

12-E DCMR § 1003.16 (failure to make a timely repair, alteration, or cleaning, to a boiler specified in a notice).

3306.4.4 Violation of any of the following provisions shall be a Class 4 infraction:

(a) 12-E DCMR §§ 1001.2, 1001.4 and 1003.17 (improper boiler or pressure vessel operation);

(b) 12-E DCMR § 1003.1 (certificate of inspection not properly posted); or

(c) 12-E DCMR § 1005.3; IMC 1004.6; 12-A DCMR § 109.6.1 (denial of entry to boiler room).

3306.5 ELEVATOR INSPECTION INFRACTIONS

The following abbreviations apply to this section and identify referenced standards adopted by the 2013 District of Columbia Construction Codes:
ASME- American Society of Mechanical Engineers
NFPA- National Fire Protection Association

3306.5.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 12-A DCMR §§ 105.1 and 105.1.1 (installation of elevators, escalators, dumbwaiters, man lift(s), and other conveying systems without a permit);

(b) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order);

(c) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order).or

(d) 12-A DCMR §§ 115.5 and 3010.10.2 and 3010.10.3; 12-G DCMR

§§ 108.5, 606.8.2 and 606.8.3 (failure to comply with terms of posted Unsafe to Use notice).

3306.5.2 Violation of any of the following provisions shall be a Class 2 infraction:

12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3, 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

(a) ASME A17.1- Rules 8.11.4.1, 8.11.2.1 and 8.6.8.15 (failure to have semi-annual inspections performed);

(b) ASME A17.1- Rule 1002.3 (failure to schedule five-year governor speed and safety test);

(c) ASME A17.1- Rule 2.2.4.5(e), 2.7.3.4 and 8.11.2.1.2 (b) (failure to provide required fire rated door at elevator machine room with self-closing and self-locking device);

(d) ASME A17.1- Rules 2.2.4.5(e) and 2.7.3.4 (failure to provide a UL listed fire rated self-closing, self-locking, device at machine room door of elevators or pit doors);

(e) ASME A17.1 – Rules 8.11.3.1.1(f) and 8.11.4.1(e) (failure to provide emergency light and bell operation); or

(f) ASME A17.1 – Rules 2.27.1, 8.11.2.1.1(f) and 8.11.3.1.1(f) (failure to repair emergency phone on elevators).

3306.5.3 Violation of any of the following provisions shall be a Class 3 infraction:

12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3 and 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

(a) ASME A17.1- Rule 8.11.3.1.2(j) (failure to provide required class fire extinguisher in elevator machine room);

(b) ASME A17.1- Rule 8.6.4.13.1(h) (failure of elevator to level at floor);

(c) ASME A17.1- Rule 8.11.2.1.1(o) (failure to post fire emergency instruction pictograph adjacent to each non-egress hall push button);

(d) NFPA 70 § 620-51(c) (main line disconnects unable to be locked in the off position);

(e) ASME A17.1-Rule 8.6.4.7.1 (failure to remove all materials not related to the operation from the pit).

3306.5.4 Violation of any of the following provisions shall be a Class 4 infraction:

12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3 and 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

(a) ASME A17.1- Rule 8.6.4.7.1 (excessive lint and dust in hoist ways);

(b) ASME A17.1- Rule 8.6.4.8.2 (non-related equipment in elevator machine room);

(c) ASME A17.1- Rules 8.6.4.13.1(c); 8.6.4.13.1(k), and 8.6.4.13.1(l) (elevator door reopening device/closure button in disrepair); or

(d) ASME A17.1-Rule 8.6.4.7.1 (unclean elevator pits)

Section 3309, DCRA FIRE PROTECTION DIVISION INFRACTIONS, is amended to read as follows:

3309 DCRA FIRE PROTECTION DIVISION INFRACTIONS

The following abbreviations apply to this section:

IFC- International Fire Code (2012 edition)
IBC- International Building Code (2012 edition)
IPMC- International Property Maintenance Code (2012 edition)

The following abbreviation applies to this section and identifies referenced standards adopted by the 2013 District of Columbia Construction Codes:

NFPA- National Fire Protection Association

3309.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 12-A DCMR §§ 115 and 116; 12-H DCMR § 108.3 (failure to remedy dangerous conditions to remove hazardous materials);

(b) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a stop work order);

(c) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);

(d) [RESERVED];

(e) [RESERVED];

(f) IBC 709.3; IPMC 703, 703.1 and 703.2 (failure to maintain all required fire resistance rated doors or smoke barriers);

(g) IFC 901.4.1; IPMC 704.1 and 704.1.1; IBC 904.1; 12-G DCMR §§ 704.1.2, 704.2 and 704.5 (failure to maintain in an operative condition at all times fire protection and life safety systems, devices, units, or service equipment);

(h) 12-H DCMR § 906.1; 12-G DCMR § 704.1.2; 12-A DCMR § 906.1 (failure to provide fire extinguishers);

(i) IFC 1003.1; IPMC 702.1 and 702.3 (failure to maintain in a safe condition and free of all obstructions the means of egress from each part of the building);

(j) IBC 1004.3 (overcrowding or admitting persons beyond the established posted occupants load);

(k) IFC 507.5.4; IBC 912.3 (fire hydrants, fire department inlet connections, or fire protection system control valves are obstructed in such manner as to interfere with firefighting access);

(l) IFC 1006.1 and 1006.2; IBC 1006.1 and 1006.2; 12-G DCMR § 402.2 (failure to provide adequate lighting for stairways, hallways, and other means of egress); or

(m) IBC 1027.1, 1027.2 and 1027.5 (exits fail to discharge directly at a public way or at a yard, court, or open space of the required width and size to provide all occupants with a safe access to a public way).

3309.2 Violation of any of the following provisions shall be a Class 2 infraction:

(a) 12-G DCMR § 308.1 (permitting the accumulation of waste paper, wood, hay straws, weeds, litter, or combustible or flammable waste or rubbish of any kind);

(b) IFC 904.11; IBC 904.11 (failure to provide or maintain an automatic activation kitchen hood fire extinguishing system);

(c) IFC 904.11.1; IBC 904.11.1 (failure to provide or maintain a manual activation device for the hood fire extinguishing system);

(d) NFPA 70 110.32 (failure to provide the required clearance between all electrical service equipment and storage);

(e) IFC 904.11.5 (failure to provide a sufficient number of portable fire extinguishers for commercial cooking equipment);

(f) IFC 906.2; 12-G DCMR § 704.1.2 (failure to maintain, test, or recharge hand-operated portable fire extinguishing equipment);

(g) IFC 315.3.2 (storing combustible or flammable materials on any portion of an exit, elevator car, stairway, fire escape, or other means of egress);

(h) IBC § 1005.1 (door openings fail to meet the requirements of minimum width based upon occupant load);

(i) IBC 1008.1.10 (doors are not equipped with approved panic hardware);

(j) IBC 1008.1.2 (exit doors swing in the wrong direction);

(k) 12-E DCMR § 1003.6 (failure to provide an oil burner emergency switch);

(l) IBC 1011.6.3 (failure to provide emergency lights, alarms, or power back-ups);

(m) IBC 1011.1 (permitting decorations, furnishings, or equipment that impairs the visibility of exit signs);

(n) IBC 716.5.9, 707.1 and 709 (failure to maintain self-closing and automatic doors or to provide a fire or smoke barrier);

(o) IBC 1004.3 (failure to conspicuously post sign stating the number of occupants permitted within such space for each place of assembly);

(p) IBC 1011.1 (failure to maintain exit signs in theaters or other places of public assembly); or

(q) IBC 806 (decorative materials are not non-combustible or flame resistant).

3309.3 Violation of any of the following provisions shall be a Class 3 infraction:

(a) IFC 904.1 and 904.4; IPMC 704.1.1; 12-G DCMR § 704.1.2 (extinguishing systems are not inspected and tagged);

(b) IBC 1006.1; 12-G DCMR § 702.6 (exit signs are not maintained or clearly illuminated at all times when the building is occupied); or

(c) Any provision of the District of Columbia Construction Codes adopted pursuant to the Construction Codes Approval and Amendment Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code §§ 6-1401 *et seq.*) which is not cited elsewhere in this section shall be a Class 3 infraction.

Chapter 34, FIRE AND EMERGENCY MEDICAL SERVICES (EMS) DEPARTMENT INFRACTIONS, is amended as follows:

Section 3401, FIRE PREVENTION CODE INFRACTIONS, is amended to read as follows:

3401 FIRE CODE INFRACTIONS

The following abbreviations apply to this section:
IFC- International Fire Code (2012 edition)

3401.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 12-H DCMR § 102.3 (change in occupancy that will subject the structure to special provisions of the Fire Code or Building Code without the approval of the code official);

(b) 12-H DCMR § 105.1.1 (failure to obtain and maintain required permits on the premises, including operational or installation permits as described by 12-H DCMR §§ 105.1.2 and 105.6;

(c) 12-H DCMR § 104.11.6.2 (obstructing operations of the Fire Department in connection with extinguishment or control of any fire, or action relating to other emergencies);

(d) 12-H DCMR § 109.2.5 (failure to remedy dangerous condition or remove hazardous materials);

(e) 12-H DCMR § 110.1.1 (failure to remedy hazardous conditions liable to cause or contribute to the spread of fire in, or on, the premises, building or structure, or endangering life or property);

(f) IFC 5003.3.1.4 (failure to remedy hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive, or otherwise hazardous materials);

(g) 12-H DCMR § 110.5 (failure to maintain, on a structure, premises, or lot, the fire protection equipment, systems or devices, means of egress or safeguards required by the Fire Code);

(h) 12-H DCMR 109.2.4 (failure to remedy unsafe conditions in an existing structure or vacant structure, or a deficiency in a means of egress);

(i) 12-H DCMR § 110.2 (refusal to leave, or interference with the evacuation of other occupants or continuance of any operation after receiving an evacuation order);

(j) 12-H DCMR § 109.2.4 (failure to comply with a notice of violation issued by the code official);

(k) IFC 311.2.1 (failure to secure exterior and interior openings of vacant premises);

(l) IFC 603.4 (failure to prohibit the use of portable unvented heaters or fuel fired heating equipment in use groups A, E, I, R-1, R-2, R-3, and R-4);

(m) IFC 604.1 (failure to maintain and inspect emergency and standby systems in accordance with the Fire Code, NFPA110 and NFPA111);

(n) IFC 904.1 (failure to inspect, test and maintain automatic fire-extinguishing systems (except sprinkler systems) in accordance with the Fire Code and the applicable referenced standards);

(o) IFC 1004.3 (failure to post occupant load);

(p) 12-H DCMR § 107.6 (permitting overcrowding or admitting persons beyond the established occupant load); or

(q) 12-H DCMR § 5609.1.1 (engaging in the manufacturing, possession, storage or display, sale, setting off, or discharge of prohibited fireworks).

3401.2 Violations of any of the following provisions shall be a Class 2 infraction:

(a) 12-H DCMR § 308.1.4 (operating charcoal burners and other open-flame cooking devices on a balcony or within ten (10) feet of combustible construction);

(b) IFC 308.2 (failure to obtain a permit for open flame use in an educational or assembly occupancy);

(c) IFC 404.2 (failure to prepare and maintain a fire safety and evacuation plan in accordance with this section);

(d) IFC 405.5 (failure to maintain emergency evacuation drill records);

(e) IFC 406.3 (failure to ensure employees are provided with fire prevention, evacuation and fire safety training);

(f) IFC 505.1 (failure to provide approved legible and visible building address identification);

(g) IFC 507.5.4 (obstructing fire hydrants, department connections or other fire protection system control valves);

(h) IFC 907.2.11 (failure to install approved single or multi-station smoke alarms in existing dwellings, congregate residences, and hotel and lodging house guestrooms); or

(i) IFC 1029.1 (failure to maintain emergency escape windows operational).

3401.3 Violation of any of the following provisions shall be a Class 3infraction:

(a) IFC 605.3 (failure to provide and maintain required clearance in front of electrical service equipment);

(b) IFC 807.4.1 (obstruction of egress or exit access visibility by placement of furnishing or other objects in educational, assembly and in institutional Group 4 occupancies);

(c) IFC 906.1 (failure to provide fire extinguishers in required occupancies and locations); or

(d) IFC 1026.1 (failure to ensure security bars, grilles and screens over emergency escape windows are releasable or removable from the inside without the use of a key or tool).

3401.4 Violation of any of the following provisions shall be a Class 4 infraction:

(a) IFC 304.1 (failure to prohibit accumulation of prohibited waste);

(b) IFC 310.4 (removing, obscuring, defacing, mutilating or destroying “No Smoking” signs);

(c) IFC 807.4.3.2 (failure to limit artwork and teaching material to not more than twenty percent (20%) on walls of corridors in educational occupancies);

(d) IFC 806.1.1 (failure to prohibit display of natural cut trees in certain occupancies); or

(e) IFC 1022.9 (failure to provide stair identification of interior and exterior doors connecting more than three stories).

3401.5 Violation of any provisions of the Fire Code not otherwise listed in this section shall be a Class 5 infraction.

Copies of the emergency rules can be obtained from Matthew Orlins, Legislative Affairs Officer, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via e-mail at matt.orlins@dc.gov. A copy fee of one dollar ($1.00) will be charged for each copy of the emergency rulemaking requested. Free copies are available on the DCRA website at http://dcra.dc.gov by going to the "About DCRA" tab, clicking on "News Room", and then clicking on "Rulemaking".

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the "Act"), hereby gives notice of the intent to amend Section 1617 of Chapter 16 (Procurement by Competitive Sealed Proposals), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends the regulations applicable to procurement by competitive proposals. Specifically, this rulemaking modifies sections of the regulation governing the use of visual quality concepts (VQCs) in connection with the procedure for submission and revision of VQC proposals. The District Department of Transportation uses this method in the request for proposals process for the South Capitol Street Corridor project.

The emergency rulemaking is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, as it will facilitate a major infrastructure project that will include replacing the Frederick Douglass Memorial Bridge and transforming related sections of urban freeway into a scenic boulevard in order to increase pedestrian and vehicular safety, improve multi-modal transportation options, increase community accessibility, and support economic development.

The emergency rules will remain in effect for up to one hundred twenty (120) days from September 2, 2016, the date of their adoption; thus, expiring on January 2, 2017, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Chapter 16, PROCUREMENT BY COMPETITIVE SEALED PROPOSALS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:

Section 1617, VISUAL QUALITY CONCEPTS, is amended to read as follows:

1617 VISUAL QUALITY CONCEPTS

1617.1 An RFP for the construction of a road, bridge, or other transportation system, or a facility or structure appurtenant to a road, bridge, or other transportation system, may require offerors to submit visual quality concepts (VQCs) prior to the submission of their final technical proposals, for review and comment by the date specified in the RFP.

1617.2 A VQC shall represent the offeror's approach to meeting the project design appearance goals set forth in the RFP.

1617.3 An RFP requiring offerors to submit VQCs must specifically state the requirements for the content of a VQC; procedures for submission and

resubmission of VQCs, including the date by which the VQCs must be submitted; procedures for review of and comment on VQCs; procedures for confidential meetings related to the VQCs; and methods for evaluating VQCs.

1617.4 Before an offeror's submission of its technical proposal, the contracting officer shall meet with the offeror and discuss, on a confidential basis, whether the offeror's VQC meets each of the project design appearance goals set forth in the RFP. The contracting officer may invite to confidential meetings other attendees that the contracting officer deems useful for the purpose of assisting in the review of the VQC submitted by an offeror.

1617.5 The contracting officer may also seek confidential review of a VQC by anyone deemed useful by the contracting officer, including independent technical advisors, for the purpose of assisting in the evaluation of the VQC. Any such confidential review shall be subject to the requirements contained in § 1629.4 of this chapter.

1617.6 Following the confidential meeting and any confidential review, the contracting officer shall provide written comments to the offeror regarding whether the offeror's VQC meets each of the project design appearance goals set forth in the RFP. If the contracting officer determines that it is in the best interests of the District, the contracting officer may provide an offeror a reasonable opportunity to submit revisions to its VQC in response to the results of the confidential meeting or written comments issued to the offeror after the meeting. The written comments of the contracting officer shall set the date by which revisions to the VQC must be submitted by the offeror in order to be considered by the contracting officer.

1617.7 For as many times as the contracting officer determines it to be in the best interests of the District, the contacting officer may permit the offeror to submit revisions to a VQC in response to the results of a confidential meeting or written comments issued to the offeror after the meeting. When the offeror is permitted to submit a revised VQC, the contracting officer shall meet with the offeror and discuss, on a confidential basis, whether the offeror's revised VQC meets each of the project design appearance goals set forth in the RFP. Following each confidential meeting and any confidential review, the contracting officer shall provide written comments to the offeror regarding whether the offeror's revised VQC meets each of the projects design appearance goals set forth in the RFP.

1617.8 The contracting officer shall not discuss any offeror's VQC at a confidential meeting other than the VQC of the offeror with whom the contracting officer is meeting.

1617.9 Nothing stated in a confidential meeting or included in a written record or summary of a meeting will modify the RFP unless it is incorporated into an amendment to the RFP.

1617.10 The offeror shall be solely responsible for ensuring that the final technical proposal complies with the requirements of the RFP.

1617.11 If an amendment to the RFP causes previously approved VQCs to become non-compliant with the project design appearance goals set forth in the RFP, then the offeror shall revise and resubmit its VQC for review and comment, in compliance with the terms of the amendment.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street N.W., 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register.* A copy of this proposed rulemaking may be obtained at the same address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-168
October 31, 2016

SUBJECT: Amendments and Appointments – 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 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 2016 Supp.), pursuant to §§ 2602(a)(1) and (b)(l) 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), and pursuant to Mayor's Order 2016-001, dated January 8, 2016, it is hereby **ORDERED** that:

1. Mayor's Order 2016-002, dated January 08, 2016, is amended as follows:

    a. By renumbering the duplicate Section 3 as Section 4;
    b. By renumbering the existing Section 4 as Section 5;
    c. By renumbering the existing Section 5 as Section 6; and
    d. Striking in newly renumbered Section 4 the phrase "voting" and inserting the phrase "non-voting" in its place.

2. Section 2 of Mayor's Order 2016-137, dated September 30, 2016, is amended by striking the phrase "non-voting" and inserting the phrase "voting" in its place.

3. The following persons are appointed as members of the Metropolitan Regional Ryan White Planning Council for terms to end November 5, 2017:

    a. **STANISLAV BRENTINI**
    b. **DOUG FOGAL**
    c. **JENNIFER ZOERKLER**

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 2016-169
November 2, 2016

SUBJECT: Appointments — Open Government Advisory Group

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl. and 2016 Supp.), and in accordance with Mayor's Order 2016-094, dated June 9, 2016, it is hereby **ORDERED** that:

1. The following persons are appointed as voting members of the Open Government Advisory Group, and shall serve at the pleasure of the Mayor:

   a. **ALANA INTRIERI**, as the designee of the Executive Office of the Mayor, replacing Lindsey Parker.

   b. **LYNDSEY MILLER-VIERRA,** as the designee of the Deputy Mayor for Public Safety and Justice, replacing Jorhena Thomas.

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 2016-170
November 3, 2016

SUBJECT: Appointments – For-Hire Vehicle Advisory Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl. and 2016 Supp.), and in accordance with the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, D.C. Law 6-97, D.C. Official Code § 50-301 *et seq.*, as amended by Section 401(l) of Title IV of the Transportation Reorganization Amendment Act of 2016, effective June 22, 2016, D.C. Law 21-124, 63 DCR 10569 (August l9, 2016), it is hereby **ORDERED** that:

1. **ERIK MOSES** is appointed as a member of the For-Hire Vehicle Advisory Council ("**Council**"), as a representative of the hospitality or tourism industry, for a term to end October 25, 2019.

2. **EVIAN PATTERSON** is appointed as a member of the Council, to serve as a representative of the District Department of Transportation for a term to end at the pleasure of the Mayor.

3. **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 2016-171
November 3, 2016

SUBJECT: Establishment—Office of Victim Services and Justice Grants

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(2), 422(6), and 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Official Code § 1-204.22(2), (6), and (11) (2014 Repl. and 2016 Supp.)), and in accordance with the Juvenile Justice and Delinquency Prevention Act of 1974, approved September 7, 1974 (88 Stat. 1109; 42 U.S.C. §§ 5601 *et seq.*), it is hereby **ORDERED** that:

I. ESTABLISHMENT

There is hereby established within the Executive Branch of the Government of the District of Columbia the Office of Victim Services and Justice Grants (the "**Office**").

II. PURPOSE

The mission of the Office is to develop, fund, and coordinate programs that improve public safety; enhance the administration of justice; and create systems of care for crime victims, youth, and their families in the District.

III. FUNCTIONS

A. The Office shall, in coordination with District agencies as necessary or appropriate:

1. Represent the Mayor on issues concerning victims of crime, the perpetration of crime, and the criminal justice system;

2. Identify and cultivate evidence-based practices to respond to, intervene in, and prevent violence;

3. Advocate on behalf of victims of crime and their families on issues related to services, systems response, legislation, and resource allocation at all levels of the government and the community;

4. Review, evaluate, and make recommendations concerning the District's response to crime, outreach and education on victims' issues, capacity building for victim and reentry services, training for responders, and any legislation affecting victims and their families;

5. Assist with the development of legislation, policies, plans, programs, and budgets to ensure consistent and effective systems responses to victims and perpetrators of crime;

6. Provide technical assistance for community-based victim service providers and programs, truancy reduction service providers and programs, and reentry service providers and programs;

7. Identify new sources of funding for services for victims of crime and returning citizens, criminal justice system enhancements, and violence prevention and intervention, and provide assistance to District agencies and community providers in obtaining such funds;

8. Promote outreach and education efforts concerning crime issues and resources available to assist victims of crime and returning citizens;

9. Work in partnership with District agencies, community-based organizations, educators, faith-based organizations, businesses, and community members (including victims of crime and returning citizens) to identify and address issues related to public safety; and

10. Issue an annual report that provides an update on the use of local and federal funds for, and analyzes the provision of services and provides recommendations for enhancements to, crime prevention, intervention, and response.

