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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-564, Automatic Voter Registration Amendment Act of 2016
- D.C. Council enacts Act 21-568, Comprehensive Youth Justice Amendment Act of 2016
- D.C. Council enacts Act 21-571, Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016
- D.C. Council passes Resolution 21-688, Wage Theft Prevention Clarification and Overtime Fairness Emergency Declaration Resolution of 2016
- Board of Ethics and Government Accountability formulates Advisory Opinion 1583-001, Post-Employment Restrictions
- Department of Parks and Recreation announces funding availability for the Fort Dupont Ice Arena Programming Grant
- D.C. Zoning Commission updates the Inclusionary Zoning (IZ) regulations
- Office of the Secretary schedules a meeting on the Electoral College

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-564

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the District of Columbia Election Code of 1955 to provide that each Department of Motor Vehicles ("DMV") application for a DMV-issued driver's license (including any renewal application) or nondriver's identification card shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant indicates on the application that he or she does not want the application to serve as a voter registration application, to change the voter registration deadline from the 30th day before an election to the 21st day before an election, to require the District of Columbia Board of Elections to accept electronic registration information from the DMV to register voters and maintain up-to-date voter rolls, and to provide a person the opportunity to decline automatic voter registration; to amend the District of Columbia Uniform Military and Overseas Voters Act of 2012 to change the voter registration deadline from the 30th day before an election to the 21st day before an election; and to amend the District of Columbia Traffic Act, 1925 to require the DMV to provide the District of Columbia Board of Elections with electronic records containing specified information on each person who may qualify as a qualified elector.

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

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 7 (D.C. Official Code § 1-1001.07) is amended as follows:

(1) Subsection (a)(2) is amended to read as follows:

"(2)(A) He or she executes an application to register to vote by signature or mark (unless prevented by physical disability) on a form approved pursuant to subsection (b) of this section or by the Election Assistance Commission attesting that he or she meets the requirements of a qualified elector, and if he or she desires to vote in party elections, indicating his or her political party affiliation; or

"(B) He or she applies for a DMV-issued driver's license or non-driver's identification card pursuant to subsection (c) of this section; and".

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

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

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(i) Subparagraphs (A) and (B) are amended to read as follows:

"(A)(i) Each DMV application for a DMV-issued driver's license (including any renewal application) or nondriver's identification card shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant indicates on the application that he or she does not want the application to serve as a voter registration application.

"(ii) For each applicant who did not decline to register to vote or update his or her voter registration information under sub-subparagraph (i) of this subparagraph and stated that he or she is a citizen of the United States, the DMV shall provide to the Board electronic records containing the applicant's:

"(I) Legal name;

"(II) Date of birth;

"(III) Residence;

"(IV) Mailing address;

"(V) Previous voter registration address;

"(VI) DMV-issued identification number or social security number;

"(VII) Party affiliation;

"(VIII) Response as to whether the applicant would like information on serving as a poll worker in the next election;

"(IX) Citizenship information; and

"(X) Electronic signature.

"(B) The DMV and the Board shall jointly develop a DMV application form that shall contain the necessary information for the:

"(i) Issuance, renewal, or correction of the applicant's driver's license or nondriver's identification card; and

"(ii) Means for the applicant to:

"(I) Provide a mailing address, if mail is not received at the residence address;

"(II) State whether the applicant is a United States citizen;

"(III) Indicate a choice of party affiliation (if any);

"(IV) Indicate the last address of voter registration (if known);

"(V) Indicate whether the applicant would like information on serving as a poll worker in the next election;

"(VI) Sign, under penalty of perjury, an attestation that sets forth the requirements for voter registration and states that the applicant meets each of those requirements; and

"(VII) Decline to register to vote, or, if already registered in the District, decline to update his or her voter registration.".

(ii) Subparagraph (D) is amended by striking the phrase "combined portion of the form" and inserting the word "application" in its place.

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(iii) Subparagraphs (E) and (F) are repealed.

(iv) Subparagraph (I) is amended as follows:

(I) The existing text is designated as sub-subparagraph (i).

(II) The newly designated sub-subparagraph (i) is amended by striking the phrase "An application to register to vote or for change of address, party, or name" and inserting the phrase "An application" in its place.

(III) A new sub-subparagraph (ii) is added to read as follows:

"(ii) The Board shall consider an application that the DMV accepted for the purposes of voter registration on or before the voter registration deadline as timely received.".

(v) Subparagraph (J) is amended by striking the phrase "may state whether the change of address or name is" and inserting the phrase "may decline to correct or update the individual's address or name" in its place.

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

"(3)(A) If a person who is not a qualified elector becomes registered to vote under this subsection, that person's voter registration:

"(i) Shall be presumed to have been effected with official authorization and not through the fault of that person;

"(ii) Shall not constitute a violation of section 14; and

"(iii) Shall not serve as a basis for holding that person civilly or criminally liable for the voter registration;

"(B) If a person who is not a qualified elector becomes registered to vote under this subsection and votes or attempts to vote in an election held after the effective date of that person's voter registration, that person shall not be in violation of section 14 or held civilly or criminally liable for voting, unless that person votes or attempts to vote knowing that he or she is not a qualified elector.".

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

(A) Paragraph (1) is amended by striking the phrase "from any applicant" and inserting the phrase "from any applicant, the DMV, pursuant to subsection (c)(1) of this section, or a voter registration agency, pursuant to subsection (d) of this section" in its place.

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

(i) The existing text is designated as subparagraph (A).

(ii) A new subparagraph (B) is added to read as follows:

"(B) For applications received from the DMV, pursuant to subsection (c)(1) of this section, the notification, in addition to the information required under subparagraph (A) of this paragraph, shall include information regarding the process to decline voter registration and to change or adopt a political party affiliation, if one was not designated on the application.".

(4) Subsection (g) is amended as follows:

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

(i) Strike the phrase "At any time except during the 30-day" and insert the phrase "Except as provided in paragraph (4) of this subsection, at any time except during

the 21-day" in its place.

(ii) Strike the phrase "30th day" and insert the phrase "21st day" in its place.

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

"(2) The Board shall process voter registration applications and voter registration update notifications that are received, whether received postmarked, non-postmarked, or digitally, by the Board by the 21st day preceding any election.".

(C) Paragraph (3) is amended by striking the phrase "30th" and inserting the phrase "21st" in its place.

(D) Paragraph (4) is amended by striking the phrase "30th" both times it appears and inserting the phrase "21st" in its place.

(5) Subsection (i)(4) is amended as follows:

(A) Subparagraph (A) is amended by striking the phrase "at the polling place serving the former residence address, subject to the requirements of section 302 of the Help America Vote Act, approved October 29, 2002 (116 Stat. 1706; 42 U.S.C. § 15483)" and inserting the phrase "at the polling place serving the current residence address" in its place.

(B) Subparagraph (C) is amended by striking the phrase "only within the polling place assigned by the Board before election day" and inserting the phrase "at the polling place serving the current residence address or the accessible polling place assigned by the Board pursuant to section 9(b)(3)" in its place.

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

"(m)(1) By October 1, 2017, the Board, in conjunction with the DMV, shall develop and implement electronic transmission of voter registration information from the DMV;

"(2) Upon implementation of electronic transmission of voter registration information required under paragraph (1) of this subsection, the DMV shall transmit any eligible voter registration application to the Board no later than 5 days after the date of the application's acceptance by the DMV.".

(b) Section 9(b)(3) (D.C. Official Code § 1-1001.09(b)(3)) is amended by striking the phrase "Except pursuant to section 7(i)(4), no" and inserting the phrase "No" in its place.

Sec. 3. Section 106(b) of the District of Columbia Uniform Military and Overseas Voters Act of 2012, effective June 5, 2012 (D.C. Law 19-137; D.C. Official Code § 1-1061.06(b)), is amended by striking the number "30" and inserting the number "21" in its place.

Sec. 4. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; codified in scattered cites of the D.C. Official Code), is amended by adding a new section 7c to read as follows:

"Sec. 7c. Electronic transmission of voter registration information.

"(a) Beginning October 1, 2017, the Department of Motor Vehicles ("Department") shall electronically transmit to the District of Columbia Board of Elections the voter registration

information of each applicant who did not decline to register to vote and stated that he or she is a citizen of the United States no later than 5 days after the date of its acceptance by the DMV.

"(b) The electronic information submitted pursuant to subsection (a) of this section shall contain the applicant's:

"(1) Legal name;

"(2) Date of birth;

"(3) Residence;

"(4) Mailing address;

"(5) Previous voter registration address;

"(6) DMV-issued identification number or social security number;

"(7) Party affiliation;

"(8) Response as to whether the applicant would like information on serving as a poll worker in the next election;

"(9) Citizenship information; and

"(10) Electronic signature.".

Sec. 5. Applicability.

(a) Sections 2(a)(1), (2), (3), (4), and (6), and sections 3 and 4 shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

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

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

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

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

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AN ACT

D.C. ACT 21-565

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to allow patients enrolled in another jurisdiction's medical marijuana program to participate in the District's medical marijuana program, to require the implementation of a medical marijuana electronic tracking system, to provide for the registration of independent medical marijuana testing facilities by the Department of Health, to require independent testing of medical marijuana before distribution, to allow medical marijuana cultivation centers to expand into adjacent real property, to increase the plant count limit from 500 to 1000, and to provide for the relocation and change in ownership of dispensaries, cultivation centers, and testing laboratories; and to amend the District of Columbia Health Occupations Revision Act of 1985 to allow additional health professionals to recommend medical marijuana, and to make conforming amendments.

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

Sec. 2. The Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7-1671.01), is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (1A).

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

"(1) "Adjacent" means located within the same physical structure as, and is abutting, adjoining, bordering, touching, contiguous to, or otherwise physically meeting.".

(3) New paragraphs (1B) and (1C) are added to read as follows:

(1B) "Advanced practice registered nurse" means an individual licensed and in good standing to practice advanced practice registered nursing under District law.

"(1C) "Authorized practitioner" means a physician, advanced practice registered nurse, physician assistant, dentist, or naturopathic physician who is licensed and in good standing to practice under District law.".

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

(A) The lead-in language is amended as follows:

(i) Strike the phrase "physician-patient relationship" and insert the phrase "relationship with a qualifying patient" in its place.

(ii) Strike the phrase "a physician and patient in which the physician" and insert the phrase "an authorized practitioner and qualifying patient for which the authorized practitioner" in its place.

(B) Subparagraph (A) is amended to read as follows:

"(A) Has completed a full assessment of the patient's medical or dental history and current medical or dental condition, including a personal physical or dental examination; and".

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

(A) Subparagraph (A) is amended by striking the word "dispense," and inserting the phrase "dispense, administer," in its place.

(B) Subparagraph (C) is amended by striking the phrase "Is not currently" and inserting the phrase "Is not currently, with the exception of caregivers providing services on behalf of nursing homes and hospices, as those terms are defined in sections (2)(a)(3) and (6), respectively, of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(3) and (6))," in its place.

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

"(5A) "Dentist" means an individual who is licensed and in good standing to practice dentistry under District law, but does not include an individual who only holds a dental teaching license.".

(7) A new paragraph (12A) is added to read as follows:

"(12A) "Medical marijuana product" means a product derived from or composed of medical marijuana, in part or in whole.".

(8) A new paragraph (13A) is added to read as follows:

"(13A) "Naturopathic physician" means an individual who is licensed and in good standing to practice naturopathic medicine under District law.".

(9) A new paragraph (15A) is added to read as follows:

"(15A) "Physician assistant" means an individual who is licensed and in good standing to practice as a physician assistant under District law.".

(10) Paragraph (17) is amended as follows:

(A) Strike the phrase "Qualifying medical" and insert the phrase "Qualifying medical or dental" in its place.

(B) Strike the word "physician" and insert the phrase "authorized practitioner" in its place.

(11) Paragraph (18) is amended as follows:

(A) The lead-in language is amended by striking the phrase "Qualifying medical" and inserting the phrase "Qualifying medical or dental" in its place.

(B) Subparagraph (D) is amended by striking the phrase "qualifying medical" and inserting the phrase "qualifying medical or dental" in its place.

(12) Paragraph (19) is amended by striking the phrase "medical condition or is undergoing a qualifying medical treatment." and inserting the phrase "medical or dental condition or is undergoing a qualifying medical or dental treatment, or a patient enrolled in another jurisdiction's medical marijuana program; provided, that a patient from another jurisdiction shall not be a qualifying patient if the Department determines that there is a shortage of medical marijuana or the real-time electronic records system referenced in section 6(4)(A) is inactive." in its place.

(13) A new paragraph (19A) is added to read as follows:

"(19A) "Real-time electronic records" means a records system that is able to track the amount of medical marijuana that District residents and patients from another jurisdiction purchase in real-time.".

(14) A new paragraph (21) is added to read as follows:

"(21) "Testing laboratory" means an entity that is not owned or operated by a director, officer, member, incorporator, agent, or employee of a cultivation center or dispensary, and is registered by the Department to test medical marijuana and medical marijuana products that are to be sold under this act.".

(b) Section 3(c) (D.C. Official Code § 7-1671.02(c)) is amended as follows:

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

(A) Designate the existing text as subparagraph (A).

(B) The newly designated subparagraph (A) is amended by striking the phrase "from a physician" and inserting the phrase "from an authorized practitioner" in its place.

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

(A) Redesignate the existing text as paragraph (1)(B).

(B) The newly designated paragraph (1)(B) is amended by striking the phrase "section 6" and inserting the phrase "section 6; or" in its place.

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

"(2) Enrolled in another jurisdiction's medical marijuana program.".

(c) Section 4 (D.C. Official Code § 7-1671.03) is amended as follows:

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

(A) Paragraph (1) is amended by striking the phrase "the qualifying patient's residence, if permitted" and inserting the phrase "the qualifying patient's residence, if permitted, the residence of an individual who has given permission to the qualifying patient to administer medical marijuana at his or her residence, if permitted" in its place.

(B) Paragraph (2) is amended by striking the phrase "dispensary or cultivation center" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(2) Subsection (f) is amended by striking the phrase "cultivation center or dispensary" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(3) Subsection (g) is amended by striking the phrase "cultivation center or a dispensary" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its

place.

(d) Section 5 (D.C. Official Code § 7-1671.04) is amended as follows:

(1) The section heading is amended by striking the word "physician" and inserting the phrase "authorize practitioner" in its place.

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

(A) The lead-in language is amended as follows:

(i) Strike the phrase "A physician" and insert the phrase "An authorized practitioner" in its place.

(ii) Strike the phrase "the physician" and insert the phrase "the authorized practitioner" in its place.

(B) Paragraph (1) is amended by striking the phrase "bona fide physician-patient relationship with the qualifying patient" and inserting the phrase "bona fide relationship with the qualifying patient" in its place.

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

(i) Strike the word "physician's" and insert the phrase "authorized practitioner's" in its place.

(ii) Strike the word "medical" wherever it appears and insert the phrase "medical or dental" in its place.

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

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

(i) The lead-in language is amended as follows:

(I) Strike the phrase "A physician's recommendation" and insert the phrase "An authorized practitioner's recommendation" in its place.

(II) Strike the phrase "the physician" and insert the phrase "the authorized practitioner" in its place.

(ii) Subparagraph (A) is amended by striking the phrase "physician's medical license number" and inserting the phrase "authorized practitioner's board-issued license number" in its place.

(iii) Subparagraph (B) is amended by striking the phrase "medical condition or the side effects of a qualifying medical treatment" and inserting the phrase "medical or dental condition or the side effects of a qualifying medical or dental treatment" in its place.

(B) Paragraph (2) is amended by striking the phrase "A physician's" and inserting the phrase "An authorized practitioner's" in its place.

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

(A) Strike the phrase "A physician" and insert the phrase "An authorized practitioner" in its place.

(B) Strike the phrase "dispensary or cultivation center" wherever it appears and insert the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(e) Section 6 (D.C. Official Code § 7-1671.05) is amended as follows:

(1) The lead-in language is amended by striking the phrase "possession, and administration" and inserting the phrase "possession, testing, and administration" in its place.

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

(A) Subparagraph (A)(i) is amended by striking the phrase "patients;" and inserting the phrase "patients, except qualifying patients enrolled in another jurisdiction's medical marijuana program under section 3(c)(2);" in its place.

(B) Subparagraph (B) is amended as follows:

(i) Sub-subparagraph (i) is repealed.

(ii) Sub-subparagraph (ii) is amended by striking the phrase "physician's recommendation" and inserting the phrase "authorized practitioner's recommendation" in its place.

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

(A) Subparagraph (B) is amended by striking the phrase "; and" and inserting a semicolon in its place.

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

"(B-i) Testing laboratories; and".

(C) Subparagraph (C) is amended by striking the phrase "dispensaries and cultivation centers;" and inserting the phrase "dispensaries, cultivation centers, and testing laboratories;" in its place.

(4) Paragraph (3) is amended by striking the phrase "distribute, or possess medical marijuana" and inserting the phrase "distribute, test, or possess medical marijuana" in its place.

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

(A) The lead-in language is amended by striking the phrase "dispensaries and cultivation centers" and inserting the phrase "dispensaries, cultivation centers, and testing laboratories" in its place.

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

(i) The lead-in language is amended by striking the phrase "and current records" and inserting the phrase "and real-time electronic records" in its place.

(ii) Sub-subparagraph (ii) is amended as follows:

(I) The lead-in language is amended by striking the phrase "A record of each transaction," and inserting the phrase "Each transaction conducted by the facility," in its place.

(II) Sub-sub-subparagraph (I) is amended by striking the phrase "distributed or dispensed" and inserting the phrase "tested, distributed, or dispensed" in its place.

(III) Sub-sub-subparagraph (II) is amended by striking the phrase "the medical marijuana" and inserting the phrase "the medical marijuana, if any" in its place.

(iii) Sub-subparagraph (iii) is amended by striking the phrase "dispensary or cultivation center" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(iv) Sub-subparagraph (iv) is amended by striking the phrase "but

not sold" and inserting the phrase "but that did not meet the requirements for sale established by the Department through rulemaking under paragraph (5A) of this section or that was not sold for any other reason" in its place.

(6) New paragraphs (5A) and (5B) are added to read as follows:

"(5A) Upon the registration of at least one testing laboratory under paragraph (2)(B-i) of this section and pursuant to rules issued by the Department, require that cultivation centers segregate all harvested medical marijuana into batches before manufacturing any medical marijuana product or packaging raw medical marijuana for sale to a dispensary and hold the harvested medical marijuana from sale until:

"(A) The medical marijuana has been tested by a testing laboratory;

"(B) The cultivation center has received the information required under paragraph (5B) of this section; and

"(C) The cultivation center has determined that the medical marijuana meets the requirements for sale established by the Department through rulemaking;

"(5B) Require testing laboratories to provide cultivation centers with the following information after testing harvested medical marijuana samples:

"(A) The concentration of tetrahydrocannabinol and cannabidiol in the testing material;

"(B) Whether the tested material is organic or non-organic;

"(C) The presence and concentration of fertilizers and other nutrients; and

"(D) Any other information that the Department may require through rulemaking;".

(7) Paragraph (9) is amended as follows:

(A) Strike the phrase "fees for dispensaries and cultivation centers" and insert the phrase "fees for dispensaries, cultivation centers, and testing laboratories" in its place.

(B) Strike the phrase "employees of dispensaries and cultivation centers" and insert the phrase "employees of dispensaries, cultivation centers, and testing laboratories" in its place.

(8) Paragraph (11) is amended as follows:

(A) The lead-in language is amended by striking the phrase "physicians," and inserting the phrase "authorized practitioners," in its place.

(B) Subparagraph (E) is amended by striking the word "physicians" and inserting the phrase "authorized practitioners" in its place.

(9) Paragraph (12) is amended by striking the phrase "dispensary and cultivation center" and inserting the phrase "dispensary, cultivation center, and testing laboratory" in its place.

(10) Paragraph (13) is amended as follows:

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

(i) Strike the phrase "to all Advisory Neighborhood Commissions in the affected ward" and insert the phrase "to the Councilmember and all Advisory Neighborhood Commissions in the affected ward" in its place.

(ii) Strike the phrase "dispensary or cultivation center" and insert the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(B) Subparagraph (B) is amended by striking the phrase "dispensary or cultivation center" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(f) Section 7 (D.C. Official Code § 7-1671.06) is amended as follows:

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

"(b-1) Notwithstanding any other District law, a testing laboratory may possess medical marijuana for the purpose of testing its contents, in accordance with this act and the rules issued pursuant to section 14.".

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

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

(i) Strike the phrase "dispensary and cultivation center" and insert the phrase "dispensary, cultivation center, and testing laboratory" in its place.

(ii) Strike the phrase "possessing, or distributing medical marijuana," and insert the phrase "possessing, testing, or distributing medical marijuana," in its place.

(B) Paragraph (3)(A) is amended to read as follows:

"(3)(A) The number of cultivation centers and testing laboratories that may be registered to operate in the District shall be determined by rulemaking; provided, that the combined total number of cultivation centers and testing laboratories registered to operate within an election ward established by the Council in section 4 of the Redistricting Procedure Act of 1981, effective March 16, 1982 (D.C. Law 4-87; D.C. Official Code § 1-1041.03), shall not exceed 6.".

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

"(4) The Mayor may approve the holder of a cultivation center registration that also owns, or has a valid lease for, real property adjacent to its existing cultivation center to physically expand the registered cultivation center into that adjacent real property for the purpose of increasing production of medical marijuana.".

(3) Subsection (e)(2) is amended by striking the number "500" and inserting the number "1,000" in its place.

(4) Subsection (f) is amended by striking the phrase "dispensary or a cultivation center" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(5) Subsection (g) is amended by striking the phrase "dispensary or cultivation center" and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(6) New subsections (g-2) and (g-3) are added to read as follows:

"(g-2) A dispensary, cultivation center, or testing laboratory may be permitted to relocate within an election ward upon approval from the Mayor.

"(g-3) A dispensary, cultivation center, or testing laboratory may be permitted to change ownership or controlling interest upon approval from the Mayor.".

(7) Subsection (h) is amended by striking the phrase "dispensary and cultivation

center" and inserting the phrase "dispensary, cultivation center, and testing laboratory" in its place.

(8) Subsection (j) is amended to read as follows:

"(j) No director, officer, member, incorporator, agent, or employee of a dispensary, cultivation center, or testing laboratory who has access to the medical marijuana at the dispensary, cultivation center, or testing laboratory shall have a felony conviction; provided, that the Mayor shall not disqualify any of the forgoing individuals solely for a felony conviction of possession with intent to distribute marijuana that occurred before the effective date of the Marijuana Possession Decriminalization Amendment Act of 2014, effective July 17, 2014 (D.C. Law 20-126; D.C. Official Code § 48-1201 *et seq.*).".

(9) Subsection (k) is amended by striking the phrase "dispensary or cultivation center" wherever it appears and inserting the phrase "dispensary, cultivation center, or testing laboratory" in its place.

(g) Section 8 (D.C. Official Code § 7-1671.07) is amended as follows:

(1) The section heading is amended as follows:

(A) Strike the phrase "Board of Medicine" and insert the phrase "Health Occupations Boards" in its place.

(B) Strike the phrase "physician" and insert the phrase "authorized practitioner" in its place.

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

(A) Strike the phrase "The Board of Medicine" and insert the phrase "The Boards of Medicine, Nursing, and Dentistry" in its place.

(B) Strike the phrase "written physician recommendations" and insert the phrase "written authorized practitioner recommendations" in its place.

(C) Strike the phrase "physicians" and insert the phrase "authorized practitioners under their licensing authority" in its place.

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

(A) Strike the phrase "The Board of Medicine" and insert the phrase "The relevant licensing board" in its place.

(B) Strike the phrase "any physician" and insert the phrase "any authorized practitioner" in its place.

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

(A) Strike the phrase "a license to practice medicine or osteopathy" and insert the phrase "an authorized practitioner's license" in its place.

(B) Strike the phrase "or both." and insert the phrase "or both, at the licensing board's discretion." in its place.

(h) Section 11(a) (D.C. Official Code § 7-1671.10(a)) is amended as follows:

(1) Strike the phrase "dispensaries, and qualifying patients" and insert the phrase "dispensaries, testing laboratories, and qualifying patients" in its place.

(2) Strike the phrase "cultivation centers and dispensaries" and insert the phrase "cultivation centers, dispensaries, and testing laboratories" in its place.

(i) Section 14(a) (D.C. Official Code § 7-1671.13(a)) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase "sufficient information" and inserting the phrase "sufficient and accurate information, verified by a testing laboratory," in its place.

(2) Paragraph (3) is amended by striking the phrase "cultivation center and dispensary" and inserting the phrase "cultivation center, dispensary, and testing laboratory" in its place.