B. The Office shall serve as the state administering agency for and shall plan for, administer, and monitor federal funds related to victims of crime, victim services, juvenile justice, and criminal justice systems, including:

1. The Edward Byrne Memorial Justice Assistance Grant Program funds, authorized by section 501 of the Omnibus Crime Control and Safe Streets Act of 1968, approved January 5, 2006 (119 Stat, 3095; 42 U.S.C. § 3751);

2. Residential Substance Abuse Treatment for State Prisoners funds, authorized by section 1901 of the Omnibus Crime Control and Safe Streets Act of 1968, approved September 13, 1994 (108 Stat. 1898; 42 U.S.C. § 3796ff);

3. Title II Formula Grants Program funds, authorized by section 221 of the Juvenile Justice and Delinquency Prevention Act of 1974, approved September 7, 1974 (88 Stat. 1118; 42 U.S.C. § 5631);

4. Paul Coverdell Forensic Sciences Improvement Grant funds, authorized by section 2801 of the of the Omnibus Crime Control and Safe Streets Act of 1968, approved December 21, 2000 (114 Stat. 2788; 42 U.S.C. § 3797j);

5. Victims of Crime Act grant programs funds, authorized by the Victims of Crime Act of 1984, approved October 12, 1984 (98 Stat. 2170; 42 U.S.C. §§ 10601 *et seq.*); and

6. Grants to Combat Violent Crimes Against Women funds, authorized by section 2001 of the Omnibus Crime Control and Safe Streets Act of 1968, approved September 13, 1994 (108 Stat. 1910; 42 U.S.C. § 3796gg).

C. The Office shall monitor the District government's compliance with the following federal laws and the expenditure of federal funds associated with these laws:

1. Prison Rape Elimination Act of 2003, approved September 4, 2003 (117 Stat. 972; 42 U.S.C. §§ 15601 *et seq.*); and

2. Sex Offender Registration and Notification Act, approved July 27, 2006 (120 Stat. 590; 42 U.S.C. §§ 16901 *et seq.*).

D. The Office shall plan for, administer, and monitor local funds related to crime prevention, intervention, and response, including the:

1. Crime Victims Assistance Fund, established by section 16a of the Victims of Violent Crime Compensation Act of 1996, effective October 1, 2002 (D.C. Law 14-190; D.C. Official Code § 4-515.01);

2. Shelter and Transitional Housing for Victims of Domestic Violence Fund, established by section 3013 of the Crime Victims Assistance Fund and Shelter and Transitional Housing for Victims of Domestic Violence Fund Amendment Act of 2007, effective September 18, 2007 (D.C. Law 17-20; D.C. Official Code § 4-521); and

3. Community-based Violence Reduction Fund (also known as the Truancy Fund), established by section 3014 of the Community-Based Violence Reduction Fund [Act of 2008], effective August 16, 2008 (D.C. Law 17-219; D.C. Official Code § 1-325.121).

E. The Office shall provide facilities and other administrative support for the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052.

F. The Office shall provide administrative support for the Juvenile Justice Advisory Group, as described in Mayor's Order 2009-13, dated February 9, 2009.

G. The Office is the sole agency responsible for carrying out the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974 ("JJDP Act"), approved September 7, 1974 (88 Stat. 1109; 42 U.S.C. §§ 5601 *et seq.*), and the sole agency responsible for supervising the preparation and administration of the state plan according to section 223(a) of the JJDP Act (42 U.S.C. § 5633(a)).

H. The Office shall perform all functions, duties, and responsibilities previously delegated or otherwise assigned to the Office of Victim Services or the Justice Grants Administration, whether by law, regulation, Mayor's Order, or otherwise.

IV. ORGANIZATION AND ADMINISTRATION

A. The Office shall be headed by a Director, who shall be appointed by the Mayor and shall report to the Deputy Mayor for Public Safety and Justice.

B. The Director shall coordinate, hire, and supervise all staff of the Office as needed to achieve the mission of the Office.

C. Local funds to support victim services and local funds to support juvenile delinquency and offender-related services shall remain in separate programs within the Office's organizational structure.

V. TRANSFERS OF AUTHORITY

All powers, duties, functions, and responsibilities previously delegated or otherwise assigned to the Office of Victim Services or the Justice Grants Administration, whether by law, regulation, Mayor's Order, or otherwise, are hereby delegated and assigned to the Office of Victim Services and Justice Grants and all references to the Office of Victim Services or the Justice Grants Administration in such laws, regulations, Mayor's Orders, and other documents shall be deemed to be references to the Office of Victim Services and Justice Grants, unless the context otherwise requires.

VI. AMENDMENTS, RESCISSIONS, AND SUPERSESSION

A. The following Mayor's Orders are rescinded:

1. Mayor's Order 2015-270, dated December 31, 2015;

2. Mayor's Order 2010-43, dated March 8, 2010;

3. Mayor's Order 2008-73, dated April 30, 2008;

4. Mayor's Order 2004-119, dated July 19, 2004;

5. Mayor's Order 2004-97, dated June 4, 2004;

6 Mayor's Order 2000-149, dated October 3, 2000.

B. Part I of Mayor's Order 2009-13, dated February 9, 2009, is rescinded.

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

VII. EFFECTIVE DATE

This Order shall be effective *nunc pro tunc* to October 1, 2015.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, NOVEMBER 16, 2016
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Mafara Hobson Jake Perry

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CC-00099; Dean & Deluca of Georgetown, Inc., t/a Dean & Deluca 3276 M Street NW, License #18083, Retailer B, ANC 2E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing* **10:00 AM**
Case # 16-AUD-00013; Adams Morgan Spaghetti Gardens, Inc., t/a Spaghetti Garden Brass Monkey Peyote Roxanne, 2317 18th Street NW, License #10284 Retailer CR, ANC 1C
Failed to Maintain Books and Records (Two Counts), Failed to Qualify as a Restaurant

Show Cause Hearing* **10:00 AM**
Case # 15-CMP-00882; Mockingbird Hill, LLC, t/a Mockingbird Hill, 1843 7th Street NW, License #91418, Retailer CT, ANC 1B
Operating after Hours

Show Cause Hearing* **11:00 AM**
Case # 16-CMP-00448; SRF, LLC, t/a Boss Burger, 1931 14th Street NW License #98831, Retailer CR, ANC 1B
No ABC Manager on Duty

Board's Calendar
November 16, 2016

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

Protest Hearing* **1:30 PM**
Case # 16-PRO-00036; 1001 H St, LLC, t/a Ben's Upstairs/Ten 01, 1001 H Street NE, License #93103, Retailer CR, ANC 6A
Application to Renew the License

Show Cause Hearing* **1:30 PM**
Case # 16-251-00076; New York Avenue Beach Bar, LLC, t/a Halftime Sports Bar, 1427 H Street NE, License #94107, Retailer CT, ANC 6A
Substantial Change in Operation Without Board Approval

Fact Finding Hearing* **3:00 PM**
750Biere, LLC, t/a Duchess and the Queen; 2102 18th Street NW, License #89545, Retailer CR, ANC 1C
Request to Extend Safekeeping

Fact Finding Hearing* **3:30 PM**
Dancing Crab, LLC, t/a Dancing Crab; 4615 41st Street NW, License #90297 Retailer CR, ANC 3E
Request to Extend Safekeeping

Fact Finding Hearing* **4:00 PM**
Bardo, LLC, t/a Bardo; 25 Potomac Ave SE, License #103291, Retailer B ANC 6D
Contested Fact Finding Hearing on the Application

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA (CLASS B)

WEDNESDAY, NOVEMBER 16, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-060653 – **Washington Cash & Carry** – Wholesaler – B – 1270 4th STREET NE
[Licensee has requested Cancellation.]

ABRA-013994 – **Cathedral Pharmacy –** Retailer – B - 3000 CONNECTICUT AVENUE NW
[Licensee has requested Cancellation.]

ABRA-089069 – **Gedera Market –** Retailer – B – 4600 14TH ST NW
[Licensee did not make third year payment.]

ABRA-076415 – **T's Market –** Retailer – B - 1795 LANIER PL NW
[Licensee did not make third year payment.]

ABRA-078461 – **M & M Market –** Retailer – B – 3544 EAST CAPITOL ST NE
[Licensee did not make third year payment.]

ABRA-088380 – **Dollar Plus Food Store –** Retail – B – 1443 HOWARD ROAD SE
[Safekeeping][Licensee did not make third year payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, NOVEMBER 16, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On Wednesday, November 16, 2016 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#16-251-00226, Smith Commons, 1245 H Street N.E., Retailer CR, License # ABRA-084598

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2. Case#16-CMP-00700, Taqueria Distrito Federal, 805 Kennedy Street N.W., Retailer DR, License # ABRA-088476

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3. Case#16-CMP-00751, Po Boy Jim, 709 H Street N.E., Retailer CR, License # ABRA-087903

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4. Case# 16-CMP-00758, The Pinch, 3548-3550 14th Street N.W., Retailer CT, License # ABRA-088333.

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5. Case# 16-251-00240, Player's Lounge, 2737 Martin Luther King Jr. Avenue S.E., Retailer CN, License # ABRA-001271

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, NOVEMBER 16, 2016 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for Class Change from Retailer B to Retailer A. ANC 1C. SMD 1C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***The Bottle Shop***, 2216 18th Street NW, Retailer B Grocery, License No. 100543.

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2. Review request to combine two ABRA licenses into one by incorporating ABRA-089388 into ABRA-098225, expanding the scope of the Settlement Agreement to cover the entire building, and ultimately cancelling License No. ABRA-089388. ANC 3F. SMD 3F05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Politics & Prose/P &P Coffehouse***, 5015 Connecticut Avenue NW, Retailer DX/DR, License No. 089388 and 098225.

***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.**

DEMOCRACY PREP CONGRESS HEIGHTS
PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Painting Services

Scope of Work

Democracy Prep Congress Heights is looking for a vendor to provide interior painting services for our roughly 50,000 square foot facility. This includes the painting of classrooms, hallways, offices and other common spaces. All firms are encouraged to make appointments to visit the building prior to submiting a proposal.

Democracy Prep
Our mission is to be a community of diverse learners that builds relationships with families to empower students to become college-ready and to thrive in a global society.

Submission of Proposals

The Firm's proposal must include:

Narrative Technical Proposal detailing approach and qualifications to provide the services described in this RFP. Firms must use Benjamin Moore paints in the following colors:

Interior Walls	White Heron OC-57
Accent Walls	Mellow Yellow 2020-50
Wainscot	Blue Dragon 810
Stair Floors	Ocean Floor 1630
Stair Handrails	Blue Dragon 810
Stair Walls	Mellow Yellow 2020-50
Sheetrock Ceilings	White Heron OC-57
Kalwall Steel	Flat Black

Please ensure that your proposals take these specific colors into account.

Cost Proposal that includes the cost of the proposed services. This should include the costs of primer, paint, labor, clean up, touch ups, drop cloths for the protection of school equipment, furniture and fixtures, equipment, tools including ladders and spray machines according to insudstry standards. Note that we are seeking a proposal that gives us a fixed price for the completion of this project in a time frame described in any contract which may result from the submission of a proposal from this RFP.

Draft Contract (or other documentation required to place order) reflecting proposed terms, fee structure, and scope of service for the project. The School reserves the right to negotiate any proposed terms before signing a final contract.

Two References that include contact information for business references with knowledge of the Firm's past performance on similar work.

Prospective Firms shall submit one electronic submission via e-mail to the following address: **nho@democracyprep.org or mailed to:**

Democracy Prep Congress Heights
Attn: Nathaniel Ho
3100 Martin Luther King Jr Ave SE
Washington, DC 20032

All proposals must be received no later than 12:00 p.m. on Tuesday, November 22. Any proposals or modifications received after this time shall not be considered. Any questions should be submitted by email to **nho@democracyprep.org.**

Selection will be made after consideration of all information requested and submitted including match of product offering with the needs of the school, qualifications of firm, quality of response, and proposal fee. Proposal fees are a criterion but not the sole determining factor for selection. The School reserves the right to establish a fee schedule that is acceptable to the Firm selected and to negotiate fees when appropriate.

The School reserves the right to request additional information if necessary or to request interviews with bidders. The School further has the right conduct investigations as it deems necessary to verify the qualifications of any and all Firms submitting proposals. The School also reserves the right to reject any and all proposals with or without cause, and to waive any irregularities of informalities in the proposal submitted. In the event that all proposals are rejected, the School reserves the right to conduct a subsequent solicitation of proposals.

The School will not be responsible for any expenses incurred by bidders in the preparation and/or presentation of their proposal or oral interviews. The School also will not be responsible for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise. All information submitted in response to this RFP will become the property of the School and may be open to inspection by members of the public.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR QUALIFICATIONS

Professional Educational Consulting Services

Project Summary
Your firm is invited to submit qualifications to provide professional educational consulting services. Specifically, Eagle Academy PCS is seeking a nationally recognized early childhood expert with at least 15 years of experience working with DC public schools to implement an instructional evaluation program, including review, observations, professional development, and other related activities as agreed upon by Eagle Academy and the Consultant.

Date and Location Submittal is Due: Friday, November 18, 2016 by 5:00 p.m.

Send proposal to the attention of Mayra Martinez-Fernandez, Deputy Chief Operating Officer, at mmartinez@eagleacademypcs.org

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

2017 Washington DC Electric Vehicle Grand Prix

The Department of Energy and Environment (the Department) seeks eligible entities to conduct a hands-on educational program and organize the 2017 Washington DC Electric Vehicle Grand Prix (DCEV Grand Prix) for high schools located in the District of Columbia. The educational program and DCEV Grand Prix must include participation by a minimum of ten (10) DC-based high schools, with a specific focus on reaching non-STEM schools. The amount available for the project is approximately $170,000.00. This amount is subject to availability of funding and approval by the appropriate agencies.

Beginning 11/11/2016, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to the announcement for this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to 2017dcev.grandprix@dc.gov with "Request copy of RFA 2016-1706-EA" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Lance Loncke at (202) 671-3306 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Lance Loncke RE:2016-1706-EA" on the outside of the envelope.

The deadline for application submissions is 12/12/2016, at 5:00 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2017dcev.grandprix@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;
☒-Universities/educational institutions; and
☒-Private Enterprises.

For additional information regarding this RFA, write to: 2017dcev.grandprix@dc.gov.

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide;

- Classroom/ Instructional Supplies and Materials
- Athletic Supplies and Materials
- Contractors to provide uniformed security and protective services at school buildings

The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, December 2nd, 2016. No proposal will be accepted after the deadline. Questions can be addressed to: ProcurementInquiry@friendshipschools.org-- **Bids not addressing all areas as outlined in the RFP will not be considered.**

EXTENSION OF REQUEST FOR PROPOSALS

Friendship Public Charter School is soliciting proposals from qualified vendors for Executive Search Firm to Select a Senior Academic Administrator. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. The deadline has been extended and the proposals are due no later than 4:00 P.M., EST, November 22nd, 2016. No proposal will be accepted after the deadline. Questions can be addressed to: ProcurementInquiry@friendshipschools.org. -- **Bids not addressing all areas as outlined in the RFP will not be considered.**

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS

Compass Learning

Friendship Public Charter School intends to enter into sole source contracts with CompassLearning for the Odyssey software and licences. The Odyssey software/services meet the SEA/LEA scientifically-based assessment, curriculum, management and reporting obligations under NCLB especially for Title I and Title III designated students. The estimated yearly cost is approximately $100,000. The decision to sole source is due to the fact CompassLearning is the copyright proprietor of these items, and offers the copyrighted materials of third parties under license which allows for the integration of those materials into the CompassLearning offerings. The contract term shall be automatically renewed for the same period unless either party, 60 days before expiration, gives notice to the other of its desire to end the agreement.

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

HOUSING PRODUCTION TRUST FUND ADVISORY BOARD

MEETING NOTICE

DC Department of Housing and Community Development (DHCD)-Housing Production Trust Fund (HPTF) Advisory Board announces its next Meeting on **Wednesday, November 30, 2016, at 10:00 A.M.,** in the DHCD, Housing Resource Center, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020. See Draft Agenda below.

For additional information, please contact Oke Anyaegbunam via e-mail at Oke.Anyaegbunam@dc.gov or by telephone at 202-442-7200.

DRAFT AGENDA *(as of 11.3.16):*

Call to Order, Susanne Slater, Chair

1) Approval of Prior Meeting Summaries

2) Presentation/Discussion Item: DHCD Updates-Polly Donaldson, Director DHCD

3) Inclusionary Zoning Presentation, Gene Bulmash, Inclusionary Zoning Manager

4) Property Acquisition and Disposition Presentation, Karanja Slaughter, PADD Manager

5) DC Preservation Strike Force Update, Danilo Pelletiere, Strike Force Advisor

6) Announcements

7) Public Comments

8) Adjournment

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Full Service Catering

KIPP DC is soliciting proposals from qualified vendors for Full Service Catering. 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 PM on November 18, 2016. Questions can be addressed to megan.hawkins@kippdc.org.

MERIDIAN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Services

Speech Language Pathology and Occupational Therapy

The Board of Trustees of Meridian Public Charter School located in Washington, DC, hereinafter referred to as the "LEA" invites proposals from qualified individuals and agencies, hereinafter referred to as the "Proposer", to provide Special Education Related Services for students with disabilities under Part B of the Individuals with Disabilities Act.

Deadline of submission is November 21st, 2016 by 1:00pm Eastern Time.

Please send all questions or request for additional information to:

Michael L. Russell
Business Manager
Meridian Public Charter School
mbids@meridian-dc.org

NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS

2017 PUBLIC MEETING SCHEDULE

The regular monthly meetings of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, are held at 9:00am in open session on the fourth Wednesday of each month, unless otherwise indicated.

The following are dates and times for the regular monthly meetings to be held in calendar year 2017. All meetings are held at 1310 Southern Avenue, Southeast, Washington, DC 20032, conference room 2/3, unless otherwise indicated. Notice of a meeting location change other than 1310 Southern Avenue, Southeast will be published in the D.C. Register and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

The Annual Community Meeting will be held on Thursday, November 16, 2017 from 6:30pm-8:30pm at the R.I.S.E. Demonstration Center, located at 2730 Martin Luther King Jr. Avenue, SE, Washington, DC 20032 (on the campus of St. Elizabeth East). A notice and or draft agenda will be published in the D.C. Register for each meeting.

Wednesday, January 25, 2017	9:00am	United Medical Center
Wednesday, February 22, 2017	9:00am	United Medical Center
Wednesday, March 22, 2017	9:00am	United Medical Center
Saturday, April 29, 2017	9:00am	United Medical Center
Wednesday, May 24, 2017	9:00am	United Medical Center
Wednesday, June 28, 2017	9:00am	United Medical Center
Saturday, July 29, 2017	9:00am	United Medical Center
Wednesday, September 27, 2017	9:00am	United Medical Center
Wednesday, October 25, 2017	9:00am	United Medical Center
Thursday, November 16, 2017	6:30pm	R.I.S.E. Demonstration Center

NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Annual Community Health Forum meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held from 6:00 p.m. to 8:00 p.m. on Thursday, November 17, 2016. The meeting will be held at United Medical Center, 1310 Southern Avenue, SE, Washington, DC 20032 on the ground level. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

5:45 p.m.	Arrival
6:00 p.m.	Welcome and Introductions Chris Gardiner, Chair, Board of Directors
6:10 p.m.	Luis A. Hernandez, CEO
6:20 p.m.	Panel Discussion and Q & A
6:55 p.m.	Video – What's New at UMC?
7:00 p.m.	Panel Discussion and Q & A
7:40 p.m.	Adopt-A-School Announcement
7:50 p.m.	Raffle Drawing
8:00 p.m.	Adjournment

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLIC MEETING

Walter Reed Local Redevelopment Authority
Citizen's Advisory Committee
PURSUANT TO D.C. OFFICIAL CODE § 10-1906

The District will hold a public meeting for the Walter Reed Local Redevelopment Authority (LRA) Citizen's Advisory Committee (CAC) at the following time and location:

Date: Monday, November 14, 2016

Time: 6:30 p.m. - 8:30 p.m.

*****NEW LOCATION*****
Jewish Primary Day School
6045 16th Street NW
Washington, DC 20011

MEETING AGENDA

I. 6:30 pm WRAMC CAC Meeting

- I. LRA Opening Remarks
- II. LRA Project Overview and Update
  - i. October 26, 2016 Ceremonial Site Transfer
  - ii. Update on Site Transfer
  - iii. New CAC Member Seating
- III. Master Development Team overview and update
  - i. Next Steps/Interim Activities for Site
  - ii. Creative Placemaking- Cultural DC
- IV. Questions/Next Meeting Date
- V. Adjourn

For questions, please contact Randall Clarke, Walter Reed Local Redevelopment Authority Director at 202-727-6365 or randall.clarke@dc.gov or Malaika Abernathy Scriven at 202-545-3123 or Malaika.abernathy2@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED 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 intent to act upon the proposed tariff amendment of the Potomac Electric Power Company ("Pepco" or "Company")[2] in not less than thirty (30) days from the date of publication of this Notice of Proposed Tariff ("NOPT") in the *D.C. Register*.

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, 2016."[3] Pepco states that the "updated Network Integrated Transmission Service rate is based on the data in the 2015 FERC Form 1 for Pepco, which was filed with the FERC on April 15, 2016."[4] According to Pepco, the filed wholesale transmission rate for the Pepco Zone effective June 1, 2016 is $23,232 per megawatt-year for Network Integrated Transmission Service, which is currently reflected in Attachment H-9 of the PJM Open Access Transmission Tariff.[5] This $23,232 per megawatt-year rate must be adjusted in order to derive the $26,745 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.[6]

3. The Network Integrated Transmission Service rate reflects a rate of $21,611 per megawatt-year, which is net of the Schedule 12 Transmission Enhancement Charges due to projects within the Pepco Zone.[7] In addition, the load in the Pepco Zone is responsible for Schedule 12 Transmission Enhancement Charges due to transmission projects outside of the

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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, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed August 30, 2016 ("Pepco Letter").

3 Pepco Letter.

4 Pepco Letter.

5 Pepco Letter.

6 Pepco Letter. Attachment D.

7 Pepco Letter. Attachment E.

Pepco Zone and the rate for these projects is $5,134 per megawatt-year.[8] Combining these two rates results in an overall wholesale transmission rate for load in the Pepco Zone of $26,745 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.[9]

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

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Eighty-Third Revised Page No. R-1
Superseding Eighty-Second Revised Page No. R-1

P.S.C.-D.C. No. 1
Eighty-Third Revised Page No. R-2
Superseding Eighty-Second Revised Page No. R-2

P.S.C.-D.C. No. 1
Seventy-Sixth Revised Page No. R-2.1
Superseding Seventy-Fifth Revised Page No. R-2.1

P.S.C.-D.C. No. 1
Fifty-Second Revised Page No. R-2.2
Superseding Fifty-First Revised Page No. R-2.2

P.S.C.-D.C. No. 1
Twenty-Fifth Revised Page No. R-41
Superseding Twenty-Fourth Revised Page No. R-41

P.S.C.-D.C. No. 1
Twenty-Forth Revised Page No. R-41.1
Superseding Twenty-Third Revised Page No. R-41.1

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.2
Superseding Twenty-Third Revised Page No. R-41.2

[8] Pepco Letter. Attachment D.

[9] 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."

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.3
Superseding Twenty-Third Revised Page No. R-41.3

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.4
Superseding Twenty-Third Revised Page No. R-41.4

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.5
Superseding Twenty-Third Revised Page No. R-41.5

P.S.C.-D.C. No. 1
Twenty-Fifth Revised Page No. R-41.6
Superseding Twenty- Forth Revised Page No. R-41.6

P.S.C.-D.C. No. 1
Twenty-Fourth Revised Page No. R-41.7
Superseding Twenty-Third Revised Page No. R-41.7

P.S.C.-D.C. No. 1
Twenty-Fourth Revised Page No. R-41.8
Superseding Twenty-Third Revised Page No. R-41.8

5. The filing may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's web site at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on the "Searchable database" and input "FC1017" as the case number and "735" as the item number. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost by contacting the Commission Secretary at (202) 626-5150 or psc-commissionsecretary@dc.gov.

6. 6. All persons interested in commenting on Pepco's proposed tariff are invited to submit written comments and reply comments no later than 30 and 45 days, respectively, after the publication of this NOPT in the *D.C. Register*. Written comments should be filed with: Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission's website at http://edocket.dcpsc.org/comments/submitpubliccomments.asp. Once the comment period has expired, the Commission will take final action on Pepco's tariff filing.

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

November 17, 2016
10:00 a.m.

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

On Thursday, November 17, 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

November 17, 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, November 17, 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	Chair Bress
II.	Approval of Board Meeting Minutes	Chair Bress
III.	Chair's Comments	Chair 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	Chair Bress
XI.	Adjournment	

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENT AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after December 15, 2016.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on November 11, 2016. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: December 15, 2016**
Recommendations for appointment as DC Notaries Public **Page 2**

Alcocer	Silvana T.	Georgetown University 37th & O Street, NW	29957
Ali	Toni M.	Sutherland Asbill & Brennan, LLP 700 Sixth Street, NW, Suite 700	20001
Ashton	Jannese	Law Offices of Johnny M. Riddick & Associates 505 Capitol Court, NE, Suite 100	20002
Aydahis	Alo	Stoladi Property Group 800 Connecticut Avenue, NW	20006
Bellinger	Judith E.	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Bernaza	Georgina	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Berry	Chemere L.	Blumenthal & Cordone Law Office 7325 Georgia Avenue, NW	20012
Blagrove	Judith M.	Wells Fargo Bank 1100 Connecticut Avenue, NW	20036
Blanco	Estefania L.	TD Bank N.A. 1030 15th Street, NW	20005
Boles	Timothy E.	Baked & Wired 1052 Thomas Jefferson Street, NW	20007
Bontemps	Murielle	Beach-Oswald Immigration Law Associates, PC 888 17th Street, NW, Suite 310	20006
Brim	Sonya P.	Department of Behavioral Health/Comprehensive Psychiatric Emergency Program 1905 E Street, SE, Building 14	20003
Brockett- Parker	Angela Denise	Center for Law and Social Policy 1200 18th Street, NW, Suite 200	20036
Brown	Barbara A.	Self (Dual) 627 Girard Street, NE	20017
Brown	Bonita J.	International Association of Fire Fighters 1750 New York Avenue, NW	20006

Brown	Greta L.	US Senate Federal Credit Union 118 Senate Hart Building	20510
Campbell	Kamisha	Office of Notary Commissions and Authentications 441 4th Street, NW, Suite 810 South	20001
Carter	Stacy C.	International Association of Fire Fighters 1750 New York Avenue, NW	20006
Cassese	Devon	Dexis Interactive INC., D.B.A. Dexis Consulting Group 1412 Eye Street, NW	20005
Collins	Priscilla S.	Self 1432 Bangor Street, SE	20020
Dalil	Erdiyas	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Damiani	Caitlin	Wells Fargo 1934 14th Street, NW	20009
Darden	Abeni Edelin	Self 1833 Channing Street, NE	20018
Donaldson	Trump	Tito Contractors, Inc. 7308 Georgia Avenue, NW	20012
Elgas	Nicholas	The Westbridge Condominiums 2555 Pennsylvania Avenue, NW	20037
Fletcher	Teresa M.	Northside Medical Services Corporation 4121 Minnesota Avenue, NE	20019
Fowler	Chanae Nicole	National Association Of Broadcasters 1771 N Street, NW	20036
Fultz	Christina W.	Department of Justice - Office of International Affairs 1301 New York Avenue, NW	20530
Garris	Denise Celess	Court Services and Offender Supervision Agency 910 Rhode Island Avenue, NE	20018

D.C. Office of the Secretary **Effective: December 15, 2016**
Recommendations for appointment as DC Notaries Public **Page 4**

Ghaith	Ala N.	PVS International 1201 34th Street, NW	20007
Gilbert	Patricia A.	Self (Dual) 2013 32nd Place, SE	20020
Gordon	Sharea	Center for Global Development 2055 L Street, NW	20036
Hall	Craig A.	Morgan Stanley 1747 Pennsylvania Avenue, NW, Suite 900	20006
Hill	Charvonne E.	O'Brien Garrett 1133 19th Street, NW, Suite 300	20036
Hollis	Laneen A.	Fannie Mae 4000 Wisconsin Avenue, NW	20016
Jacobson	Julia	Stobier + Associates., PC 1621 Q Street, NW, Suite 200	20009
Jawneh	Aji Nemuna	TD Bank 905 Rhode Island Avenue, NE	20018
Johnson	LaShawn	Office of Notary Commissions and Authentications 441 4th Street, NW, Suite 810 South	20001
Jones	Mary C.	Health Services for Children with Special Needs 1101 Vermont Avenue, NW, Suite 1200	20005
Jones	Olivia V.	OAG/CSSD 441 4th Street, NW, Suite 550 North	20001
Kelley	Anthony L.	Law Offices of Joanne Sgro, PC 1750 K Street, NW, Suite 12E	20006
Kim	Jun H.	U.S. Immigration and Customs Enforcement/Homeland Security 500 12th Street, SW, Mailstop 5000	20536
Kinghorn	Paige Elizabeth	Mid Atlantic Realty Partners 3050 K Street, NW, Suite 125	20007

D.C. Office of the Secretary **Effective: December 15, 2016**
Recommendations for appointment as DC Notaries Public **Page 5**

Lahr	Jaclyn	DC Volunteer Lawyers Project 5335 Wisconsin Avenue, NW, # 440	20015
Lark	Calise V.	AAA Complete Building Services, Inc. 5151 Wisconsin Avenue, NW, Suite 400	20016
Leotsakos	Elizabeth	Pathways to Housing DC 101 Q Street, NE, Suite G	20002
Logan	Samantha E.	Walter P. Moore 1747 Pennsylvania Avenue, NW, Suite 1050	20006
Lourenco	Enrique	Lourenco Consultants, Inc. 5151 MacArthur Boulevard, NW, Suite 100	20016
Loux	Colleen B.	AAA Complete Building Services, Inc. 5151 Wisconsin Avenue, NW, Suite 400	20016
Mabery Chestnut	Dawn M.	Self 307 57th Street, NE	20019
McCormick	Jessica	United States Attorney's Office 555 4th Street, NW	20530
Melendez	Madelene	Davis Goldberg & Galper PLLC 1700 K Street, NW, Suite 825	20006
Minniefield	David	ES & Associates 517 Allison Street, NW	20011
Moore	Lakiicha L.	9/11 Victims Compensation Fund - PAE 1099 14th Street, NW, Floor 11	20005
Morson	Nia T.	Chaikin, Sherman, Cammarata & Siegel, PC 1232 17th Street, NW	20036
Moss	Rhonda R.	National Aeronautics and Space Administration (NASA) HQ 300 E Street, SW	20546
Murillo	Darwin	Difede Ramsdell Bender, PLLC 900 7th Street, NW	20001

D.C. Office of the Secretary **Effective: December 15, 2016**
Recommendations for appointment as DC Notaries Public **Page 6**

Nayini	Pavan	Potomac Elevator Company, LLC 5125 MacArthur Boulevard, NW, Suite 41	20016
Pannell	Randy L.	Wiley Rein, LLP 1776 K Street, NW	20006
Parris	Patricia Lynn	Dentons US, LLP 1900 K Street, NW	20006
Pasko	Zakelina	M&T Bank 1420 Wisconsin Avenue, NW	20007
Pendergraft	Jesse	Wells Fargo 1300 Connecticut Avenue, NW	20036
Potter	Laurance A.	Self 5823 Sherier Place, NW	20016
Ptomey	Marsha	US Department of Treasury 1500 Pennsylvania Avenue, NW	20220
Redmond	Janet A.	Department of Housing and Urban Development 820 First Street, NE	20002
Rimel	Mary Ann	Carey International, Inc. 4530 Wisconsin Avenue, NW, Suite 500	20016
Rosa	Elisa	AAA Complete Building Services, Inc. 5151 Wisconsin Avenue, NW, Suite 400	20016
Salas	Jessica N.	Curtis, Mallet-Prevost, Colt & Mosle 1717 Pennsylvania Avenue, NW	20006
Saravia	Mirna Xiomara	ICBA Bancard 1615 L Street, NW, Suite 900	20036
Schmitz	Allison M.	Curtis, Mallet-Prevost, Colt & Mosle 1717 Pennsylvania Avenue, NW	20006
Shepherd	Nakia	Law Offices of Joanne Sgro, PC 1750 K Street, NW, Suite 1200	20006
Shuntich	Savanna Lee	Bar-Adon & Vogel, PLLC 1642 R Street, NW	20009

D.C. Office of the Secretary **Effective: December 15, 2016**
Recommendations for appointment as DC Notaries Public **Page 7**

Simpkins	Cara L.	Friedlander Misler, PLLC 5335 Wisconsin Avenue, NW, Suite 600	20015
Skeete	Lenora A.	Alston & Bird, LLP 950 F Street, NW	20004
Smallwood	Danielle R.	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Smith	Nathan Harry	The UPS Store 2020 Pennsylvania Avenue, NW	20006
Snodgrass	Aaron	Credit Union National Association (CUNA) 601 Pennsylvania Avenue, NW, South Building, Suite 600	20004
Stack	Margaret M.	Himmelfarb Properties, Inc. 1293 Taylor Street, NW	20011
Stanley	Mariah	Self 134 42nd Street, NE, Apartment B-12	20019
Teodoro	Celine	GCS, Inc 3020 Yost Place, NE	20018
Timan	Josephine G.	Capital One Bank 1545 Wisconsin Avenue, NW	20007
Vogel	Kenneth Alan	Bar-Adon & Vogel, PLLC 1642 R Street, NW	20009
White	Venessa	Stewart Title Group, LLC 11 Dupont Circle, NW, Suite 750	20036
Williams-Radway	Joni	Accon Services 7600 Georgia Avenue, NW, Suite 303	20012
Zink	Samara J.	Planet Depos 1100 Connecticut Avenue, NW, #950	20036
Zollman	Carmen D.	Arent Fox, LLP 1717 K Street, NW	20006

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF JOINT PUBLIC MEETING

DC Retail Water and Sewer Rates Committee
and
Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) DC Retail Water and Sewer Rates Committee and the Finance and Budget Committee will be holding a joint meeting on Tuesday, November 15, 2016 at 10:15 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 the 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	Committee Chairperson
2. Briefing on IAC for CAP Customers	Chief Financial Officer
3. Other Business	Chief Financial Officer
4. Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF JOINT PUBLIC MEETING

Environmental Quality and Sewerage Services Committee
and
Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee and Water Quality and Water Services Committee will be holding a joint meeting on Thursday, November 17, 2016 at 10:15 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 the 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	Committee Chairperson
2. Asset Management Update	Chief Engineer
3. Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 19154-A on the Motion for Reconsideration in the Application of District Design and Development Argonne, LLC, pursuant to 11 DCMR § 3103.2,[1] for a variance from the minimum parking space dimension requirements of § 2115.1, to convert an existing flat into a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place, N.W. (Square 2589, Lot 460).

HEARING DATE:	January 12, 2016
DECISION DATE:	January 12, 2016
ORDER ISSUANCE DATE:	July 13, 2016
DECISION DATES ON MOTION FOR RECONSIDERATION:	September 27, 2016 and October 18, 2016

ORDER DISMISSING MOTION FOR RECONSIDERATION

On January 12, 2016 the Board of Zoning Adjustment (the "Board") voted to grant the application of District Design and Development Argonne, LLC (the "Applicant"). Specifically, the Board granted the Applicant's request for a variance from the minimum parking space dimension requirements of § 2115.1, to convert an existing flat into a four-unit apartment house in the R-5-B District. During the public hearing on the Application on January 12, 2016, the Board granted party status in opposition to Concerned Citizens of Argonne Place, represented by Alan Gambrell and Ana Bruno ("Party in Opposition" or "Movant"). The Board issued Order No. 19154 granting variance relief on July 13, 2016.

On July 27, 2016, the Party in Opposition filed a request for reconsideration in order to correct two alleged errors in the Board's Order No. 19154 (the "Motion"). (Exhibit 34.) The Movant also acknowledged that the Motion was filed after the regulatory deadline and requested a waiver of the timely filing requirement. (Exhibit 34.) On August 3, 2016, the Applicant filed a response, arguing that the Motion should be dismissed as untimely-filed and that the Motion is improper, as it requests technical corrections to the Order rather than reconsideration of the Board's decision. (Exhibit 35.) For reasons explained below, the Board voted on October 18, 2016 to deny the requested waiver and to dismiss the Party in Opposition's Motion as untimely.

[1] This and all other references to the relief granted in Order No. 19154, as well as the timely filing requirement for a motion for reconsideration, are to provisions that were in effect on the date the Application was heard and decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text ("the 2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 19154.

Pursuant to 11 DCMR § 3126.2, which was among the Board's Rules of Practice and Procedure in place when the Order was issued and the Motion filed, a motion for reconsideration or rehearing of any Board decision must be filed within ten days from the date of issuance of the final written order reflecting that decision. The Board's Order was issued on July 13, 2016 and was served on the Party in Opposition by email on that day. Ten days after the issuance of the Order fell on July 23, 2016, which was a Saturday. Therefore, pursuant to 11 DCMR § 3110.2, the motion was due by the end of the next business day, which was July 25, 2016. A representative of the Party in Opposition filed the Motion on July 27, 2016, indicating that he "overlooked the 10 calendar day deadline for filing" and requesting a waiver of the timely filing requirement. (Exhibit 34.)

Subtitle Y § 101.9[2] authorizes the Board to waive most provisions of its Rules of Practice and Procedure provided that there is "good cause" for the request and that "the waiver will not prejudice the rights of any party and is not otherwise prohibited by law."[3]

The Board finds that the Party in Opposition has not established the "good cause" that is required to waive the timely filing requirement. Although the D.C. Court of Appeals has not defined "good cause," the Court has established that good cause for an untimely filing must be considered "in light of the circumstances in each case" and that a key consideration is "the moving party's reasons for failing to plead or otherwise defend." (*Restaurant Equipment and Supply Depot, Inc. v. Gutierrez*, 852 A.2d 951, 956-57 (D.C. 2004).) The Movant in this case indicated that he had overlooked the filing deadline for a motion for reconsideration or rehearing. (Exhibit 34.) The Board finds that the reason provided by the Movant does not establish good cause to waive the filing deadline.

Because the Movant has not established good cause, the Board cannot grant a waiver to the filing deadline requirement and therefore must dismiss the Motion as untimely.

For the reasons stated above, it is **ORDERED** that the Motion for Reconsideration is **DISMISSED.**

VOTE: 3-0-2 (Peter G. May, Jeffrey L. Hinkle, and Frederick L. Hill to DISMISS; Anita Butani D'Souza not participating, and one Board seat vacant.)

[2] The motion for reconsideration was considered by the Board at a public meeting after the effective date of the 2016 Regulations, therefore the Board evaluated the motion under the standards and procedures in Subtitle Y of those regulations.

[3] One such waivable provision in the 2016 Regulations, Subtitle Y § 700.2, contains the same ten-day deadline for motions for reconsideration and rehearing as § 3126.2 of the 1958 Regulations.

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: November 1, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19185 of Samson Gugsa and Luleadey K. Jembere, pursuant to 11 DCMR § 3103.2[1], for variances from the use requirements under § 200 to permit a flat, and from the requirements under § 2116.4 to allow the location of parking spaces between the front building wall and the front lot line in the R-1-B District at premises 3101 35th Street, N.E. (Square 4325, Lot 15).

HEARING DATE: February 9, 2016
DECISION DATE: February 9, 2016

DECISION AND ORDER

Pursuant to a Zoning Administrator letter dated October 30, 2016 (Exhibit 5), this application was submitted on November 5, 2015 by Luleadey K. Jembere and Samson Gugsa (together, the "Applicant"), the owners of the property that is the subject of the application. The application requested a use variance from 11 DCMR § 200 to allow a flat (i.e. a two family dwelling) and an area variance from 11 DCMR § 2116.4 to allow the location of parking spaces between the front building wall and the front lot line in the R-1-B District at 3101 35th Street, N.E. (Square 4325, Lot 15). Following a public hearing, the Board of Zoning Adjustment ("Board") voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 12, 2015, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 5; Advisory Neighborhood Commission ("ANC") 5C, the ANC in which the subject property is located; and Single Member District/ANC 5C03. Pursuant to 11 DCMR § 3112.14, on November 17, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 5C, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on November 20, 2015 (62 DCR 15115).

Party Status. The Applicant and ANC 5C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Jacqueline Jones, who lives in a residence abutting the subject property and was represented by her niece, Cheryl Tracy.

[1] This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text. The repeal and replacement of the 1958 Regulations has no effect on the validity of the Board's decision or the validity of this order.

Applicant's Case. The Applicant provided testimony and evidence describing the acquisition of the subject property, and explaining their interest in retaining the use of the property as a flat.

OP Report. By memorandum dated February 2, 2016, the Office of Planning recommended approval of the application subject to a condition requiring the Applicant to limit "off-street parking … to one off-street parking space and remove all excess paving from the front yard" so as to enhance the residential appearance of the property. (Exhibit 28.)

DDOT. By memorandum dated January 20, 2016, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 26.) At the public hearing, DDOT indicated its agreement with OP's proposed condition, which would limit the off-street parking in the front yard to one parking space, so as to reduce the size of the paved area in favor of landscaping. DDOT encouraged the Applicant to ensure compliance with public space regulations, in part by seeking permits for improvements to the curb cut into the subject property and the treatment of the front yard.

ANC Report. By letter dated December 16, 2015, ANC 5C indicated that, at a properly noticed public meeting with a quorum present, the ANC voted 6-0 in support of the application. (Exhibit 22.)

Party in opposition. The party in opposition objected to the height of the building on the subject property and its use as a flat in an otherwise "residential neighborhood," and complained about the limited availability of parking on the street and that the cul-de-sac did not provide enough room for vehicles, including emergency vehicles, to turn around. (Exhibit 31; Hearing Transcript of February 9, 2016, pp. 76-88.)

Person in support. The Board received a letter in support of the application from the owner of a neighboring property in the 3100 block of 35th Street, N.E., who heard the Applicant's presentation at an ANC meeting and recommended that the Board grant the relief requested. (Exhibit 23.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located on the north side of 35th Street N.E., east of its intersection with Bladensburg Road (Square 4325, Lot 15).

2. The subject property is trapezoidal, narrower along its street frontage (35.33 feet) than along the rear property line (77.5 feet). Its side lot lines are 133.41 feet long on the west and 139.92 feet long on the east, providing a lot area of 7,526 square feet.

3. The subject property is improved with a two-story building configured as a two-family dwelling. The Zoning Regulations provide that a two-family dwelling is a "flat." *See* 11 DCMR § 199.1, definition of "two-family dwelling". The building was built in 2004 and has been used and configured as a flat continuously. The building has separate gas and electric meters, kitchens, furnaces, air conditioners, duct work, and hot water heaters for each unit. One unit is located on the first floor and in the basement, while the second unit occupies the second floor of the building. Each unit contains approximately 1,248 square feet and contains at least five bedrooms.

4. The Applicant purchased the property in June 2015 from Fannie Mae as a foreclosure property. The property had been listed as a two-family residence, was treated for tax purposes as a two-unit building, and was rented to tenants at the time of the Applicant's purchase.

5. The Applicant decided to rent both units through a housing choice voucher program. After finding tenants, the Applicant pursued approval of a landlord-tenant agreement with the D.C. Housing Authority and had the property inspected successfully. After applying for a business license from the Department of Consumer and Regulatory Affairs, the Applicant first learned that the use of the subject property did not comply with zoning requirements and therefore was ineligible for a certificate of occupancy.

6. Other properties along the same segment of 35th Street, including the abutting lot to the west of the subject property, are improved with one-family detached dwellings. The neighboring houses are smaller buildings on smaller lots (generally 3,000 to 3,500 square feet) than the Applicant's building and lot.

7. Areas to the east and south are located within the Fort Lincoln New Town development, which is zoned R-5-D and contains both row dwellings and vacant land. A large parcel northeast of the subject property is zoned R-5-A and is currently undeveloped, although a townhouse development has been planned for the parcel.

8. The Applicant's building is set back from the front property line, and much of the front yard is paved for use as parking for four or five vehicles. The paved area is accessible via a curb cut situated near the western lot line of the subject property, while the largest area of paving is located on the eastern portion of the front yard. The subject property has no alley access.

9. 35th Street does not extend to the east beyond the subject property into the Fort Lincoln New Town development. Vehicular access from 35th Street to nearby private roadways within the Fort Lincoln New Town is blocked by a fence and concrete barriers.