(3) Paragraph (4) is amended by striking the phrase "dispensaries and cultivation centers" and inserting the phrase "dispensaries, cultivation enters, and testing laboratories" in its place.

(4) Paragraph (6) is amended by striking the phrase "dispensary or cultivation center; and" and inserting the phrase "dispensary, cultivation center, or testing laboratory;" in its place.

(5) Paragraph (7) is amended by striking the phrase "distribute;" and inserting the phrase "distribute; and" in its place.

(6) A new paragraph (8) is added to read as follows:

"(8) Within 6 months after the effective date of the Medical Marijuana Omnibus Amendment Act of 2016, passed on 2nd reading on November 1, 2016 (Enrolled version of Bill 21-210), determine the process for permitting a dispensary, cultivation center, or testing laboratory to:

"(A) Relocate within an election ward, established by the Council in section 4 of the Redistricting Procedure Act of 1981, effective March 16, 1982 (D.C. Law 4-87; D.C. Official Code § 1-1041.03), pursuant to section 7(g-2); and

"(B) Change ownership or controlling interest pursuant to section 7(g-3).".

Sec. 3. The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), is amended as follows:

(a) Section 201 (D.C. Official Code § 3-1202.01) is amended by adding a new subsection (h) to read as follows:

"(h) Pursuant to section 8 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*) ("Initiative"), the Board shall review and audit written recommendations for the use of medical marijuana issued by dentists pursuant to section 5 of the Initiative and shall have the authority to discipline any dentist who has acted outside the scope of the dentist's authority under the Initiative.".

(b) Section 203 (D.C. Official Code § 3-1202.03) is amended as follows:

(1) Subsection (a)(8) is amended by striking the word "his" in the lead-in language and inserting the phrase "his or her" in its place.

(2) Subsection (a-2) is amended as follows:

(A) Strike the word "physicians" and insert the phrase "a physician, individual licensed to practice naturopathic medicine, or physician assistant" in its place.

(B) Strike the word "physician" and insert the phrase "physician, individual licensed to practice naturopathic medicine, or physician assistant" in its place.

(C) Strike the phrase "the physician's" and insert the phrase "such person's" in its place.

(c) Section 204 (D.C. Official Code § 3-1202.04) is amended by adding a new subsection (g) to read as follows:

"(g) Pursuant to section 8 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*) ("Initiative"), the Board shall review and audit written recommendations for the use of medical marijuana issued by advanced practice registered nurses pursuant to section 5 of the Initiative and shall have the authority to discipline any advanced practice registered nurse who has acted outside the scope of the advanced practice registered nurse's authority under the Initiative.".

(d) Section 514(a)(19) (D.C. Official Code § 3-1205.14(a)(19)) is amended by striking the word "dispenses," and inserting the phrase "dispenses, recommends," in its place.

(e) Section 601(a) (D.C. Official Code § 3-1206.01(a)) is amended as follows:

"(1) Strike the word "prescription," and insert the phrase "prescription, recommendation," in its place.

"(2) Strike the period at the end and insert the phrase ", or by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*)." in its place.

(f) Section 621(b)(1) (D.C. Official Code § 3-1206.21(b)(1)) is amended as follows:

(1) Strike the word "dispense," and insert the phrase "dispense, recommend," in its place.

(2) Strike the word "act" and inserting the phrase "act, or by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*)" in its place.

Sec. 4. Applicability.

(a) Sections 2(b)(3), (e)(2)(B)(i), and (e)(5)(B)(i) shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

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

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

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

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Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-566

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the Rental Housing Act of 1985 to clarify that a housing provider is prohibited from circumventing the rent control law by imposing on a tenant any mandatory fee for services or facilities except as included in the maximum rent charged, to prohibit a housing provider from entering a rental unit without a reasonable purpose, at a reasonable time, with reasonable notice to the tenant, to require that a housing provider have an affirmative duty to mitigate damages due to a tenant's breach of a rental agreement, to clarify that a tenant in a month-to-month tenancy is never required to provide more than a 30-day notice of the tenant's intention to vacate the premises, to otherwise restrict the use of lease provisions that require a tenant to provide more than 30 days notice of a tenant's intention to vacate the premises, to stipulate that where the lease provision requires the tenant to secure the housing provider's consent before subletting the premises or where the lease is silent that it be based on reasonable rental guidelines to be furnished to the tenant upon request, to provide a tenant with damages when a housing provider places or causes to be placed a prohibited provision in a lease in bad faith, and to add certain tenant protections concerning issues arising from ordinary wear and tear of apartments and their furnishings; and to amend An Act To establish a code of law for the District of Columbia to clarify that a residential tenant is never required to provide more than a 30-day notice of the tenant's intention to vacate the premises.

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

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Code § 42-3501.01 *et seq.*), is amended as follows:

(a) The table of contents is amended as follows:

(1) Insert the phrase "Sec. 211a. Mandatory fees prohibited." after the phase "Sec. 211. Services and Facilities.".

(2) A new Title V-A is added to read as follows:

"TITLE V-A. OTHER HOUSING PROVIDER ACTIONS DURING TENANCIES

"Sec. 531. Access by housing provider to dwelling unit.

"Sec. 532. Housing provider duty to mitigate damages after breach of the rental agreement by tenant.

"Sec. 533. Notice of tenant's intent to vacate upon the expiration of an initial lease term.

"Sec. 534. Notice of tenant's intent to vacate after the expiration of the signed lease term, renewal or extension term.

"Sec. 535. Housing provider's consent before subletting.".

(b) A new section 211a is added to read as follows:

"Sec. 211a. Mandatory fees prohibited.

"(a) A housing provider shall not impose on a tenant a mandatory fee for any service or facility that has not been approved pursuant to section 211 or section 215.

"(b) A housing provider who violates this section shall be liable to the tenant for treble damages pursuant to section 901(a).".

(c) Section 217 (D.C. Official Code § 42-3502.17) is amended by adding a new subsection (c) to read as follows:

"(c)(1) No housing provider shall withhold a security deposit for the replacement value of apartment items that are damaged due to ordinary wear and tear.

"(2) A covenant or promise by a tenant to leave, restore, surrender, or yield a leased premises in good repair does not obligate the tenant to make substantial repairs, replace obsolete materials, or fix other defects without negligence or fault on the tenant's part.

"(3) For the purposes of this subsection, the term "ordinary wear and tear" means deterioration that results from the intended use of a dwelling unit, including breakage or malfunction due to age or deteriorated condition. The term "ordinary wear and tear" does not include deterioration that results from negligence, carelessness, accident, or abuse of the unit, fixtures, equipment, or other tangible personal property by the tenant, immediate family member, or a guest.".

(d) A new Title V-A is added to read as follows:

"TITLE V-A

"OTHER HOUSING PROVIDER ACTIONS DURING TENANCIES

"Sec. 531. Access by housing provider to dwelling unit.

"(a) For the purposes of this section, the term:

"(1) "Reasonable notice" means written notice provided to the tenant at least 48 hours before the time the housing provider wishes to enter the unit or a shorter period of time as agreed to by the tenant in writing. Written notice may include electronic communication, including email and mobile text messaging; provided, that if the tenant fails to furnish a written acknowledgement, the housing provider will provide a paper notice

"(2)"Reasonable purpose" means a purpose that is directly related to the housing provider's:

"(A) Duty to keep the entire property safe from damage;

"(B) Duty to inspect the premises;

"(C) Duty to make necessary or agreed repairs, decorations, alterations, renovations, or improvements;

"(D) Duty to supply necessary or agreed services and maintenance;

"(E) Need to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors; or

"(F) Need to gain entry for work ordered by a governmental entity.

"(3) "Reasonable time" means a time between the hours of 9 a.m. and 5 p.m., and not on a Sunday or federal holiday, or at another time agreed upon by the tenant.

"(b)(1) Except in the event of an emergency for the protection or preservation of the premises, or for the protection and safety of the tenants or other persons, a housing provider may enter a rental unit during a tenancy only for a reasonable purpose, at a reasonable time, and after having provided the tenant with reasonable notice.

"(2) Upon a showing by the tenant that the housing provider has entered a unit in violation of this section, or has repeatedly made unreasonable demands for entry, any court of competent jurisdiction may enjoin the housing provider from that behavior and may assess appropriate damages against the housing provider for breach of the tenant's right to quiet enjoyment of the premises.

"(3) Upon the allegation of a housing code violation by a tenant, a tenant may not unreasonably prevent the housing provider from accessing the unit for assessment and abatement of the alleged violation and must provide access to the unit within 48 hours of the written request by the housing provider for access.

"Sec. 532. Housing provider duty to mitigate damages after breach of the rental agreement by tenant.

"If a tenant refuses to take possession of a rental unit in bad faith, or vacates a rental unit before the end of a lease term, any actual damages the housing provider may be entitled to shall be subject to the duty of the housing provider to mitigate actual damages for breach of the rental agreement.

"Sec. 533. Notice of tenant's intent to vacate upon the expiration of an initial lease term.

"Any provision that requires a tenant to provide more than a 30-day notice to the housing provider of the tenant's intention to vacate the premises upon the expiration of an initial lease term shall be void and unenforceable, unless the lease explicitly states that the provision expires upon the expiration of the initial lease term, and that, unless the tenant agrees to sign a renewal lease of other than month-to-month, the tenant thereafter has the right to vacate the premises upon a 30-day notice for so long as the tenant remains a tenant from month-to-month.

"Sec. 534. Notice of tenant's intent to vacate after the expiration of the signed lease term, renewal or extension term.

"(a) A residential tenancy from month-to-month may be terminated by a 30-day notice in writing only from the tenant to the housing provider of the tenant's intention to quit. The notice shall expire on the first day of the first month at least 30 days after the date of the notice.

"(b) A housing provider shall not place or cause to be placed in a residential lease or rental agreement a requirement that the tenant provide more than a 30-day notice to the housing provider of the tenant's intention to vacate the premises, unless the lease or agreement also requires the housing provider to provide the tenant with a written notice of any rent increase that is at least 15 days more than that time period.

"Sec. 535. Housing provider's consent before subletting.

"A housing provider may, in its sole and absolute discretion, prohibit subletting of the premise or assigning a lease, either in part or in full; provided, that the prohibition is included in the lease. Where the lease provision allows subletting subject to the housing provider's reasonable consent or where the lease is silent regarding subletting, the housing provider may condition its consent on the prospective subtenant meeting all of the housing provider's reasonable rental qualification guidelines; provided, that the housing provider furnishes the guidelines to the tenant upon request.".

(e) Section 901 (D.C. Official Code § 42-3509.01) is amended by adding a new subsection (a-1) to read as follows:

"(a-1) A housing provider found to have violated any provision of section 533, section 534, or section 535, or section 304 of Title 14 of the Housing Regulations of the District of Columbia, issued August 11, 1955 (C.C. 55-1503; 14 DCMR § 304), shall be liable to the tenant for treble damages if the housing provider is found to have acted in bad faith.".

Sec. 3. Section 1219 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1382; D.C. Official Code § 42-3202), is amended to read as follows:

"Sec. 1219. NOTICES TO QUIT. --

"(a) A commercial tenancy from month-to-month, or from quarter–to-quarter, may be terminated by a 30-day notice in writing from the housing provider to the tenant to quit, or by such a notice from the tenant to the housing provider of the tenant's intention to quit. The notice shall expire on the first day of the first month at least 30 days after the date of the notice.

"(b) A residential tenancy may be terminated by a 30-day notice in writing only from the tenant to the housing provider of the tenant's intention to quit. The notice shall expire on the first day of the first month at least 30 days after the date of the notice.".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-567

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the Office of the Chief Tenant Advocate Establishment Act of 2005 to establish the authority for the District to seek reimbursement from an owner of a residential building to offset the cost of providing emergency housing assistance and relocation assistance to tenants who have been displaced from the residential building due to circumstances beyond the tenants' control, to provide an administrative process for an owner to contest the District's charge for reimbursement, to provide for the imposition of a lien to collect charges found due and owing, and to establish the Emergency Housing and Relocation Assistance Fund; to amend the Office of Administrative Hearings Establishment Act of 2001 to make a conforming amendment; and to amend the Business Improvement Districts Act of 1996 to include in the order of priority that proceeds from property sold due to delinquent taxes shall be applied to a lien in place pursuant to the Office of the Chief Tenant Advocate Establishment Act of 2005.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Relocation Expenses Recoupment and Lien Authority Amendment Act of 2016".

Sec. 2. The Office of the Chief Tenant Advocate Establishment Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 42-3531.01 *et seq.*), is amended as follows:

(a) Section 2064 (D.C. Official Code § 42-3531.04) is amended as follows:

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

"(1A) "Closure order" means any order by a District agency requiring relocation of tenants.".

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

"(2A) "Owner" shall have the same meaning as provided in D.C. Official Code § 47-802(5).".

(b) Section 2068b (D.C. Official Code § 42-3531.10) is amended by striking the phrase "On or before December 1, 2007, the" and inserting the word "The" in its place.

(c) New sections 2068c through 2068h are added to read as follows:

"Sec. 2068c. Reimbursement of emergency housing and relocation expenses.

"(a) If the Office has provided emergency housing or relocation assistance, as authorized by section 2067(6A), the owner shall reimburse the District for the assistance, as described in subsection (b) of this section, and all reasonable administrative and incidental expenses incurred by the District in providing the assistance, if:

"(1) A closure order requires the housing unit occupied by the tenant to be vacated and closed; and

"(2) The conditions that created the emergency:

"(A) Arose from circumstances within the control of the owner, including conditions arising from the failure to perform maintenance on the premises, affirmative acts of the owner, or termination of water service or utility services provided by the owner;

"(B) Did not arise from an act of God;

"(C) Arose from the actions of a person within the control of the owner; and

"(D) Were not caused solely by actions of the tenant.

"(b) The District may seek reimbursement from an owner for emergency housing and relocation expenses for:

"(1) The short-term relocation of tenants to hotels, motels, or other appropriate accommodations for a period of up to 30 days;

"(2) Actual moving costs;

"(3) The storage of personal property for a period of up to 60 days;

"(4) Rental application fees, security deposits, and utility deposits; and

"(5) The first month's rent.

"Sec. 2068d. Assessment of expenses for emergency housing and relocation assistance.

"(a)(1) The Chief shall submit a bill to the owner for the cost of providing emergency assistance or relocation assistance, including information on how the owner can pay the bill and, if the owner disputes the charge, how to contest the bill.

"(2) The Chief may submit the bill to the owner by personal service or by sending it via first-class U.S. mail to the person who last appears as the owner of the real property on the tax roll on file with the Office of Tax and Revenue, to the last mailing address shown on the tax roll in accordance with section 499d of the Property Conveyancing Revisions Act of 1994, effective October 23, 1997 (D.C. Law 12-34; D.C. Official Code § 42-405). The Chief may, by regulation, establish alternative methods of providing the bill to the owner.

"(b) Within 30 calendar days after receipt of the bill, the owner shall:

"(1) Pay the full amount of the bill; or

"(2) Contest the bill and request a hearing to determine liability.

"(c) If an owner fails to pay the full amount of the bill or to request a hearing within 30 days after receipt of the bill, the owner shall be liable for the full amount of the bill.

"(d) For the purpose of this section, a mailed bill is presumed to have been received by the owner 7 calendar days after the date of mailing.

"Sec. 2068e. Hearing.

"(a) A hearing to determine liability for a bill shall be held before an administrative law judge within the Office of Administrative Hearings and shall be conducted in accordance with section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509).

"(b) If an owner who requests a hearing fails to appear at a hearing, the administrative law judge may proceed with the hearing and issue a final decision in the case.

"(c)(1) The administrative law judge shall decide whether the owner's liability for the amount of the bill, in whole or in part, has been established by a preponderance of the evidence.

"(2) If an owner is found liable for any portion of the bill, the administrative law judge may impose an additional penalty of up to twice the amount of the liability for the bill.

"(d) If an administrative law judge issues an order finding an owner liable, the owner shall pay the amount due within 30 days after the issuance of the order.

"Sec. 2068f. Collection.

"The Attorney General for the District of Columbia may bring any appropriate legal action, or defend any action, to collect the amount owed by an owner pursuant to this act.

"Sec. 2068g. Liens.

"(a) The amount for which an owner has been found liable, including any other charges, costs, penalties, and interest, shall be a continuing and perpetual lien in favor of the District upon all real and personal property belonging to the person named in the notice and shall have the same force and effect as a lien created by judgment. Interest shall accrue as provided in subsection (f) of this section.

"(b) The lien shall attach to all property belonging to the owner during the period of the lien, including any property acquired by the owner after the lien arises.

"(c) The lien shall have priority over any other lien, except a lien for District taxes and District water charges; provided, that the lien shall not be valid as against any bona fide purchaser, or holder of a security interest, mechanic's lien, or other such creditor interested in the property, without notice, until notice of the lien is filed with the Recorder of Deeds. The lien shall be satisfied by payment of the amount of the lien to the agency that issued the notice.

"(d) For reasonable cause shown, the Chief may abate the amount owed by the owner pursuant to this act.

"(e)(1) As additional means for collection, the Chief may enforce payment of the fines, expenses, costs, penalties, interest, or other charges imposed against the real property in the same manner and under the same conditions that real property tax liens are enforced pursuant to Chapter 13A of Title 47 of the D.C. Official Code.

"(2) Proceeds collected from a sale pursuant to Chapter 13A of Title 47 of the D.C. Official Code shall be credited to the Emergency Housing and Relocation Assistance Fund established by section 2068h.

"(f) Interest on an amount due pursuant to this section shall be at the rate of 1 1/2% per month, and shall be prorated if interest is owed for a portion of a month.

"Sec. 2068h. Emergency Housing and Relocation Assistance Fund.

"(a) There is established as a special fund the Emergency Housing and Relocation Assistance Fund ("Fund"), which shall be administered by the Office of the Tenant Advocate in accordance with subsections (c) and (d) of this section.

"(b) Revenue from interest, costs, expenses, fees, fines, penalties, and other charges collected pursuant to sections 2068c through 2068g shall be deposited in the Fund.

"(c) Money in the Fund shall be used to offset some of the costs of providing emergency housing and relocation assistance.

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

Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-11) to read as follows:

"(b-11) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), (b-9), and (b-10), this act shall apply to all adjudicated cases involving the reimbursement of emergency housing and relocation assistance as authorized by sections 2068c through 2068h of the Office of the Chief Tenant Advocate Establishment Act of 2005, passed on 2nd reading on November 15, 2016 (Enrolled version of Bill 21-656).".

Sec. 4. Section 16(g) of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.15(g)), is amended by striking the phrase "any delinquent water and sewer charges; and any delinquent litter control nuisance fines," and inserting the phrase "any delinquent water and sewer charges; any lien for tenant relocation expenses under section 2068g of the Office of the Chief Tenant Advocate Establishment Act of 2005, passed on 2nd reading on November 15, 2016 (Enrolled version of Bill 21-656); and any delinquent litter control nuisance fines," in its place.

Sec. 5. Applicability.

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

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

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

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

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Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

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AN ACT

D.C. ACT 21-568

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend Title 16 of the District of Columbia Official Code to strengthen the presumption against pre-disposition detention of a child, to reduce the number of unnecessary arrests of children, to ban the secure detention of status offenders, to transfer juveniles adjudicated pursuant to Chapter 23 of Title 16 of the District of Columbia Official Code to the custody of the Department of Youth Rehabilitation Services, to end the commitment to the Department of Youth Rehabilitation Services of children under 10 years of age, to terminate the commitment of status offenders on their 18th birthday, to allow the sharing of juvenile information between agencies for the purpose of providing services and evaluating the efficacy of diversion programs, and to authorize the sealing of juvenile arrest records; to amend section 23-1322 of the District of Columbia Official Code to transfer juveniles adjudicated pursuant to Chapter 23 of Title 16 of the District of Columbia Official Code to Department of Youth Rehabilitation Services custody; to restrict the use of room confinement of juveniles, to ban the use of disciplinary segregation of juveniles, to remove juveniles from adult correctional facilities, and to end the detention of juveniles adjudicated pursuant to Chapter 23 of Title 16 of the District of Columbia Official Code in adult facilities; to amend the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to require the establishment of a victim-offender mediation program; to amend the Revised Statutes of the District of Columbia to require the Metropolitan Police Department to cooperate with the Criminal Justice Coordinating Council in its review of the root causes of juvenile delinquency; to amend the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001 to require the Criminal Justice Coordinating Council to conduct an analysis of the root causes of juvenile delinquency; to amend An Act To create a Department of Corrections in the District of Columbia to require the Department of Corrections to cooperate with the Criminal Justice Coordinating Council in its review of the root causes of juvenile delinquency; to amend An Act To establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes to eliminate mandatory minimums for juveniles charged as adults, to ban the use of juvenile life sentences without parole, and to allow for sentence review for individuals who have served 20 years or more in prison for crimes committed as juveniles; to amend the Department of Youth Rehabilitation Services Establishment Act of 2004 to better inform the families of committed juveniles about their commitment and the resources available to them, to require the Department of

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Youth Rehabilitation Services to cooperate with the Criminal Justice Coordinating Council in its review of the root causes of juvenile delinquency, and to require the agency to collect information regarding the effectiveness of its rehabilitation programs from other agencies; to amend Chapter 3 of Title 13 of the District of Columbia Official Code to allow for constructive notice when a defendant cannot be found after diligent efforts or who by concealment seeks to avoid the service of process and to reduce the cost of providing notice in child custody cases; and to amend the District of Columbia Theft and White Collar Crimes Act of 1982 to repeal the Fraud Prevention Fund authorization.

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

TITLE I. YOUTH SERVICES AND REHABILTATION ENHANCEMENT.

Sec. 101. Short title.

This title may be cited as the "Strengthening Youth Services and Rehabilitation Amendment Act of 2016".

Sec. 102. Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-1031 is amended by adding a new subsection (c) to read as follows:

"(c)(1) Notwithstanding subsections (a) and (b) of this section, a law enforcement officer shall not be required to arrest a person who is under 18 years of age when there is probable cause to believe that the person has committed an intrafamily offense that does not constitute intimate partner violence.

"(2) If a person is not arrested under paragraph (1) of this section, the person shall be diverted to a program that provides behavioral health and community support services.".

(b) Section 16-2301 is amended by adding a new paragraph (46) to read as follows:

"(46) The term "penal institution" shall have the same meaning as provided in § 22-2603.01(6).".

(c) Section 16-2310(a) is amended as follows:

(1) The lead-in language is amended by striking the phrase "or in need of supervision".

(2) Paragraph (1) is amended to read as follows:

"(1) to protect the person or property of others from significant harm, or".

(d) Section 16-2312(a) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase "or a child in need of supervision".

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

"(3) When a child is not released as provided in § 16-2311 and the child is alleged to be a child in need of supervision:

"(A) A shelter care hearing shall be commenced not later than 72 hours (excluding Sundays) after the child has been taken into custody; and

"(B) A petition shall be filed at or before the shelter care hearing.".

(e) Section 16-2313 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "to be neglected" wherever it appears and inserting the phrase "to be neglected or in need of supervision" in its place.

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

(A) Strike the phrase "is alleged to be in need of supervision or (except as provided in subsection (d) or (e))".

(B) Paragraph (3) is amended by striking the phrase "or children alleged to be in need of supervision".

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

(A) The existing text is designated as paragraph (1).

(B) The newly designated paragraph (1) is amended as follows:

(i) Strike the phrase "Except as provided in subsection (e), no" and insert the word "No" in its place.

(ii) Strike the phrase "subsection (b)(3)" and insert the phrase "subsection (b)(3); provided, that beginning October 1, 2018, no person under 18 years of age may be held in the custody of the Department of Corrections" in its place.

(C) New paragraphs (2) and (3) are added to read as follows:

"(2) All persons under 18 years of age who are in the custody of the Department of Corrections shall be transferred to the custody of the Department of Youth Rehabilitation Services before October 1, 2018.

"(3) After October 1, 2018, the Department of Corrections shall immediately inform the Superior Court if a person under 18 years of age is transferred to the Department of Corrections and transfer the individual to the Department of Youth Rehabilitation Services.".

(4) Subsection (e) is repealed.

(f) Section 16-2320 is amended as follows:

(1) Subsection (c)(2) is amended by striking the phrase "delinquent children." and inserting the phrase "delinquent children; provided, that legal custody shall not be transferred to a public agency for the care of delinquent children when the child in question is less than 10 years of age." in its place.

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

"(d)(1) No child found in need of supervision, unless also found delinquent, shall be committed to or placed in a secure juvenile residential facility, as defined in § 22-2603.01(7), or a secure residential treatment facility for delinquent juveniles.

"(2) Except as provided in paragraph (1) of this subsection, a child found in need of supervision shall be released to the child's parent, guardian, or custodian; provided, that the child may be committed to or placed in a foster home, group home, youth shelter, or other appropriate home for children in need of supervision if the return of the child will result in placement in, or return to, an abusive situation, or the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child's parent, guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.".

(g) Section 16-2322 is amended as follows:

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

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

(i) Strike the phrase "Subject to subsection (f) of this section, a" and insert the word "A" in its place.

(ii) Strike the phrase "or in need of supervision".

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

"(5) Subject to subsection (f) of this section, a dispositional order vesting legal custody of a child adjudicated in need of supervision in a department, agency, or institution shall remain in force for an indeterminate period not to exceed the child's 18th birthday. Unless the order sets a minimum period for commitment of the child, or specifies that release is permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.".

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

(A) Strike the word "he" and insert the phrase "the child" in its place.

(B) Strike the phrase "age." and insert the phrase "age, except that orders under this subchapter in force with respect to a child adjudicated in need of supervision, but not delinquent, terminate when the child reaches 18 years of age." in its place.

(h) Section 16-2331(c)(4)(B) is amended to read as follows:

"(B) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Behavioral Health, the Child and Family Services Agency, the Department of Human Services, the District of Columbia Public Schools, and the Office of the Attorney General for the District of Columbia for the purpose of:

"(i) The delivery of services to:

"(I) Individuals under the jurisdiction of the Family Court, or their families; and

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02; or

"(ii) Monitoring recidivism and the efficacy of services provided to:

"(I) Individuals under the jurisdiction of the Family Court; and

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02;".

(i) Section 16-2332(c)(4)(D) is amended to read as follows:

"(D) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Behavioral Health, the Child and Family Services Agency, the Department of Human Services, the District of Columbia Public Schools, and the Office of the Attorney General for the District of Columbia for the purpose of:

"(i) The delivery of services to:

"(I) Individuals under the jurisdiction of the Family Court, or their families; and

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02; or

"(ii) Monitoring recidivism and the efficacy of services provided to:

"(I) Individuals under the jurisdiction of the Family Court; and

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02;".

(j) Section 16-2333(b)(4)(C) is amended to read as follows:

"(C) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Behavioral Health, the Child and Family Services Agency, the Department of Human Services, the District of Columbia Public Schools, and the Office of the Attorney General for the District of Columbia for the purpose of:

"(i) The delivery of services to:

"(I) Individuals under the jurisdiction of the Family Court or their families; or

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02; and

"(ii) Monitoring recidivism and the efficacy of services provided to:

"(I) Individuals under the jurisdiction of the Family Court; and

"(II) Youth who have been diverted by law enforcement, by the Office of the Attorney General for the District of Columbia, or pursuant to § 16-2305.02;".

(k) Section 16-2335(a) is amended by striking the phrase "who has been the subject of a petition" and inserting the phrase "who has been taken into custody pursuant to section 16-2309 or has been the subject of a petition" in its place.

(l) Section 16-2336 is amended by striking the phrase "16-2335" and inserting the phrase "16-2335 and 16-2335.02" in its place.

Sec. 103. Section 23-1322(g)(2) of the District of Columbia Official Code is amended by striking the phrase "appeal;" and inserting the phrase "appeal; provided, that after October 1, 2018, if the person is younger than 18 years of age, direct that the person be transferred to the custody of the Department of Youth Rehabilitation Services, subject to the federal standards under 28 C.F.R. § 115.14;" in its place.

TITLE II. IMPROVING CONDITIONS OF CONFINEMENT.

Sec. 201. Short title.

This title may be cited as the "Improving the Conditions of Confinement of Juveniles Act of 2016".

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Juvenile" means any individual under 18 years of age and any child, as defined in D.C. Official Code § 16-2301(3).

(2) "Penal institution" shall have the same meaning as provided in section 2(6) of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01(6)).

(3) "Room confinement" means the involuntary restriction of a juvenile alone, other than during normal sleeping hours or facility-wide lockdowns, in a cell, room, or other area.

(4) "Secure juvenile facility" means a secure juvenile residential facility, as defined in section 2(7) of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01(7)), or a secure residential treatment facility for juveniles that is owned, operated, or under the control of the Department of Youth Rehabilitation Services.

Sec. 203. Limitations on the use of room confinement.

(a) Penal institutions and secure juvenile facilities shall not use room confinement on a juvenile for the purposes of discipline, punishment, administrative convenience, retaliation, or staffing shortages.

(b)(1) Except as provided in subsection (c) of this section, a penal institution or secure juvenile facility may use room confinement on a juvenile as a temporary response to behavior that threatens:

(A) Imminent harm to the juvenile or others; or

(B) Imminent danger to the safe or secure operation of the penal institution or secure juvenile facility.

(2) A penal institution or secure juvenile facility may use room confinement pursuant to paragraph (1) of this section if there is no other reasonable means to eliminate the condition; provided, that:

(A) Room confinement is used only to the extent necessary to eliminate the condition identified;

(B) Facility staff promptly notifies the juvenile of the specific conditions that resulted in the use of room confinement;

(C) Room confinement takes place under the least restrictive conditions practicable and consistent with the individualized rationale for placement; and

(D) Facility staff develops a plan that will allow the youth to leave room confinement and return to the general population as soon as possible.

(c) Facility staff at a penal institution or secure juvenile facility may grant a juvenile's request for room confinement; provided, that the juvenile is free at any time to revoke his or her request for confinement and be immediately returned to the general population.

(d) Except for room confinement occurring under subsection (c) of this section, a health or mental health professional shall conduct a mental health screening on a juvenile placed in room confinement within one hour after placement. After a screening, the penal institution or secure juvenile facility shall provide mental health services to the juvenile, if necessary.

(e) Except for room confinement occurring under subsection (c) of this section, room confinement shall be used for the briefest period of time possible and not for a time to exceed 6 hours. After 6 hours, the youth shall be returned to the general population, transported to a mental health facility upon the recommendation of a mental health professional, transferred to the medical unit in the facility, or provided special individualized programming that may include:

(1) Development of an individualized plan to improve the juvenile's behavior, created in consultation with the juvenile, mental health or health staff, and the juvenile's family members that identifies the causes and purposes of the negative behavior as well as concrete goals that the juvenile understands and that he or she can work toward to be removed from special programming.

(2) In-person supervision by and interaction with staff members;

(3) In-person provision of educational services;

(4) Involvement of the juvenile in other aspects of the facility's programming, unless the involvement threatens the safety of the juvenile or staff or the security of the facility; and

(5) Daily review with the juvenile of his or her progress toward the goals outlined in his or her plan.

(f) For each use of room confinement, facility staff shall document the following, if applicable:

(1) The name of the juvenile;

(2) The date and time the juvenile was placed in room confinement;

(3) The name and position of the person authorizing placement of the juvenile in room confinement;

(4) The staff involved in the conditions leading to the use of room confinement;

(5) The date and time the juvenile was released from room confinement;

(6) A description of the conditions leading to the use of room confinement or if room confinement was upon request by the juvenile;

(7) The alternative actions to room confinement that were attempted and found unsuccessful or the reason that alternatives were not possible;

(8) Any incident reports describing the condition that led to the period of room confinement; and

(9) Any referrals and contacts with qualified medical and mental health professionals, including the date, time, and person contacted.

(g) On March 1, 2018, and annually thereafter, the Department of Youth Rehabilitation Services and the Department of Corrections shall submit a report to the Mayor and the Council that includes steps each agency has taken to reduce the unnecessary use of room confinement for juveniles and a summary of any information collected pursuant to subsection (f) of this section, including, for each penal institution or secure juvenile facility:

(1) The total number of incidents in which room confinement was utilized in the prior year;

(2) The average length of time juveniles spent in room confinements in the prior year;

(3) The longest period of time that any juvenile was in room confinement; and
(4) The greatest number of times that any juvenile was in room confinement.

Sec. 204. Age-appropriate housing for youth.

(a) On October 1, 2017, and on a quarterly basis thereafter, the Mayor shall provide a report to the Council that includes:

(1) The greatest number of juveniles housed in the Correctional Treatment Facility or the Central Detention Facility at any one time during the preceding quarter;

(2) The lowest number of unused beds for juveniles at secure juvenile facilities at any one time during the preceding quarter; and

(3) The number of consecutive quarters that the lowest number of unused beds at secure juvenile facilities, as determined in paragraph (2) of this subsection, has exceeded the greatest number of juveniles housed in the Correctional Treatment Facility or the Central Detention Facility, as determined in paragraph (1) of this subsection, if any.

(b) All juveniles housed at the Correctional Treatment Facility or the Central Detention Facility shall be transferred to available space in secure juvenile facilities within 6 months after a determination that there have been 4 consecutive quarters of excess capacity, as determined under subsection (a)(3) of this section.

TITLE III. INCARCERATION REDUCTION.

Sec. 301. Short title.

This title may be cited as the "Incarceration Reduction Amendment Act of 2016".

Sec. 302. Section 101(a) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-301.81(a)), is amended by adding a new paragraph (3) to read as follows:

"(3) By October 1, 2018, the Attorney General shall develop a pilot program, in collaboration with community partners, to provide victim-offender mediation as an alternative to the prosecution of juveniles in cases deemed appropriate by the Attorney General; provided, that participation in the mediation pilot program established pursuant to this paragraph shall be voluntary for both the victim and the offender.".

Sec. 303. Section 386 of the Revised Statutes of the District of Columbia (D.C. Official Code § 5-113.01), is amended as follows:

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

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

"(b) The Metropolitan Police force shall cooperate with the Criminal Justice Coordinating Council by sharing records to the extent otherwise permissible under the law for the purpose of preparing the report described in section 1505(b-3) of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234(b-3)).".

Sec. 304. Section 1505 of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234), is amended by adding new subsections (b-2) and (b-3) to read as follows:

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

"(b-2) By October 1, 2018, and every 2 years thereafter, the CJCC shall conduct a voluntary survey of individuals under 21 years of age currently committed to the Department of Youth Rehabilitation Services or incarcerated at the Department of Corrections on their perspective on the causes of youth crime and the prevalence of adverse childhood experiences, such as housing instability, childhood abuse, family instability, substance abuse, mental illness, family criminal involvement, or other factors deemed relevant by the CJCC.

"(b-3) On October 1, 2018, and every 2 years thereafter, the CJCC shall submit a report to the Mayor and the Council containing an analysis of the root causes of youth crime and the prevalence of adverse childhood experiences among justice-involved youth, such as housing instability, childhood abuse, family instability, substance abuse, mental illness, family criminal involvement, or other factors deemed relevant by the CJCC that incorporates the results of the survey conducted pursuant to subsection (b-2) of this section.".

Sec. 305. Section 2(b) of An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.02(b)), is amended as follows:

(a) Paragraph (4) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(b) Paragraph (5) is amended by striking the period and inserting the phrase "; and" in its place.

(c) A new paragraph (9) is added to read as follows:

"(9) Cooperating with the Criminal Justice Coordinating Council by sharing data and allowing access to individuals under 21 years of age to the extent otherwise permissible under the law for the purpose of preparing the report described in section 1505(b-3) of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234(b-3)).".

Sec. 306. An Act To establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes, approved July 15, 1932 (47 Stat. 697; D.C. Official Code § 24-403 *et seq.*), is amended as follows:

(a) Section 3a (D.C. Official Code § 24-403.01) is amended as follows:

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

"(c)(1) Except as provided under paragraph (2) of this subsection, a sentence under this section of imprisonment, or of commitment pursuant to section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-903), shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law.

"(2) Notwithstanding any other provision of law, if the person committed the offense for which he or she is being sentenced under this section while under 18 years of age:

"(A) The court may issue a sentence less than the minimum term otherwise required by law; and

"(B) The court shall not impose a sentence of life imprisonment without the possibility of parole or release.".

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

"(c-1) A person sentenced under this section to imprisonment, or to commitment pursuant to section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-903), shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section and subject to section 3c, if applicable.".

(3) Subsection (e) is amended by striking the phrase "person convicted of" wherever it appears and inserting the phrase "person who was over 18 years of age at the time of the offense and was convicted of" in its place.

(4) Subsection (f) is amended by striking the phrase "person convicted of" and inserting the phrase "person who was over 18 years of age at the time of the offense and was convicted of" in its place.

(b) A new section 3c is added to read as follows:

"Sec. 3c. Modification of an imposed term of imprisonment for violations of law committed before 18 years of age.

"(a) Notwithstanding any other provision of law, the court may reduce a term of imprisonment imposed upon a defendant for an offense committed before the defendant's 18th birthday if:

"(1)(A) The defendant was sentenced pursuant to section 3 and has served at least 20 years in prison and not yet become eligible under section 4 for release on parole from the sentence imposed; or

"(B) The defendant was sentenced pursuant to section 3a or was committed pursuant to section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-903), and has served at least 20 years in prison; and

"(2) The court finds, after considering the factors set forth in subsection (c) of this section, that the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.

"(b)(1) A defendant convicted as an adult of an offense committed before his or her 18th birthday may file an application for a sentence modification under this section. The application shall be in the form of a motion to reduce the sentence. The application may include affidavits or other written material. The application shall be filed with the sentencing court and a copy shall be served on the United States Attorney.

"(2) The court may direct the parties to expand the record by submitting additional written materials related to the motion. The court shall hold a hearing on the motion at which the

defendant and the defendant's counsel shall be given an opportunity to speak on the defendant's behalf. The court may permit the parties to introduce evidence.

"(3) The defendant shall be present at any hearing conducted under this section unless the defendant waives the right to be present. Any proceeding under this section may occur by video teleconferencing and the requirement of a defendant's presence is satisfied by participation in the video teleconference.

"(4) The court shall issue an opinion in writing stating the reasons for granting or denying the application under this section.

"(c) The court, in determining whether to reduce a term of imprisonment pursuant to subsection (a) of this section, shall consider:

"(1) The defendant's age at the time of the offense;

"(2) The nature of the offense and the history and characteristics of the defendant;

"(3) Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available;

"(4) Any report or recommendation received from the United States Attorney;

"(5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;

"(6) Any statement, provided orally or in writing, provided pursuant to D.C. Official Code § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;

"(7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;

"(8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

"(9) The extent of the defendant's role in the offense and whether and to what extent an adult was involved in the offense;

"(10) The diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to a lifetime in prison; and

"(11) Any other information the court deems relevant to its decision.

"(d) If the court denies the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 5 years after the date that the order on the initial application becomes final. If a sentence has not been reduced after a 2nd application, a court shall entertain a 3rd and final application under this section no sooner than 5 years following the date that the order on the 2nd application becomes final. No court shall entertain a 4th or successive application under this section.

"(e) Any defendant whose sentence is reduced under this section shall be resentenced pursuant to section 3, section 3a, or section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-903), as applicable.".

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TITLE IV. YOUTH REHABILITATION ACCOUNTABILITY.

Sec. 401. Short title.

This title may be cited as the "Rehabilitation Accountability Amendment Act of 2016".

Sec. 402. The Department of Youth Rehabilitation Services Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-335; D.C. Official Code § 2-1515.01 *et seq.*), is amended as follows:

(a) Section 101(12) (D.C. Official Code § 2-1515.01(12)) is amended by striking the phrase "D.C. Official Code § 16-2301(3)" and inserting the phrase "D.C. Official Code § 16-2301(3) or other minor in the custody of the Department" in its place.

(b) Section 104 (D.C. Official Code § 2-1515.04) is amended as follows:

(1) Paragraph (13) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (14) is amended by the striking the period and inserting a semicolon in its place.

(3) New paragraphs (15), (16), and (17) are added to read as follows:

"(15) Within 180 days after the effective date of the Comprehensive Youth Justice Amendment Act of 2016, passed on 2nd reading on November 1, 2016 (Enrolled version of Bill 21-683), developing a manual for families of juveniles residing in secure juvenile facilities that includes, at a minimum, information on the operation of the institution or facility as it relates to families of juveniles, information on government and community resources available for families of juveniles, and information and resources available for juveniles after leaving confinement;

"(16) Evaluating the effectiveness of rehabilitative services by collecting any available information from other District agencies on the education, employment, criminal justice, or other outcomes of persons who are either currently committed to the Department or who were committed to the Department in the previous 3 years; and

"(17) Cooperating with the Criminal Justice Coordinating Council by sharing data and allowing access to individuals under 21 years of age, to the extent otherwise permissible under the law, for the purpose of preparing the report described in section 1505(b-3) of the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4234(b-3)).".

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

"Sec. 104b. Data collection.

"(a) The Department shall request any available records on the education, employment, criminal justice, or other outcomes of persons who are either currently committed to the Department or who were committed to the Department in the previous 3 years from the following agencies:

"(1) Office of the State Superintendent of Education;

"(2) Department of Health;

"(3) Department of Behavioral Health;

"(4) Child and Family Services Agency;

"(5) Department of Human Services;

"(6) District of Columbia Public Schools; and

"(7) Office of the Attorney General.

"(b) All records collected by the Department pursuant to this section shall be kept privileged and confidential pursuant to section 106.".

(d) Section 152 (D.C. Official Code § 2-1515.52) is amended as follows:

(1) Subsection (c) is amended by striking the phrase "in the third trimester of pregnancy or in postpartum recovery" and inserting the phrase "is known to be pregnant or is in postpartum recovery" in its place.

(2) Subsection (d)(1) is amended by striking the phrase "in the third trimester of pregnancy or in postpartum recovery" and inserting the phrase "who is known to be pregnant or is in postpartum recovery" in its place.

TITLE V. CONSTRUCTIVE NOTICE

Sec. 501. Chapter 3 of Title 13 of the District of Columbia Official Code is amended as follows:

(a) Section 13-336(a) is amended to read as follows:

"(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process:

"(1) Upon a defendant who cannot be found and who is shown by affidavit to be a nonresident or to have been absent from the District for at least 6 months;

"(2) Upon a defendant who cannot be found after diligent efforts or who by concealment seeks to avoid service of process; or

"(3) Against the unknown heirs or devisees of deceased persons.".

(b) Section 13-340(a) is amended by striking the phrase "actions for divorce" and inserting the phrase "child custody proceedings, as defined in § 16-4601.01(4), or actions for divorce" in its place.

TITLE VI. FRAUD PREVENTION FUND REPEAL

Sec. 601. Section 126n of the District of Columbia Theft and White Collar Crimes Act of 1982, effective June 8, 2001 (D.C. Law 13-301; D.C. Official Code § 22-3226.14), is repealed.

TITLE VII. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE.

Sec. 701. Applicability.

(a) Sections 102(c)(1)(A), (d), (e), and (f)(2), and 103, 302, 303, 304, 305, 402(b), and (c) shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

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

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

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

Sec. 702. Fiscal impact statement.

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

Sec. 703. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-569

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the District of Columbia Revenue Act of 1937 to require the Mayor to issue a motor vehicle identification tag with an inscription, facsimile, or emblem honoring women veterans, and to require the Mayor to issues a motor vehicle identification tag with a bicycle awareness design that includes an image and wording to educate motorists on the 3-foot passing rule; and to amend the Department of Transportation Establishment Act of 2002 and the Office of Veterans Affairs Establishment Act of 2001 to make conforming amendments.

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

Sec. 2. Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.01 *et seq.*), is amended as follows:

(a) New sections 2b and 2c are added to read as follows:

"Sec. 2b. Issuance of women veterans license plates.

"(a) The Mayor shall design and issue motor vehicle identification tags to honor women veterans that shall bear either the inscription "women veterans" or a facsimile or an emblem honoring women veterans. These identification tags shall retain and display the "TAXATION WITHOUT REPRESENTATION" slogan of the current District of Columbia motor vehicle identification tags.

"(b)(1) A resident ordering a motor vehicle identification tag for women veterans shall pay a one-time application fee and a display fee each year thereafter. The application fee shall be $25 and the display fee shall be $20, or other amounts as may be established by the Mayor by rule.

"(2) The application fee and annual display fee shall be deposited in the Office of Veterans Affairs Fund, established by section 705 of the Office of Veterans Affairs Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 49-1004).

"Sec. 2c. Issuance of bicycle awareness license plates.

"(a) The Mayor shall design and issue motor vehicle identification tags with a design to enhance motorists' awareness of bicycles, which shall include an image and wording to educate motorists about section 2202.10 of Title 18 of the District of Columbia Municipal Regulations

(18 DCMR § 2202.10). These identification tags shall retain and display the "TAXATION WITHOUT REPRESENTATION" slogan of the current District of Columbia motor vehicle identification tags.

"(b)(1) A resident ordering a bicycle awareness tag shall pay a one-time application fee and a display fee each year thereafter. The application fee shall be $25 and the display fee shall be $20, or other amounts as may be established by the Mayor by rule.

"(2) The application fee and annual display fee shall be deposited into the Vision Zero Pedestrian and Bicycle Safety Fund, established by section 9l of the Department of Transportation Establishment Act of 2002, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 50-921.20).".

(b) Section 3 (D.C. Official Code § 50-1501.03) is amended as follows:

(1) Subsection (a)(l) is amended to read as follows:

"(a)(l)(A) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under this act, the registration fee provided in this section, except that in the event the Council of the District of Columbia prescribes and the Mayor of the District of Columbia issues as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Council may charge a fee not exceeding $.50 in addition to all other fees which may be required.

"(B) Any person ordering a tag with special markings unique to that person shall pay a one-time application fee of $100, and may obtain a replacement if a tag is lost or stolen upon payment of a fee of $25 per tag.

"(C) Any person displaying a tag already approved for use by a member of an organization other than Disabled American Veterans shall pay a one-time application fee of $100, and may obtain a replacement if a tag is lost or stolen upon payment of a $25 fee per tag.

"(D) Any person ordering Anacostia River Commemorative License Plates shall pay the fees as set forth in section 8(b) of the Anacostia River Clean Up and Protection Act of 2009, effective September 23, 2009 (D.C. Law 18-55; D.C. Official Code § 8-102.07(b)).

"(E) Any person ordering veterans identification tags pursuant to section 2a shall pay the fees as set forth in section 2a(b)(2).

"(F) Any person ordering a women veterans identification tags pursuant to section 2b shall pay the fees as set forth in section 2b(b)(1).

"(G) Any person ordering bicycle awareness identification tags shall pay the fees as set forth in section 2c(b)(1).".

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

(A) Paragraph (2) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(B) Paragraph (3) is amended by striking the period and inserting a semicolon in its place.

(C) New paragraphs (4) and (5) are added to read as follows:

"(4) The fees collected for women veteran identification tags shall be deposited in the Office of Veterans Affairs Fund, established by section 705 of the Office of Veterans Affairs Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 49-1004); and

"(5) The fees collected for bicycle awareness identification tags shall be deposited in the Vision Zero Pedestrian and Bicycle Safety Fund, established by section 9l of the Department of Transportation Establishment Act of 2002, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 50-921.20).".

Sec. 3. Section 9l(b) of the Department of Transportation Establishment Act of 2002, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 50-921.20(b)), is amended to read as follows:

"(b) There shall be deposited in the Fund:

"(1) $500,000 per fiscal year from the fines generated from the automated traffic enforcement system, authorized by section 901 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 50-2209.01); and

"(2) Fees received by the Department of Motor Vehicles, pursuant to section 2c(b)(1) of the District of Columbia Revenue Act of 1937, passed on 2nd reading on November 15, 2016 (Enrolled version of Bill 21-759).".

Sec. 4. Section 705(a) of the Office of Veterans Affairs Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 49-1004(a)), is amended by striking the phrase "other funds for the Office" and inserting the phrase "other funds for the Office, including fees received by the Department of Motor Vehicles pursuant to section 2b(b)(1) of the District of Columbia Revenue Act of 1937, passed on 2nd reading on November 15, 2016 (Enrolled version of Bill 21-759),".

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-570

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes to clarify that the owner of record or an authorized agent of the owner of record may register a property as vacant, and to provide that the Mayor may allow a relative of the owner of record to register the property as vacant if the owner is physically unable to do so; and to amend Chapter 28 of Title 47 of the District of Columbia Official Code to require the owner of a building offered for lease or rent to post in a visible place a telephone number accessible on a 24-hour basis for residents and to provide the number to the Mayor, and to provide an exemption from business license requirements for de minimis business activity.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Consumer and Regulatory Affairs Community Partnership Amendment Act of 2016".

Sec. 2. Section 6 of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, effective April 27, 2001 (D.C. Law 13-281; D.C. Official Code § 42-3131.06), is amended by adding a new subsection (a-1) to read as follows:

"(a-1)(1)(A) Except as provided in subparagraph (B) of this paragraph, no person except the owner of record or an authorized agent of the owner of record, with proof of authorization from the owner of record, may register a building as vacant.