10. The subject property is located in the R-1-B District, which is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant

areas likely to be developed for those purposes. (11 DCMR § 200.1.)

11. A flat is not among that matter of right uses permitted in R-1 zones, *see* 11 DCMR § 201.1, but is first permitted in the less restrictive R-4 zone pursuant to § 330.5 (f).

12. The Zoning Regulations applicable in the R-1 District are contained in Chapter 2 of Title 11 and are intended "to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses" are permitted in areas zoned R-1. (11 DCMR § 200.2.) Examples of such uses include public schools, public libraries, and places of worship.

13. The building at the subject property satisfies the minimum area requirements of the R-1-B zone, with the exception of minimum lot width (a minimum of 50 feet is required). The building has two stories, where three are permitted. The lot area exceeds the minimum requirement of 5,000 square feet. Existing lot occupancy is 17.2%, where a maximum of 40% is permitted. The rear yard is 44 feet deep, where a minimum of 25 feet is required, and the side yards are at least 10 feet wide, where the minimum requirement is eight feet. (See 11 DCMR §§ 400-405.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a use variance from § 200 of Title 11 DCMR to allow a flat, which is not among the matter of right uses permitted in an R-1 zone by § 201 and an area variance from § 2116.4 to allow the location of parking spaces between the front building wall and the front lot line in the R-1-B District at 3101 35th Street, N.E. (Square 4325, Lot 15). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (*See* 11 DCMR § 3103.2.)

The District of Columbia Court of Appeals has held that the uniqueness test follows from its rationale: to support a variance, difficulties or hardship must be due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood. There is no requirement that the uniqueness inheres in the land at issue, and the uniqueness may arise from a confluence of factors, so long as the extraordinary or exceptional condition affects only a single property.

The higher "undue hardship" standard applies to requests for use variances while the lower "practical difficulty" standard applies to area variances. The District of Columbia Court of Appeals has interpreted "undue hardship" to mean that a property cannot be put to any zoning-compliant use for which it can be reasonably adapted. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). Determinations of whether practical difficulties exist must be made on a case-by-case basis, where an applicant can demonstrate that compliance with an area restriction would be unnecessarily burdensome. *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554 at 560-161 (D.C. 2011) (citations omitted).

Based on the findings of fact, the Board concludes that the application satisfies the requirements for variance relief in accordance with § 3103.2. The subject property exhibits an exceptional condition in that the Applicant's lot is approximately twice as large as any other property on its street, and was already improved with a building devoted to use as a two-family flat when the property was acquired by the Applicant. The building had been constructed more than 10 years earlier, and had been used and offered for sale as a two-family dwelling.

The Board concludes that the strict application of the use permissions of Zoning Regulations would create an undue hardship to the Applicant as the owner of the property. The existing building has always been configured as a two-family dwelling, with separate ductwork, kitchens, and other features necessary for a flat but not for a one-family dwelling. Use of the existing building as a one-family dwelling would require the Applicant to bear the expense of its conversion, and would result in a very large house – possibly one with 10 or 11 bedrooms. The Applicant demonstrated that a one-family dwelling of that size and at that location would not be readily marketable.

The rule against self-created hardship bars variance relief where the affirmative act of an applicant, or its predecessor in title, is the sole cause of the hardship complained of. *See De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233 (D.C. 1978) (Court declined to apply the self-created hardship rule in part because "the hardship at issue … cannot be accurately described as the direct consequence of the [property owner's] sole and affirmative acts….) In this proceeding, the Board finds no self-created hardship by the Applicant, who purchased the property long after its construction and use as a flat, and who relied on the presence of tenants, real estate listings, and tax classifications that depicted the property as a two-family dwelling. The Applicant's immediate predecessor in title acquired the property in foreclosure. Nothing in the record suggests that either the Applicant or its predecessor in title were in any way involved in the construction or initial use of the building as a two-family dwelling.

The Board does not find that approval of the requested use variance relief would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan. The building complies with area requirements of the R-1-B zone in terms of height, lot occupancy, and yard setbacks, and does not adversely affect neighboring

properties with respect to light, air, or privacy. Approval of the requested use variance would allow a flat in a location where that use would not otherwise be permitted; however, the Board notes that the R-1-B zone does not impose use restrictions that would result in the limited sort of "residential neighborhood" described by the party in opposition. Rather, the R-1-B zone also allows certain other uses compatible with its one-family residential emphasis, whether as a matter of right or by special exception approval including such institutional uses such as schools, libraries, and places of worship. To suggest that a flat may never be permitted when exceptional circumstances and undue hardship are shown is contrary to both the letter and spirit of the Zoning Act. *See e.g. Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936 (D.C. 1979) (Variance relief was appropriate to allow a flat in an area characterized by one-family dwellings in light of factors including the exceptional size and unique layout of the structure, which was "already an anomaly in its neighborhood larger than any of the houses within 200 feet," and the infeasible marketability of the large property as a single dwelling.)

With respect to the area variance relief requested by the Applicant to allow the location of a parking area between the building and the front lot line, the Board finds an exceptional condition arising from the siting of the existing building on the property, which hinders the use of the side yards as a location for a driveway to the rear of the property. The widths of the existing side yards exceed the minimum requirement by two feet, but air-conditioning equipment has been installed on one side and vehicular access to the other side would require a substantial addition to the amount of paving on the property, due to the location of the existing curb cut.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, OP recommended approval of the application subject to a condition restricting the extent of the paving, to an area suitable for parking one vehicle, in order to improve the residential appearance of the property. DDOT also recommended adoption of that condition, so as to minimize the extent of paving, rather than landscaping, in the front yard of the residence. The Board is sympathetic to those concerns, but declines to include the restriction as a condition of its approval because use of the subject property as a flat might generate a demand for parking greater than one space. The Board credits the testimony of the party in opposition about the limited availability of on-street parking and the difficulties faced by motorists in navigating the cul-de-sac, which is relatively narrow and lacks access to nearby private roads. The Board also notes DDOT's testimony about public space issues possibly affecting the front yard of the building and the location of the curb cut. The Board encourages the Applicant to work with DDOT on a suitable parking arrangement that could enhance maneuverability without reliance on unduly extensive paving in the front yard of the dwelling.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.).) In this case ANC 5C did not express any issues or concerns but voted unanimously in support of the

application. For the reasons discussed above, the Board concurs with the ANC's recommendation that the requested zoning relief should be granted.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a use variance from § 200 to allow a flat when that use is not permitted in an R-1 zone by § 201 and an area variance from § 2116.4 to allow the location of parking spaces between the front building wall and the front lot line in the R-1-B District at 3101 35th Street, N.E. (Square 4325, Lot 15). Accordingly, it is **ORDERED** that the application is **GRANTED.**

VOTE: **3-0-2** (Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; Marnique Y. Heath not participating, one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 31, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 19200-A of Jemal's Pappas Tomato's L.L.C., Motion for Modification of Consequence, pursuant to 11 DCMR Subtitle Y § 703.

The original application (No. 19200) was pursuant to 11 DCMR § 3103.2[1], for a variance from the off-street parking requirements under § 2101.1, to allow the adaptive reuse of an existing warehouse building for retail uses in the C-M-1 District at premises 1401 Okie Street N.E. (Square 4093, Lot 832).

HEARING DATE (Case No. 19200):	March 1, 2016
DECISION DATE (Case No. 19200):	March 1, 2016
FINAL ORDER ISSUANCE DATE (Case No. 19200):	March 3, 2016
MODIFICATION DECISION DATE:	September 27, 2016 and October 18, 2016

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On March 1, 2016, in Application No. 19200, the Board of Zoning Adjustment ("Board" or "BZA") approved the request by Jemal's Pappas Tomato's L.L.C (the "Applicant") for a variance from the off-street parking requirements under § 2101.1, to allow the adaptive reuse of an existing warehouse building for retail uses in the C-M-1 District at premises 1401 Okie Street N.E. (Square 4093, Lot 832). The Board issued Order No. 19200 on March 3, 2016. (Exhibit 5 of the record for Case No. 19200A.) The Order in Case No. 19200 was conditioned on the Applicant, pending the approval of the Public Space Committee, installing curb ramps on the east-side of Fenwick Street at the intersection of Gallaudet Street as part of streetscape improvements, which will be coordinated through public space permits.

MOTION FOR MODIFICATION OF CONSEQUENCE

On September 14, 2016, the Applicant submitted a request for modification of consequence to the plans approved by the Board in Order No. 19200. (Exhibit 1.) Pursuant to 11 DCMR Subtitle Y § 703, the Applicant requested to redesign the architectural elements from the approved plans of Order No. 19200.

Under § 2101.1 of the 1958 Zoning Regulations, a total of 223 onsite parking spaces were required for the proposed retail and manufacturing uses. The Board granted a variance from §

[1] The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the "1958 Zoning Regulations") but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the "2016 Regulations").

2101.1 to allow the Applicant to provide zero parking spaces on the Site, based largely on the fact that the Applicant's development company (Douglas Development Corporation) had already constructed a seven-story above-ground parking garage across the street from the Site. The parking garage contains over 1,000 parking spaces and was built to accommodate future development at the Site.

The approved plans structurally preserved the existing building and included a number of renovations that resulted in approximately 54,521 square feet of gross floor area (0.69 FAR) and approximately 55,857 square feet of cellar floor area. The maximum building height was maintained at 35 feet and two stories. The renovated building complied with all applicable Zoning Regulations, except for parking.

In the application herein, the Applicant requests a Modification of Consequence to redesign the architectural elements from the final design approved by the Board in Case No. 19200. Specifically, the Applicant proposes to add a new third-story addition to a portion of the west side of the building, and to reconfigure the uses within the building to incorporate office use. These changes result in relocated core elements, shifted penthouses at the roof levels, reconfigured partitions within the retail space to accommodate the office use, and reconfigured loading facilities. The revised building will have approximately 73,244 square feet of gross floor area (0.93 FAR) and approximately 51,582 square feet of cellar floor area. The maximum building height will be increased to 40 feet.

Pursuant to Subtitle C § 700, the revised plans generate a total parking requirement that represents a significant reduction from the 223 parking spaces required under the 1958 Zoning Regulations, in part because the parking requirement for retail use was reduced significantly in the 2016 Regulations. The building height, density, setbacks, loading, and penthouses all comply with 2016 Regulations, such that no additional areas of zoning relief are generated by the revised plans. (Exhibit 3.)

The Applicant submitted revised plans reflecting these modifications. (Exhibit 6.)

The Applicant indicated that the proposed modification of consequence does not required additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify the conditions of approval included in BZA Order No. 19200.

The Merits of the Request for Modification of Consequence

The Applicant’s request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a “proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.”

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties are allowed to submit

comments within ten days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 5D, the only other party to Application No. 19200, as well the ANC Commissioner for Single Member District 5D01. ANC 5D submitted a report dated October 13, 2016, recommending approval of the request for modification of consequence. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 11, 2016, at which a quorum was present, the ANC voted 5-0-0 to support the request. (Exhibit 11.)

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report on October 12, 2016 recommending approval of the proposed modification of consequence to the Applicant's plans. (Exhibit 10.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence of approved plans. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a modification of consequence to the plans approved in Case No. 19200, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 19200 is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 6.**

In all other respects, Order No. 19200 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON MARCH 1, 2016: 3-0-2
(Marnique Y. Heath, Frederick L. Hill, Michael G. Turnbull, to APPROVE; Jeffrey L. Hinkle, not participating or voting; one Board seat vacant.)

VOTE ON MODIFICATION OF CONSEQUENCE ON OCTOBER 18, 2016: 3-0-2
(Anita Butani D'Souza, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; Frederick L. Hill, not participating or voting and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: November 1, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19350 of Art Charo and Maude Fish, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, and the side yard requirements of Subtitle D § 307, to construct a rear addition to an existing one-family dwelling in the R-1-B Zone at premises 3224 Oliver Street N.W. (Square 2022, Lot 48).

HEARING DATE: October 25, 2016
DECISION DATE: October 25, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3 (original) and 38 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3G and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. The ANC submitted a report dated July 15, 2016, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 11, 2016, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 39.) The Single Member District commissioner 3G04 also testified in support of the application.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

Letters from neighbors of support for the application were also submitted. (Exhibits 10.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201, from the nonconforming structure

[1] The Applicant amended the application to add special exception relief under Subtitle C § 202.2 from nonconforming structure requirements at the recommendation of the Office of Planning. (Exhibit 38.) The caption has been changed accordingly.

requirements of Subtitle C § 202.2, and the side yard requirements of Subtitle D § 307, to construct a rear addition to an existing one-family dwelling in the R-1-B Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle D §§ 5201 and 307, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 7 AND 32.**

VOTE: **4-0-1** (Anita Butani D'Souza, Anthony J. Hood, Frederick L. Hill, and Jeffrey L. Hinkle, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 31, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19357 of James and Lisa Hobbs, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck addition to an existing one-family dwelling in the RF-1 Zone at premises 712 8th Street N.E. (Square 890, Lot 66).

HEARING DATE: October 25, 2016
DECISION DATE: October 25, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 13, 2016, from the Zoning Administrator, certifying the required relief. (Exhibit 7.)

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") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report dated October 15, 2016, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 13, 2016, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a timely report (Exhibit 34) and testified at the hearing in support of the application.[1] The District Department of Transportation ("DDOT") submitted a report of no objection to the approval of the application. (Exhibit 33.)

Five letters, including letters from both adjacent neighbors, were submitted in support of the application. (Exhibits 30, 37-39, and 41.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the nonconforming structure requirements of Subtitle C § 202.2,

[1] At the public hearing, to inquiries by the Board and the Office of the Attorney General, the Applicant and OP clarified that the proposed rear yard would be 10 feet, one and 3/8 inches. not 5.4 feet as OP had mistakenly stated on page 1 of its report. OP noted that it correctly stated the proposed rear yard dimensions on page 2 of the report.

the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck addition to an existing one-family dwelling in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C § 202.2 and Subtitle E §§ 304.1 and 306.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5.**

VOTE: **4-0-1** (Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Anthony G. Hood to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 28, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y

§ 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF CLOSED MEETING

TIME AND PLACE: **Wednesday, November 9, 2016, @ 9:00 a.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 405(c) of the Open Meetings Act, hereby provides notice it will hold a closed meeting at the time and place noted above for the purpose of receiving training as permitted by D.C. Official Code § 2-575(b)(12). The subjects of the trainings are: DOES First Source Agreements, the DDOT RPP program, and how the Zoning Administrator's office has begun using the new Zoning Regulations.

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

Public Employee Relations Board

In the Matter of:	)	
District of Columbia Metropolitan Police Department	)	PERB Case No. 06-A-09
Petitioner	)	Opinion No. 883
v.	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Hoang Nguyen)	)	
Respondent	)	

DECISION AND ORDER

I. Statement of the Case

The District of Columbia Metropolitan Police Department ("MPD" or "Agency") filed an Arbitration Review Request ("Request") in the above-captioned matter. MPD seeks review of an Arbitration Award ("Award") that rescinded the termination of Hoang Nguyen ("Grievant"), a bargaining unit member.

Arbitrator Michael Murphy was presented with the issue of whether MPD had just cause to terminate the Grievant.[1] The Arbitrator found that MPD failed to prove that it had just case to terminate the grievant, but did prove that it had cause to discipline the Grievant. CITE. As a result, the Arbitrator ruled that the appropriate discipline in this case should be a sixty day suspension. (Award at 18).

[1] The Arbitrator also considered the Fraternal Order of Police's argument that: (1) MPD violated the 55-day rule contained in the parties' collective bargaining agreement, and (2) MPD violated the District Personnel Manual. The Arbitrator found that the Grievant expressly waived application of the 55-day rule. (Award at 11). In addition, the Arbitrator ruled that MPD did not violate the District of Columbia Personnel Manual by adding a charge of "Neglect of Duty" at the end of the hearing. (Award at 12).

MPD contends that: (1) the Arbitrator was without authority to grant the Award; and (2) the Award is contrary to law and public policy. (Request at 2). The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") opposes the Request ("Opposition").

The issue before the Board is whether "the award on its face is contrary to law and public policy" and whether "the arbitrator was without or exceeded his or her jurisdiction." D.C. Code § 1-605.02(6).

II. Discussion

Beginning around November 2001 and continuing to April 2003, the Grievant was hired as a crossing guard at the Maret School, a private school in the northwest section of Washington, D.C. (Award at 6).

MPD claimed that the Grievant failed to obtain approval for this outside employment. (Award at 6). In addition, MPD asserted that the Grievant "acted as a go between for other officers, regarding the Maret School, by scheduling their work assignments and picking up checks. . .in violation of MPD regulations." (Award at 6).

On June 8, 2004, MPD served the Grievant with a Notice of Proposed Adverse Action indicating MPD's intention to terminate him for his participation in the crossing guard operation at the Maret School. (Award at 2). That same day, the Grievant responded to the Notice and requested that a Trial Board be convened. (Award at 7).

The Trial Board proceeding was scheduled for June 29. On June 24, 2004, the Grievant's counsel noted a scheduling conflict for the June 29 hearing and asked that the proceeding begin on June 30, 2004. (Award at 8).

The Trial Board Convened on June 30, 2004, to hear the charges against the Grievant for engaging in unauthorized outside employment at the Maret School and brokering outside employment for other officers.[2] The Trial Board found the Grievant guilty of several charges and recommended that he be suspended for sixty days. (Award at 1).

On September 22, 2004, the Grievant received a Final Notice of Adverse Action from Assistant Chief Shannon P. Cockett, Director of Human Services. This Notice did not adopt the findings of the Trial Board that the Grievant be suspended for sixty days; instead, it found that termination was the appropriate penalty. (Award at 1-2). The Grievant appealed the decision by invoking arbitration pursuant to the parties' collective bargaining agreement ("CBA"). (Award at 2).

2 In addition, at the hearing the charges and specifications were amended to include a "neglect of duty" allegation. (Award at 2).

At arbitration, FOP asserted that MPD violated Article 12, Section 6 of the parties' CBA in that it did not issue its decision within fifty-five days of the date that the Grievant filed his request for a departmental hearing. (Award at 1). Article 12, Section 6 of the parties' CBA provides in pertinent part that an employee "shall be given a written decision and the reasons therefore no later than...55 days after the date the employee is notified in writing of the charges or the date the employee elects to have a departmental hearing." (Award at 3). FOP argued that in this case the Grievant requested a "hearing by memo of June 8, 2004." (Award at 4). Therefore, MPD was required to provide a written decision no later than August 2, 2004. MPD issued its final decision ordering the Grievant's termination on September 22, 2004, well after the deadline. (Award at 4-5). FOP argued that because of this violation the termination should be rescinded. (Award at 4).

Additionally, FOP claimed that MPD violated the District of Columbia Personnel Manual ("DPM") by adding an additional charge of "neglect of duty" during the hearing. (Award at 5). FOP argued that this procedural violation was grounds for dismissing the charge. *Id.* Further, FOP asserted that the penalty imposed was arbitrary and inappropriate. (Award at 5).

MPD countered with the argument that when FOP asked for continuance of the hearing before the Trial Board, its continuance request resulted in a complete waiver of the 55-day time limitation in Article 12, Section 6 of the parties' CBA. (Award at 5). Therefore, the 55-day rule should not apply. (Award at 5). In addition, MPD asserted that even if a violation of the 55-day rule occurred, it constituted harmless error and that consistent with a Superior Court ruling the termination should be sustained. (Award at 5). In support of its position, MPD cited the decision in Metropolitan Police Department v. District of Columbia Public Employee Relations Board, 01-MPA-19 (September 10, 2002).

Further, MPD urged that the charge of "neglect of duty" was properly added because the MPD Trial Board Handbook permits charges to be added based on evidence presented. (Award at 6).

In addition, MPD denied that it erred in its application of the *Douglas* factors in this case. (Award at 6). With regard to the penalty imposed on the Grievant (termination), MPD claimed that there was substantial evidence to support the action taken. (Award at 6).

In an Award issued on February 27, 2006, Arbitrator Michael Murphy found that FOP expressly waived application of the 55-day rule in this case. (Award at 10). In addition, the Arbitrator rejected FOP's claim that MPD violated the DPM by adding a charge at the hearing. Specifically, the Arbitrator noted that "[p]age 6 of the MPD Trial Handbook...specifically provides that, where appropriate based on the evidence, the Panel is authorized to add charges. Since the addition of a charge is an authorized Trial Board procedure, the Union argument on this point is not persuasive." (Award at 12).

Having addressed the two procedural arguments raised by FOP, the Arbitrator focused on the merits of the case and addressed the issue of whether MPD had just cause to terminate the Grievant. Arbitrator Murphy indicated the following:

The question remains as to whether just cause existed for increasing the penalty from a sixty (60) day suspension to termination, as proposed by Assistant Chief Shannon P. Cockett. After reviewing the findings of the Trial Board, Chief Crockett rendered a decision in Officer Nguyen's case in which she stated:

> In accordance with General Order 1202.1.G.3.b (3), I hereby affirm the original penalty as proposed in the Notice of Proposed Adverse Action, dated June 8, 2004, and received by you on that date. For the cited violations you will be removed from the force. Your removal will become effective November 5, 2004.

The General Order relied on by Chief Cockett...notes that the board, at the conclusion of the hearing, shall make findings of fact, conclusions of law and recommendations to the Administrative Services Officer (that person is Chief Cockett), setting forth its opinion in the matter. The Administrative Services Officer then has a number of options as outlined in the General Order. The case may be remanded to the same Board or a different Board, which did not happen in Officer Nguyen's grievance. Alternatively, the Administrative Services Officer can affirm, reduce or set aside the Trial Board's recommendation. However, there is no mention in the General Order of there being any authority for the Administrative Services Officer to increase a proposed penalty. Nonetheless, Assistant Chief Cockett opted to increase the penalty proposed by the Trial Board. How does this affect the outcome?

* * *

In the instant case we have precedent that is less than a month old, addressing the very same issue (General Order 1202.1.G.3.b(3)) and involving the very same parties. The MPD has offered absolutely no countervailing argument on this point that would support the actions taken by Chief Cockett. Accordingly, the arbitrator is constrained to find that Chief Cockett exceeded the limits of her authority when she increased the penalty that had been recommended by the Trial Board. The General Order, which she cited and which sets forth her authority, simply does not grant her this power. As a result of this arbitrary action, and consistent with the recent arbitral award on this very point, the undersigned arbitrator is ineluctably drawn to the conclusion that the MPD did not have cause for terminating the grievant and its actions in this regard must be set aside.