"(B) The Mayor, upon a showing that the owner of record is physically unable to register the property, may allow a relative of the owner of record to register the building as vacant; provided, that the relative can show proof of being a relative and, to the satisfaction of the Mayor, that the owner of record is physically unable to register the property.

"(2) This subsection shall not in any way limit the Mayor's authority to register as vacant or blighted any property whose owner fails to register it as required by this act.

"(3) For the purposes of this section, the term:

"(A) "Owner of record" means the person or persons named in the public record as the title holder of a real property.

"(B) "Relative" means a spouse, domestic partner, sibling, parent, grandparent, child, grandchild, or the sibling's child, spouse, or domestic partner.".

Sec. 3. Chapter 28 of Title 47 of the District of Columbia Official Code is amended as follows:

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

"47-2851.02a. License exemption for de minimis business activity.".

(b) Section 47-2828 is amended as follows:

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

"(a-1)(1) An owner of a residential building in which one or more dwelling units or rooming units are offered for rent or lease shall provide to the Mayor a 24-hour accessible telephone number and publicly post the telephone number in the residential building.

"(2) The telephone number required pursuant to this subsection shall be continuously and conspicuously posted for residents to view. Any change in a posted telephone number shall be provided to the Mayor and the correct number posted in the building as required by this subsection within a reasonable amount of time, as determined by the Mayor or as set forth in rules issued pursuant to this subsection.

"(3) The failure to post and maintain a telephone number as required by this subsection shall be a civil infraction for the purposes 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 § 2-1801.01 *et seq.*), and an owner found in violation may be subject to suspension or revocation of the owner's basic business license.".

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

(A) The existing text is designated as paragraph (1).

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

"(2) As a condition of licensure, apartment houses, all community-based residential facilities, and other residential housing businesses shall post and provide to the Mayor a telephone number as required by subsection (a-1) of this section.".

(c) A new section 47-2851.02a is added to read as follows:

"§ 47-2851.02a. License exemption for de minimis business activity.

"(a) Business activity shall be exempt from the licensing requirement set forth in § 47-2851.02; provided, that the business activity has a gross annual revenue of $2,000 or less and does not occur more than 30 days in a calendar year.

"(b)(1) Upon request by the Department of Consumer and Regulatory Affairs, a person applying for the exemption provided by this section ("applicant") shall submit a letter self-certifying that the gross annual revenue of the business activity for which the exemption is sought does not exceed $2,000 and does not occur more than 30 days in a calendar year ("self-certification letter").

"(2) An applicant who knowingly makes a false statement in a self-certification letter shall be guilty of a Class 1 civil infraction and subject to fines pursuant to section 16-3201 of the District of Columbia Municipal Regulations.

"(c)(1) If, after the submission of a self-certification letter, the revenue of the business activity described in the self-certification letter exceeds $2,000 or the business activity occurs more than 30 days in a calendar year, the applicant shall inform the Department of Consumer and Regulatory Affairs within 30 days of the increase in revenue or days of business activity from that stated in the self-certification letter.

"(2) An applicant who fails to inform the Department of Consumer and Regulatory Affairs as required by this subsection shall be guilty of a Class 1 civil infraction and subject to fines pursuant to section 16-3201 of the District of Columbia Municipal Regulations.

"(d) Nothing in this section shall be construed to supersede the zoning regulations.".

Sec. 4. Applicability.

(a) Section 3(a) and (c) shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

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

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

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

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-571

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To amend the Department of Insurance and Securities Regulation Establishment Act of 1996 to establish a Student Loan Ombudsman within the Department of Insurance, Securities, and Banking, and to regulate student loan servicers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Loan Ombudsman Establishment and Servicing Regulation Amendment Act of 2016".

Sec. 2. The Department of Insurance and Securities Regulation Establishment Act of 1996, effective May 21, 1997 (D.C. Law 11-268; D.C. Official Code § 31-101 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 31-101) is amended as follows:

(1) New paragraphs (6A) and (6B) are added to read as follows:

"(6A) "Licensee" means the holder of a SLS license.

"(6B) "Ombudsman" means the position of Student Loan Ombudsman established within the Department by section 7a.".

(2) New paragraphs (8), (9), (10), (11), and (12) are added to read as follows:

"(8) "Student education loan" means a loan obtained for personal use to finance education or other school-related expenses.

"(9) "Student loan borrower" means a resident of the District of Columbia who has received or agreed to pay a student education loan, or a person who shares legal responsibility with such a resident for the repayment of a student education loan.

"(10) "Student loan servicer" means a person or entity, whether located within or outside the District, responsible for the servicing of a student education loan of a student loan borrower.

"(11) "Student loan servicing" means the process of collecting payments and interest and performing other administrative tasks associated with maintaining a student education loan. The term "student loan servicing" includes:

"(A) Receiving any scheduled periodic payments from a student loan borrower or notification of payments;

"(B) Applying payments to the student loan borrower's account pursuant to the terms of the student education loan or contract governing the servicing;

"(C) Maintaining account records for the student education loan during a period when no payment is required on the loan; and

"(D) Communicating with the student loan borrower regarding the student education loan; and having other interactions to assist a student loan borrower, including activities to help prevent default on obligations arising from a student education loan.

"(12) "SLS license" means the business license issued by the Department pursuant to section 7b that is required for a student loan servicer.".

(b) New sections 7a, 7b, and 7c are added to read as follows:

"Sec. 7a. Student Loan Ombudsman.

"(a) There is established within the Department the position of the Student Loan Ombudsman.

"(b)(1) The Ombudsman shall be:

"(A) Appointed by the Commissioner of the Department;

"(B) A District resident within 180 days of appointment; and

"(C) Experienced in consumer finance, including student loan servicing and debt collection.

"(2) If a vacancy in the position of Ombudsman occurs as a consequence of removal, resignation, disability, death, or other reason, the Commissioner shall appoint an Ombudsman to fill the vacancy within 90 days of the occurrence of the vacancy.

"(c) The Ombudsman, in consultation with the Commissioner, shall:

"(1) Assist in the enforcement of the licensing provisions of section 7b, including the referral of actions to the Office of the Attorney General for the District of Columbia for the enforcement of an order of the Commissioner pursuant to section 7b or other authority of the Commissioner related to a licensee or a person required to have a license under the act;

"(2) Receive, review, and attempt to resolve any complaints from a student loan borrower, including attempts to resolve such complaints in collaboration with student loan servicers, and any other participants in student-loan lending, including those entities engaging student loan borrowers about existing student debt;

"(3) Compile and analyze data on student loan borrower complaints;

"(4) Develop and provide information to assist student loan borrowers in understanding their rights and responsibilities under the terms of the student loan borrower's student education loan;

"(5) Monitor the actions that student loan servicers take to ensure that student loan borrowers are informed of their rights and responsibilities under the terms of the student loan borrower's student education loan in a transparent, accessible, and timely manner;

"(6) Make recommendations to the Commissioner for resolving problems and concerns of student loan borrowers;

"(7) Analyze and monitor the development and implementation of federal and local laws, regulations, and policies relating to student loan borrowers;

"(8) Upon the request and written consent of a student loan borrower, review the student education loan history of the student loan borrower; provided, that the student loan

borrower has provided documentation of the student loan borrower's student education loan history;

"(9) By October 1, 2017, establish, publicize, and maintain an education course to assist student loan borrowers in understanding their student education loans, which shall include:

"(A) Educational presentations;

"(B) Explanations of key loan terms;

"(C) Documentation requirements;

"(D) Monthly payment obligations, including:

"(i) Income-based repayment options;

"(ii) Loan forgiveness; and

"(iii) Disclosure requirements; and

"(E) Other educational materials that the Commissioner considers necessary or appropriate;

"(10) By October 1, 2017, develop a student loan borrower bill of rights;

"(11) Conduct an examination of the activities of each student loan servicer at least once every 3 years, and as the Commissioner considers necessary;

"(12) Charge each student loan servicer an examination fee, which shall be assessed in an amount set by the Mayor; and

"(13) Take any other action required by the Commissioner.

"(d) Beginning March 1, 2018, and by March 1 of each year thereafter, the Commissioner shall submit an annual report to the Mayor and the Council on the Ombudsman's activities, as required or authorized by this section, of the previous year, which shall include the number of educational presentations held across the city, the number of residents in attendance for the educational presentations, and the number of complaints received and the action taken to resolve the complaints.

"(e) The Ombudsman shall not:

"(1) Disclose personally identifiable information regarding a student loan borrower without the written consent of the student loan borrower;

"(2) Disclose the identity of a person who brings a complaint or provides information to the Ombudsman without the person's consent, unless the Commissioner determines that disclosure is necessary to further the resolution of a complaint or an investigation;

"(3) Provide legal advice or legal representation; or

"(4) Be held personally liable for the good-faith performance of his or her responsibilities or duties under this section or rules issued pursuant to this section; except, that no immunity shall extend to criminal acts, or other acts that violate District or federal law.

"Sec. 7b. Student loan servicer; licensure and reporting requirements.

"(a) Except as provided in subsection (b) of this section, no person or entity shall operate as a student loan servicer in the District, directly or indirectly, without first obtaining a SLS license pursuant to this section.

"(b) The following persons and entities shall be exempt from the requirements of subsection (a) of this section:

"(1) A bank, trust company, or other loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in the District;

"(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in the District;

"(3) A savings and loan association, savings bank, or credit union organized under the laws of the District or any other state that is authorized to transact business in the District; or

"(4) A public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extended to a student loan borrower.

"(c)(1) Except as provided in subsection (b) of this section, a person or entity seeking to operate as a student loan servicer in the District shall apply for a SLS license by submitting to the Department:

"(A) A completed application, in a form and manner prescribed by the Commissioner, that is signed under penalty of perjury;

"(B) Application fees and other fees as prescribed by the Commissioner;

"(C) Three years of audited financial statements prepared in accordance with generally accepted accounting principles and acceptable to the Department that show a net worth of at least $250,000;

"(D) A surety bond in an amount determined by the Mayor to be used for the recovery of damages incurred by a student loan borrower as the result of a licensee's noncompliance with the requirements of this act or the recovery of fees or expenses levied against a licensee pursuant to this act; and

"(E) Any other information the Commissioner considers necessary and appropriate as prescribed by rules issued pursuant to section 7c.

"(2) An applicant shall notify the Department in writing of any change in the information provided in the applicant's application for an initial SLS license or a renewal within 10 business days of the change having occurred. The failure to timely notify the Department of a change in the accuracy of the application may result in the denial of the application.

"(d) The Commissioner shall issue a SLS license if the application meets all the requirements for licensure prescribed this act and by the Commissioner by rule.

"(e)(1)(A) A SLS license issued pursuant to this section before November 1 of a given year shall expire on December 31 of that same year, unless renewed or earlier surrendered, suspended, or revoked.

"(B) A SLS license issued pursuant to this section on or after November 1 of a given year shall expire on December 31 of the following year, unless renewed or earlier surrendered, suspended, or revoked.

"(2) No later than 15 days after a licensee ceases to engage in the business of being a student loan servicer, the licensee shall surrender the SLS license to the Commissioner, along with a signed notice of the surrender.

"(3) The signed notice of surrender shall provide the:

"(A) Location where the records of the licensee will be stored;

"(B) Name, address, and telephone number of an individual authorized to provide access to the records; and

"(C) Reason for the cessation of business.

"(f) The surrender of a SLS license does not toll or eliminate a licensee's civil or criminal liability arising from acts or omissions occurring before the surrender of the SLS license, including any administrative actions undertaken by the Commissioner to revoke or suspend the SLS license.

"(g)(1)(A) A SLS license may be renewed for a term prescribed by the Commissioner upon the timely filing of an application, along with all required documents and the payment of fees, as required by this section, or rules issued pursuant to this section.

"(B) If an application for a renewal of a SLS license has been filed with the Department on or before the date the current SLS license expires, the current SLS license shall continue in full force and effect until the Commissioner issues a renewal or notifies the licensee in writing that the licensee's application for renewal has been denied, including the grounds for the denial.

"(C) The Commissioner may deny an application for renewal of a SLS license on any ground that the Commissioner may deny an application for an initial SLS license.

(2) A SLS license shall not be transferable or assignable.

"(h)(1) The Commissioner may revoke any license issued pursuant to this act if, after notice and a hearing, the Commissioner finds that the licensee has:

"(A) Committed any fraudulent acts, engaged in any dishonest activities, or made any misrepresentation in any business transaction;

"(B) Been convicted of a felony under the laws of the District of Columbia, any state, or the United States;

"(C) Violated any applicable banking laws of the District of Columbia, or any rules or regulations issued pursuant to any of those laws, or has violated any other law in the course of dealings as a licensee;

"(D) Made a material misstatement in the application for a license under this act;

"(E) Demonstrated incompetency or untrustworthiness to act as a licensee;

"(F) Violated any provision of this act or of any implementing regulation; or

"(G) Failed to satisfy any of the criteria for obtaining a license as set out in this act.

"(2) Whenever the Commissioner revokes a license issued pursuant to this act, the Commissioner shall issue a written order setting forth the grounds for revocation, with a copy to be served on the licensee either personally or by mail to the last known address of the licensee.

"(i) Pending the hearing required by subsection (h) of this section, the Commissioner may suspend the license for a period not to exceed 30 days if the Commissioner determines that the suspension is in the public interest and that one or more grounds for revocation of a license, as set forth in subsection (h) of this section, exist. Whenever the Commissioner suspends a license pursuant to this subsection, the Commissioner shall issue a written notice to the licensee setting forth, with particularity, the grounds for suspension and the licensee's right to a hearing, with a copy to be served on the licensee either personally or by mail to the last known address of the licensee.

"(j)(1) Beginning January 30, 2018, and by January 30th, each year thereafter, a licensee shall file an annual report with the Commissioner, which shall include the number of loans that were sold, assigned, or transferred in the preceding calendar year and any other information that the Commissioner reasonably requires concerning the business operations conducted by the licensee during the preceding calendar year.

"(2) The Department shall provide a copy of each report to the Mayor and the Council and make the reports available to the public by publishing them on the Department's website.

"Sec. 7c. Rules.

"Within 180 days of the effective date of this section, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement of provisions of sections 7a and 7b.".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-572

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2016

To approve, on an emergency basis, Modification Nos. 2, 3, 4 and proposed Modification No. 5 to Human Care Agreement No. DCJM-2015-H-0006-01 to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities and to authorize payment for the services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCJM-2015-H-0006-01 Approval and Payment Authorization Emergency Act of 2016".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 2, 3, 4 and proposed Modification No. 5 to Human Care Agreement No. DCJM-2015-H - 0006-01 with Ward and Ward Mental Health Services, Inc., to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities, and authorizes payment in the total not-to-exceed amount of $1,304,498.01 for services received and to be received under Modification Nos. 2, 3, 4 and proposed Modification No. 5.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 7, 2016

ENROLLED ORIGINAL

A RESOLUTION

21-671

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Mr. Eric Kessler as a voting member of the Food Policy Council.

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

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

Mr. Eric Kessler
3775 Oliver Street, N.W.
Washington, D.C. 20015
(Ward 3)

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

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-672

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Ms. Greer Gillis as the Director of the Department of General Services.

RESOLVED, BY COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Director of the Department of General Services Greer Gillis Confirmation Resolution of 2016".

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

Ms. Greer Gillis
60 L Street, N.E., #1116
Washington, D.C. 20002
(Ward 6)

as the Director of the Department of General Services, established by section 1022 of the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-551.01), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-673

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Mr. Ely S. Ross as the Director of the Office of Veterans Affairs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Director of the Office of Veterans Affairs Ely S. Ross Confirmation Resolution of 2016".

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

Mr. Ely S. Ross
701 I Street, S.E., Apt. #1129
Washington, D.C. 20003
(Ward 6)

as the Director of the Office of Veterans Affairs, established by section 703 of the Office of Veterans Affairs Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 49-1002), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-674

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the reappointment of Mr. Stephen Green to the District of Columbia Housing Finance Agency Board of Directors.

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

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

Mr. Stephen Green
215 I Street, N.E., Unit #411
Washington, D.C. 20002
(Ward 6)

as a member, with experience in finance, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-675

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the reappointment of Ms. Elvi Moore to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Elvi Moore Confirmation Resolution of 2016".

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

Ms. Elvi Moore
4200 Massachusetts Avenue, N.W.
Apartment 713
Washington, D.C. 20016
(Ward 3)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), for a term to end June 30, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-676

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Mr. Josef Palermo to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Josef Palermo Confirmation Resolution of 2016".

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

Mr. Josef Palermo
2415 20th Street, N.W.
Apartment 27
Washington, D.C. 20009
(Ward 1)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), replacing Marvin Bowser, for a term to end June 30, 2017.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-677

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the reappointment of Ms. Rhona Friedman to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Rhona Friedman Confirmation Resolution of 2016".

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

Ms. Rhona Friedman
2441 Tracy Place, N.W.
Washington, D.C. 20008
(Ward 2)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), for a term to end June 30, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-678

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Ms. Haili C. Francis to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Haili C. Francis Confirmation Resolution of 2016".

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

Ms. Haili C. Francis
5044 8th Street, N.E.
Washington, D.C. 20017
(Ward 5)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), to replace Rogelio Maxwell, for a term to end June 30, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-679

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the reappointment of Ms. Alma Gates to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Alma Gates Confirmation Resolution of 2016".

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

Ms. Alma Gates
4911 Ashby Street, N.W.
Washington, D.C. 20007
(Ward 3)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), for a term to end June 30, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-680

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Ms. Cicie Sattarnilasskorn to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on the Arts and Humanities Cicie Sattarnilasskorn Confirmation Resolution of 2016".

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

Ms. Cicie Sattarnilasskorn
2125 14th Street, N.W., Unit #210W
Washington, D.C. 20009
(Ward 1)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), to replace Barbara Jones, for a term to end June 30, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-681

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To confirm the appointment of Mr. Edwin Dugas to the Real Property Tax Appeals Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Real Property Tax Appeals Commission Edwin Dugas Confirmation Resolution of 2016".

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

Mr. Edwin H. Dugas
4550 Connecticut Avenue, N.W., Unit 712
Washington, D.C. 20008
(Ward 3)

as a part-time member of the Real Property Tax Appeals Commission, established by D.C. Official Code § 47-825.01a, replacing Sean A. Warfield, for a term to end April 30, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-682

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. M19 to Contract No. DCKA-2012-C-0089 for rehabilitation and restoration of pavement District-wide, and to authorize payment for the goods and services received and to be received under the modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification No. M19 to Contract DCKA-2012-C-0089 Approval and Payment Authorization Emergency Approval Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modification No. M19 to Contract No. DCLA-2012-C-0089 to continue to provide rehabilitation and restoration of payment District-wide.

(b) Modification No. M19 to Contract No. DCKA-2012-C-0089 modifies the contract by increasing the not-to-exceed amount of Option Three to $35,000,000.00.

(c) Council approval is necessary since this modification increases the contract by more than $1,000,000 during a 12-month period.

(d) Approval is necessary to allow the continuation of these vital services. Without Council approval, Capitol Paving of DC, Inc., cannot be paid for services provided in excess of $1,000,000.00.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. M19 to Contract DCKA-2012-C-0089 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-683

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. M0003 to Contract No. CW37842 to provide for mission oriented business integrated services to the District, and to authorize payment for the goods and services received and to be received under the modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification No. M0003 to Contract No. CW37842 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modification No. M0003 to Contract No. CW37842 between the Office of Contracting and Procurement and Tecknomic, LLC, to continue to provide mission oriented business integrated services to the District.

(b) Modification No. M0003 to Contract No. CW37842 modifies the contract by increasing the not-to-exceed amount of Option One from $950,000.00 to $10,000,000.00 for the period from July 31, 2016, through July 30, 2017.

(c) Council approval is necessary since this modification increases the contract to more than $1,000,000.00 during a 12-month period, as required by section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)).

(d) Approval is necessary to allow the continuation of these vital services. Without this approval, Tecknomic, LLC, cannot be paid for services provided and to be provided in excess of $1,000,000.00.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. M0003 to Contract No. CW37842 Approval and Payment Authorization Emergency Declaration Resolution of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-684

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. M13 to Contract No. DCKA-2012-C-0007 with Capitol Paving of DC, Inc., to provide rehabilitation and restoration of the alleyway system, and to authorize payment for the goods and services received and to be received under the modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification No. M13 to Contract No. DCKA-2012-C-0007 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need for the Council of the District of Columbia to approve Modification No. M13 to Contract No. DCKA-2012-C-0007 between the Department of Transportation and Capitol Paving of DC, Inc., to continue the rehabilitation and restoration of the alleyway system.

(b) Modification No. M13 modifies the contract by increasing the not-to-exceed amount of Option Three to $30,000,000.

(c) Council approval is necessary since this modification increases the contract to more than $1,000,000 during a 12-month period, as required by section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)).

(d) Approval is necessary to allow the continuation of these vital services without interruption. Without this approval, Capitol Paving of DC, Inc., cannot be paid for services provided and to be provided in excess of $1,000,000.

Sec. 3. The Council of the District of Columbia therefore determines that the circumstances enumerated in section 2 constitute emergency circumstances, making it necessary that the Modification No. M13 to Contract No. DCKA-2012-C-0007 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-685

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Modifications 010 through 012 to Contract No. DCFA-2015-C-2292SS with PFC Associates, LLC, to provide occupational and ancillary healthcare services at the Police and Fire Clinic, and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. DCFA-2015-C-2292SSApproval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modifications 010 through 012 to Contract No. DCFA-2015-C-2292SS with PFC Associates, LLC, to provide occupational and ancillary healthcare services at the Police and Fire Clinic ("Clinic") and to authorize payment for the services received and to be received under the modifications.

(b) On June 29, 2015, the Office of Contracting and Procurement ("OCP"), on behalf of the Metropolitan Police Department, entered into Contract No. DCFA-2015-C-2292SS with PFC Associates, LLC, to provide occupational and ancillary healthcare services at the Clinic from July 1, 2015 through October 31, 2015, in the total estimated contract amount of $4,399,726.33.

(c) On October 28, 2015, by Modification No. 001, OCP extended the term of the contract for the period from November 1, 2015, through November 21, 2015, in the total estimated contract amount of $893,321.38.

(d) By Modification No. 005, dated November 20, 2015, OCP extended the term of the contract for the period from November 22, 2015, through December 1, 2015, in the total not to exceed contract amount of $1,000,000.00.

(e) By Modification No. 002, dated December 1, 2015, OCP extended the term of the contract from December 2, 2016, through June 30, 2016, in the total estimated contract amount of $8,232,555.00.

(f) By Modification No. 007, dated July 1, 2016, OCP extended the term of the contract for the period from July 1, 2016, through October 31, 2016, in the total estimated contract amount of $4,605,982.90.

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(g) By Modification No. 010, OCP extended the term of the contract for the period from November 1, 2016, through November 21, 2016, in the total estimated contract amount of $903,840.38.

(h) By proposed Modification No. 011, OCP now intends to extend the term of the contract for the period from November 22, 2016, through December 22, 2017, in the total not to exceed contract amount of $1,000,000.00.

(i) By proposed Modification No. 012, OCP now intends to extend the term of the contract for the period from December 23, 2016, through March 31, 2017, in the total estimated contract amount of $6,205,982.90.

(j) Council approval is necessary since the unapproved value of the contract is more than $1,000,000.00 during a 12-month period.

(k) Approval is necessary to allow the continuation of these vital services. Without this approval, PFC cannot be paid for services provided in excess of $1,000,000.00.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. DCFA-2015-C-2292SS Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-686

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. CW29955 with CSZNet, Inc., to provide mission oriented business integrated services for District agencies, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW29955 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. CW29955 with CSZNet, Inc., to provide mission oriented business integrated services for District agencies, and to authorize payment in the not-to-exceed amount of $10,000,000 for the goods and services received and to be received under the contract.

(b) On July 18, 2014, the Office of Contracting and Procurement ("OCP"), on behalf of District agencies, entered into Indefinite Delivery/Indefinite Quantity Contract No. CW29955 with CSZNet, Inc., to provide mission oriented business integrated services for a period of 1 year, from July 18, 2014, through July 17, 2015, in the minimum contract amount of $10.00 and maximum contract amount of $950,000.00.

(c) By Modification No. M0001, dated July 13, 2015, OCP exercised Option Year One to extend the term of the contract for a period of 1 year, from July 18, 2015, through July 17, 2016, in the minimum contract amount of $10.00 and maximum contract amount of $950,000.00.

(d) By Modification No. M0003, dated July 1, 2016, OCP exercised Option Year Two to extend the term of the contract for a period of 1 year, from July 18, 2016, through July 17, 2017, in the minimum contract amount of $10.00 and maximum contract amount of $950,000.00.

(e) OCP now desires to increase the maximum contract ceiling amount from $950,000.00 to $10,000,000.00 for the period from July 18, 2016 through July 17, 2017.

(f) Council approval is necessary since the contract is more than $1,000,000.00 during a 12-month period.

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, CSZNet, Inc., cannot be paid for services provided in excess of $1,000,000.00.

ENROLLED ORIGINAL

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW29955 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-687

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to clarifying District law to ensure that tenants are protected from dangerous and unsanitary conditions resulting from dishonest or fraudulent business practices.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "At-Risk Tenant Protection Clarifying Emergency Declaration Resolution of 2016".

Sec. 2. (a) By bringing enforcement actions or investigations under the District of Columbia Consumer Protection Procedures Act (D.C. Official Code § 28-3901, *et seq*.) ("CPPA"), the District government is increasingly looking to protect tenant-consumers from unscrupulous housing providers that fail to live up to their obligations.

(b) The CPPA provides the Attorney General with flexible enforcement tools to address problem housing providers, including the ability to enjoin bad conduct, recover restitution for tenant-consumers forced to live in substandard conditions, and impose penalties to deter future violations.

(c) For instance, in one pending case in the Superior Court of the District of Columbia, the Attorney General is using the CPPA to try and recover, among other remedies, past rent paid by consumers forced by their housing provider to allegedly live in slum-like conditions. However, there remains the possibility that a District of Columbia Court might question whether the District has authority to bring a CPPA enforcement action in the landlord-tenant arena.

(d) This concern is due to language in the CPPA that prevents the Department of Consumer and Regulatory Affairs (DCRA) from applying the CPPA to landlord-tenant relations. Even though this language, by its express terms, only applies to DCRA, a Court might nevertheless wrongly interpret that provision to foreclose an enforcement action brought by the Attorney General under the CPPA.

(e) Finally, other available enforcement tools do not provide the full range of flexible relief available under the CPPA, such as the potential to recover past rent for a large group of consumers or penalties to deter future bad acts.

(f) There are active CPPA enforcement cases and non-public investigations in the landlord-tenant arena that could be jeopardized by a wrong interpretation of the CPPA's

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landlord-tenant exclusion. It is therefore necessary to clarify that the Attorney General may enforce the CPPA in the area of landlord-tenant relations.

(g) Therefore, there exists an immediate need to clarify existing law on an emergency basis so that current District tenants that might be helped by the Attorney General's active enforcement in this area are not potentially robbed of the full protections due them under District 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 At-Risk Tenant Protection Clarifying Emergency Amendment Act of 2016 be adopted after a single reading.

Sec 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-688

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to update and clarify District wage laws, including to clarify that the Office of Administrative Hearings judges will hear wage theft cases, that the Attorney General can bring civil enforcement actions in court and inspect business records, that employee associations may bring civil actions on behalf of their members, the Mayor's authority to issue rules, when an employer or a temporary staffing firm must provide notices to an employee in a second language, how the Mayor will make certain information available to employers, that general contractors and clients of temporary staffing agencies may waive their right to indemnification, and the deadlines, procedures, and remedies in civil and administrative actions.

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

Sec. 2. (a) The Council enacted the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016, passed on 1st reading on November 15, 2016 (Engrossed version of Bill 21-120) ("permanent legislation), to clarify that the Office of the Attorney General for the District of Columbia ("OAG") is authorized to bring a civil action in a court of competent jurisdiction against a person violating District wage law and that an administrative law judge within the Office of Administrative Hearings is authorized to hear wage theft cases.

(b) The permanent legislation clarifies the Mayor's authority to issue rules, the remedies and processes for administrative and civil actions, deadlines for service of complaints, language requirements for notices of employee rights, how the Mayor will make certain information available to employers, and that general contractors and clients of temporary staffing agencies may waive their right to indemnification.

(c) The permanent legislation also adds new requirements. It requires the Mayor to issue rules to align District record-keeping requirements with prevailing federal standards. It exempts employers from keeping time records for certain employees and allows businesses to challenge demands for their business records. The permanent legislation also aligns the overtime requirements for parking lot and garage attendants under District law with those of federal law.

(d) In addition to clarifying the processes, timelines, remedies, and notice requirements of wage laws, as well as the other important reforms in the permanent legislation, as soon as possible, the authority of the OAG to investigate allegations of wage theft (including the use of

subpoenas when appropriate) and the authority of the Office of Administrative Hearings to hear wage theft cases must be clarified without delay.

(e) The permanent legislation must complete the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and will not become law until after the start of 2017. It is important that the provisions in the permanent legislation, which are mirrored in the proposed emergency legislation, be in effect until the permanent legislation is law.

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

Sec 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-689

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to increase the number of medical marijuana dispensaries that may be registered to operate in the District from 5 to 6, and to require the Mayor to open an application period for the registration of a medical marijuana dispensary in Ward 7 or Ward 8.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Medical Marijuana Dispensary Emergency Declaration Resolution of 2016".

Sec. 2. (a) The Legalization of Marijuana for Medical Treatment Initiative of 1999 effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.01 *et seq*.), established a medical marijuana program in the District. Pursuant to this act, the Mayor can register a maximum of 8 dispensaries to ensure that qualifying patients have adequate access to medical marijuana.

(b) Although approximately 25% of all medical marijuana qualifying patients reside in Wards 7 and 8, there are no medical marijuana dispensaries east of the Anacostia River.

(c) A medical marijuana program that requires qualifying patients to travel across the city does not encourage the utilization of that program. Additionally, research has shown that travel often serves as a barrier to the use of healthcare services.

(d) Requiring the Mayor to open an application period will help the District ensure that all of its residents are able to utilize the medical marijuana program as intended.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-690

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to enhance the reporting requirements of political action committees and independent expenditure committees during nonelection years and to apply current contribution limitations to political action committees during nonelection years.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Campaign Finance Reform and Transparency Emergency Declaration Resolution of 2016".

Sec. 2. (a) Following the November 2016 General Election, the District of Columbia entered into a nonelection year.

(b) District law does not currently provide limitations on contributions to political action committees in nonelection years, nor do political action committees or independent expenditure committees report frequently to the Office of Campaign Finance during that time period.

(c) It is therefore imperative that the Council amend existing law to ensure that the activities of political action committees and independent expenditure committees are transparent and accountable.

(d) The emergency bill will apply the contribution limitations under section 333 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1163.33), to political action committees in nonelection years.

(e) The bill will also bring transparency to contributions to and expenditures by political action committees and independent expenditure committees during nonelection years.

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 Campaign Finance Reform and Transparency Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-691

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCKA-2016-T-0046 with Motivate International, Inc., to operate, maintain, and expand the Capital Bikeshare system, and to authorize payment in the not-to-exceed amount of $7,672,856.60 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCKA-2016-T-0046 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists a need to approve Contract No. DCKA-2016-T-0046 with Motivate International, Inc., to operate, maintain, and expand the Capital Bikeshare system, and to authorize payment in the not-to-exceed amount of $7,672,856.60 for the goods and services received and to be received under the contract.

(b) The Office of Contracting and Procurement ("OCP"), on behalf of the District Department of Transportation, entered into a letter contract on September 2, 2016, with Motivate International, Inc., to operate, maintain, and expand the Capital Bikeshare system for 45 days in the not-to-exceed amount of $900,000.

(c) By Modification No. 1 dated October 17, 2016, OCP extended the letter contract until November 1, 2016, increasing the not-to-exceed amount to $1,100,000.

(d) By Modification No. 2 dated October 31, 2016, OCP extended the letter contract until December 31, 2016, increasing the not-to-exceed amount to $2,100,000.

(e) OCP now desires to definitize multiyear Contract No. DCKA-2016-T-0046.

(f) The estimated price for the 394-day base period with Motivate International, Inc., is in the not-to-exceed amount of $7,672,856.60.

(g) Council approval is necessary to allow the District to continue to receive the benefit of the vital services that Motivate International, Inc., provides.

(h) These critical services can only be obtained through an award of the multiyear contract to Motivate International, Inc.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCKA-2016-T-0046 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-692

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCAM-16-NC-0105A with F & L Construction, Inc., to provide trash collection services to various District locations in Aggregate Award Group 1, and to authorize payment in the total amount of $1,759,856.80 for the goods and services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCAM-16-NC-0105A Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. DCAM-16-NC-0105A with F & L Construction, Inc., to provide trash removal services at various District of Columbia facilities in Aggregate Award Group 1, and to authorize payment in the total amount of $1,759,856.80 for the goods and services to be received under the contract.

(b) Approval of Contract No. DCAM-16-NC-0105A is necessary for the District to enter into a long-term agreement with F & L Construction, Inc., to provide trash removal services at District of Columbia facilities in Aggregate Award Group 1. Given that the services must begin by December 2016 in order to ensure that there is no lapse of trash removal services at the District locations in Aggregate Award Group 1, the District must act immediately.

(c) Contract No. DCAM-16-NC-0105A is a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCAM-16-NC-0105A Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-693

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCAM-16-NC-0105B with F & L Construction, Inc., to provide trash collection services to various District locations in Aggregate Award Group 2, and to authorize payment in the total amount of $218,895.20 for the goods and services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCAM-16-NC-0105B Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. DCAM-16-NC-0105B with F & L Construction, Inc., to provide trash removal services at various District of Columbia facilities in Aggregate Award Group 2, and to authorize payment in the total amount of $218,895.20 for the goods and services to be received under the contract.

(b) Approval of Contract No. DCAM-16-NC-0105B is necessary for the District to enter into a long-term agreement with F & L Construction, Inc. to provide trash removal services at District of Columbia facilities in Aggregate Award Group 2. Given that the services must begin by December 2016 in order to ensure there is no lapse of trash removal services at the District locations in Aggregate Award Group 2, the District must act immediately.

(c) Contract No. DCAM-16-NC-0105B is a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code §1-204.51(c)).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCAM-16-NC-0105B Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-694

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCAM-16-NC-0105C with F & L Construction, Inc., to provide trash collection services to various District locations in Aggregate Award Group 3, and to authorize payment in the total amount of $1,424,696 for the goods and services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCAM-16-NC-0105C Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. DCAM-16-NC-0105C with F & L Construction, Inc., to provide trash removal services at various District of Columbia facilities in Aggregate Award Group 3, and to authorize payment in the total amount of $1,424,696 for the goods and services to be received under the contract.

(b) Approval of Contract No. DCAM-16-NC-0105C is necessary for the District to enter into a long-term agreement with F&L Construction, Inc., to provide trash removal services at District of Columbia facilities in Aggregate Award Group 3. Given that the services must begin by December 2016 in order to ensure that there is no lapse of trash removal services at the District locations in Aggregate Award Group 3, the District must act immediately.

(c) Contract No. DCAM-16-NC-0105C is a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCAM-16-NC-0105C Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-695

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCAM-16-NC-0105D with Jerome L. Taylor Trucking, Inc., to provide trash collection services to various District locations in Aggregate Award Group 4, and to authorize payment in the total amount of $442,572 for the goods and services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCAM-16-NC-0105D Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. DCAM-16-NC-0105D with Jerome L. Taylor Trucking, Inc., to provide trash removal services at various District of Columbia facilities in Aggregate Award Group 4, and to authorize payment in the total amount of $442,572 for the goods and services to be received under the contract.

(b) Approval of Contract No. DCAM-16-NC-0105D is necessary for the District to enter into a long-term agreement with Jerome L. Taylor Trucking, Inc., to provide trash removal services at District of Columbia facilities in Aggregate Award Group 4. Given that the services must begin by December 2016 in order to ensure there is no lapse of trash removal services at the District locations in Aggregate Award Group 4, the District must act immediately.

(c) Contract No. DCAM-16-NC-0105D is a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCAM-16-NC-0105D Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-696

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCAM-16-NC-0105E with Jerome L. Taylor Trucking, Inc., to provide trash collection services to various District locations in Aggregate Award Group 5, and to authorize payment in the total amount of $513,520 for the goods and services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCAM-16-NC-0105E Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Contract No. DCAM-16-NC-0105E with Jerome L. Taylor Trucking, Inc., to provide trash removal services at various District of Columbia facilities in Aggregate Award Group 5, and to authorize payment in the total amount of $513,520 for the goods and services to be received under the contract.

(b) Approval of Contract No. DCAM-16-NC-0105E is necessary for the District to enter into a long-term agreement with Jerome L. Taylor Trucking, Inc., to provide trash removal services at District of Columbia facilities in Aggregate Award Group 5. Given that the services must begin by December 2016 in order to ensure that there is no lapse of trash removal services at the District locations in Aggregate Award Group 5, the District must act immediately.

(c) Contract No. DCAM-16-NC-0105E is a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCAM-16-NC-0105E Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-697

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Human Care Agreement No. CW43691 with PCC Stride, Inc., and proposed Modification No. 5 to provide extended family home services and to authorize payment for the services received and to be received under the contract and contract modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "PCC Stride, Inc., Human Care Agreement No. CW43691 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists a need to approve Human Care Agreement No. CW43691 with PCC Stride, Inc., and proposed Modification No. 5 to provide extended family home services and to authorize payment for the services received and to be received under Human Care Agreement No. CW43691 and proposed Modification No. 5.

(b) On May 23, 2016, the Office of Contracting and Procurement, on behalf of the Department of Youth Rehabilitation Services, issued Human Care Agreement No. CW43691 to provide extended family home services for the period from May 13, 2016, to May 12, 2017, in the amount of $995,650.65.

(c) Modification No. 5 is now necessary to increase the total not-to-exceed amount for the base year to $1,164,168.69.

(d) Council approval is necessary since this modification increases the contract by more than $1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, PCC Stride, Inc., cannot be paid for services provided in excess of $1 million for the contract period from May 13, 2016, through May 12, 2017.

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 PCC Stride, Inc., Human Care Agreement No. CW43691 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-698

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 5 and 6 and proposed Modification No. 7 to Human Care Agreement No. DCJM-2012-H-0004-16 to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities and to authorize payment for the services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Human Care Agreement No. DCJM-2012-H-0004-16 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists a need to approve Modification Nos. 5 and 6 and proposed Modification No. 7 to Human Care Agreement No. DCJM-2012-H-0004-16 with Innovative Life Solutions, Inc., to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities and to authorize payment for the services received and to be received under the contract modifications.

(b) On September 28, 2016, by Modification No. 5, the Office of Contracting and Procurement ("OCP"), on behalf of the Department on Disability Services, exercised a partial option of Option Year 4 of Human Care Agreement No. DCJM-2012-H-0004-16 to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities for the period from October 1, 2016, to December 30, 2016, in the amount of $265,949.25.

(c) On October 21, 2016, by Modification No. 6, the OCP updated the price schedule.

(d) By proposed Modification No. 7, it is now necessary to exercise the remaining option and increase the total not-to-exceed amount for Option Year 4 to $1,065,514.32.

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

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, Innovative Life Solutions, Inc., cannot be paid for services provided in excess of $1 million for the contract period from October 1, 2016, through September 30, 2017.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Human Care Agreement No. DCJM-2012-H-0004-16 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of 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. 21-268: Request to reprogram $3,232,449 of Fiscal Year 2017 Local funds budget authority within the Office of the Chief Technology Officer (OCTO) was filed in the Office of the Secretary on December 8, 2016. This reprogramming ensures that OCTO will be able to support the salaries and Fringe Benefits for 27.75 Full-Time Equivalents (FTEs).

RECEIVED: 14 day review begins December 9, 2016

Reprog. 21-269: Request to reprogram $2,132,245 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on December 8, 2016. This reprogramming ensures that DOEE is able to pay for the contract from the administrative portion of the budget.

RECEIVED: 14 day review begins December 9, 2016

Reprog. 21-270: Request to reprogram $4,000,000 of Capital funds budget authority and allotment from various agencies to the Department of Public Works (DPW) was filed in the Office of the Secretary on December 8, 2016. This reprogramming is needed to complete major critical upgrades at the Fort Totten Trash Transfer Station, including replacement of the tipping floor used by trash trucks depositing trash at the station and construction of an exterior shed to shelter debris delivered to the site.

RECEIVED: 14 day review begins December 9, 2016

Reprog. 21-271: Request to reprogram $7,480,740 of Fiscal Year 2017 Local funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on December 8, 2016. This reprogramming is needed to ensure that DCPS' budget is properly aligned to accommodate changes in class sizes and DCPS initiatives.

RECEIVED: 14 day review begins December 9, 2016

Reprog. 21-272: Request to reprogram $14,380,132 of Fiscal Year 2017 Local funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on December 8, 2016. This reprogramming is needed to ensure that DCPS' budget is properly aligned to accommodate reporting changes within organizations and changes in DCPS initiatives.

RECEIVED: 14 day review begins December 9, 2016

Reprog. 21-273: Request to reprogram $1,470,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the Department of General Services (DGS) to the Local funds budget of DGS was filed in the Office of the Secretary on December 8, 2016. This reprogramming is will ensure that there is a sufficient available operating budget in these programs to cover this expense.

RECEIVED: 14 day review begins December 9, 2016

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
**12/16/2016

**READVERTISEMENT

Notice is hereby given that:

License Number: ABRA-094795 **License Class/Type: C Restaurant**

Applicant: Appioo, LLC

Trade Name: Appioo

ANC: 1B02

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

1924 9TH ST NW, WASHINGTON, DC 20001

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

**1/30/2017

A HEARING WILL BE HELD ON:

**2/13/2017

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Monday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Tuesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Wednesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Thursday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Friday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am
Saturday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
**12/2/2016

****RESCIND**

Notice is hereby given that:

License Number: ABRA-094795 **License Class/Type: C Restaurant**

Applicant: Appioo, LLC

Trade Name: Appioo

ANC: 1B02

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

1924 9TH ST NW, WASHINGTON, DC 20001

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

**1/16/2017

A HEARING WILL BE HELD ON:

**1/30/2017

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Monday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Tuesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Wednesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Thursday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Friday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am
Saturday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date:	November 18, 2016
Petition Date:	January 2, 2017
Hearing Date:	**January 17, 2017
Protest Date:	March 15, 2017

License No.:	ABRA-104641
Licensee:	Webwines, LLC
Trade Name:	Best Deals Wine
License Class:	Retailer's Class "A" Liquor Store (Online Only)
Address:	175 R Street, N.E.
Contact:	Margie A. S. Lehrman: (202) 449-3739

WARD 5 ANC 5E SMD 5E03

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 15, 2017 at 1:30pm.

NATURE OF OPERATION

New online-only class A retailer. This location will not be open to the public.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date:	November 18, 2016
Petition Date:	January 2, 2017
Hearing Date:	**January 16, 2017
Protest Date:	March 15, 2017

License No.:	ABRA-104641
Licensee:	Webwines, LLC
Trade Name:	Best Deals Wine
License Class:	Retailer's Class "A" Liquor Store (Online Only)
Address:	175 R Street, N.E.
Contact:	Margie A. S. Lehrman: (202) 449-3739

WARD 5 ANC 5E SMD 5E03

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 15, 2017 at 1:30pm.

NATURE OF OPERATION

New online-only class A retailer. This location will not be open to the public.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: November 18, 2016
Petition Date: January 2, 2017
Hearing Date: **January 17, 2017

License No.: ABRA-026466
Licensee: Marabu, Inc.
Trade Name: Bukom Cafe
License Class: Retailer's Class "C" Tavern
Address: 2442 18th Street, N.W.
Contact: Justice Matey: 202-265-4600

WARD 1 ANC 1C SMD 1C03

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

NATURE OF SUBSTANTIAL CHANGE
Request to add an Entertainment Endorsement that will include cover charge.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION
Sunday through Thursday 11:00 am to 2:00 am, Friday and Saturday 11:00 am to 3:00 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday through Saturday 9:00 pm to 2:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: November 18, 2016
Petition Date: January 2, 2017
Hearing Date: **January 16, 2017

License No.: ABRA-026466
Licensee: Marabu, Inc.
Trade Name: Bukom Cafe
License Class: Retailer's Class "C" Tavern
Address: 2442 18th Street, N.W.
Contact: Justice Matey: 202-265-4600

WARD 1 ANC 1C SMD 1C03

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

NATURE OF SUBSTANTIAL CHANGE
Request to add an Entertainment Endorsement that will include cover charge.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION
Sunday through Thursday 11:00 am to 2:00 am, Friday and Saturday 11:00 am to 3:00 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday through Saturday 9:00 pm to 2:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/18/2016

**CORRECTION

Notice is hereby given that:

License Number: ABRA-001008 **License Class/Type: C Club**

Applicant: American Foreign Service

Trade Name: Foreign Service Club

ANC: 2A07

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

2101 E ST NW, Washington, DC 20037

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

1/2/2017

A HEARING WILL BE HELD ON:

**1/17/2017

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

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 12 am	11 am - 12 am	-
Monday:	11 am - 12 am	11 am - 12 am	-
Tuesday:	11 am - 12 am	11 am - 12 am	-
Wednesday:	11 am - 12 am	11 am - 12 am	-
Thursday:	11 am - 12 am	11 am - 12 am	-
Friday:	11 am - 12 am	11 am - 12 am	-
Saturday:	11 am - 12 am	11 am - 12 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/18/2016

****RESCIND**

Notice is hereby given that:

License Number: ABRA-001008 **License Class/Type: C Club**

Applicant: American Foreign Service

Trade Name: Foreign Service Club

ANC: 2A07

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

2101 E ST NW, Washington, DC 20037

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

1/2/2017

A HEARING WILL BE HELD ON:

**1/16/2017

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

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 12 am	11 am - 12 am	-
Monday:	11 am - 12 am	11 am - 12 am	-
Tuesday:	11 am - 12 am	11 am - 12 am	-
Wednesday:	11 am - 12 am	11 am - 12 am	-
Thursday:	11 am - 12 am	11 am - 12 am	-
Friday:	11 am - 12 am	11 am - 12 am	-
Saturday:	11 am - 12 am	11 am - 12 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/16/2016

Notice is hereby given that:
License Number: ABRA-092484 **License Class/Type: C Restaurant**
Applicant: Pal, The Mediterranean Spot and More, LLC
Trade Name: Pal The Mediterranean Spot
ANC: 1B12

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

1501 U ST NW, WASHINGTON, DC 20009

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

1/30/2017

A HEARING WILL BE HELD ON:

2/13/2017

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

ENDORSEMENT(S): Sidewalk Cafe

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

	Hours Of Sidewalk Cafe Operation	Hours Of Sales Sidewalk Cafe
Sunday:	10 am - 12 am	11 am - 12 am
Monday:	10 am - 12 am	11 am - 12 am
Tuesday:	10 am - 12 am	11 am - 12 am
Wednesday:	10 am - 12 am	11 am - 12 am
Thursday:	10 am - 12 am	11 am - 12 am
Friday:	10 am - 12 am	11 am - 12 am
Saturday:	10 am - 12 am	11 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/18/2016

**CORRECTION

Notice is hereby given that:

License Number: ABRA-102178 **License Class/Type: C Tavern**

Applicant: Piassa, Inc.

Trade Name: Piassa Ethiopian Cuisine & Cafe

ANC: 2F06

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

1336 9TH ST NW, #2, WASHINGTON, DC 20001

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

1/2/2017

A HEARING WILL BE HELD ON:

**1/17/2017

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 1:30 am	10 am - 1:30 am	6 pm - 1:30 am
Monday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Tuesday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Wednesday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Thursday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Friday:	9 am - 2:30 am	9 am - 2:30 am	6 pm - 2:30 am
Saturday:	9 am - 2:30 am	9 am - 2:30 am	6 pm - 2:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/18/2016

****RESCIND**

Notice is hereby given that:

License Number: ABRA-102178 **License Class/Type: C Tavern**

Applicant: Piassa, Inc.

Trade Name: Piassa Ethiopian Cuisine & Cafe

ANC: 2F06

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

1336 9TH ST NW, #2, WASHINGTON, DC 20001

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

1/2/2017

A HEARING WILL BE HELD ON:

**1/16/2017

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 1:30 am	10 am - 1:30 am	6 pm - 1:30 am
Monday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Tuesday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Wednesday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Thursday:	9 am - 1:30 am	9 am - 1:30 am	6 pm - 1:30 am
Friday:	9 am - 2:30 am	9 am - 2:30 am	6 pm - 2:30 am
Saturday:	9 am - 2:30 am	9 am - 2:30 am	6 pm - 2:30 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/16/2016

Notice is hereby given that:

License Number: ABRA-073644 **License Class/Type: C Restaurant**

Applicant: Queen of Sheba, Inc.