* * *

> Consistent with the discussion set forth above, the arbitrator holds that the Grievant's discharge was arbitrary and therefore not for cause as required by Article 4.5 and Article 12.1 of the CBA. However, the penalty recommended by the Trial Board was for just cause. In light of this finding, the grievance is sustained and the grievant shall be reinstated to his former position with the MPD, subject to the penalty of a sixty day suspension without pay, a suspension from participating in the Outside Employment Program for a period of six (6) months, and a transfer from the Special Operations Division to a Patrol District, as recommended by the Trial Board.

(Award at 15-18).

MPD takes issue with the Award. Specifically, MPD argues that: (1) the Arbitrator was without authority to grant the Award; and (2) the Award is contrary to law and public policy. (Request at 2).

MPD contends that "the authority of...Assistant Chief [Cockett] is clear. The Assistant Chief may (1) remand the case to the same or different Board, or (2) the Assistant Chief may issue a decision affirming, reducing, or setting aside the action, **as originally proposed in the notice of proposed action."** (Request at 4-5; emphasis in original). Therefore, MPD suggests that the Arbitrator exceeded his authority.

MPD's arguments are a repetition of the positions it presented to the Arbitrator and its ground for review only involves a disagreement with the Arbitrator's interpretation of General Order 1202.1.G.3.b(3). MPD merely requests that the Board adopt its interpretation of the General Order. This we will not do.

We have held that "[b]y agreeing to submit the settlement of [a] grievance to arbitration, it [is] the Arbitrator's interpretation, not the Board's, that the parties have bargained for." ***University of the District of Columbia and University of the District of Columbia Faculty Association,*** 39 D.C. Reg. 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992). In addition, the Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement and related rules and/or regulations as well as his evidentiary findings and conclusions." *Id.* Moreover, "the Board will not substitute its own interpretation or that of the Agency for that of the duly designated **arbitrator."** ***District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246,*** 34 D.C. Reg. 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). In the present case, the parties submitted their dispute to Arbitrator Murphy. Neither MPD's disagreement with the Arbitrator's interpretation of General Order 1202, nor MPD's disagreement with the Arbitrator's findings and conclusions, are grounds for reversing the

Arbitrator's Award. *See MPD and FOP/MPDLC (on behalf of Keith Lynn),* _ D.C. Reg. ____, Slip Op No. 845, PERB Case No. 05-A-01 (2006).

The Board finds that Arbitrator Murphy was within his authority to rescind the Grievant's termination. We have held that an arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provisions." *DC. Department of Public Works and AFSCME Local 2091,* 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). In addition, we have found that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement.[3] *See MPD and FOP/MPDLC,* 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Furthermore, the Supreme Court held in *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960), that arbitrators bring their "informed judgment" to bear on the interpretation of collective bargaining agreements, and that is "especially true when it comes to formulating remedies." Further, other courts have followed the Supreme Court's lead in holding that arbitrators have implicit authority to fashion appropriate remedies. *See Metropolitan Police Dept.* v. *Public Employee Relations Board,* D.C. Sup. Ct. No. 04 MPD 0008 at p. 6, (May 13, 2005).

In the present case, MPD does not cite any provision of the parties' collective bargaining agreement that limits the Arbitrator's equitable power. Therefore, once the Arbitrator concluded that MPD failed to prove that it had cause to terminate the Grievant, but did prove that it had cause to discipline him, the Arbitrator had authority to determine what he deemed to be the appropriate remedy.

As a second basis for review, MPD claims that the Award is on its face contrary to law and public policy. (Request at 2). For the reasons discussed below, we disagree.

In support of its public policy argument, MPD states the following:

> [I]t should not be ignored that the Grievant was found guilty of committing serious acts of misconduct, and that determination has not been contested or otherwise challenged...It is beyond question that the suitability of a person employed as a police officer is an important public policy. [The] Grievant committed his misdeeds while employed as a police officer and [MPD] decided that he was no longer suitable to function in that capacity. A remedy of reinstatement returns to MPD an individual unsuitable to serve as a police officer. Clearly such a remedy would violate public policy.

(Request at 6).

3 We note that if MPD had cited a provision of the parties' collective bargaining agreement that limits the Arbitrator's equitable power, that limitation would be enforced.

The possibility of overturning an arbitration decision on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's ruling. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *American Postal Workers Union, AFL-CIO* v. *United States Postal Service,* 789 F.2d 1, 8 (D.C. Cir. 1986). A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well-defined public policy grounded in law or legal precedent. *See United Paperworkers Int'l Union, AFL-CIO* v. *Misco, Inc.,* 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPDLC,* 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). *See also District of Columbia Public Schools and AFSCME District Council 20,* 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 85-A-05 (1987). As the Court of Appeals has stated, we must "not be led astray by our own (or anyone else's) concept of 'public policy,' no matter how tempting such a course might be in any particular factual setting." *District of Columbia Department of Corrections* v. *Teamsters Local 246,* 54 A.2d 319, 325 (D.C. 1989).

We find that MPD has not cited any specific law or public policy that was violated by the Arbitrator's Award. MPD had the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result." *MPD and FOP/MPDLC,* 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). In the present case, MPD failed to do so. Moreover, it is clear that MPD's argument involves a disagreement with the Arbitrator's ruling. This Board has held that "a disagreement with the arbitrator's interpretation...does not make the award contrary to law and public policy." *AFGE Local 1975 and Department of Public Works,* 48 D.C. Reg. 10955, Slip Op. No. 413 at pp. 2-3, PERB Case No.95-A-02(1995).

In view of the above, we find no merit to MPD's arguments. Additionally, we find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous, contrary to law or public policy, or in excess of this authority under the parties' collective bargaining agreement. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

July 30, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-A-09 was transmitted via U.S. Mail to the following parties on this the 30th day of July, 2012.

Ms. Pamela Smith, Esq. **U.S. MAIL**
Assistant Attorney General
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Ms. Kelly Burchell **U.S. MAIL**
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Erin E. Wilcox, Esq.
Attorney-Advisor

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	)	
Complainant,	)	PERB Case No. 11-E-02
	)	Opinion No. 1592
v.	)	
District of Columbia Metropolitan Police Department,	)	
Respondent.	)	

DECISION AND ORDER

The petitioner Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") has filed in this proceeding a "Motion for Enforcement of PERB Order Granting Petition for Enforcement and to Initiate Enforcement Proceedings in D.C. Superior Court." FOP alleges that the respondent Metropolitan Police Department ("MPD") has failed to comply with an arbitration award. MPD subsequently filed the "Agency's Response and Motion to Dismiss Petition for Enforcement of PERB Decision and Order." The two motions are before the Board for disposition.

I. Statement of the Case

A. The Arbitrator's Opinion and Award

1. Background

FOP seeks enforcement of a decision and order sustaining a grievance arbitration award concerning MPD's 2009 All Hands on Deck initiative ("AHOD"). The Arbitrator, the late John Truesdale, explained in his Opinion and Award ("Award") that the grievance arose from a January 7, 2009 teletype ("the Teletype") that Chief Cathy L. Lanier sent to the force. The Teletype listed the dates for the 2009 AHOD. Those dates were eight 3-day weekends from May to December 2009, identified as Phases I through VIII.[1] The Teletype stated:

[1] Award 5, 6.

> All sworn members of the Department are to take part in this effort. All members will work an 8-hour tour of duty on the aforementioned dates. No member shall be scheduled for day [*sic*] off on these dates. All leave is restricted for these dates unless already approved for leave prior to January 7, 2009. Additionally, the optional sick leave program will be suspended for these AHOD phases.[2]

On January 23, 2009, FOP Chairman Kristopher Baumann filed a class grievance stating that the Teletype violated Articles 1, 4, 24, and 49 of the parties' collective bargaining agreement ("CBA") and demanding bargaining. On February 23, 2009, the Chief denied the grievance and denied that there was a requirement to bargain concerning the Teletype. The next day FOP demanded arbitration in accordance with the CBA.[3]

Phase I was originally scheduled to occur May 15-17, 2009, but on March 5, 2009, the Chief sent another teletype announcing that she had rescheduled Phase I to April 24-26, 2009, when the World Bank and the International Monetary Fund were to hold meetings. This teletype concluded:

> No member shall be scheduled for the day off on Friday, April 24, 2009. All leave is restricted for Friday, April 24, 2009 unless already approved for leave prior to March 5, 2009. Teletype 02-009-09 (Spring IMF/World Bank Meetings) restricted leave for April 25-26th, 2009.[4]

As revised, the eight Phases of the 2009 AHOD were as follows:

Phase I	April 24-26, 2009
Phase II	June 5-7, 2009
Phase III	June 26-28, 2009
Phase IV	July 10-12, 2009
Phase V	July 24-26, 2009
Phase VI	August 3-5, 2009
Phase VII	November 13-15, 2009
Phase VIII	December 17-19, 2009

On June 17, 2009, after the first two Phases had occurred, the Arbitrator held an evidentiary hearing on the grievance.[5] The Arbitrator issued his Award September 9, 2009. In his

[2] Award 5.
[3] Award 6.
[4] Award 6.
[5] Award 5-6.

Award the Arbitrator stated that the only issue before him was "whether Chief Lanier's 2009 AHOD initiative violates Articles 1, 4, 24, and 49 of the parties' CBA."[6]

Article 1, Section 3 states that the parties "agree to honor and support the commitments contained herein."[7] Article 4 states in pertinent part:

> The Union recognizes that the following rights, when exercised in accordance with applicable law, rules and regulations, which in no way are wholly inclusive, belong to the Department:
>
> 1. To direct employees of the Department.
> 2. To determine . . . the tour of duty. . . .
> 6. To take any action necessary to carry out the mission of the Department in an emergency situation, and to alter, rearrange, change, extend, limit or curtail its operations or any part thereof. . . .
> 8. To formulate, change or modify Department rules, regulations and procedures, except that no rule, regulation or procedure shall be formulated, changed or modified in a manner contrary to the provisions of this Agreement.[8]

Article 24 provides in pertinent part:

> Section 1
> Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory time at the rate of time and one half, in accordance with the provisions of the Fair Labor Standards Act. . . .
>
> Section 2
> The Chief or his/her designee may suspend Section 1 on a Department wide basis or in an operational unit for a declared emergency, for crime, or for an unanticipated event.[9]

Article 49, section 5 provides:

[6] Award 23.
[7] Award 4, 24.
[8] Award 4.
[9] Award 5, 24.

> All terms and conditions of employment not covered by the terms of this Agreement shall continue to be subject to the Employer's direction and control. However, when a Departmental order or regulation directly impacts on the conditions of employment of unit members, such impact shall be a proper subject of negotiation.[10]

2. The Arbitrator's Findings and Award

The Arbitrator found that MPD violated Article 24, Section 1:

> MPD argues that because the Chief of Police gave more than 14 days notice of the AHOD schedules, it complied with the scheduling provisions of Article 24. But in fact, as stated by the Union, the Teletype was issued on January 7, 2009, without any notice, advising that for 8 weekends no leave would be permitted (unless leave had already been approved before January 7) and every member of the Department would be working those weekends. Subsequently, the Phase I Teletype changed, without notice, the May dates to a new leave ban for the April dates.[11]

The Arbitrator also found that the Chief failed to make a finding under Section 2 of Article 24 that would have allowed her to suspend Section 1 of Article 24.

The Arbitrator recognized that under Article 4 management retains its right to determine the tour of duty but does so only when that right is exercised in accordance with applicable laws, rules and regulations.[12] He stated that D.C. Official Code § 1-612.01(b) "establishes tours of duty in specified detail 'except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased.'"[13] The Arbitrator found that the right to determine the tour of duty was not exercised in accordance with D.C. Official Code § 1-612.01 because this determination was not made. The Mayor did not make that determination, and he rescinded an earlier delegation of his personnel and rulemaking authority to the chief of police.[14]

In conclusion the Arbitrator made these findings:

> I find that the Union has met its burden here in establishing that Chief Lanier's 2009 AHOD initiative violated Article 1 of the CBA in that it did not honor and support the commitments contained in Articles 4, 24, and 49; violated Article 24 by

[10] Award 5, 24.
[11] Award 26.
[12] Award 24, 26.
[13] Award 24 (quoting D.C. Official Code 1-612.01(b)(2)).
[14] Award 25-26.

> suspending the provisions of Section 1 without having declared an emergency, for crime, or other unanticipated event; and violated Article 49, Section 5, by not having negotiate[ed] with the Union when a Department order directly impacted on the conditions of employment of unit members.[15]

Having sustained the grievance, the Arbitrator issued the following Award:

> MPD is directed to rescind the January 7, 2009 teletype; promptly advise The Force that it has done so; and, beginning with the date of this Class Grievance, to comply with the requirements of Article 24, Section 1, concerning overtime pay or compensatory time at the rate of time and one half in accordance with the provisions of the Fair Labor Standards Act.[16]

MPD appealed the Award by filing an arbitration review request with the Board. MPD contended that the Arbitrator exceeded his authority by considering the order by which the Mayor rescinded his delegation of personnel and rulemaking authority to the Chief. MPD objected that FOP had not disclosed that exhibit to MPD before the hearing. MPD further argued that the Award was contrary to law and public policy because a correct application of all the relevant mayoral orders would lead to the conclusion that adoption of the 2009 AHOD was within MPD's authority and in conformity with the CBA. On August 5, 2011, the Board issued a decision and order on the arbitration review request, Opinion No. 1032. The Board found no merit in MPD's arguments and found no statutory basis for setting aside the award.[17] MPD did not request judicial review of the August 5, 2011 decision and order.

B. The Enforcement Proceedings before the Board

A month after the Board issued Opinion No. 1032, FOP filed the instant Petition for Enforcement alleging that MPD had failed to comply with the Award. The petition lists the dates of nine affected weekends in 2009 and includes in its list both the original and the revised dates of Phase I, May 15-17 and April 24-26, respectively. FOP states that members had originally been restricted from requesting leave May 15-17 but have not been compensated for this leave restriction.[18] FOP further asserts that as a result of the Award "MPD was required to pay overtime to all members of the bargaining unit at a rate of time and a half for all of these 8 hour tours, as well as penalty pay in accordance with the FLSA for the same amount."[19]

MPD filed an Opposition in which it "admits that it has not appealed the Board's decision and that it has not complied with the Award and Board Order as interpreted by the FOP in its

[15] Award 27.
[16] Award 27.
[17] *D.C. Metro. Police Dep't and F.O.P./Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6455, Slip Op. No. 1032, PERB Case No. 10-A-01 (2011).
[18] Pet. for Enforcement of PERB Decision and Order 4 n.3.
[19] Pet. for Enforcement of PERB Decision and Order 4.

Petition, but denies that the FOP's interpretation of the Award in its Petition is consistent with the Award."[20] MPD also "denies that it is flatly refusing to comply with the Award."[21]

On November 17, 2011, the Board issued Opinion No. 1222 regarding the Petition for Enforcement. After repeating with slight alterations five pages of text taken from Opinion No. 1032 wherein the Board had set forth its reasons for rejecting MPD's arbitration review request, Opinion No. 1222 granted the Petition for Enforcement.[22] The Board's order stated, "The Board shall proceed with enforcement of Slip Op. No. 1032 pursuant to D.C. Code §1-617.13(b) (2001 ed) if full compliance with Slip Opinion 1032 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order."[23]

MPD moved for reconsideration. In the motion MPD referred to its denial of allegations in the petition and to its dispute with FOP over the interpretation of the Award. MPD observed that the Board had apparently resolved those disputes in FOP's favor but did not explain how or why.[24] MPD claimed to document compliance with the Award as ordered by the Board. Attached to the motion was an affidavit averring that individuals listed in payroll records attached to the affidavit were paid the amounts indicated on the attachment on November 18, 2011, the day after the Board issued Opinion No. 1222.[25]

The Board denied the motion for reconsideration in Opinion No. 1234, issued December 21, 2011. Again the Board repeated almost verbatim five pages of text taken from Opinion No. 1032 on the reasons for denying MPD's arbitration review request.[26] Then turning to the proceeding that was before the Board—MPD's motion for reconsideration of the granting of FOP's petition—the Board characterized MPD's documentation of compliance as new evidence added to the factual record on an issue not previously presented to the Board. Because the affidavit and its attachment had not been previously submitted, the Board found "that the affidavit and attachment may not serve as a basis for reconsideration of the Board's order"[27] even though the Board itself had instructed MPD to submit documentation of compliance. The Board denied the motion for reconsideration and again issued an order stating, "The Board shall proceed with enforcement of Slip Op. No. 1032 pursuant to D.C. Code §1-617.13(b) (2001 ed) if full compliance with Slip Opinion 1032 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order."[28]

On January 6, 2012, MPD filed with the Board a "Documentation of Compliance," which attached the affidavit and payroll records that it attached to its motion for reconsideration. FOP

[20] Opp'n to Pet. for Enforcement ¶ 8.
[21] Opp'n to Pet. for Enforcement ¶ 9.
[22] *F.O.P./Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, 59 D.C. Reg. 6945, Slip Op. No. 1222, PERB Case No.11-E-02 (2011).
[23] *Id.* at 6.
[24] Mot. for Recons. 3-4.
[25] While the motion for reconsideration was pending, FOP moved for leave to file an amended petition for enforcement. The record does not reflect that leave was granted.
[26] *F.O.P./Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, 59 D.C. Reg. 7171, Slip Op. No. 1234 at 1-5, PERB Case No. 11-E-02 (2011).
[27] *Id.* at 6.
[28] *Id.*

filed an opposition to the documentation of compliance. FOP argued that the documentation of compliance must be rejected because the payments MPD documented were admittedly incomplete, did not compensate all members time and one half for each day of the 2009 AHOD, and did not include liquidated damages of an additional time and one half.

On January 18, 2012, MPD filed with the D.C. Superior Court a "Petition for Review of Agency Decision." MPD asked the court to vacate the Board's decision and order of November 17, 2011, asserting that that decision and order failed to make necessary factual findings and failed to articulate a justification for its conclusions. Although MPD requested review of the Board's November 17, 2011 decision and order granting the petition for enforcement and did not request review of its August 5, 2011 decision and order sustaining the Award, the court stated, "In the petition before the Court MPD contends that PERB's decision and order to affirm the Arbitrator's Award was an abuse of discretion and thereby erroneous as a matter of law. . . . PERB's affirming of the Arbitrator's Award was not an abuse of discretion."[29] The court also stated, "MPD does not provide this Court, as it must under the CMPA and Agency Rule 1(g), with any guiding legal precedent or analysis that supports its assertions that PERB's decisions granting FOP's Petition for Enforcement and denying MPD's Motion for Reconsideration are 'rationally indefensible.'"[30] The court dismissed MPD's request for review.

In view of the court's ruling, FOP filed on August 30, 2013, a "Motion for Enforcement of PERB Order Granting Petition to Enforce and to Initiate Enforcement Proceedings in D.C. Superior Court" ("Motion for Enforcement"). FOP states that full payment requires compliance with Article 24, Section 1 concerning overtime or compensatory time at the rate of time and a half in accordance with the Fair Labor Standards Act ("FLSA") for all members of the union for all hours of all announced days of the nine AHOD weekends.[31]

MPD then filed a "Response and Motion to Dismiss Petition for Enforcement of PERB Decision and Order" ("Motion to Dismiss"). In the Motion to Dismiss, MPD makes three points. First, MPD argues that it has complied with the requirements of Article 24, Section 1 concerning compensation. It attached an affidavit and payroll records that allegedly showed payments to members of the bargaining unit ("Members") who worked outside their schedules April 24-26 and June 4-7 of 2009. MPD argues that the six subsequent phases of AHOD that took place after the arbitration hearing were not within the scope of the Award.[32] MPD insists that neither the order to rescind the Teletype nor any other language in the Award eliminated the six phases that had not occurred at the time of the hearing.[33] MPD explained that it calculated the payments in the following manner:

[29] *D.C. Metro. Police Dep't v. D.C. Pub. Employee Relations Bd.*, Civ. Action No. 2012 CA 000439 slip op. at 1, 2 (D.C. Super. Ct. July 19, 2013).
[30] *Id.* at 3. Superior Court Agency Review Rule 1(g) provides, "This Court shall base its decision exclusively upon the administrative record and shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law."
[31] Mot. for Enforcement 11.
[32] Mot. to Dismiss 6.
[33] Mot. to Dismiss 6-7.

> As members had already been compensated at a straight time rate for the non-overtime worked performed on those dates, those members who worked outside their regularly scheduled tours of duty were compensated with an additional half-time their rate of pay for all hours worked outside their normal schedule in full compliance with the Award and Article 24 (Scheduling), Section 1 of the parties' labor agreement. The total of the straight-time rate that was originally provided to members, combined with the halftime payment made in 2011, totaled the time and a half rate payment required under the labor agreement and the arbitrator's decision.[34]

Second, MPD states that in compliance with the Award it rescinded the Teletype and so notified the force by issuing another teletype.[35] Third, MPD argues that the compensation sought by FOP beyond what MPD has paid is not supported by the Award and is not appropriate. MPD asserts that no language in the Award directs it to compensate Members for each day of all nine announced 2009 AHOD weekends.[36]

FOP filed an Opposition to the Motion to Dismiss in which it claims that the Board and the Superior Court already rejected MPD's arguments and its claim of compliance. FOP also contends that MPD failed to promptly notify the force of the rescission of the Teletype and that all nine announced phases of AHOD are included in the Award, not just the two phases for which MPD has made partial payment.

Following a conference involving the parties and the Board's Executive Director, FOP filed a supplemental memorandum in support of its Motion for Enforcement. In that memorandum, FOP reiterates that the Award requires payment to all Members for all nine announced weekends. FOP further argues that a correct calculation of compensation must include "an additional equal amount as liquidated damages" as provided in the FLSA, that scheduling violations in addition to the leave restriction require compensation, and that even by its own method of calculation MPD's compensation for the first two phases is incomplete.

The case was set for a hearing on December 18, 2014. A continuance of the hearing was granted at the request of MPD. The Executive Director met with the parties again on February 18, 2015, to discuss using the Office of Pay and Retirement Services to assist in resolving factual disputes. As a result of the meeting, the parties were requested to engage in mediation. A mediation conference took place April 21, 2015. The mediation conference did not succeed in obtaining a settlement of the case. In a subsequent letter to the Executive Director, FOP requested the Board to move forward with the enforcement proceeding.