Trade Name: Queen of Sheba

ANC: 6E01

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

1503 9TH ST NW, Washington, DC 20001

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

1/30/2017

A HEARING WILL BE HELD ON:

2/13/2017

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 2 am	12 pm - 2 am	9 pm - 2 am
Monday:	9 am - 2 am	11 am - 2 am	9 pm - 2 am
Tuesday:	9 am - 2 am	11 am - 2 am	9 pm - 2 am
Wednesday:	9 am - 2 am	11 am - 2 am	9 pm - 2 am
Thursday:	9 am - 2 am	11 am - 2 am	9 pm - 2 am
Friday:	9 am - 3 am	11 am - 3 am	9 pm - 3 am
Saturday:	9 am - 3 am	11 am - 3 am	9 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: November 18, 2016
Petition Date: January 2, 2017
Hearing Date: **January 17, 2017

License No.: ABRA-101399
Licensee: Timber Pizza Company, LLC
Trade Name: Timber Pizza Company
License Class: Retailer's Class "C" Restaurant
Address: 809 Upshur Street, N.W.
Contact: Andrew Dana: 202-258-6832

WARD 4 ANC 4C SMD 4C07

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

NATURE OF SUBSTANTIAL CHANGE
Applicant requests to add a Sidewalk Cafe with 12 seats.

CURRENT HOURS OF OPERATION
Sunday 7:00 am – 1:00 am, Monday through Saturday 7:00 am - 2:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION
Sunday 8:00 am – 1:00 am, Monday through Saturday 8:00 am - 2:00 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Saturday 12:00 pm - 10:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: November 18, 2016
Petition Date: January 2, 2017
Hearing Date: **January 16, 2017

License No.: ABRA-101399
Licensee: Timber Pizza Company, LLC
Trade Name: Timber Pizza Company
License Class: Retailer's Class "C" Restaurant
Address: 809 Upshur Street, N.W.
Contact: Andrew Dana: 202-258-6832

WARD 4 ANC 4C SMD 4C07

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

NATURE OF SUBSTANTIAL CHANGE
Applicant requests to add a Sidewalk Cafe with 12 seats.

CURRENT HOURS OF OPERATION
Sunday 7:00 am – 1:00 am, Monday through Saturday 7:00 am - 2:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION
Sunday 8:00 am – 1:00 am, Monday through Saturday 8:00 am - 2:00 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Saturday 12:00 pm - 10:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
**12/16/2016

**READVERTISEMENT

Notice is hereby given that:

License Number: ABRA-096141 **License Class/Type: C Restaurant**

Applicant: Zion Kitchen and Trading, Inc.

Trade Name: Zion Kitchen and Trading

ANC: 5C05

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

1805 MONTANA AVE NE, WASHINGTON, DC 20002

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

**1/30/2017

A HEARING WILL BE HELD ON:

**2/13/2017

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
**12/2/2016

****RESCIND**

Notice is hereby given that:

License Number: ABRA-096141 **License Class/Type: C Restaurant**

Applicant: Zion Kitchen and Trading, Inc.

Trade Name: Zion Kitchen and Trading

ANC: 5C05

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

1805 MONTANA AVE NE, WASHINGTON, DC 20002

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

**1/16/2017

A HEARING WILL BE HELD ON:

**1/30/2017

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board (DC PCSB) hereby gives notice of YouthBuild Public Charter School's (YouthBuild PCS) request to amend its enrollment ceiling. YouthBuild PCS is proposing to increase its enrollment ceiling from 115 to 150 students. This enrollment ceiling increase will enable YouthBuild PCS to meet increased demand for its program, and allow the school to afford the cost of relocating its campus to a facility that is better suited to meet the needs of its students. A public hearing will be held on January 23, 2017 at 6:30 p.m.; a vote will be held on February 27, 2017 at 6:30 p.m. To submit public comments, you may do so by one of the actions below. All comments must be submitted on or before January 23, 2017 at 4:00pm. For questions, please contact Laterica (Teri) Quinn, Equity and Fidelity Specialist, at 202-328-2660 or lquinn@dcpcsb.org.

Submitting Public Comment:

1. Submit a comment by one of the following actions:
    a. E-mail: public.comment@dcpcsb.org
    b. Postal mail: Attn: Public Comment, DC Public Charter School Board, 3333 14th ST. NW., Suite 210, Washington, DC 20010
    c. Hand Delivery/Courier*: Same as postal address above
    d. Phone: 202-328-2660

2. Sign up to testify in-person at the public hearing on January 23, 2017, by emailing a request to public.comment@dcpcsb.org by no later than 4 p.m. on Thursday, January 19, 2017.

BOARD OF ZONING ADJUSTMENT
REVISED PUBLIC HEARING NOTICE
WEDNESDAY, FEBRUARY 1, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Cases added:	**Cases removed**:	**Case withdrawn**:
18690A	N/A	N/A

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

TIME: 9:30 A.M.

WARD EIGHT

19413 ANC-8A **Application of Chughtai Family Properties LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot area and width requirements of Subtitle D § 302.1, and the side yard requirements of Subtitle D § 307.2, to permit the subdivision of two lots and construct four new one-family dwellings in the R-3 Zone at premises on Maple View Place S.E. (Square 5803, Lots 976 and 977).

WARD FOUR

19416 ANC-4C **Application of Robert Edwards**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the RF-use requirements of Subtitle U § 320.2, and a variance from the lot dimension requirements of Subtitle E § 201.4, to convert an existing one-family dwelling into a three-unit apartment house in the RF-1 Zone at premises 1412 Shepherd Street N.W. (Square 2693, Lot 23).

WARD ONE

19417 ANC-1A **Application of A3 Development, LLC**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the RF-use requirements of Subtitle U § 320.2, and a variance from the height and number of stories requirements of Subtitle E § 303.1, to convert an existing flat into a three-unit apartment house in the RF-1 Zone at premises 1219 Park Road N.W. (Square 2839, Lot 122).

WARD FOUR

19418 ANC-4C **Application of 319 Varnum LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to convert an existing one-family dwelling into a three-unit apartment house in the RF-1 Zone at premises located at 319 Varnum Street N.W. (Square 3310, Lot 47).

WARD THREE

19419 ANC-3G **Application of Stephen and Jennifer Cummings**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the rear yard requirements of Subtitle D § 306.1, and the side yard requirements of Subtitle D § 307.1, to allow the construction of a rear deck to an existing one-family dwelling in the R-1-B Zone at premises 2629 Woodley Place N.W. (Square 2357, Lot 35).

WARD FOUR

19420 ANC-4B **Application of Steven and Stephanie Hoehn**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the lot occupancy requirements of Subtitle D § 304.1, the rear yard requirements of Subtitle D § 306.2, and the side yard requirements of Subtitle D § 307.1, to replace a rear deck to an existing one-family dwelling in the R-2 Zone at premises 720 Tewkesbury Place N.W. (Square 3163, Lot 31).

WARD TWO

19422 ANC-2E **Application of IMA PIZZA STORE 17, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements of Subtitle C § 1504.1, to allow the installation and full screening of rooftop mechanical equipment in the MU-4 Zone at premises located at 1335 Wisconsin Avenue N.W. (Square 1232, Lot 69).

WARD ONE

19424 ANC-1A **Application of Young Soo Kim**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, 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 third-story addition to an existing one-family dwelling in the RF-1 Zone at premises 1500 Ogden Street N.W. (Square 2686, Lot 810).

THIS CASE WAS POSTPONED FROM THE PUBLIC HEARING OF DECEMBER 14, 2016 AT THE APPLICANT'S REQUEST:

WARD SIX

18690A ANC-6E **Application of Rito Loco LLC**, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No. 18690, now requesting special exception relief under the penthouse requirements of Subtitle C § 1500.3(c), to construct a roof deck above an existing fast food establishment in the MU-4 Zone at premises 606 Florida Avenue N.W. (Square 441, Lot 838).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

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

Do you need assistance to participate?

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም መተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነ ኛህ አገልግሎቶች የሚሰጡት በነጻ ው።

Chinese
您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au

(202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
ANITA BUTANI D'SOUZA, VICE CHAIRPERSON
JEFFREY L. HINKLE, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 2, 2017, @ 6:30 p.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:

CASE NO. 16-23 (Valor Development, LLC – Voluntary Design Review @ Square 1499, Lots 802, 803, and 807)

THIS CASE IS OF INTEREST TO ANCs 3E and 3D

On October 27, 2017, the Office of Zoning received an application from Valor Development, LLC (the "Applicant"), on behalf of FW DC-Spring Valley Shopping Center, LLC and Apex Real Estate Company. The Applicant is requesting design review and approval of a new mixed-use (residential and retail) development project for Lots 802, 803, and 807 in Square 1499 (the "Project Site"), pursuant to Subtitle X, Chapter 6 of Title 11 DCMR and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development. As part of this design review, the Applicant seeks relief from the rear yard requirements of the MU-4 zone. The Commission can grant such flexibility as part of the design review process pursuant to 11-X DCMR § 603.1, which permits it to grant relief from certain development standards including the standards for "setbacks."[1]

The Project Site consists of approximately 119,138 square feet of land area and is generally bounded by Yuma Street on the north; Massachusetts Avenue, the former American University Law School building, and a PNC Bank on the south; 48th Street on the east; and the Spring Valley Exxon station on the west. The Project Site is currently improved with the Spring Valley Shopping Center ("SVSC") (Lots 802 and 803), and a vacant grocery store building, retail uses (restaurant and salon), and substantial surface and below-grade parking (Lot 807). The Project Site is zoned MU-4, a district in which residential and retail uses are permitted as a matter of right.

The proposed mixed-use development retains the existing SVSC and consists of two new buildings on Lot 807. The main building proposed on Lot 807 ("Building 1") will have a maximum height of approximately 50 feet, plus a penthouse that will have a maximum height of 15 feet above the roof level. The lower-level of Building 1 will contain a residential lobby, a new full-service grocery store and potential additional retail/amenity space, and access to loading and below-grade parking. The remainder of Building 1, including a portion of the penthouse, will contain residential dwelling units and amenity space. The second building proposed on Lot 807

[1] When the current versions of Subtitles G and X were first proposed, the applicable minimum rear yard requirement was referred to as a "rear setback." This terminology was later replaced with the traditional reference to a "minimum rear yard" in current Subtitle G, but the reference to "setbacks" in 11-X DCMR § 603.1 was not similarly revised.

("Building 2") will have a maximum height of approximately 48 feet, and will also contain a penthouse with a maximum height of 15 feet above the roof level. Building 2 will contain residential dwelling units and amenity space.

Collectively, the two buildings proposed on Lot 807 will contain approximately 285,829 square feet of gross floor area ("GFA"), consisting of approximately 254,782 GFA of residential use, and approximately 31,047 GFA of grocery store and other potential retail/amenity uses. Including penthouse habitable space, below-grade/cellar areas, and permitted projections into public space, the two proposed buildings will result in approximately 230 dwelling units and approximately 60,000 total square feet of grocery store and other potential retail/amenity uses.

Other significant aspects of the proposed mixed-use development include streetscape improvements; paving, landscape, and other improvements to surrounding alleys; a new linear park/landscaped pedestrian extension of Windom Place through the Project Site; affordable housing in excess of the minimum required by 11-C DCMR § 1003; below-grade parking; and LEED-Gold designed buildings.

This public hearing will be conducted in accordance with the contested case provisions of Chapter 4 of Title 11-Z DCMR.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11-Z DCMR § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in DCMR Title 11-Z. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

Except for an affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party**

status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: https://app.dcoz.dc.gov/help/forms.html. This form may also be obtained from the Office of Zoning at the address stated below.

11-Z DCMR § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	60 minutes collectively
3.	Organizations	5 minutes each
4.	Individuals	3 minutes each

Pursuant to 11-Z DCMR § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at 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, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission.

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

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, 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.

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Avez-vous besoin d'assistance pour pouvoir participer? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

참여하시는데 도움이 필요하세요? 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

您需要有人帮助参加活动吗？如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov 这些是免费提供的服务。

Quí vị có cần trợ giúp gì để tham gia không? Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

ለመሳተፍ ዕርዳታ ያስፈልግዎታል? የ ተለየ እርዳታ ካስፈለገ ዎት ወይም የ ቋንቋ እርዳታ አገ ልግለሎች (ትርጉም ወይም ማስተርጎ ም) ካስፈለገ ዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገ ናኙ። እነ ኝህ አገ ልግለሎች የ ሚሰጡ በነ ጻ ነ ው።

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 04-33G
Z.C. Case No. 04-33G
(Text Amendment – Inclusionary Zoning – Amendments to Subtitle C, Chapter 10)
October 17, 2016

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 adoption of amendments to Subtitles B (Definitions, Rules of Measurement, and Use Categories), C (General Rules), and I (Downtown (D) Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR). At the time it took final action to adopt these rules the Commission also authorized a notice of proposed rulemaking for a provision that had been advertised in the notice of public hearing for this case, but which was inadvertently omitted from the notice of proposed rulemaking. That notice is being published in this issue of the *D.C. Register*. Also being published in this issue is a notice of final rulemaking for Z.C. Case No. 04-33H, which adopts amendments to 11-C DCMR § 1001.6(a), including amendments originally proposed in this case.

The Inclusionary Zoning Regulations contained in Chapter 10 of Title 11-C require that inclusionary developments reserve a percentage of residential gross floor area for Inclusionary Units. The amendments provide that ownership of inclusionary units must be reserved for households earning equal to or less than eighty percent (80%) of the Median Family Income[1] (MFI) while rental inclusionary units must be reserved for households earning equal to or less than sixty percent (60%) of the MFI. A deeper level of affordability will continue to be required when the set-aside is attributable to penthouse habitable space. (*See* 11-C DCMR § 1003.7.) The amendments also allow for voluntary compliance; clarify how set-aside requirements are calculated; permit a twenty percent (20%) reduction of the set-aside applicable to an inclusionary development that is exclusively comprised of ownership units if the units are set aside to households earning sixty percent (60%) of the MFI, clarify development standards, allow owner/occupants of inclusionary units to request relief when certain circumstances are met; and adds definitions for "bedroom" and "inclusionary development."

A Notice of Proposed Rulemaking (Notice) was published in the *D.C. Register* on September 9, 2016, at 63 DCR 11434. The Notice indicated that the Commission, at the time it took proposed action, made a preliminary determination that the amendments should take effect six (6) months after the publication of a notice of final rulemaking. At the same time, the Commission requested that the Department of Housing and Community Development (DHCD) advise the

[1] Median Family Income is defined by Title 11-B, § 100.2 as the "Median Family Income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers."

Commission whether the agency would be able to begin administering the inclusionary zoning program, as the Commission proposes to revise it, on the preliminary effective date.

In response to the Notice, the Commission received comments from the Committee of 100 for the Federal City (Committee of 100) and from the Bernice J. Drazin Trust. The Office of Planning submitted a supplemental report that responded to the public comments, discussed potential amendments to address circumstances in which Inclusionary Units resulting from penthouse habitable space could be reserved for households earning sixty percent (60%) or less of the MFI, and noted an omission made in the Notice of Proposed Rulemaking. DHCD provided its response to the Commission's implementation questions on September 8th.

At its regularly scheduled public meeting on October 17, 2016, the Commission considered whether it should take final action to adopt the amendments. As a preliminary matter, the Commission's Secretary noted that the Commission had moved the proposed amendments to 11-C DCMR § 1001.6(a), pertaining to exempted projects, to Z.C. Case No. 04-33H.

During its deliberations, the Commission discussed the Committee of 100's recommendation to impose the higher set-aside requirements of 11-C DCMR § 1003.1 on all inclusionary developments that employ Type I construction, and not just to such developments located in zones with a by-right height limit of fifty feet (50 ft.) or less. The Commission considered this idea worthy of future study, but did not wish to delay adoption of the proposed rules for that analysis to be completed.

The Commission then took final action to adopt the amendments it proposed in September, with the exception of the amendment to 11-C DCMR § 1001.6(a), which was moved to Z.C. Case No. 04-33H. The Commission also authorized the publication of a Notice of Proposed Rulemaking with respect to the provision inadvertently omitted from the September Notice. With respect to an effective date for the adopted rules, rather than make the rules effective six (6) months after publication of this final notice, the Commission decided that it would be preferable to specify the exact date when the rules would take effect. The Commission determined that the effective date should be the first Monday in June 2017.

Therefore, this final rulemaking shall become effective on June 5, 2017.

Title 11 DCMR, ZONING REGULATIONS OF 2016, is amended as follows (new text shown in **bold** and underline and deleted text shown in ~~strikethrough~~):

Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, Chapter 1, DEFINITIONS, is amended as follows:

Section 100, DEFINITIONS, § 100.2, is amended by inserting the following new definitions in alphabetical order:

Bedroom: A habitable room with immediate access to an exterior window and a closet that is designated as a "bedroom" or "sleeping room" on construction plans submitted in an application for a building permit.

Development, Inclusionary: A residential development subject to the provisions of Subtitle C, Chapter 10, Inclusionary Zoning.

Subtitle C, GENERAL RULES, Chapter 10, INCLUSIONARY ZONING, is amended to read as follows:

CHAPTER 10 INCLUSIONARY ZONING

1000 INTRODUCTION

1000.1 The purposes of the Inclusionary Zoning (IZ) Program are:

(a) To further the Housing Element of the Comprehensive Plan by increasing the amount and expanding the geographic distribution of adequate, affordable housing available to current and future residents;

(b) To utilize the skills and abilities of private developers to produce quality affordable housing;

(c) To leverage private development, combined where appropriate with zoning density increases, to produce affordable housing throughout the District of Columbia;

(d) To mitigate the impact of market-rate residential development on the availability and cost of housing available and affordable to low- and moderate-income households;

(e) To increase the production of affordable housing units throughout the District to meet existing and anticipated housing and employment needs;

(f) To provide for a full range of housing choices throughout the District for households of all incomes, sizes, and age ranges to preserve diversity and to ensure the benefits of economic integration for the residents of the District;

(g) To stabilize the overall burden of housing costs on low- and moderate-income households;

(h) To create a stock of housing that will be affordable to low- and moderate-income residents over a long term; and

(i) To make homeownership opportunities available to low- and moderate-income residents.

1000.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an IZ Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the minimum sizes of the units, the selection and obligations of eligible households, **administrative flexibility to ensure occupancy,** and the establishment of enforcement mechanisms such as covenants and certifications shall be governed by the following laws and regulations related to the IZ requirements:

(a) The Inclusionary Zoning Implementation Amendment Act of 2006; and

(b) Chapter 22 of the Housing Regulations (Title 14 DCMR).

1001 APPLICABILITY

1001.1 Achievable ~~inclusionary~~ bonus density is the amount of the permitted bonus density that potentially may be utilized within a particular inclusionary ~~residential~~ development **provided in Subtitle C § 1002**.

1001.2 Except as provided in Subtitle C § 1001.5, the requirements and modifications of this chapter shall apply to developments meeting the following criteria:

(a) Are mapped in the R-2, R-3, R-10, R-13, R-17, ~~or~~ R-20**, RA-1 through RA-4, RA-6, RA-7, RA-8, or RA-9** zone; any RF, ~~RA,~~ ARTS, CG, RC, USN, STE, **SEFC,** or HE zone; the NC-1 through NC-5 or ~~NC-9~~**NC-7** through NC-13 zone; the MU-1 through MU-10 or MU-12 through ~~MU-29~~**MU-26, MU-28, or MU-29** zone; or the D-2 or D-4 zone; ~~and~~

(b) Is proposing new gross floor area that would result in ten (10) or more dwelling units;

(c) Will have ten (10) or more new dwelling units ~~with only one (1) or two (2) dwelling units~~ constructed concurrently or in phases, on contiguous lots or lots divided by an alley if such lots were under common ownership**, control, or affiliation within one (1) year prior to the application for the first building permit** ~~at the time of construction~~; ~~or~~

(d) Consists of a residential building, other than a single dwelling unit or flat, that has penthouse habitable space pursuant to Subtitle C § 1500.11.~~;~~ **; or**

(e) **Any semi-detached, attached, flat, or multiple dwellings development not described in Subtitle C § 1001.2(b) through 1001.2(d) if the owner voluntarily agrees to the requirements of Subtitle C § 1003 and meets all other requirements of this chapter, provided:**

(1) **The square footage set aside achieves a minimum of one (1) Inclusionary Unit;**

(2) **Residential developments located in the areas identified by Subtitle C § 1001.5(a) may not use the modifications to height and lot occupancy, or minimum lot area or width; and**

(3) **Any use of the bonus density provided in Subtitle C § 1002 in the R-2, R-3, R-10, R-13, R-17, R-20, RF-1, RF-2, RF-3, RF-4, RF-5, or the RA-1 zones shall require special exception approval pursuant to Subtitle X, Chapter 9.**

1001.3 If more than one (1) building permit is issued for a development, the number of dwelling units and new gross floor area used to establish the applicability of the IZ requirements, and associated IZ modifications, shall be based on all the applications occurring within a three (3) year period, starting from the first building permit application.

1001.4 If the new gross floor area comprising ten (10) or more units would result in an increase of fifty percent (50%) or more in the floor area of an existing building, IZ requirements and modifications shall apply to both the existing and the increased gross floor area.

1001.5 Except for new penthouse habitable space as described in Subtitle C § 1001.2(d), IZ requirements of this chapter shall not apply to:

(a) Properties located in any of the following areas:

(1) The R-1-A and R-1-B zones;

(2) The MU-13 zone in the Georgetown Historic District;

(3) The R-3 zone in the Anacostia Historic District;

(4) The MU-27 zone;

(5) The D-1-R, D-3, D-4-R, and D-5 zones;

(6) The SEFC zones of Subtitle K, Chapter 2 **that are subject to a land disposition or other agreement with the District of Columbia that mandates the provision of affordable housing**;

(7) The WR zones of Subtitle K**,** Chapter 9; **and**

(8) The NC-6 zone;

~~(9) Hotels, motels, or inns;~~

(b) Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff; ~~and~~

(c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff**; and**

(d) **Hotels, motels, or inns.**

1001.6 IZ requirements of this chapter shall not apply to:

(a) Any development subject to a mandatory affordable housing requirement that exceeds the requirements of this chapter as a result of District law or financial subsidies funded in whole or in part by the Federal or District Government and administered and/or monitored by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency (DCHFA), or the District of Columbia Housing Authority (DCHA); provided:

(1) The development shall set aside, for so long as the project exists, affordable dwelling units ("Exempt Affordable Units") in accordance with the minimum income standards of Subtitle C § 1001.6(a)(2) and equal to at least the gross square footage that would have been otherwise required pursuant to the set-aside requirements in Subtitle C § 1003 for the zone in which the development is located;

(2) The Exempt Affordable Units shall be reserved as follows:

(i) The square footage set aside for rental units shall be at or below sixty percent (60%) MFI; and

(ii) The square footage set aside for or ownership units shall be at or below eighty percent (80%) MFI;

(3) The requirements set forth in subparagraphs (1) and (2), of this paragraph, shall be stated as declarations within a covenant approved by the District of Columbia; and

(4) The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include buildings with only one (1) dwelling unit, the covenant shall be recorded before the first purchase agreement or lease is executed; and

(b) Boarding houses, community based institutional facilities; or single room occupancy projects within a single building.

1001.7 No exemption may be granted pursuant to Subtitle C § 1001.6(a) unless the Zoning Administrator receives a written certification from the DHCD Director that the development meets the requirements of Subtitle C §§ 1001.6(a)(1) and (4).

1001.8 **[DELETED]**~~A development not otherwise subject to the requirements of this chapter may opt in to the IZ program and, except as limited in Subtitle C § 1001.9, may utilize the IZ zoning modifications provided for in Subtitle C § 1002.~~

1001.9 **[DELETED]**~~A development in the following zones not otherwise subject to the requirements of this chapter may opt in to the IZ program but shall not utilize the IZ zoning modifications provided for in Subtitle C § 1002:~~

~~(a) D-1-R; D-3, D-4, D-5, and D-8;~~

~~(b) MU-13 and MU-27;~~

~~(c) NC-6;~~

~~(d) R-3;~~

~~(e) RA-6; and~~

~~(f) SEFC.~~

1001.10 The requirements of this chapter shall automatically terminate if title to the mortgaged property is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in the first position, or a mortgage in the first position is assigned to the Secretary of the U.S. Department of Housing and Urban Development (HUD).

1002 BONUSES AND ADJUSTMENTS TO INCENTIVIZE INCLUSIONARY UNITS

1002.1 The types of density bonuses and/or dimensional adjustments in this section are available to developments subject to the Inclusionary Zoning (IZ) provisions of this chapter.

1002.2 Inclusionary ~~residential~~ developments in the zones identified in the following table may use the minimum lot dimensions identified in the table in lieu of the otherwise required lot dimension required by Subtitles D and E:

TABLE C § 1002.2: IZ DIMENSIONAL MODIFICATIONS FOR LOWER DENSITY ZONES

Base Zone	IZ Dimensional Modifications for Lower Density Zones		
	Minimum Lot Area	Minimum Lot Width	Minimum Lot Width with Special Exception
R-2, R-10 Detached	3,200 sq. ft.	40	32
R-2, R-10 Semi-Detached	2,600 sq. ft.	30	25
R-3, R-13, R-17, R-20	1,600 sq. ft.	20	16
RF-1, RF-2, RF-3, RF-4, RF-5	1,500 sq. ft.	18	16

1002.3 Inclusionary **developments, except those located in the SEFC, StE, and HE zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right (bonus density), subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.** ~~residential developments in the following zones governed by Subtitles F, G, H, I, or K may construct bonus density of up to an additional twenty percent (20%) gross floor area (bonus density) than permitted as a matter-of-right subject to all other zoning requirements of their zone:~~

~~(1) All RA zones;~~

~~(2) MU-3, MU-4, MU-12, MU-13, MU-17, MU-18, MU-19, MU-24 through MU-29, and RC-2 zones;~~

~~(3) NC-1, NC-2 , NC-3, NC-5, NC-10, NC-12, NC-14, and NC-16 zones;~~

~~(4) D-2 and D-4 zones;~~

~~(5) USN and CG zones; and~~

(6) ~~HE zones, subject to the development standards in Subtitle K § 402.1.~~

1002.4 Inclusionary ~~residential~~ developments in the zones below may use the following modifications to height and lot occupancy in order to achieve the bonus density:

TABLE C § 1002.4: MODIFICATIONS TO HEIGHT AND LOT OCCUPANCY FOR BONUS DENSITY

Base Zone	Matter-of-Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height	Zoning FAR	Lot Occupancy	Height (feet)
RA-5, RA-11, D-1	75%	90 ft.	6.00	90%	90

Base Zone	Matter-of-Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Zoning Height	Zoning FAR	Lot Occupancy	Height (feet)
MU-10, MU-22, MU-29, ARTS-4	75%	90 ft.	6.00	80%	100
MU-4, MU-17, MU-24, MU-25, MU-26 through MU-29, MU-33, NC-2, NC-3, NC-4, NC-7, NC-9, NC-14, NC-16 ARTS-1, RC-2	60%	50 ft.	2.50	75%	50
MU-5, MU-18, ARTS-2, RC-3, NC-5, NC-10, NC-17	80%	65 ft.	3.50	80%	70
MU-6, MU-19, NC-11	80%	90 ft.	6.00	~~90%~~ **80%**	~~90~~ **100**
MU-7, MU-28, ARTS-3, NC-8, NC-12, NC-15	75%	65 ft.	4.00	80%	65
MU-12	80%	40 ft.	2.50	80%	50
MU-13	75%	60 ft.	4.00	75%	80
MU-13	75%	90 ft.	6.00	80%	100
MU-1, MU-15	80%	65 ft.	4.00	80%	70
MU-2, MU-16, MU-23, D-2	80%	90 ft.	6.00	90%	90
MU-9, MU-21	**100%**	**90 ft.**	**6.50**	**100%**	**100**
CG-1	75%	90 ft.	6.00	90%	90

1002.5 An inclusionary ~~residential~~ development that has met its IZ set-aside requirements and used all the bonus density permitted by IZ may be eligible for other bonus density permitted by other chapters of this title, provided the development's total density does not exceed the FAR-maximum associated with the zone permitting that additional bonus density.

1003 SET-ASIDE REQUIREMENTS

1003.1 An inclusionary ~~residential~~ development ~~for~~ which ~~the primary method of construction~~ does not employ **Type I construction as defined by Chapter 6 of the International Building Code as incorporated into District of Columbia Construction Codes (Title 12 DCMR)** ~~steel or steel and concrete frame structure~~ **to construct a majority of dwelling units** and which is located in a zone with a by-right height limit of fifty feet (50 ft.) or less shall set aside the greater of ten percent (10%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or seventy-five percent (75%) of its achievable bonus density to inclusionary units plus an area equal to ten percent (10%) of the penthouse habitable space as described in **Subtitle C** § ~~2602.1~~ **1001.2**(d).

1003.2 An inclusionary ~~residential~~ development **which employs Type I construction as defined by Chapter 6 of the International Building Code as incorporated into the District of Columbia Construction Codes (Title 12 DCMR)** ~~of steel or steel~~

~~and concrete frame construction~~**to construct the majority of dwelling units** shall set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use including penthouse habitable space as described in Subtitle C § 1001.2(d), or fifty percent (50%) of its achievable bonus density to inclusionary units plus an area equal to eight percent (8%) of the penthouse habitable space as described in **Subtitle C** § ~~2602.1~~ **1001.2**(d).

1003.3 **Except as provided in Subtitle C §§ 1003.5 through 1003.6, inclusionary units resulting from the set asides required by §§ 1003.1 and 1003.2 shall be reserved for households earning equal to or less than:** ~~1003.7, inclusionary residential developments in the R, RF, RA zones, or in the MU or NC zones where the by-right height limit is fifty feet (50 ft.) or less, shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd-number unit shall be set aside for low-income households~~

(a) **Sixty percent (60%) of the MFI for rental units; and**

(b) **Eighty percent (80%) of the MFI for ownership units.**

1003.4 **[DELETED]**~~Except as provided in Subtitle C § 1003.7, inclusionary residential developments in the D zones, or in the MU or NC zones where matter-of-right height limits exceed fifty feet (50 ft.), shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.~~

1003.5 An inclusionary development that results from a conversion of a single dwelling unit or flat to a multiple dwelling unit development in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside every even numbered dwelling unit beginning at the fourth (4^{th}) unit as an inclusionary unit.

1003.6 An inclusionary development that results from a conversion of a single dwelling unit or flat to a multiple dwelling unit development in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside one hundred percent (100%) of inclusionary units for eligible ~~moderate-income~~ households **earning equal to or less than eighty percent (80%) of the MFI**.

1003.7 Notwithstanding Subtitle C §§ 1003.3 ~~and 1003.4~~, one hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible ~~low-income~~ households **earning equal to or less than fifty percent (50%) of the MFI**.

1003.8 **An inclusionary development in an StE zone shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use for inclusionary units.**

1003.9 **An inclusionary development's entire residential floor area including dwelling units located in cellar space or enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2**

1003.10 **The square footage set aside applicable to an inclusionary development that is exclusively comprised of ownership units may be reduced by twenty percent (20%) provided all the units are set aside to households earning equal to or less than sixty percent (60%) of the MFI.**

1003.11 **Increases in FAR as a result of variances granted by the Board of Zoning Adjustment shall be included within gross floor area for the purposes of calculating the maximum IZ requirement.**

1004 PURCHASE AND TENANCY REGULATIONS

1004.1 Except as provided for in Subtitle C § 1004.2, all inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary ~~residential~~ development exists.

1004.2 An owner/occupant of an inclusionary unit may not sell the unit at a price greater than that established by the Mayor pursuant to D.C. Official Code § 6-1041.03 of the IZ Act unless the price is offered by the Mayor or a Housing Trust authorized by the Mayor:

(a) No eligible household shall be offered an inclusionary unit for rental or sale at an amount greater than that established by the Mayor pursuant to D.C. Official Code § 6-1041.03 of the IZ Act;

(b) The Mayor or DCHA shall have the right to purchase the greater of one (1) IZ unit or twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development, or any number agreed to by the owner of the development, in accordance with procedures set forth in the IZ Act.

1004.3 Notwithstanding Subtitle C § 1004.2, nothing shall prohibit the Mayor or DCHA from acquiring title to inclusionary units in a for-sale inclusionary development if any of the following circumstances exist:

(a) There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development (HUD); or

(b) Title to the units has been transferred by the foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to HUD.

1005 DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS

1005.1 The proportion of studio and one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type.

1005.2 All inclusionary units shall be comparable in exterior design, materials, and finishes to the market-rate units.

1005.3 The interior amenities of inclusionary units, such as finishes and appliances, shall be comparable to the market-rate units but may consist of less expensive materials and equipment, provided the interior amenities are durable, of good quality, and consistent with contemporary standards for new housing.

1005.4 All inclusionary units in an inclusionary development shall be constructed prior to or concurrently with the construction of market-rate units, except that in a phased development, the inclusionary units shall be constructed at a pace that is proportional to the construction of the market-rate units.

1005.5 Inclusionary units shall not be overly concentrated **by tenure, dwelling type, including single dwelling units, flats, or multiple-dwellings, or** on any floor of a project.

1006 OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING

1006.1 The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of Subtitle C § 1003 to be met by off-site construction upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship.

1006.2 Among the factors that may be considered by the Board of Zoning Adjustment in determining the existence of economic hardship are:

(a) Exceptionally high fees in condominium developments that cannot be reduced to levels affordable to eligible households;

(b) The inclusion of expensive and specialized social or health services in a retirement housing development or a development that principally provides housing for the disabled, if such services are not severable from the provision of housing and render units in the development unaffordable to eligible households; or

(c) Proof that continuation of the existing rental inclusionary development is no longer economically feasible, when the owner wishes to change the property's use to a non-residential use or to one (1) meeting the exemption requirements of Subtitle C § 1001.5.

1006.3 An applicant who has demonstrated the existence of economic hardship shall further demonstrate that the off-site development:

(a) Is located within the same census tract as the inclusionary residential development;

(b) Consists of new construction for which no certificate of occupancy has been issued;

(c) Is at a location suitable for residential development;

(d) Has complied with or will comply with all on-site requirements of this chapter as are applicable to it;

(e) Has not received any development subsidies from Federal or District Government programs established to provide affordable housing;

(f) Will provide inclusionary units with gross floor areas for each unit type of not less than ninety-five percent (95%) of the gross floor area of the off-site market-rate unit types, and of a number no fewer than the number of units that would otherwise have been required on-site; and

(g) Will not have more than thirty percent (30%) of its gross floor area occupied by inclusionary units.

1006.4 The requirement of Subtitle C § 1006.3(a) may be waived upon a showing that the off-site development is owned by the applicant, is located in the District of Columbia, and meets all the other requirements of Subtitle C § 1006.3.

1006.5 Inclusionary units permitted to be constructed pursuant to this section shall not be counted toward any set-aside requirement separately applicable to the off-site development or to any other inclusionary residential development.

1006.6 No order granting off-site compliance shall become effective until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the off-site property, shall be attached to an application for relief under this section.

1006.7 The covenant shall bind the owner and all future owners of the off-site development to:

(a) Construct and reserve the number of inclusionary units allowed to be accounted for off-site, in accordance with the plans approved by the Board of Zoning Adjustment and the conditions of the Board's order;

(b) Sell or rent, as applicable, such units in accordance with the provisions of this chapter and the IZ Act for so long as the off-site development remains in existence;

(c) Neither apply for nor accept any development subsidies from Federal or District Government programs established to provide affordable housing;

(d) Acknowledge that the owners are legally responsible for the set-aside requirement accepted as if the requirement had been imposed directly on the off-site development; and

(e) Not request special exception or variance relief with respect to the obligations accepted or its own obligations under this chapter.

1006.8 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. All dwelling units as are required to be reserved in the off-site development in accordance with the Board of Zoning Adjustment's order shall be deemed inclusionary units for the purposes of this chapter and the IZ Act.

1006.9 No application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units.

1006.10 Inclusionary units resulting from the set-aside required for penthouse habitable space as described in Subtitle C § 1001.2(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of Subtitle C §§ 1505.13 through 1505.16 when:

(a) The new penthouse habitable space is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;

(b) The penthouse habitable space is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or

(c) The building is not otherwise required to provide inclusionary units for low income households and the amount of penthouse habitable space would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

1007 RELIEF FROM INCLUSIONARY ZONING REQUIREMENTS

1007.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirements of Subtitle C § 1003 upon a showing that compliance, whether on-site, off-site, or a combination thereof, would deny ~~the applicant~~ **an inclusionary development owner** economically viable use of its land.

1007.2 An application **from an inclusionary development owner** for a variance from the requirements of Subtitle C § 1003 shall not be granted unless the Board of Zoning Adjustment has determined that the applicant cannot comply with the provisions of Subtitle C § 1006 based on evidence provided by the applicant, and has voted to deny an application for relief pursuant to this section or Subtitle C § 1006.

1007.3 **The Zoning Commission may grant relief from the requirements of this chapter to an owner/occupant of an inclusionary unit on the consent calendar authorized by Subtitle Z § 703 provided:**

(a) **Condominium or homeowner association fees have increased to make the unit unaffordable to other Eligible IZ Households as defined by Title 14, Chapter 22; and**

(b) **The application for relief includes written confirmation of Subtitle C § 1007.3(a) from the Director of DHCD; and**

(1) **The IZ covenant remains and the unit is sold at the Maximum Resale Price (MRP) as determined by 14 DCMR § 2218 if the income of the Eligible IZ Household purchasing the unit does not exceed eighty percent (80%) of the MFI; or**

(2) **If the IZ covenant is terminated and the unit is sold above the Maximum Resale Price, a fee equal to any net proceeds from the sale that are above and beyond the MRP are deposited into the District's Housing Trust Fund.**

1008 APPLICABILITY DATE

1008.1 With the exception of penthouse habitable space approved by the Zoning Commission pursuant to Subtitle C § 1504.3, the provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to a planned unit development if the approved application was set down for hearing prior to March 14, 2008.

Subtitle I, DOWNTOWN (D) ZONES, Chapter 8, GENERATION AND CERTIFICATION OF CREDITS, is amended as follows:

Section 802, GENERATION OF CREDITS BY RESIDENTIAL DEVELOPMENT, § 802.2, is amended by repealing paragraph (a) and amending paragraph (b) 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 shall be generated in the following circumstances:

(a) **[DELETED]** ~~For 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 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~~ **that meet the income requirements of Subtitle C § 1003**;

…

On July 20, 2016, upon motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the petition at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot).

On October 17, 2016, upon motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on December 16, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 04-33H
Z.C. Case No. 04-33H
(Text Amendment - 11 DCMR)
(Addition of Affordable Housing Required by District Law to Exemptions from Inclusionary Zoning)
November 14, 2016

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of the adoption of amendments to § 1001.6 of Chapter 10 (Inclusionary Zoning), Subtitle C (General Rules) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR). Subtitle C is among the Title 11 subtitles that constitute the Zoning Regulations for the District of Columbia. (*See* 11-A DCMR § 200.2.)

These same amendments were adopted on an emergency basis on September 12, 2016. Prior to the adoption of the emergency amendments, Subtitle C § 1001.6(a) exempted from the Inclusionary Zoning ("IZ") Regulations any developments financed, subsidized, or funded in whole or in part by the federal or District Government and administered by the Department of Housing and Community Development, the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority. Exempted developments were required to set aside at least the gross square footage that would have been required had IZ applied. The resulting units ("Exempted Units") could be sold or rented based upon the affordability levels for low- and moderate-income households established by the federal or District funding source, or financing or subsidizing entity.

The amendments adopted through this rulemaking action permanently add to that exemption developments that are subject to a mandatory affordable housing requirement that exceeds the IZ requirements as a result of District law. The amendments also add language to encompass projects that are monitored, but not administered by the above-referenced District agencies.

A Notice of Proposed Rulemaking for these amendments was published in the *D.C. Register* on July 8, 2016 at 63 DCR 9410 for a thirty (30) day comment period. No comments were received in response to the notice. Referral was made to the National Capital Planning Commission (NCPC) on October 11, 2016. In a letter dated November 3, 2016, the Executive Director of NCPC informed the Commission that, through a delegated action dated October 27, 2016, he found that the proposed text amendment is not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital

In addition, the permanent amendments specify minimum levels of affordability based upon whether the Exempted Units are ownership or rental. These amendments were originally proposed as part of Z.C. Case 04-33G. A Notice of Proposed Rulemaking for Z.C. Case 04-33G,

was published in the *D.C. Register* on September 9, 2016 at 63 DCR 011434 for a thirty (30) day comment period. The two comments that were received did not pertain to the proposed Subtitle C § 1001.6(a) amendments. Referral was made to the NCPC and in a letter dated July 12, 2016, its Executive Director informed the Commission that, through a delegated action dated July 1, 2016, he found that the proposed text amendment is not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. On September 12, 2016, the Commission decided to consider the § 1001.6(a) amendment proposed in Z.C. Case 04-33G as part of this case.

The Commission took final action to adopt the amendments at a public meeting on November 14, 2016. The only change to the text as published on July 8, 2016 was to add the amendment published on September 9, 2016. No substantive changes were made. During its deliberations, the Commission noted that nothing in these amendments should be construed as limiting the ability of applicants for planned unit developments from offering more affordable units and/or deeper levels of affordability than required by the funding source or law that made their project eligible for exemption.

The amendments shall become effective upon publication of this notice in the *D.C. Register*.

Chapter 10, INCLUSIONARY ZONING, of Title 11-C DCMR, GENERAL RULES, is amended as follows:

Section 1001, APPLICABILITY, § 1001.6, is amended to read as follows:

1001.6 IZ requirements of this chapter shall not apply to:

(a) Any development subject to a mandatory affordable housing requirement that exceeds the requirements of this chapter as a result of District law or financial subsidies funded in whole or in part by the Federal or District Government and administered and/or monitored by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency (DCHFA), or the District of Columbia Housing Authority (DCHA); provided:

(1) The development shall set aside, for so long as the project exists, affordable dwelling units (Exempt Affordable Units) in accordance with the minimum income standards of Subtitle C § 1001.6(a)(2) and equal to at least the gross square footage that would have been otherwise required pursuant to the set-aside requirements in subtitle C § 1003 for the zone in which the development is located;

(2) The Exempt Affordable Units shall be reserved as follows:

(i) The square footage set aside for rental units shall be at or below sixty percent (60%) MFI; and

(ii) The square footage set aside for ownership units shall be at or below eighty percent (80%) MFI;

(3) The requirements set forth in subparagraphs (1) and (2), of this paragraph, shall be stated as declarations within a covenant approved by the District of Columbia; and

(4) The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include buildings with only one (1) dwelling unit, the covenant shall be recorded before the first purchase agreement or lease is executed; and

(b) Boarding houses, community based institutional facilities; or single room occupancy projects within a single building.

On July 20, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission took **PROPOSED ACTION** to publish a notice of proposed rulemaking on Z.C. Case No. 04-33G at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie E. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve)

On October 6, 2016, upon the motion of Vice Chairman Miller as seconded by Chairman Hood, the Zoning Commission took **PROPOSED ACTION** to refer the text published in the D.C. Register on July 8, 2016 to NCPC at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Third Mayoral Appointee position vacant, not voting).

On November 14, 2016, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the petition at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on December 16, 2016.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Stormwater Management and Soil Erosion and Sediment Control Fees and Exemption

The Director of the Department of Energy and Environment (DOEE or Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl. & 2016 Supp.)); the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq*. (2012 Repl.)); the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; 55 DCR 1689 (February 22, 2008)), as amended by the Anacostia Waterfront Environmental Standards Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-192; D.C. Official Code §§ 2-1226.31 *et seq*. (2012 Repl. & 2016 Supp.)); the Soil Erosion and Sedimentation Control Act of 1977, effective September 28, 1977 (D.C. Law 2-23; D.C. Official Code §§ 8-1701 *et seq.* (2013 Repl. & 2016 Supp.)), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective August 26, 1994 (D.C. Law 10-166; 41 DCR 4892 (July 22, 1994)); the Uniform Environmental Covenants Act of 2005, effective May 12, 2006 (D.C. Law 16-95; D.C. Official Code §§ 8-671.01 *et seq.* (2013 Repl.)); the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2013 Repl. & 2016 Supp.)); Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to adopt the following amendments to Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

These amendments update the fees for the District Stormwater Management Guidebook and existing fees that the Department adjusts annually for inflation using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics, as required by 21 DCMR § 501.1. All fees are rounded to the nearest cent. These amendments also update the total project cost beneath which an individual house, townhouse, or rowhouse is exempt from complying with the soil erosion and sediment control provisions of this chapter. Adjustments in future years will be applied to the adjusted value of the prior year rather than the rounded value.

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

Section 501, FEES, is amended as follows:

Subsection 501.3 is amended to read as follows:

501.3 An applicant for Department approval of a soil erosion and sediment control plan shall pay the fees in Table 1 for Department services at the indicated time, as applicable:

Table 1. Fees for Soil Erosion and Sediment Control Plan Review

Payment Type	Payment Requirement	Fees by Land Disturbance Type		
		Residential	All Other	
		≥ 50 ft² and < 500 ft²	≥ 50ft² and < 5,000 ft²	≥ 5,000 ft²
Initial	Due upon filing for building permit	$51.61	$449.04	$1,104.52
Final • Clearing and grading > 5,000 ft² • Excavation base fee • Excavation > 66 yd³ • Filling > 66 yd³	Due before building permit is issued	n/a		$0.15 per 100 ft²
		n/a	$449.04	
		$0.10 per yd³		
		$0.10 per yd³		
Supplemental	Due before building permit is issued	$103.23	$103.23	$1,032.26

Subsection 501.4 is amended to read as follows:

501.4 An applicant for Department approval of a Stormwater Management Plan (SWMP) shall pay the fees in Table 2 for Department services at the indicated time, as applicable:

Table 2. Fees for Stormwater Management Plan Review

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≥ 5,000 ft² and ≤ 10,000 ft²	> 10,000 ft²
Initial	Due upon filing for building permit	$3,406.47	$6,296.82
Final	Due before building permit is issued	$1,548.40	$2,477.44
Supplemental	Due before building permit is issued	$1,032.26	$2,064.53

Subsection 501.6 is amended to read as follows:

501.6 An applicant shall be required to pay the fees in Table 3 for review of a Stormwater Pollution Prevention Plan only if the site is regulated under the Construction General Permit issued by Region III of the Environmental Protection Agency.

Table 3. Additional Fees

Review or Inspection Type	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
	≤ 10,000 ft²	> 10,000 ft²
Soil characteristics inquiry	$154.84	
Geotechnical report review	$72.26 per hour	

Pre-development review meeting	No charge for first hour $72.26 per additional hour	
After-hours inspection fee	$51.61 per hour	
Stormwater pollution plan review	$1,135.49	
Dewatering pollution reduction plan review	$1,135.49	$2,167.76
Application for relief from extraordinarily difficult site conditions	$516.13	$1,032.26

Subsection 501.7 is amended to read as follows:

501.7 An applicant for Department approval of a SWMP for a project being conducted solely to install a Best Management Practice (BMP) or land cover for Department certification of a Stormwater Retention Credit (SRC) shall pay the fees in Table 4 for Department services at the indicated time, as applicable, except that:

(a) A person who is paying a review fee in Table 2 for a major regulated project shall not be required to pay a review fee in Table 4 for the same project; and

(b) A person who has paid each applicable fee to the Department for its review of a SWMP shall not be required to pay a review fee in Table 4 for the same project:

Table 4. Fees for Review of Stormwater Management Plan to Certify Stormwater Retention Credits

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$593.55	$877.43
Final	Due before building permit is issued	$129.03	$206.45
Supplemental	Due before building permit is issued	$516.13	

Subsection 501.10 is amended to read as follows:

501.10 An applicant for Department approval of a Green Area Ratio plan shall pay the fees in Table 5 for Department services at the indicated time:

Table 5. Fees for Review of Green Area Ratio Plan

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$593.55	$877.43
Final	Due before building permit is issued	$129.03	$206.45

Supplemental	For reviews after first resubmission	$516.13

Subsection 501.11 is amended to read as follows:

501.11 The in lieu fee shall be three dollars and sixty-one cents ($3.61) per year for each gallon of Off-Site Retention Volume (Offv).