III. Discussion

[34] Mot. to Dismiss 4-5.
[35] Mot. to Dismiss 5.
[36] Mot. to Dismiss 6.

A. The Board's Authority to Enforce its Orders

The Comprehensive Merit Personnel Act ("CMPA") empowers the Board to "[s]eek appropriate judicial process to enforce its orders and otherwise carry out its authority under this chapter"[37] and further provides that "[t]he Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter."[38] The Board has no statutory authority to seek enforcement of decisions rendered by third parties, such as the awards of arbitrators, or other decisions rendered pursuant to contractual agreements.[39] Thus, when there is no decision and order sustaining an arbitration award, the Board has no authority to seek judicial process.[40] But where a party has allegedly failed to abide by a decision and order of the Board sustaining an arbitration award, the Board can seek enforcement of its own order pursuant to Board Rule 560.1.[41] In addition, when a party fails or refuses to implement an arbitration award where there is no dispute over its terms, such conduct constitutes a failure to bargain in good faith and, thus, an unfair labor practice.[42]

Accordingly, the Board has granted petitions to enforce its orders sustaining arbitration awards where the agency's "reasons for failing to implement the terms of the arbitrator's award did not constitute a genuine dispute over the terms of the award."[43] Similarly, failure to implement an arbitrator's award is not an unfair labor practice when interpretation of the award is in dispute by the parties.[44]

The remedy of an enforcement proceeding is unavailable in another circumstance. Where the alleged refusal to implement the terms of a decision rendered pursuant to the parties' contract presents an issue of contract interpretation, the Board lacks statutory authority to enforce compliance.[45]

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[37] D.C. Official Code § 1-605.02(16).
[38] D.C. Official Code § 1-617.13(b).
[39] *Council of Sch. Officers, Local 4 v. D.C. Pub. Sch.*, 59 D.C. Reg. 6138, Slip Op. No 1016 at 11, PERB Case No. 09-U-08 (2010); *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 39 D.C. Reg. 9617, Slip Op. No 295 at 3, PERB Case No. 91-U-18 (1992).
[40] *F.O.P./Dep't of Corr. Lab. Comm. (on behalf of Claiborne) v. Dep't of Corr. Lab. Comm.*, 60 D.C. Reg. 10834, Slip Op. No. 1398 at 4, PERB Case No. 12-E-09 (2013).
[41] *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, 997 A.2d 65, 79 (D.C. 2013). Board Rule 560.1 provides, "If any respondent fails to comply with the Board's Decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order."
[42] *D.C. Metro. Police Dep't.*, 997 A.2d at 79; *AFGE Local 1000 v. D.C. Dep't of Emp't Servs.*, 60 D.C. Reg. 5247, Slip Op. No. 1368 at 2, PERB Case No.13-U-15 (2013).
[43] *AFSMCE Dist. Council 20, Local 2921 v. D.C. Pub. Sch.*, 51 D.C. Reg. 4170, Slip Op. No. 731 at 2, PERB Case No. 03-U-17 (2003).
[44] *Int'l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosp. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. No. 622 at 4, PERB Case No. 99-U-30 (2000).
[45] *AFSMCE Dist. Council 20, Local 2921 v. D.C. Pub. Sch.*, 42 D.C. Reg. 5685, Slip Op. No. 339 at 6, PERB Case No. 92-U-08 (1992) (failure to implement the terms of a step 3 grievance decision). *See also AFGE, Local 872 v. D.C. Water & Sewer Auth*., Slip Op. No. 1102 at 5, PERB Case No. 08-U-49 (Mar. 4, 2011) ("Whether or not Respondent's actions violated the parties' CBA presents an issue for contract interpretation. Accordingly, the Board declines to exercise its statutory authority to seek or enforce compliance with decisions rendered pursuant to the parties' contractual agreement.").

B. The Posture of this Case

In Opinion No. 1032 the Board sustained the Award. FOP petitioned for enforcement of that order of the Board. The Board granted the petition and stated in both its prior orders in this case "The Board shall proceed with enforcement of Slip Op. No. 1032 pursuant to D.C. Code §1-617.13(b) (2001 ed) if full compliance with Slip Opinion 1032 is not made and documented to the Board within ten (10) days of the issuance of this Decision and Order."[46] With its exhibits to its Motion to Dismiss, MPD has submitted documentation of alleged compliance.

FOP argues that "MPD has failed to provide *any* evidence that it complied with the payment obligations in the 1222 enforcement order beyond the payments which were already rejected by the PERB and the D.C. Superior Court as insufficient in Opinion 1234 and Superior Court Order in 2012 CA 000439 P(MPA)."[47] It is not true, however, that the Board and the. Superior Court rejected MPD's payments as insufficient. In Opinion No. 1234 the Board did not admit or consider the proffered evidence of the payments, and the Superior Court did not refer to the payments in its opinion. Neither opinion could have considered the evidence subsequently submitted with MPD's Motion to Dismiss. FOP acknowledges that the affidavit and payroll records submitted with the Motion to Dismiss are not the same as what MPD previously submitted.[48] We proceed then to consider, for the first time, whether MPD has documented compliance with the Award.

C. The Teletype and the Compensable Phases of the Award

The first two things the Award orders MPD to do are "to rescind the January 7, 2009 teletype [and] promptly advise The Force that it has done so." As exhibit 4 to its Motion to Dismiss, MPD submitted a teletype dated July 31, 2013 and signed by Chief Lanier. It is addressed to "THE FORCE" and states "Teletype 01-023-09 (AHOD Calendar for 2009) is hereby rescinded."[49]

FOP argues that the July 31, 2013 teletype does not constitute compliance with the directive to MPD "to rescind the January 7, 2009 teletype [and] promptly advise The Force that it has done so." FOP quotes a definition of "promptly" but fails to observe that "promptly" modifies advise rather than rescind: after MPD rescinds the Teletype, it must "promptly advise The Force that it has done so." MPD promptly—concurrently, to be precise—advised the force of the rescission of the Teletype.

While MPD complied with this aspect of the Award, it chose to rescind the Teletype after all the phases it announced had taken place. MPD takes the position that there should be no consequences for delaying compliance beyond the time when it would have had any practical effect. The Award contains no cease and desist order, MPD argues, and does not compel

[46] *F.O.P./Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, 59 D.C. Reg. 6945, Slip Op. No. 1222 at 6, PERB Case No.11-E-02 (2011) (granting petition for enforcement), 59 D.C. Reg. 7171, Slip Op. No. 1234 at 6, PERB Case No. 11-E-02 (2011) (denying motion for reconsideration).
[47] Opp'n to Motion to Dismiss 4.
[48] Opp'n to Motion to Dismiss 7.
[49] Motion to Dismiss ex. 4.

compensation for any phases occurring after the arbitration evidentiary hearing.[50] FOP correctly responds that MPD "ignores the fact that had the MPD complied with the Arbitration Award in a timely manner, the teletype would have been immediately rescinded and none of the later stages of AHOD in 2009 would have occurred because they would not be authorized."[51]

MPD's position also ignores the Award's ongoing requirement whereby MPD is directed "beginning with the date of this Class Grievance, to comply with the requirements of Article 24, Section 1, concerning overtime pay or compensatory time." This directive has a beginning date—January 23, 2009, the date of the filing of the grievance—but has no ending date with respect to the grievance. The grievance alleged that the Teletype, which announced all the phases of the 2009 AHOD through Phase VIII ending December 19, 2009, violated the CBA, and the Arbitrator agreed. Had MPD rescinded the Teletype before any more illicit phases occurred, it would have avoided the obligation to comply with the requirements of Article 24, Section 1 concerning overtime and compensatory time with respect to such phases. Instead, as FOP states, MPD "made the deliberate choice that it would have to continue to provide the compensation awarded for the remaining phases of AHOD."[52]

MPD admits it has paid no compensation for Phases III to VIII. The Award requires MPD to pay compensation pursuant to Article 24 for those phases to Members affected by them. In this regard, FOP's Motion for Enforcement is well taken and is granted. Therefore, MPD's Motion to Dismiss is denied.

D. Compensation Owed

We next consider the nature of the compensation MPD owes for all phases, those for which MPD has made payments and those for which it has not. In its Motion for Enforcement and its Supplemental Memorandum, FOP contends that the payments MPD has made are incomplete because the payments (1) do not compensate all Members for all violations of the CBA, (2) do not include liquidated damages as a penalty, and (3) do not fully compensate Members even pursuant to MPD's method of calculating compensation.

1. Compensation of All Members for All Violations

FOP disagrees with MPD on the scope of compensation in several respects having to do with the hours for which time and a half compensation must be paid and the contractual violations that give rise to liability for time and a half compensation. FOP asserts that MPD conceded in litigation before the Superior Court that Opinion No. 1222 applies to all relief FOP requested.[53] Opinion No. 1222 speaks for itself. It does not address the issues of scope of compensation raised by FOP in its Motion for Enforcement and its Supplemental Memorandum.

(a) Compensation for the Leave Restriction

[50] Mot. to Dismiss 6-7.
[51] Opp'n to Motion to Dismiss 9-10.
[52] Opp'n to Mot. to Dismiss 10.
[53] Opp'n to Mot. to Dismiss 7-8.

The first issue of the scope of compensation raised by FOP concerns the hours for which Members are entitled to time and a half compensation. FOP alleges in its Petition that "[a]s a result of the arbitrator's order, the MPD was required to pay overtime to all members of the bargaining unit at a rate of time and one half for all of these 8 hour tours, as well as penalty pay in accordance with the FLSA for the amount."[54] In conformity with that position, FOP claims that all Members should be compensated for all hours of May 15-17, a weekend in which AHOD compelled no one to work outside his tour of duty because Phase I was moved from those dates to April 24-26. FOP contends that compensation is owed for those days because Members originally had been restricted from requesting leave for May 15-17. MPD denies that FOP's interpretation is supported by any language in the Award.[55]

As the parties have separately pointed out, neither of them sought clarification of the Award from the Arbitrator during the sixty days during which he retained jurisdiction for that purpose. Each separately had its own understanding of the Award and may have seen no need to seek confirmation of its understanding from the Arbitrator. The instant dispute over the meaning of the Award arose when FOP filed its Petition for Enforcement just under two years after the sixty-day period ended.

FOP argues that because the Arbitrator found that the Teletype's restriction of leave violated Article 24, he thus "found, without qualification, that the AHOD award applies to all members of the D.C. Police Union for all AHOD weekends in 2009 [for] which the leave was announced as restricted in the teletype, *regardless of whether the members worked or whether their schedules were changed*."[56] Contrary to FOP's assertion, the Arbitrator's finding that the leave restriction violated Article 24 does not necessarily yield the conclusion that Arbitrator found that the Article entitles all Members to time and a half compensation for all hours of all days of all weekends regardless of whether they worked or had their schedules changed. If the Arbitrator intended that his remedy included paying Members time and a half when they did not work, he did not say so. What he said was that MPD must "comply with the requirements of Article 24, Section 1, concerning overtime pay or compensatory time at the rate of time and one half in accordance with the provisions of the Fair Labor Standards Act." This is very different from the language FOP requested in its post-hearing brief to the Arbitrator. There FOP requested an order compelling that "[t]he MPD will compensate all members at a rate of time and one-half for any violations of Article 24 for all applicable AHOD initiative days announced for 2009."[57]

Even though the Arbitrator did not phrase the Award as FOP requested, FOP characterizes the Award as if he had. FOP states that "as set forth clearly in the Arbitration Award, the MPD is required to compensate members . . . for all 27 days [for] which AHOD was announced in 2009, regardless of whether the member's tour was changed or whether the member worked."[58] However, that requirement is not set forth clearly in the Award or set forth at all. The Arbitrator, who has the sole authority to interpret the contract, does not explain how to

[54] Pet. for Enforcement 4.
[55] Mot. to Dismiss 5-6; Opp'n to Pet. for Enforcement ¶ 8.
[56] Supplemental Mem. 3 (emphasis added).
[57] FOP's Post-Hearing Br. 22.
[58] Supplemental Mem. 4

apply the compensation provision of Article 24 when the violation is a restriction of the ability of employees to request leave and the leave that the employees would have requested is not known. In that situation there are no particular hours of employment that must be treated differently from other hours, as is the case where a particular employee works certain hours outside his tour of duty or, in the case of the FLSA, which the Article references as a standard, where an employee works over forty hours. The FLSA identifies the hours for which overtime must be as those in excess of forty hours.[59]

Article 24, Section 1, in contrast to the FLSA, does not specify the period for which compensation is to be paid. It provides, "Notice of any changes to [members'] days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given fourteen (14) days in advance the member shall be paid . . . overtime or compensatory time. . . ." The period for which compensation is to be paid under Article 24 can be easily deduced where the change compelled a Member to work certain hours on his assigned days off without proper notice, but that is not the case with a leave restriction, which is not mentioned in the Article. On that issue the Award is not ambiguous; it is completely silent.

The parties have a genuine dispute over the application of the compensatory provisions of Article 24, Section 1 to the leave restriction. Resolving that dispute requires an interpretation of the contract that the Arbitrator did not provide. Under those circumstances, the Board will not seek enforcement compelling MPD to comply with the Award or with the CBA as interpreted by FOP.[60]

(b) Compensation for Alleged Additional Violations

FOP claims that, in addition to the Article 24 violations discussed above, the Arbitrator recognized that other contractual violations caused by AHOD entitle Members to time and a half compensation that is yet to be paid.

The first such violation is based upon Article 4 of the CBA. Article 4 states that the union recognizes that certain management rights, including the right to determine the tour of duty, belong to MPD "when exercised in accordance with applicable laws, rules and regulations, which are in no way wholly inclusive." As noted, the Arbitrator stated that D.C. Official Code § 1-612.01(b) "establishes tours of duty in specified detail 'except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased.'"[61] He found that the right to determine the tour of duty was not exercised in accordance with applicable law because the Mayor did not make this determination.

FOP calls attention to one of the specifications of the tour of duty that section 1-612.01(b) requires absent this determination. Section 1-612.01(b)(2) requires that tours of duty be

[59] "[N]o employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation *for his employment in excess of the hours above specified* at a rate of not less than one and one-half times the regular rate at which he is employed." FLSA § 207(a)(1); 29 U.S.C. § 207(a)(1) (emphasis added).
[60] See notes 42-44 *supra* and accompanying text.
[61] Award 24 (quoting D.C. Official Code § 1-612.01(b)(2)).

established such that "[t]he basic 40 hour workweek is scheduled on 5 days, Monday through Friday when practicable, and the 2 days outside the basic workweek are consecutive."

FOP claims that "[f]or numerous D.C. Police Union members, as a result of AHOD, their days off were split and were not consecutive. This is an additional scheduling violation caused by the 2009 AHOD which Arbitrator Truesdale recognized entitles the members to time and one-half pay."[62] FOP does not, and cannot, support these assertions with a citation to the Award. The Arbitrator made no finding that, as result of AHOD, the days off of numerous Members were split and did not recognize that such a violation of Article 4 would entitle Members to time and a half compensation. The various articles of the CBA that AHOD violates, as well as the Arbitrator's comments on them, need to be considered separately.[63] Unlike Article 24, Article 4 does not provide for time and a half compensation for its violation, and neither does section 1-612.01(b).

FOP makes a similarly unsupported claim with respect to tours of duty in the weeks surrounding the AHOD weekends. FOP asserts that, because of the improper suspension of Article 24, Section 1, "numerous D.C. Police Union member's tours were changed during the weeks surrounding AHOD. . . . This is an additional scheduling violation caused by the 2009 AHOD which Arbitrator Truesdale recognized must be compensated."[64] Again there is no citation to the Award. And nowhere in the Award did the Arbitrator find that tours of duty were changed in the surrounding weeks or that such changes must be compensated. He was not asked to make such findings. FOP requested compensation for "all AHOD initiative days."[65] AHOD initiative days were Friday through Sunday on the designated weekends.[66]

The only contention the Award reflects that FOP made to the Arbitrator regarding AHOD's effect on surrounding days indicates that the effect was to reduce compensable changes to Members' tours of duty. According to FOP, an assistant chief testified that once MPD began implementing AHOD, staffing shortages occurred on other days of the week, and as a result half of the Members were allowed to take their normal weekend days off.[67]

MPD's failure to pay compensation that the Arbitrator did not award for violations he did not find is not a ground for filing an enforcement action.

2. Liquidated Damages

The Arbitrator's Award of compensation tracks the language of Article 24, Section 1, which provides, "If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory time at the rate of time and one half, in accordance with the provisions of the Fair Labor Standards Act." FOP argues that by

[62] Suppl. Mem. 8.
[63] *See D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 12839, Slip Op. No. 1494, PERB Case No. 13-A-06 (2014).
[64] Suppl. Mem. 8.
[65] Award 19.
[66] Award 14.
[67] Award 17.

incorporating the language "in accordance with the provisions of the Fair Labor Standards Act" into the contract, the parties agreed that the calculation of damages would be guided by the law governing FLSA violations, specifically the damage provision in section 216(b) of the FLSA.[68]

Section 216(b) of the FLSA provides that employers who violate certain provisions of the FLSA are liable to the affected employee or employees "in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." FOP contends that FLSA remedies are often employed for violations of other laws.[69] However, all the cases that FOP cites in support of that claim are Equal Pay Act cases.[70] The Equal Pay Act is a part of the FLSA.[71]

The Arbitrator could have written in his Award that MPD must pay liquidated damages of an additional time and a half (treble damages), but instead he ordered compensation at a rate of time and a half and did not say treble damages. Without an indication from the Arbitrator as to how he interpreted "the provisions of the Fair Labor Standards Act" as used in Article 24, the Board cannot assume that his interpretation had to be that on top of Article 24's penalty of overtime an additional equal amount must be added as another penalty. One could reasonably come to a different conclusion. In the only arbitral opinion on this issue to come before the Board, the arbitrator said in an award sustained by the Board:

> This record is not at all clear that the reference to the FLSA in Article 24 was intended to incorporate the liquidated damages concept in that Article. The reference can be easily read to refer simply to the calculation of time and one-half as compensatory damages. Had the parties intended to inject the FLSA's liquidated damages penalty, there were far less obscure ways of doing so. Although the . . . award of overtime pay for hours worked in the event of a violation of Article 24 seems to be a reasonable remedy for a violation of the posting provision, the imposition of a penalty in addition based on the reference to the FLSA in Article 24 is a reach beyond the agreement and will not be awarded.[72]

Arbitrator Truesdale was free to give the phrase a different interpretation, but he did not. He was not asked to interpret the phrase. In its grievance and in its post-hearing brief, FOP did not request time and one half plus an additional equal amount as it does now. It requested time and one half without reference to the FLSA.[73]

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[68] Supplemental Mem. 5.
[69] Supplemental Mem. 6.
[70] *Laffey v. Nw. Airlines, Inc.*, 740 F.2d 1071, 1097 (D.C. Cir. 1984); *Thompson v. Sawyer*, 678 F.2d 257, 278 (D.C. Cir. 1982); *Cody v. Private Agencies Collaborating Together, Inc.*, 911 F. Supp. 1, 5 (D.D.C. 1995).
[71] 29 C.F.R. § 1620.1.
[72] *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 62 D.C. Reg. 2879, Slip Op. No. 1500 at 4, PERB Case No. 13-A-05 (2014).
[73] Class Grievance 8; FOP's Post-Hearing Br. 21, 22.

Both parties have pointed out that the Board previously said in litigation in this matter before the Superior Court that the Board does not have authority to add liquidated damages to the Award.[74] The allegation that MPD has not complied with the Award because it has not paid liquidated damages presents an issue of contract interpretation that was not presented to the Arbitrator as well as a genuine dispute over the terms of the Award. Therefore, the Board lacks authority to enforce compliance in this regard.[75]

3. Incomplete Compensation for Phases 1 and 2

In its Supplemental Memorandum, FOP gives several examples of Members who worked on AHOD weekends in Phases I and II when those days were not in their tour of duty or who had days off that were not consecutive yet received no compensation for those violations.

Section 1-612.01(b)(2) of the D.C. Official Code requires days off to be consecutive. As discussed, violations of section 1-612.01 and derivatively of Article 4 are not compensable with time and a half pay, unlike violations of Article 24. However, the alterations of tours of duty identified by FOP, if true, would be compensable with time and a half pay pursuant to Article 24. And, if MPD has not paid time and a half compensation in those instances, it has not complied with the Award.

FOP does not purport to present or to know of every instance of compensation that was improperly withheld from Members whose tours of duty were changed by Phases I and II. FOP asserts that a "comprehensive review of the MPD's payments, failures to make payments, and the resulting penalties is more appropriately addressed in an enforcement proceeding."[76] In its Opposition to the Motion to Dismiss, FOP said that in an enforcement action in Superior Court "MPD will have the burden of proving to the Court compliance with all aspects of the Arbitration Award."[77]

These statements reflect a misunderstanding of the nature of an enforcement proceeding. The Board, not MPD, will be the plaintiff. In filing its complaint, the Board will represent to the court that the allegations of the complaint have evidentiary support.[78] The Board will not be asking the court to sort out the facts. Rather, the CMPA contemplates that the Board will already have made factual findings before coming to the court. Section 1-617.13(b) provides that when the Board requests the court to enforce an order, "[t]he findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole."

The Board is empowered to hold hearings on any matter subject to its jurisdiction[79] and has held hearings on the issue of whether a party has complied with an arbitration award[80] and on

[74] Mot. for Enforcement 6; Mot. to Dismiss 8, Ex. 7 at 14.
[75] See notes 42-44 *supra* and accompanying text.
[76] Supplemental Mem. 12.
[77] Opp'n to Mot. to Dismiss 4.
[78] Super. Ct. R. 11(b)(3).
[79] D.C. Official Code § 1-605.02(7).

the issue of whether a party has complied with an order of the Board.[81] The Board directs that this matter be referred to a hearing examiner to conduct a hearing and make appropriate recommendations concerning the alleged failure of MPD to pay time and a half compensation to Members who worked during April 24-26, 2009, or June 5-7, 2009, on a day or time that was not in the Member's tour of duty. As the petitioner, FOP will bear the burden to prove, by a preponderance of the evidence, MPD's noncompliance with that aspect of the Award.[82]

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD's Motion to Dismiss Petition for Enforcement of PERB Decision and Order is denied.

2. FOP's Motion for Enforcement of PERB Order Granting Petition for Enforcement and to Initiate Enforcement Proceedings in D.C. Superior Court is granted in part. The Board shall proceed with enforcement of Slip Opinion No. 1032 pursuant to D.C. Official Code §§ 1-605.02(16) and 1-617.13(b) if full compliance with the Award with respect to Phases III through VIII of the 2009 AHOD is not made and documented within ninety (90) days of the issuance of this decision and order.

3. The Board's Executive Director shall refer this matter to a hearing examiner to conduct a hearing and make appropriate recommendations concerning the alleged failure of MPD to pay time and a half compensation to Members who worked during April 24-26, 2009, or June 5-7, 2009, on a day or time that was not in the Member's tour of duty.

4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Ann Hoffman, Yvonne Dixon, and Douglas Warshof.

Washington, D.C.
September 22, 2016

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[80] *Washington Teachers' Union, Local 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 2727, Slip Op. No. 1452 at 3-6, PERB Case No. 14-U-02 (2014); *F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Stimmel) v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 577 Slip Op. No. 1346 at 1-2, PERB Case No. 00-U-03 (2012).

[81] *Haynesworth v. AFGE Local 631*, 45 D.C. Reg. 6719, Slip Op. No. 555 at 1, PERB Case Nos. 97-S-02 and 97-S-03 (1998) (dismissing motion for enforcement without prejudice).

[82] *See AFGE Locals 631, 872, & 2553 v. D.C. Water & Sewer Auth.*, 59 D.C. Reg. 3323, Slip Op. No. 817 at 3, PERB Case No. 04-U-28 (2006); Board R. 550.16.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Number 11-E-02 is being transmitted to the following parties on this the 23d day of September, 2016.

Anthony M. Conti
Daniel J. McCartin **via File&ServeXpress**
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/s/ Sheryl V. Harrington
Sheryl V. Harrington
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Micheaux Bishop),	PERB Case No. 15-A-03
Petitioner,	Opinion No. 1593
v.	
District of Columbia Metropolitan Police Department,	Decision and Order
Respondent.	

DECISION AND ORDER

On December 22, 2014, Petitioner Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP"), on behalf of Micheaux Bishop (hereinafter "Grievant"), filed an Arbitration Review Request ("Request") seeking review of an Arbitration Award[1] ("Award") that upheld Grievant's termination from the District of Columbia Metropolitan Police Department ("MPD"). FOP bases its Request upon the Board's authority under D.C. Official Code § 1-605.02(6) to modify, set aside, or remand an award, in whole or in part, where (1) the arbitrator was without, or exceeded, his jurisdiction, (2) the award on its face is contrary to law and public policy, and/or (3) the award was procured by fraud, collusion, or other similar and unlawful means.

The Board finds that the Arbitrator did not exceed his jurisdiction, that the Award is not on its face contrary to law and public policy, and that the Award was not procured by fraud, collusion, or other similar and unlawful means. FOP's Request is therefore denied.

[1] *See* Request, Attachment 1 (hereinafter cited as "Award").

I. Statement of the Case

On October 11, 2009, MPD's Chief of Police received an email from a citizen informant (hereinafter "Informant") who asserted that Grievant was the girlfriend of Omar Bowman, who had been arrested for drug trafficking.[2] At an unspecified time prior to Informant's email, the FBI had observed Grievant accompanying Bowman on multiple occasions.[3]

On October 14, 2009, MPD revoked Grievant's police powers and assigned her to a "non-contact duty" status.[4] That same day, the FBI interviewed Grievant to determine what she knew about Bowman's criminal activities. The FBI concluded that Grievant had not been aware of Bowman's activities until her meeting with the FBI. Once informed, Grievant cooperated fully with the FBI and assisted with Bowman's apprehension.[5]

Concurrent with the FBI's investigation, MPD conducted its own internal investigation based on Informant's email.[6] Grievant was informed that Informant who sent the email wished to remain anonymous, and that MPD had reason to believe that the complainant's identity should remain anonymous.[7] Grievant informed MPD's investigator that she and Bowman had become intimate in July 2009 when Bowman was separated from his wife.[8] She stated that once she became aware of his indictment for drug trafficking, she ended the relationship.[9] On January 6, 2010, MPD informed Grievant that her case had been closed with no disciplinary action recommended.[10]

Grievant thereafter requested and received a copy of MPD's investigative report, which erroneously disclosed Informant's name.[11] Within days, Informant contacted MPD to report that Bowman's mother had confronted her, showed her copies of the email Informant had sent to the Chief of Police, and told Informant that she was disappointed that Informant had told MPD about her son's relationship with Grievant.[12] Informant reported that this caused her to be fearful for her and her family's safety.[13]

MPD then opened a second investigation to determine if Grievant had been the one who disclosed Informant's identity.[14] On January 29, 2010, during an investigatory interview pursuant to that second investigation, Grievant admitted to MPD's investigator that she told

[2] Award at 1; Request at 2-3; Opposition at 2-3.
[3] Opposition at 2.
[4] Award at 2; Request at 2.
[5] Award at 2.
[6] *Id.*
[7] *Id.*
[8] *Id.* at 3.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 4.
[12] *Id.*
[13] *Id.*
[14] *See* Request, Attachment 2 at 8-24.

Bowman's mother that Informant was the one who sent the email to the Chief of Police. Grievant further admitted that she had continued to maintain a close relationship with Bowman, including regular telephone calls, visits to her home, and trips out to dinner.[15]

On May 14, 2010, MPD issued Grievant a Notice of Proposed Adverse Action letter proposing termination of her employment based on two specified charges; (1) conduct unbecoming an officer for maintaining a close interpersonal relationship with Bowman even after learning he had been indicted for drug trafficking, and (2) engaging in conduct prejudicial to the reputation of the police force for disclosing a confidential informant's identity to a non-MPD individual.[16]

On November 10 and December 21, 2010, at Grievant's request, a departmental hearing before an MPD Adverse Action Panel ("Panel") was held.[17] The Panel found Grievant guilty of both charges and recommended termination for Charge No. 1 and a 10-day suspension without pay for Charge No. 2.[18] On February 14, 2011, MPD issued Grievant a Final Notice of Adverse Action letter suspending her for 10 days and terminating her employment.[19] Grievant unsuccessfully appealed the termination to the Chief of Police, and then requested arbitration.[20]

In 2011, the parties appointed Warren M. Laddon to arbitrate the grievance.[21] The stipulated issues before the Arbitrator were:

1. Whether the MPD violated the 90-day Rule set forth in D.C. Code Section 5-1031?

2. Whether MPD's actions violated due process of law?

3. Whether sufficient evidence exists to support the alleged charges?

4. Whether termination is an appropriate remedy?[22]

On December 1, 2014, the Arbitrator issued the Award, finding that: (1) Grievant's Notice of Proposed Adverse Action letter stemmed from MPD's second investigation that commenced in January 2010 and therefore did not violate the 90-day rule;[23] (2) MPD's actions

[15] Award at 4-5.
[16] *Id.* at 5-7.
[17] *Id.* at 7; *see also* Request, Attachment 2 at 152.
[18] Award at 10-13; *see also* Request at 6; *and* Request, Attachment 2 at 914-938. The Panel also found Grievant guilty of a third charge that it added subsequent to the hearing. Request, Attachment 2 at 935. However, that new charge was later dismissed by the Assistant Chief of Police. Request at 5-6.
[19] Request at 6.
[20] *Id.* Since the Chief of Police had been personally involved in this matter, Grievant's appeal was instead heard and decided by the Assistant Chief of Police. *Id.*
[21] Request at 8.
[22] Award at 14; *see also* Request at 8; *and* Opposition at 8.
[23] Award at 16-22.

did not violate Grievant's due process rights;[24] (3) Grievant's admission to MPD's investigator that she engaged in the alleged misconduct constituted substantial evidence to support the charges;[25] and (4) termination was the appropriate penalty.[26]

On December 22, 2014, FOP filed the instant Arbitration Review Request, asserting that the Award was procured through bias; is contrary to law and public policy; and exceeded the Arbitrator's authority.[27]

II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside a grievance arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[28] FOP seeks a review of the Award on all three grounds.

A. FOP's Bias Claims Do Not Constitute a Statutory Basis for PERB to Review the Award

FOP asserts that the Award was procured through bias because:

(1) the Arbitrator criticized and denigrated FOP when he stated that "[e]very first year associate knows that it is a waste of time, and frequently worse than that, to attempt to prove your case with the testimony of an adverse witness";[29]

(2) the Arbitrator made factually untrue statements such as stating the Grievant had admitted her "guilt" to MPD's investigator even though she had pled "not guilty" to the charges;[30]

(3) the Arbitrator expressed disdain for FOP's position when he stated that he would have been even more harsh on the Grievant had he been on Grievant's Panel;[31]

(4) the Arbitrator was inconsistent and unfair in his evaluation of the evidence such as when he criticized FOP for not providing any comparative disciplinary cases during the arbitration, but then rejected other evidence that FOP did try to present on grounds that it was outside of the established record;[32] and

[24] *Id.* at 22-28.
[25] *Id.* at 29-31.
[26] *Id.* at 31-34.
[27] Request at 1-2, 8, 11, 18.
[28] *See also* PERB Rule 538.3.
[29] Request at 9.
[30] *Id.* at 9-10.
[31] *Id.* at 10.
[32] *Id.*

(5) the Arbitrator injected his personal opinion into the Award such as when he rejected FOP's argument that termination violated MPD's progressive discipline requirements because of the "current conditions in this country with respect to police departments and their relationship with the public they are employed to serve."[33]

The Board has held that disagreement with an arbitrator's conclusions does not, by itself, warrant a finding that the arbitrator lacked neutrality; nor does it provide a sufficient statutory basis for PERB to review the award under the "fraud, collusion, or other similar and unlawful means" provision in D.C. Official Code § 1-605.02(6).[34] Further, a petitioner must raise its bias claim with the arbitrator prior to filing an arbitration review request before PERB.[35] Finally, the petitioner must present evidence that the arbitrator (1) resolved questions outside of those presented to him by the parties, that he misanalysed or misapplied the law, and/or that he made factual findings not supported by the record; and (2) that the arbitrator colluded with the prevailing party, that he had a prior undisclosed relationship with one of the parties or their attorneys, and/or that he had an undisclosed personal interest in the outcome of the decision.[36]

Here, there is no evidence that FOP presented its bias arguments to the Arbitrator prior to filing its Arbitration Review Request. This alone provides a sufficient basis to find that PERB cannot review the award under the "fraud, collusion, or other similar and unlawful means" provision in D.C. Official Code § 1-605.02(6).[37] However, even if FOP had presented its bias allegations to the Arbitrator, FOP's claims would still fail because FOP did not present any evidence in its Arbitration Review Request that the Arbitrator colluded with MPD, that he had a prior undisclosed relationship with either FOP or MPD or their attorneys, and/or that he had any personal interest in the outcome of the decision.[38]

Thus, the Board finds that FOP's bias claims fail to present a statutory basis upon which PERB can review the Award under the "fraud, collusion, or other similar and unlawful means" provision in D.C. Official Code § 1-605.02(6).[39]

B. The Award is Not Contrary to Law and Public Policy

In order for the Board to find that an arbitrator's award is on its face contrary to law, the asserting party bears the burden to specify the "applicable law and definite public policy that

[33] *Id.* at 10-11.
[34] *Univ. of the Dist. of Columbia v. Univ. of the Dist. of Columbia Faculty Ass'n / NEA (on behalf of Barbara Green)*, 36 D.C. Reg. 3635, Slip Op. No. 220 at p. 3-4, PERB Case No. 88-A-03 (1989).
[35] *D.C. Fire and Emergency Med. Serv. and Int'l Ass'n of Firefighters, Local 36 (on behalf of Firefighters Mayo and Roach)*, 59 D.C. Reg. 3818, Slip Op. No. 895 at p. 5, PERB Case No. 06-A-20 (2007).
[36] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 62 D.C. Reg. 10503, Slip Op. No. 1523 at p. 4-5, PERB Case No. 15-A-04 (2015).
[37] *See FEMS and IAF, Local 36*, 59 D.C. Reg. 3818, Slip Op. No. 895 at p. 5, PERB Case No. 06-A-20.
[38] *See FOP v. MPD*, 62 D.C. Reg. 10503, Slip Op. No. 1523 at p. 4-5, PERB Case No. 15-A-04.
[39] *See FEMS and IAF, Local 36*, *supra*, Slip Op. No. 895 at p. 5, PERB Case No. 06-A-20; *see also UDC v. UDC Faculty Ass'n*, 36 D.C. Reg. 3635, Slip Op. No. 220 at p. 3-4, PERB Case No. 88-A-03.

mandates that the Arbitrator arrive at a different result."[40] Furthermore, the Board has held that "disagreement with the Arbitrator's interpretation ... does not make the award contrary to law…."[41]

Additionally, PERB's review of an arbitration award on grounds that it is contrary to public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to the arbitrator's ruling.[42] Indeed, "the exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy."[43] A petitioner must therefore demonstrate that the award "compels" the violation of an explicit, well defined public policy grounded in law and/or legal precedent.[44] Further, the violation must be so significant that the law or public policy "mandates that the arbitrator arrive at a different result."[45] Finally, mere "disagreement with the arbitrator's interpretation … does not make the award contrary to … public policy."[46]

1. The Award's Finding That MPD Did Not Violate the 90 Day Rule Was Not Contrary to Law or Public Policy

FOP contends that MPD failed to issue Grievant her Notice of Proposed Adverse Action letter within 90 days of first becoming aware of Grievant's alleged misconduct, as required by D.C. Official Code § 5-1031 (hereinafter "the 90 day rule").[47] The 90 day rule requires that unless the act or occurrence allegedly constituting cause is the subject of a criminal investigation,

> …[n]o corrective or adverse action against any sworn member or civilian employee of the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Metropolitan Police Department had notice of the act or occurrence allegedly constituting cause.

FOP argued before the Arbitrator that both charges against Grievant should be dismissed because they each sprang from and were the natural outgrowths of Grievant's relationship with

[40] *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012); *see also Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000).
[41] *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, Slip Op. No. 933, PERB Case No. 07-A-08 (Mar. 12, 2008); *see also Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Thomas Pair)*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at p. 7-8, PERB Case No. 09-A-05 (2014).
[42] *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012).
[43] *Id.* (quoting *Am. Postal Workers Union, AFL-CIO v. United States Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986)).
[44] *See United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987).
[45] *MPD v. FOP*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04.
[46] *MPD v. FOP*, Slip Op. No. 933, PERB Case No. 07-A-08.
[47] Request at 12.

Bowman, which MPD first had notice of on October 11, 2009, when Informant emailed the Chief of Police.[48] The Arbitrator rejected FOP's contention, reasoning that MPD had actually conducted two separate investigations into Grievant's misconduct. He found that MPD closed its first investigation into Grievant's relationship with Bowman after Grievant asserted to MPD's investigator that she had not been aware of Bowman's criminal activity until after he was indicted, and that she had ended their friendship as soon as she learned of it. However, when it was reported to MPD in January 2010 that Informant's identity had been disclosed to Bowman's mother, MPD opened a second and separate investigation to determine if Grievant was responsible for compromising Informant's identity. The Arbitrator found that it was during MPD's January 29, 2010 investigatory interview with Grievant that she admitted that she had disclosed Informant's identity to Bowman's mother, and that she had continued to maintain a "close interpersonal relationship" with Bowman despite being aware of his criminal activity.[49] Citing to Grievant's admissions, the Arbitrator reasoned that "January 29, 2010 [was] the first time MPD knew or should have known that the acts alleged in the Specifications in the Charges were true and factual."[50] Accordingly, calculating from January 29, 2010, the Arbitrator concluded that MPD's issuance of Grievant's Proposed Adverse Action letter on May 14, 2010, was timely issued within 90 days, not counting Saturdays, Sundays, or legal holidays.[51]

In its Arbitration Review Request, FOP again argues that the stated cause for both charges stems from Grievant's alleged relationship with Bowman, which FOP argues MPD first had notice of on October 11, 2009, when Informant emailed the Chief of Police.[52] FOP further asserts that Grievant did not become aware of Bowman's criminal activity until October 14, 2009, when she was interviewed by the FBI.[53] Using that October 14, 2009 date as the benchmark, FOP calculates that MPD was required under the 90-day rule to serve the proposed adverse action letter on Grievant by no later than February 26, 2010. However, since MPD did not serve the letter until May 14, 2010, FOP maintains that MPD violated the 90-day rule and that the Arbitrator ignored the statutory requirement when he found that MPD Proposed Adverse Action letter was timely.[54]

FOP relies on two D.C. Court of Appeals cases to support its contentions.[55] In *Finch v. Dist. of Columbia*, 894 A2d 419 (D.C. 2006), the Court characterized the 90-day rule as a "statute of limitations."[56] In *Dist. of Columbia Fire and Med. Serv. Dep't v. Dist. of Columbia Office of Emp. Appeals*, 586 A.2d 419 (D.C. 2010), the Court found that the purpose of the 90-day rule was to "bring 'certainty' to employees over whose heads a potential adverse action might otherwise linger indefinitely."[57] Analyzing the facts of the case before it, the Court found

[48] Award at 16-17.
[49] *Id.* at 16-22.
[50] *Id.* at 19.
[51] *Id.* at 22.
[52] Request at 12.
[53] *Id.*
[54] Request at 12-13.
[55] *Id.* at 13-15.
[56] *Id.* at 13.
[57] *Id.* at 14-15 (quoting 586 A.2d at 425).

that the 90-day clock began to run when FEMS first interviewed the employee under investigation and other witnesses and thereby became reasonably aware that the employee had more likely than not engaged in the alleged misconduct. Although FEMS argued that there were conflicts in the employee's and other witnesses' statements that took time to resolve, the Court found that those alleged conflicts, if they existed at all, were minimal and did not justify FEMS taking more than five months before officially initiating its proposal to remove the employee.[58] Accordingly, the Court affirmed the Office of Employee Appeals' ("OEA") reversal of the employee's termination, finding that OEA's determination that FEMS violated the 90-day rule was "consistent with the legislative intent" of the statute.[59]

Citing these cases, FOP asserts that:

> In a case such as this, even if [MPD] later becomes privy to information that would have led to administrative charges being brought against the employee (had it known of the information earlier), the public policy considerations of finality and closure (for both sides) legally prevents the MPD from charging the Grievant with adverse action. Indeed, if [the Arbitrator] were permitted to reach the merits of an adverse action that was illegally instituted, it would 1) rebuff the Court of Appeals' recent decision on this issue and 2) render the mandatory language in D.C. [Official] Code § 5-1031 meaningless. Point of fact, the 90-day rule would become a suggestion rather than an enforceable rule. Without proper mandatory construction, MPD would have absolutely no incentive to bring actions within 90 business days if the Board were to rule that the merits of the arbitration must be reached even though the allegation being investigated was known more than 90 business days ago. Therefore, [the Arbitrator's] ruling on the 90-day rule must be set aside.[60]

The Board disagrees. Grievant's Proposed Adverse Action letter expressly charged Grievant with maintaining a close interpersonal relationship with Bowman "after" she learned of his criminal activity.[61] FOP asserts that Grievant did not become aware of Bowman's criminal activity until October 14, 2009. Thus, the Arbitrator correctly concluded that MPD could not have known that Grievant had maintained her close friendship with Bowman *after* learning of his criminal activity until she admitted to it during the January 29, 2010 investigative interview.

FOP's argument assumes that Grievant was terminated based on her entire relationship with Bowman from before and after she learned of his criminal activities, but the record shows that that was not the case. MPD's first investigation into Grievant's relationship with Bowman

[58] 586 A.2d at 425-426.
[59] *Id.* at 426.
[60] Request at 15-16.
[61] *Id.* at 4.

was closed after MPD concluded that Grievant had not done anything wrong because she had not been aware of Bowman's criminal history when she was dating him—a finding that was substantiated by the FBI. However, when Informant notified MPD in mid-January 2010 that Grievant had disclosed her identity to Bowman's mother, MPD did not re-open its first investigation, but rather opened a new, separate, and distinct second investigation with a different case number.[62] Since this second investigation was based on a new allegation of misconduct, a new 90-day clock began to run that was separate and independent from the clock that ran pursuant to MPD's first investigation.[63] Similarly, when MPD learned on January 29, 2010, that Grievant had continued to maintain a close interpersonal relationship with Bowman despite now knowing he had been indicted for drug trafficking, a new 90-day clock began to tick for that new act of misconduct as well.[64]

Thus, the Board rejects FOP's contention that when MPD closed its first investigation, the 90-day rule prevented MPD from ever disciplining Grievant for any new or future acts of misconduct concerning her relationship with Bowman. Indeed, even if MPD had concluded in its first investigation that Grievant had known about Bowman's criminal history when she dated him, but had failed to initiate disciplinary proceedings against Grievant within the prescribed 90-day deadline, that still would not have given Grievant *carte blanche* leave to continue seeing Bowman and/or to continue engaging in any related misconduct in perpetuity. Certainly, the public policy considerations of finality and closure for an employee's act of misconduct occurring more than 90 days ago cannot prevent an agency from timely disciplining that employee when he/she commits new acts of misconduct later on and/or if the employee continues to engage in the inappropriate behavior.[65] Here, it is undisputed that Grievant first learned on October 14, 2009, that Bowman had been indicted for drug trafficking. Despite that knowledge, Grievant admitted to MPD on January 29, 2010, that she had continued to maintain a close interpersonal relationship with him. Furthermore, during that same January 29th investigative interview, Grievant also admitted that she had disclosed Informant's identity to a non-MPD individual despite knowing that Informant wanted to remain anonymous. Both of these deeds were new, separate, and distinct acts of misconduct that were each independently subject to their own 90-day deadlines.[66]

Accordingly, using January 29, 2010 as the benchmark, MPD had until June 9, 2010, under the requirements of the 90-day rule to initiate disciplinary proceedings against Grievant for those new acts of misconduct. Therefore, the Board finds that the Arbitrator did not act contrary to law or public policy when he concluded that Grievant's May 14, 2010 Proposed Adverse

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[62] *See* Request, Attachment 2 at 8-24.
[63] *See Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Dist. of Columbia Metro. Police Dep't*, 62 D.C. Reg. 12587, Slip Op. No. 1531 at p. 4, PERB Case No. 15-A-10 (2015) aff'd, *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Dist. of Columbia Pub. Emp. Relations Bd.*, Case No. 2015 CA 006517 P(MPA) (D.C. Super. Ct. Sep. 13, 2016) (holding that a later act of misconduct necessitates the running of a separate 90-day clock even if it is connected or related to an earlier act of misconduct for which a 90-day clock has already run and expired).
[64] *Id.*
[65] *Id.*
[66] *Id.*

Action letter was timely under the 90 day rule.

Additionally, the Board finds that there is nothing in the Award that is contrary to the Court of Appeals' findings in *Finch* and *FEMS*. In *FEMS*, there was only one act of misconduct and only one investigation that the agency took too long to act upon. In this case, MPD clearly conducted two different and independent investigations based on factually separate and distinct allegations of misconduct.[67] At no point during either investigation did MPD ever convey a lack of certainty or finality; nor did it unduly linger in issuing Grievant's Proposed Adverse Action letter. Accordingly, the Board rejects FOP's contention that the Court of Appeals' holdings in *Finch* or *FEMS* mandate that the Arbitrator arrive at a different result.[68]

2. The Arbitrator Did Not Violate Law or Public Policy When He Ignored FOP's *Douglas* Factors Due Process Claim

FOP alleges that the Arbitrator ignored and failed to address its argument concerning MPD's inclusion of an analysis pursuant to *Douglas v. Veterans Admin.*, 5 M.S.P.B. 313 (1981) in Grievant's Proposed Adverse Action letter.[69] FOP asserted before the Arbitrator, as it does in the instant Arbitration Review Request, that by including a *Douglas* factors analysis in Grievant's Proposed Adverse Action letter, MPD violated Grievant's due process rights by prematurely and prejudicially attributing guilt to the Grievant's charges and potentially tainted the ability of MPD's Adverse Action Panel to objectively review Grievant's case.[70]

This is not the first time FOP has raised this argument. In 2011, prior to Grievant's hearing before the Panel, FOP filed an unfair labor practice complaint alleging that MPD committed an unfair labor practice when it denied FOP's attorney's request to strike the *Douglas* factors analysis from Grievant's Proposed Adverse Action letter. The Board dismissed the complaint, holding that it was up to MPD's Adverse Action Panel to determine what evidence it could or could not consider, not PERB.[71]

Additionally, in 2015, FOP filed an Arbitration Review Request on behalf of another officer, William Harper, asserting, much as it has here, that MPD's inclusion of a *Douglas* factors analysis in Officer Harper's proposed adverse action letter compromised the officer's due process rights because it contaminated the deliberations of MPD's adverse action panel and compromised the panel's ability to reach its own conclusions about Officer Harper's guilt or innocence.[72] The Board agreed with the arbitrator's rejection of FOP's argument, reasoning that Officer Harper's adverse action panel "should have had no problem with independently

[67] *Id.*
[68] *See MPD v. FOP*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11; *see also MPD v. FOP*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04.
[69] Request at 16-18.
[70] *Id.*
[71] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Dist. of Columbia Metro. Police Dep't*, 60 D.C. Reg. 9245, Slip Op. No. 1392 at p. 5, PERB Case No. 11-U-25 (2013).
[72] *FOP v. MPD*, 62 D.C. Reg. 12587, Slip Op. No. 1531 at p. 4-6, PERB Case No. 15-A-10, aff'd, *FOP v. PERB*, Case No. 2015 CA 006517 P(MPA).

questioning and objectively analyzing the various conclusions reached by MPD as to the charges made and the penalties recommended." [73] Accordingly, the Board found that MPD's inclusion of a *Douglas* factors analysis in Officer Harper's proposed adverse action letter was not contrary to any applicable law or definite public policy that mandated the arbitrator arrive at a different result.[74] The D.C. Superior Court recently affirmed the Board's findings, reasoning in part that including a *Douglas* factors analysis in Officer Harper's proposed adverse action letter "provided additional detail to the notice of the reasons MPD proposed for termination that afforded Harper the opportunity to respond to the specific rationale for MPD's decision."[75]

Even though the Arbitrator in this case did not address FOP's *Douglas* factors argument, the D.C. Superior Court's recent affirmation of PERB's rejection of an almost identical argument raised by FOP in a similar case leaves the Board in a clear position to find that the Arbitrator's failure to address that particular argument was not fatal to his overall conclusion that MPD did not violate Grievant's due process rights. Accordingly, the Board sees no significant or compelling reason to invoke its "extremely narrow" public policy exception to overturn the Award.[76]

C. The Arbitrator Did Not Exceed His Authority

FOP asserts that the Arbitrator exceeded his authority and violated Article 19(E), § 5(4) of the parties' Collective Bargaining Agreement ("CBA")[77] when he ruled that two documents that FOP tried to rely on at arbitration—a sworn affidavit by an MPD Sergeant,[78] and the Hearing Examiner's Report and Recommendation from the factually related PERB Case No. 11-U-24[79]—could not be considered part of the arbitration record because Article 12, § 8 in the CBA states that "[i]n cases where a Departmental hearing has been held, any further appeal shall

[73] *Id.* at 5-6.
[74] *Id.*
[75] *See FOP v. PERB*, Case No. 2015 CA 006517 P(MPA) at p. 9-13 (quoted text on p. 12).
[76] *See MPD v. FOP (on behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01; *see also United Paperworkers*, 484 U.S. at 36; *and MPD v. FOP*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04.
[77] CBA Article 19(E), § 5(4): "The Arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration." *See* Request, Attachment 7.
[78] The sworn affidavit was given by First District Sgt. Raymond Middleton, who attested that after Grievant's Panel hearing ended, but before the Panel issued its Findings of Fact and Conclusions of Law, he had spoken with one of the Panel members who told him that the Panel had verbally voted not to terminate Grievant. He further asserted that after the Panel issued its official written findings recommending termination, he spoke with the Panel member again, who told him that the Panel members had been given additional evidence in the interim that showed Grievant had lied about ending her relationship with Bowman, and that that had caused the Panel to change its vote to recommend termination. *See* Request, Attachment 3.
[79] The Hearing Examiner's Report and Recommendation in PERB Case No. 11-U-24 found that MPD committed an unfair labor practice when it failed and refused to timely provide FOP with certain documents FOP had requested that were relevant and necessary to evaluate and consider the allegations in Grievant's case. In *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, Slip Op. No. 1585, PERB Case No. 11-U-24 (June 30, 2016), the Board upheld and sustained the hearing examiner's findings.

be based solely on the record established in the Departmental hearing."[80] FOP contends that the Arbitrator's refusal to consider the two documents improperly restricted the record because:

(1) the Arbitrator's authority was derived from Article 19 (governing "Grievance Procedure"), not Article 12 (governing "Discipline");

(2) Article 19(E), § 5(2) states that "[t]he parties to the grievance or appeal shall not be permitted to assert in such arbitration proceeding any ground or to reply on any evidence not previously disclosed to the other party";

(3) FOP's sworn affidavit had been previously disclosed to MPD as part of Grievant's Motion for Reconsideration of the Assistant Chief of Police's decision to uphold the Panel's recommendation of termination; and

(4) the Hearing Examiner's Report in PERB Case No. 11-U-24 was a legal case and therefore did not have to be contained in the record in order to be referenced.[81]

To determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."[82] The U.S. Court of Appeals for the Sixth Circuit, in *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007), provided the following standard to determine if an award "draws its essence" from a collective bargaining agreement:

> [1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

Here, there is no evidence that the Arbitrator resolved any disputes other than the four specific questions the parties jointly placed before him. Additionally, as discussed, *supra*, FOP has not demonstrated in any way that the Arbitrator's Award was the result of fraud, that he had

[80] Request at 18.
[81] *Id.* at 18-20.
[82] *MPD v. FOP (on behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (*quoting Dist. of Columbia Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)); *see also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am.*, 813 F.2d 85 (6th Cir. 1987).

a conflict of interest, or that he otherwise acted dishonestly in issuing the Award.[83]

With regard to the Arbitrator's determination that he could not consider FOP's sworn affidavit and the Hearing Examiner's Report and Recommendation from PERB Case No. 11-U-24 because of the constraints placed on him by Article 12, § 8 of the CBA, the Board finds that the Arbitrator's decision was, at the very least, an arguable construal and application of how Article 12, § 8 relates to Article 19(E), § 5(4), and not a modification of any particular terms in the CBA.[84] Indeed, the parties presented the Arbitrator with competing interpretations of what they thought the applicable provisions meant, and after duly acknowledging and weighing their positions, the Arbitrator interpreted Article 12, § 8 to mean that since MPD had held a hearing in this matter, he could not consider FOP's documents because the case before him had to be based solely on what was established at that hearing.[85] In so doing, the Arbitrator did not create any new contractual language, and he did not claim or exercise any authority for which there was no basis in the CBA. Furthermore, even if his interpretation of Article 12, § 8 could be characterized as a "serious," "improvident" or "silly" error in light of Article 19(E), § 5(4)—and the Board is not saying that it was—it was still nevertheless an interpretation, and is therefore beyond PERB's ability or authority to question. As the Board has held on many occasions, when parties submit matters to arbitration, they appoint the Arbitrator to be the reader and interpreter of their CBA and agree to be bound by his interpretations.[86] Accordingly, since the parties specifically bargained to be bound by the Arbitrator's interpretations of their CBA, the Board cannot substitute its own interpretation of the parties' agreement for that of the duly appointed Arbitrator.[87]

Therefore, since the Arbitrator's decision not to consider FOP's documents was arguably a construal, application, and interpretation of a specifically cited provision in the parties' CBA, and since the parties expressly appointed the Arbitrator to make those types of interpretations in rendering the Award, the Board finds that the Arbitrator's decision not to consider FOP's documents drew its essence from the CBA, and was therefore not in excess of the Arbitrator's authority.[88]

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[83] *See Michigan Family Res., Inc.*, 475 F.3d at 753.
[84] *See Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Tania Bell)*, Slip Op. No. 1591 at p. 5, PERB Case No. 15-A-16 (Aug. 23, 2016).
[85] Award at 16.
[86] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Timothy Harris) v. Dist. of Columbia Metro. Police Dep't*, 59 D.C. Reg. 11329, Slip Op. No. 1295 at p. 5, PERB Case No. 09-A-11 (2012) (internal citations omitted).
[87] *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Jeffrey V. Robinson)*, 59 D.C. Reg. 9778, Slip Op. No. 1261 at p. 2, PERB Case No. 10-A-19 (2012) (internal citations omitted). The Board notes that one narrow exception to this is if the arbitrator's interpretation is on its face contrary to a specific applicable law and/or definite public policy that mandates him to arrive at a different result. *Id.* However, as discussed, *supra*, FOP has not alleged any grounds in this case that would justify an invocation of that exception.
[88] *See Michigan Family Res., Inc.*, 475 F.3d at 753.

D. Conclusion

Based on the foregoing, the Board finds that FOP has not shown that the Award was procured through bias; that the Award is contrary to law and public policy; and/or that the Arbitrator exceeded his authority. Accordingly, FOP's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Request is denied and the matter is dismissed in its entirety with prejudice.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

September 22, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-03, Opinion No. 1593, was transmitted through File & ServeXpress to the following parties on this the 28th day of September, 2016.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
District of Columbia, Department of General Services,	)	PERB Case No. 15-A-11
Petitioner,	)	Opinion No. 1594
v.	)	
Fraternal Order of Police/Protective Services Police Labor Committee,	)	Motion for Reconsideration
Respondent.	)	

DECISION AND ORDER

On July 12, 2016, the Board issued a Decision and Order in PERB Case No. 15-A-11[1] (hereinafter "Slip Op. No. 1586"). The decision denied an Arbitration Review Request filed by Petitioner Department of General Services ("DGS") on April 17, 2015. On July 20, 2016, DGS filed a Motion for Reconsideration ("Motion") asking the Board to reconsider its decision. For the reasons stated herein, DGS' Motion is denied.

I. Statement of the Case

DGS employs officers that are responsible for law enforcement activities and the physical security of all properties owned, leased, or otherwise under the control of the District of Columbia Government.[2] The officers are represented for purposes of collective bargaining by FOP.

On March 21, 2014, Respondent Fraternal Order of Police/Protective Services Police Labor Committee ("FOP") filed a step 4 class grievance alleging in part that DGS had violated

[1] *Dist. of Columbia Dep't of Gen. Serv. v. Fraternal Order of Police/Protective Serv. Police Labor Comm.*, Slip Op. No. 1586, PERB Case No. 15-A-11 (July 12, 2016).
[2] Slip Op. No. 1586 at 1.

Article 16 of the parties' Collective Bargaining Agreement ("CBA") by failing to (1) provide requisite training to members of the bargaining unit; (2) offer training by instructors with demonstrated sufficient knowledge of the subject matter; (3) create a training plan; and (4) engage FOP and bargaining unit members to plan and evaluate appropriate training.[3] The grievance further alleged that by failing to adequately train bargaining unit members, DGS had created unsafe conditions in violation of Article 17.[4]

On May 1, 2014, DGS denied FOP's grievance, reasoning that it had complied with all of the training requirements for Special Police Officers outlined in District of Columbia Municipal Regulations ("DCMR") 6-A §§ 1100 *et seq*., and that it had not violated Article 17 because FOP had not alleged any specific unsafe conditions in its grievance.[5] FOP thereafter requested arbitration[6] and a hearing was held.

On March 31, 2015, Arbitrator Ellen S. Saltzman issued the Arbitration Award, finding that (1) DGS violated Article 16 of the CBA by failing to engage with FOP to establish a training program and by failing to provide its police officers with adequate training; and (2) there was no violation of Article 17 of the CBA because FOP had not followed the proper procedures for reporting safety concerns.[7] The Arbitrator reasoned that since the job descriptions, uniform requirements, terms of hire, and duties of the Special Police Officers in the bargaining unit were not the same as those described in 6-A DCMR §§ 1100, *et seq.*, the minimum training requirements in the DCMR did not apply.[8]

On April 17, 2015, DGS filed an Arbitration Review Request, asserting that the Arbitrator was without, or exceeded, her jurisdiction when she found that 6-A DCMR §§ 1100, *et seq.* did not apply to the Special Police Officers in the bargaining unit, and also that the Award was on its face is contrary to law and public policy.[9] On July 12, 2016, the Board issued Slip Op. No. 1586, holding that the Arbitrator's finding drew its essence from the CBA and therefore was not in excess of her authority. The decision further held that since the D.C. Superior Court had found in another case that DGS' special police officers are different from those described in 6-A DCMR §§ 1100, *et seq.*, the Arbitrator's finding was not on its face contrary to law or public policy.[10]

II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside a grievance arbitration award in only three limited circumstances: (1) if an arbitrator was without, or

[3] *Id.* at 1-2.
[4] *Id.* at 2.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 4-5.
[8] *Id.* at 4.
[9] *Id.* at 5.
[10] *Id.* at 4-8.

exceeded her or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[11]

Motions for reconsideration cannot be based upon a "mere disagreement" with the initial decision.[12] The moving party must provide authority which "compels reversal" of the initial decision.[13] A party that has failed to raise certain arguments in prior proceedings waives its right to raise those specific issues for the first time in a motion for reconsideration.[14]

DGS' primary argument in its Motion for Reconsideration is that two provisions of the D.C. Code compel reversal of the Arbitrator's finding.[15] DGS contends that D.C. Official Code § 10-551.02(6) established the DGS Protective Services Division and requires DGS to employ "special police officers and security officers, as defined in § 47-2839.01."[16] DGS then notes that D.C. Official Code § 47-2839.01 defines a "special police officer" as "an individual appointed under § 5-129.02, and subject to the requirements of Chapter 11 of Title 6-A of the District of Columbia Municipal Regulations."[17] DGS' contention is therefore that "the Arbitrator's award is contrary to law and public policy to the extent that it holds that the DGS Special Police Officer position 'is different from the Special Police Officer described in [6-A DCMR §§ 1100 *et seq*.] and therefore, [6-A DCMR §§ 1100, *et seq.*] does not apply' to the DGS Special Police Officer position."[18]

The instant Motion for Reconsideration is the first time that DGS has raised any arguments concerning D.C. Official Code §§ 10-551.02(6) and 47-2839.01. It did not present these claims before the Arbitrator, and it did not raise them in its Arbitration Review Request, or at any other time since arbitration was requested in 2014. Accordingly, the Board finds that DGS has waived its right to raise them for the first time in its Motion for Reconsideration.[19]

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[11] *See also* PERB Rule 538.3.
[12] *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. Dist. of Columbia Dep't of Consumer and Regulatory Affairs and Dist. of Columbia 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).
[13] *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.
[14] *Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO and Dist. of Columbia Pub. Sch.*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at 4-6, PERB Case No. 12-E-10 (2015); *see also* AFGE, *Local 2725 v. DCRA and OLRCB*, 59 D.C. Reg. 6013, Slip Op. No. 969 at p. 5, PERB Case No. 06-U-43; *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 5006, Slip Op. No. 966 at p. 5, PERB Case No. 08-E-02 (2012); *Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO v. Dist. of Columbia Pub. Sch.*, 50 D.C. Reg. 5077, Slip Op. No. 712 at p. 4, PERB Case No. 03-U-17 (2003); *and Am. Fed'n of State, Cnty and Mun. Emp., Dist. Council 20, Local 2921, AFL-CIO v. Dist. of Columbia Pub. Sch.*, 51 D.C. Reg. 4170, Slip Op. No. 731 at p. 2, PERB Case No. 03-U-17 (2003).
[15] Motion at 2-3.
[16] *Id.* at 2 (emphases removed).
[17] *Id.* (emphases removed).
[18] *Id.* at 3.
[19] *AFSCME, Dist. Council 20, Local 2921, AFL-CIO and DCPS*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at 4-6, PERB Case No. 12-E-10.

The stipulated issue that the parties jointly placed before the Arbitrator was whether DGS had failed to engage FOP in a training program and whether it had failed "to provide adequate training as required by the CBA," and if so, what should be the remedy.[20] In so doing, the parties agreed not only to be bound by the Arbitrator's interpretation of their CBA, but also to be bound by her interpretation of any related rules and/or regulations.[21] In the Award, the Arbitrator duly considered all of the evidence and information the parties placed before her and provided a very thorough interpretation of the CBA and its relationship with 6-A DCMR §§ 1100, *et seq*. Most importantly, the Arbitrator found that DGS violated Article 16 of the CBA when it failed to engage FOP in a training program and when it failed "to provide *adequate* training" to its officers based on their stated job descriptions and duties.[22] Indeed, in Article 16 DGS agreed to provide bargaining unit members with a level of training that was commensurate "with the performance of their official duties."[23] Therefore, although 6-A DCMR §§ 11, *et seq*. stated a minimum standard of training for special police officers based on a limited set of listed duties, once DGS gave its special police officers additional duties above and beyond those stated in the DCMR, it was required under Article 16 of the CBA to provide additional training commensurate with the performance of those added duties.[24] Accordingly, the Arbitrator did not err when she evaluated the job descriptions and duties of DGS' police officers and determined that the minimum training standard articulated in 6-A DCMR §§ 11, *et seq*. was inadequate based on the requirements of Article 16.

DGS also argues that PERB's denial of DGS' Arbitration Review Request was itself contrary to law because it (1) presumed that the Mayor misclassified DGS' officers; (2) presumed that PERB had personnel authority over the Mayor's appointments; (3) encroached on the Mayor's statutory authority to classify positions under her authority; and/or (4) encroached on the Mayor's authority to set training standards for DGS' officers.[25]

The Board disagrees. When the Board issued Slip Op. No. 1586, it merely exercised its express authority under D.C. Official Code § 1-605.02(6) to review the Award, at DGS' request, to determine whether the Arbitrator exceeded her authority and/or whether the Award was on its face contrary to law and public policy. In its Decision and Order, the Board noted that DGS and FOP both duly placed before the Arbitrator the express tasks of determining whether DGS had violated Article 16, and if so, what should be the remedy. The Board further noted that in order to answer those questions, "it was necessary for the Arbitrator to identify who was covered by the CBA."[26] The Board then highlighted the Arbitrator's reasoning and determined that the

[20] Slip Op. No. 1586 at 3.
[21] *Dist. of Columbia Pub. Sch. V. Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'rs, AFL-CIO*, 63 D.C. Reg. 8980, Slip Op No. 1574 at p. 6, PERB Case No. 15-A-05 (2016); *see also Dist. of Columbia Pub. Sch. v. Teamsters, Local 639*, 49 D.C. Reg. 4351, Slip Op. No. 423 at 5, PERB Case No. 95-A-06 (1995); *and Dist. of Columbia Pub. Sch. and Washington Teachers' Union, Local 6*, 60 D.C. Reg. 12096, Slip Op. No. 1406 at 5, PERB Case No. 12-A-08 (2013).
[22] *See* Award at 18-21, 24 (emphasis added).
[23] *See* CBA, Article 16 § A.
[24] *See id.*
[25] Motion at 4-7.
[26] Slip Op. No. 1586 at 5.

Award was "based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy." [27] Accordingly, the Board found, in full accordance with its express authority under D.C. Official Code § 1-605.02(6), "that the Arbitrator did not exceed her authority and the Award on its face is not contrary to law and public policy."[28]

Again, as reasoned, *supra*, 6-A DCMR §§ 1100, *et seq*. merely established minimum training requirements for special police officers. However, the Arbitrator found that since DGS and FOP, in Article 16 of their CBA, agreed that the special police officers in the bargaining unit would be trained in relation "to the performance of their official duties," and since the stated duties of DGS' special police officers were different from those the DCMR listed for special police officers, the minimum training standards in the DCMR did not apply, and additional training was required. Nothing in the Award or in PERB's Decision usurped the Mayor's authority or found that the Mayor misclassified DGS' officers; nor did either decision exercise any personnel authority over the Mayor's appointments, encroach on the Mayor's statutory authority to classify positions under her authority, or encroach on the Mayor's authority to set training standards for DGS' officers.

Accordingly, DGS' Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. DGS' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.3, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

September 22, 2016

Washington, D.C.

[27] *Id.* at 6-8.
[28] *Id.* at 8.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-11, Opinion No. 1594, was transmitted through File & ServeXpress to the following parties on this the 28th day of September 2016.

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