Subsection 501.13 is amended to read as follows:

501.13 A person shall pay the fees in Table 6 for the indicated resource before receipt of the resource:

Table 6. Fees for Resources

Paper Copies of Documents	Cost
District Standards and Specifications for Soil Erosion and Sediment Control	$51.61
District Stormwater Management Guidebook	$90.24
District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in)	$25.81

Section 541, SOIL EROSION AND SEDIMENT CONTROL: EXEMPTIONS, is amended as follows:

Subsection 541.1 is amended to read as follows:

541.1 The following land-disturbing activities are exempt from the requirement to comply with the soil erosion and sediment control provisions of this chapter, except as noted below and in Section 540 (Soil Erosion and Sediment Control: Applicability):

(a) For an individual house, townhouse, or rowhouse:

(1) Gardening;

(2) Landscaping;

(3) Repairs;

(4) Maintenance;

(5) Stormwater retrofits, provided that:

(A) The soil allows for percolation; and

(B) The retrofit location is no closer than ten feet (10 ft.) from a building foundation;

(6) Utility service connection, repair, or upgrade;

(b) A project for which the total cost is less than nine thousand two hundred ninety dollars and thirty-eight cents ($9,290.38);

(c) Tilling, planting, or harvesting of agricultural or horticultural crops;

(d) Installation of fencing, a gate, signpost, or a pole;

(e) Emergency work to protect life, limb or property, and emergency repairs, except that the following is not exempted to the extent described:

(1) The land disturbed must still be shaped and stabilized in accordance with the requirements of this chapter;

(2) Generally applicable control measures shall be used; and

(3) A plan shall be submitted within three (3) weeks after beginning the emergency work; and

(f) Activities that disturb less than fifty square feet (50 ft^2).

All persons desiring to comment on the proposed rulemaking should file comments in writing not later than thirty (30) days after publication of this notice in the *D.C. Register*. Comments should be clearly marked "Stormwater Fee and Exemption Inflation Adjustment" and filed with DOEE, Stormwater Management Division, 1200 First Street, N.E., 6th Floor, Washington, D.C. 20002, Attention: Matthew Espie or e-mailed to Matthew.Espie@dc.gov. Copies of the Notice of Proposed Rulemaking may be obtained from DOEE at the same address or at (202) 715-7644.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("the Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following new Chapter 84 (Speech-Language Pathology Clinical Fellows) to Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

This rulemaking will establish regulations for the registration of clinical fellows in speech-language pathology, in accordance with Section 911 of the Act (D.C. Official Code § 3-1209.11 (2016 Supp.)).

Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by adding a new Chapter 84 to read as follows:

CHAPTER 84 SPEECH-LANGUAGE PATHOLOGY CLINICAL FELLOWS

8400 GENERAL PROVISIONS

8400.1 This chapter shall apply to applicants for and holders of a registration to practice as speech-language pathology clinical fellow.

8400.2 Chapters 40 (Health Occupations: General Rules), 41 (Health Occupations: Administrative Procedures), and 79 (Speech-Language Pathology) of this title shall supplement this chapter.

8400.3 Except as provided in § 8400.4, no person may practice as a clinical fellow in speech-language pathology in the District unless duly registered under this chapter.

8400.4 The registration requirement under this chapter shall not be applicable to a clinical fellowship initiated and ongoing as of the effective date of this chapter provided that the clinical fellowship was initiated and conducted in accordance with the

Certification of Clinical Competence standards of the American Speech-Language-Hearing Association (ASHA).

8401 TERM OF REGISTRATION

8401.1 Except as provided otherwise, a registration issued pursuant to this chapter shall expire one (1) year from the date of issuance or on the expiration date shown on the registration.

8401.2 A registration issued pursuant to this chapter shall not be valid for more than eighteen (18) months, unless the Board extends the period for good cause shown. In any event, the clinical fellowship shall be completed within a period of no more than twenty-four (24) months.

8401.3 A registration shall not be issued unless the applicant is seeking to begin the clinical fellowship in speech-language pathology within two (2) years of the conferral of the applicant's qualifying degree. In any event, the clinical fellowship shall be completed within three and a half (3.5) years from the date of conferral of the degree.

8402 EDUCATIONAL REQUIREMENTS

8402.1 To qualify for registration under this chapter, an applicant shall have graduated with a Master's or Doctoral Degree in speech-language pathology from a recognized educational institution whose speech language pathology program is accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology, an accrediting body recognized by the United States Department of Education, or an equivalent accrediting body as determined by the Board.

8403 APPLICATION FOR REGISTRATION

8403.1 An applicant for registration shall submit a complete application in accordance with § 4001 of this title, which shall also include:

(a) Satisfactory evidence of the applicant's graduation with the requisite degree in accordance with § 8402.1;

(b) A notification of clinical fellowship supervision submitted by a speech-language pathologist licensed in the District, meeting the requirement of § 8404.2.

8403.2 A clinical fellow shall notify the Board within ten (10) business days of any change in the supervision, supervisor, or clinical fellowship.

8404 SUPERVISION OF CLINICAL FELLOWS

8404.1 A clinical fellow registered under this chapter may practice only under general supervision of a speech-language pathologist licensed in the District in accordance with Chapter 78 of this title.

8404.2 To qualify as supervisor of a clinical fellow, a speech-language pathologist shall meet the following requirements:

(a) Holds a valid District of Columbia license in speech-language pathology;

(b) Be engaged in a lawful practice of speech-language pathology for a minimum of two (2) years;

(c) Not be the subject of a public disciplinary action by a board or regulating body within the previous two (2) years; and

(d) Not supervise more than three (3) clinical fellows at any given time.

8404.3 A clinical fellow supervisor shall provide:

(a) A minimum of thirty-six (36) hours of supervisory activities during the clinical fellowship, including a minimum of two (2) hours of monitoring activities each month;

(b) Ongoing mentoring, which shall include on-site observations and other mentoring activities; and

(c) Formal evaluations of the clinical fellow's performance of clinical and other related activities.

8405 SCOPE OF PRACTICE

8405.1 The clinical fellowship shall consist of an employment, with or without direct compensation, as a professional in the field of speech-language pathology under general supervision with a minimum of thirty-five (35) hours of work per week. This requirement may also be met with part-time employment as follows:

(a) Fifteen (15) to nineteen (19) hours a week, for a period of eighteen (18) months;

(b) Twenty (20) to twenty-four (24) hours a week, for a period of fifteen (15) months; or

(c) Twenty-five (25) to twenty-nine (29) hours a week, for a period of twelve (12) months.

8405.2 At least eighty percent (80%) of the clinical fellowship shall involve direct client contact, which includes the following:

(a) Assessment, diagnosis, evaluation, and treatment;

(b) Screening;

(c) Habilitation and rehabilitation; and

(d) Activities related to case management.

8405.3 The remaining twenty percent (20%) may be composed of supervised activities such as writing, research or planning.

8405.4 The activities included in a clinical fellowship shall consist of the following:

(a) Conducting evaluations and treatment procedures;

(b) Interpreting test results;

(c) Determining case selections;

(d) Designing treatment programs;

(e) Collecting data and documenting performance;

(f) Maintaining clinical records;

(g) Providing written or oral reports (progress notes, diagnostic reports) regarding patients' or clients' status;

(h) Making referrals; and

(i) Participating in case conferences.

8406 STANDARDS OF CONDUCT

8406.1 A registered clinical fellow shall abide by the Code of Ethics adopted by the American-Speech-Hearing Association (ASHA).

8406.2 A registered clinical fellow shall identify himself or herself as a clinical fellow at all times when providing speech-language pathology services.

8499 DEFINITIONS

8499.1 The following terms and phrases shall have the meanings ascribed:

Applicant – a person applying for a registration to practice as a speech-language pathology clinical fellow under this chapter.

Board – the Board of Audiology and Speech-Language Pathology, established by Section 841 of the Audiology and Speech-Language Pathology Amendment Act of 2006, effective March 6, 2007 (D.C. Law 16-219; D.C. Official Code § 3-1208.41 (2007 Repl.)).

Clinical fellow – a person who is registered pursuant to this chapter and completing the clinical fellowship requirements set forth under 17 DCMR § 7903.

Clinical fellow supervisor – a speech-language pathologist who is the supervisor of a clinical fellow.

Clinical fellowship – a period of supervised and mentored professional experience in the practice of speech-language pathology engaged by a person with a graduate degree in speech-language pathology in order to qualify for independent practice or licensure.

General supervision – supervision in which the clinical fellow supervisor is available to the clinical fellow under supervision, either in person or by a communications device.

Good cause – serious illness of the applicant, the death or serious illness of a member of the applicant's immediate family, or other cause sufficient to the Board.

Supervision – on-site or other personal and direct oversight and involvement of a clinical fellow supervisor in any and all ways that will permit the supervisor to monitor, improve, and evaluate the clinical fellow's performance in professional employment according to the degree of oversight and involvement necessary to support the particular clinical fellow's development in self-recognition of clinical and professional strengths and areas requiring additional development of skills.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Phillip L. Husband, General Counsel, 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 during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays, at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

OFFICE OF RISK MANAGEMENT

NOTICE OF PROPOSED RULEMAKING

The Chief Risk Officer of the Office of Risk Management (ORM), Executive Office of the Mayor, pursuant to the authority set forth in Section 2344 of the District of Columbia Government Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.44 (2016 Supp.)); the Office of Administrative Hearings Establishment Act of 2001 (OAH Act), effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 1-1831.01 *et seq.* (2014 Repl.)); Section 7 of Reorganization Plan No. 1 of 2003 for the Office of Risk Management, effective December 15, 2003; and Mayor's Order 2004-198, dated December 14, 2004; hereby gives notice of proposed amendments to Chapter 1 (Public Sector Workers' Compensation Benefits) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

A new Chapter 1 is adopted in its entirety to replace existing Sections 100-199.

The Director gives notice of his intent to adopt these proposed rules as final in not less than forty-five (45) days following the publication of this notice in the *D.C. Register*.

Chapter 1, PUBLIC SECTOR WORKERS' COMPENSATION BENEFITS, of Title 7 DCMR, EMPLOYMENT BENEFITS, is amended to read as follows:

100 PURPOSE

100.1 The provisions of this chapter are promulgated to implement Title 23 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the Act) (D.C. Law 2-139; D.C. Official Code §§ 1-623.01 *et seq.* (2012 Repl. & 2016 Supp.)), which governs the Public Sector Workers' Compensation Program (the Program).

101 SCOPE

101.1 The Office of Risk Management (ORM) has oversight and administrative responsibility for the Program.

101.2 All employees, contractors, sub-contractors, and agents, acting for or on behalf of the District of Columbia (the District) to implement the Program pursuant to the Act, including third-party administrators, shall comply with these rules.

101.3 Nothing in these rules, or any instructions or attachments related thereto, shall be interpreted as:

(a) Creating an entitlement or property interest in any employee, contractor, sub-contractor, or agent to whom these rules are applicable;

(b) Making any person or entity a third-party beneficiary to any contract with the District or with any of its contractors or sub-contractors;

(c) Establishing a standard of care; or

(d) Limiting the District of Columbia's ability to amend, modify, or rescind these rules, consistent with any applicable law, including the Act and the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code §§ 2-501 *et seq*. (2012 Repl. & 2016 Supp.)), binding case law, existing government contract provisions and modifications, and applicable judgments or settlements.

101.4 These regulations shall apply to all new, pending, and existing claims, whether the injury giving rise to such claim, occurred before or after the date of these rules.

102 FORMS

102.1 Any notices, claims, requests, applications, or certificates that the Act or this chapter requires to be made shall be on approved forms.

102.2 All approved forms shall be obtained from the Program.

102.3 The following forms are approved:

(a) Form A-1 – Employee Request for Calculation and Certification of Award;

(b) Form 1 – Employee's Notice of Injury / Claim for Continuation of Pay;

(c) Form CA1 – Request to Reinstate COP;

(d) Form 2 – Employing Agency's Report of Injury / Response to COP Request;

(e) Form CA2 – Election of COP Charge Back;

(f) Form 3 – Physician's Report;

(g) Form 3RC – Annual Medical Recertification;

(h) Form 3A – Employee Statement of Medical History;

(i) Form CA3 – Employing Agency Report of Return to Work;

(j) Form 4 – Employee Authorization for Release of Medical Records;

(k) Form 5 – Employee Authorization for Release of Earnings and Tax Records;

(l) Form 6 – Employee Authorization for Release of PSWCP Records;

(m) Form 7 – Employee Request for PSWCP File;

(n) Form CA7, Part A – Employee Claim for Compensation;

(o) Form CA7, Part B – Employing Agency Statement;

(p) Form 8 – Employee Report of Earnings;

(q) Form 9 – Employee Application for Hearing;

(r) Form CA10 – Request for Leave Restoration;

(s) Form 10 – Agreement to Off-set;

(t) Form 11 – Employee Request for Travel Reimbursement;

(u) Form 12 – Employee Claim for Permanent Disability Compensation;

(v) Form 12A – Employee Request for Hearing on Permanent Disability;

(w) Form M1 – Itemization of Professional Services of Medicinal Drugs;

(x) Form M2 – Itemization of Hospital Charges;

(y) Form M3 – Request to Change Treating Physician; and

(z) Form M4 – Request for Pre-authorization of Medical Procedure.

102.4 Nothing in this section shall be construed to limit the number of forms approved by the Program.

103 INFORMATION IN PROGRAM RECORDS

103.1 All records relating to claims for benefits, including copies of such records maintained by an Employing Agency, are considered confidential and may not be released, inspected, copied, or otherwise disclosed except as permitted by the Freedom of Information Act (D.C. Official Code §§ 2-531 *et seq.* (2012 Repl.)), and in accordance with a signed Form 6, Employee Authorization for Release of

PSWCP Records.

(a) Charges for services rendered under this section shall be governed under 1 DCMR § 408.

(b) This section shall not apply to a claimant's or claimant's representative's request for files.

103.2 A claimant or claimant's representative seeking copies of or an appointment to review his or her official PSWCP file shall complete and submit Form 7 to the Program. A claimant seeking copies of PSWCP–related documents in the custody of the Employing Agency should follow the procedures established by that agency.

103.3 The Program shall provide the claimant with access to his or her PSWCP file within five (5) business days after a request for copies or to review the file is made at a mutually convenient time. Claimant shall be entitled to one (1) set of copies of the documents in the file in electronic format or hard copy. Additional electronic or hard copies of documents in the file made in the same year shall be provided at the cost of five cents per page.

103.4 While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules contained in § 103 of this chapter.

103.5 No employing agency has the authority to issue determinations with respect to requests for the correction or amendment of records contained in or covered by the Program. That authority is within the exclusive control of the Program. Thus, any request for correction or amendment received by an employing agency must be referred to the Program for review and decision.

104 NOTICE OF INJURY; EMPLOYEE OR REPRESENTATIVE ACTION

104.1 An employee shall give written notice of an injury or recurrence of disability, or an employee's representative shall give notice of an employee's death, to the employee's immediate supervisor within thirty (30) days of the injury, recurrence of disability, or death pursuant to Section 2319 of the Act and this chapter.

104.2 Notice shall be effected upon the immediate supervisor's receipt of a completed Form 1, Form 4, and Form 5 within thirty (30) days of the injury, recurrence of disability or death, or within such greater period permitted under Section 2319 of the Act or § 104.6 of this chapter.

104.3 Form 1 shall:

(a) Be in writing;

(b) State the name and address of the employee;

(c) State the time, date, and location where, the injury, recurrence of disability or death occurred;

(d) Describe the activities the employee was engaging in at the time of the injury or recurrence of disability;

(e) State the cause, mechanism and nature of the injury, or if a recurrence of disability, the causal relationship to the original injury, or in the case of death, the employment factors believed to be the cause;

(f) State the employee's official job title, grade and step, duties, shift, number of hours scheduled to work per day, and days scheduled to work per week;

(g) State the employee's benefits deductions, if any, as listed in § 128 of this chapter;

(h) State whether injury was caused by a third party; and

(i) Be signed by, and contain the address of, the individual giving the notice.

104.4 The employee or employee's representative shall complete and submit:

(a) Form 4 – Employee Authorization for Release of Medical Records; and

(b) Form 5 – Employee Authorization for Release of Earnings.

104.5 "Actual knowledge" under Section 2319(b)(1) of the Act means, within thirty (30) days of the injury, that:

(a) The employing agency prepared a written report in the regular course of duty that met the requirements of Sections 2319(a)(5), 2319(a)(6) and 2319(b)(1) of the Act; or

(b) The Program is in possession of a written report by the employing agency prepared in the regular course of duty, that meets the requirements of 2319(a)(5), 2319(a)(6), and 2319(b)(1) of the Act.

104.6 Exceptions for providing timely adequate notice under Section 2319(b)(2) of the Act may be granted only where the Chief Risk Officer or his designee finds a satisfactory reason the notice could not be given.

104.7 Notice of aggravated injury shall be provided pursuant to §§ 104.1 through 104.6

of this chapter within thirty (30) days from the discrete event or occurrence that aggravated, worsened or exacerbated the employee's pre-existing disease, illness or condition.

104.8 Notice of recurrence of disability shall be provided pursuant to §§ 104.1 through 104.6 of this chapter within thirty (30) days from the date of recurrence of disability.

104.9 Notice of latent disability shall be provided pursuant to §§104.1 through 104.6 of this chapter within thirty (30) days of the earlier of:

(a) The date on which the employee first sought medical attention for the employee's condition and was aware or, by the exercise of reasonable diligence should have been aware, of the causal relationship between the claimant's condition and employment, whether or not the employee ceased work; or

(b) The date on which the employee became disabled and was aware or, by the exercise of reasonable diligence should have been aware, of the causal relationship between the claimant's disability and employment.

105 NOTICE OF INJURY, DISEASE OR DEATH; EMPLOYING AGENCY ACTION

105.1 In accordance with Section 2320 of the Act, the immediate supervisor, shall report by telephone or electronic mail to the Program any injury which results in an employee's death or probable disability. Claims shall be reported to the Program by calling the phone number or sending an electronic mail to the address for this purpose that is published on ORM's website.

105.2 The immediate supervisor shall make an initial report of injury to ORM by telephone or electronic mail within twenty-four (24) hours of the incident, injury, death, or notice by employee, whichever occurs earlier.

105.3 No later than three (3) days after receipt of Form 1 from the employee, the immediate supervisor shall complete Form 2 and return it to the Program by electronic mail with the employee's Form 1.

105.4 The immediate supervisor shall supply all information requested by the Program.

105.5 Form 2, the Employing Agency's Report of Injury / Response to COP Request, shall contain the following information:

(a) The name and address of the employer;

(b) The name and address of the employee;

(c) The year, month, day, and hour when the injury or death occurred;

(d) The name and telephone number of the employee's immediate supervisor;

(e) The employee's position and duties at the time of the injury or death;

(f) The employee's shift and wage or base salary information;

(g) The start date of the employee's employment;

(h) The location of the incident;

(i) A description of the events which resulted in the death, injury, or disease;

(j) The type of injury;

(k) The body parts affected;

(l) The identity of any witnesses to the events;

(m) Whether medical treatment was sought or provided;

(o) Whether the immediate supervisor or anyone witnessed or was present during the incident;

(p) Whether the employee reported the incident or injury, and to whom;

(q) Whether an incident report was prepared in connection with the injury or death;

(r) The nature of the injuries the employee complained of;

(s) The period of time the employee has been absent from work;

(t) Whether the employee was in the performance of duty at the time of injury or death;

(u) A description of the events which resulted in the death, injury, or disease;

(v) A copy of the employee's official position description and all incident reports; and

(w) Whether the employing agency controverts the employee's request for continuation of pay pursuant to § 110 of this chapter.

105.6 The immediate supervisor shall complete and submit supplemental reports to the Program as requested. The supplemental reports shall contain, but not be limited to:

(a) Statements from witnesses confirming or refuting the employee's allegations concerning the accident or injury;

(b) Statements, when requested, to give additional details of the accident or incident;

(c) Statements regarding whether the employee, to the immediate supervisor's knowledge, had a similar injury or incident prior to the alleged injury, and if so, full details of the prior injury or incident and associated medical reports; and

(d) Statements of other injuries or incidents of a similar character and the full details.

105.7 The immediate supervisor shall complete and return to the Program Form CA-3, Employing Agency Report of Return to Work on day fourteen (14) and the last day of COP, as provided at Section 2318(b)(2) of the Act.

106 NOTICE OF INJURY; PSWCP ACTION

106.1 Once the Program is notified of an employee's injury or death, the Program shall forward by first-class mail or at the request of the claimant, electronic mail, the forms for making a claim for compensation benefits to the employee or the employee's representative for review, revision, and execution. The Program's failure to provide claimant with the requisite forms pursuant to this subsection shall not be prima facie evidence of good cause for a delay in submitting a claim.

107 CONTINUATION OF PAY (COP), ELIGIBILITY

107.1 To be eligible for COP, an employee must:

(a) Experience a traumatic injury;

(b) Be medically unable to work due to the traumatic injury; and

(c) File a notice of injury and assert a claim for COP within thirty (30) days of a traumatic injury.

107.2 Employees within the meaning of Section 2301(1)(B) and (C) of the Act are not eligible for COP or deductions under § 128 of this chapter, unless the employee is also an employee within the meaning of Section 2301(1)(A) of the Act.

107.3 The term "day(s)" for the purpose of Section 2318(b) of the Act means calendar day(s).

108 COP, EMPLOYEE'S RESPONSIBILITIES

108.1 To file a claim for COP, the employee or employee's representative must comply with § 104 of this chapter and complete the indicated portion for COP as soon as possible, but no later than thirty (30) days after the traumatic injury and

(a) Submit completed Form 1, Form 3, Form 3A, Form 4, and Form 5 to the immediate supervisor, timekeeper of employing agency, and the Program;

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the immediate supervisor, timekeeper of employing agency, and the Program within ten (10) calendar days after filing the claim for COP;

(c) Cooperate with the Program in developing the claim;

(d) Ensure that the treating physician specifies work limitations and provides the information to the immediate supervisor, timekeeper for the employing agency, and the Program within ten (10) calendar days after filing the claim for COP; and

(e) Provide to the treating physician a description of any specific alternative positions offered the employee within three (3) days of the offer, and ensure that the treating physician responds promptly to the employing agency and the Program, with an opinion as to whether and how soon the employee could perform that or any other specific position.

108.2 An employee's COP status shall not be construed to preclude the employee from filing a claim for compensation pursuant to § 115 of this chapter, provided that the medical evidence demonstrates that the disability is expected to continue beyond twenty-one (21) days (unless the employee is hired before January 1, 1980, then beyond forty-five (45) days).

109 COP, EMPLOYING AGENCY'S RESPONSIBILITIES

109.1 Once the employing agency learns of a traumatic injury sustained by an employee, it shall:

(a) Provide Form 1, Form 3, Form 3A, Form 4, and Form 5 to the employee or employee's representative;

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability;

(c) Inform the employee of any decision to controvert COP, and the basis for doing so; and

(d) Review employee's completed Form 1, Form 3, Form 3A, Form 4, and Form 5 and complete Form 2 and transmit all Forms, along with all other available pertinent information, (including the basis for any controversion), to the Program within three (3) business days after receiving the completed Form 1, Form 3, Form 3A, Form 4 and Form 5 from the employee.

109.2 An employing agency that learns of a recurrent disability arising out an injury for which a claim has already been accepted shall place the employee on COP status if the employee has any time remaining from the last time the employee was on COP status for the same injury.

109.3 An employing agency's failure to provide claimant with the requisite forms as outlined in § 109.1 shall not be prima facie evidence of good cause for a delay in submitting a claim for compensation under Section 2321 of the Act.

110 CONTROVERSION OF COP

110.1 COP shall not be furnished if controverted. COP may be controverted in the following situations:

(a) When the traumatic injury occurred off the employing agency's premises and the employee was not in the course of employment. For the purpose of this section, course of employment means acting in furtherance of the scope of the employing agency;

(b) The employee was not in the course of employment;

(c) When the traumatic injury was caused by the employee's willful misconduct, when the employee intended to bring about the injury or death on himself or herself or another person, or when the employee's intoxication was the cause of the injury;

(d) When the traumatic injury does not prevent the employee from working;

(e) When the employee was not in active pay status at the time of traumatic injury (for example, in the case of leave without pay or absence without

official leave);

(f) When the stoppage of work first occurs thirty-one (31) days or more after the date of injury;

(g) When the employee initially reports the injury after termination of employment;

(h) When the Program denies the compensation claim;

(i) When the disability was not caused by a traumatic injury;

(j) No notice was provided pursuant to 2319 of the Act;

(k) When the employee fails to comply with §§ 107 and 108 of this chapter;

(l) If the employee is not eligible for COP;

(m) When the employee fails to return to work, when offered alternative work that accommodates any limitations arising out of the disability; or

(n) When the medical evidence does not support the claim for COP.

110.2 If any provisions of § 110.1 apply, the employing agency may controvert COP by completing the indicated portion of Form 2 and submitting detailed information in support of the controversion to the Program. The employing agency may rely on information submitted by the employee or obtained through investigation.

110.3 The employing agency may controvert a claim for COP for up to one (1) year after the claim is filed.

111 DETERMINATION OF COP

111.1 Where the employee's absence from work due to a traumatic injury is twenty-one (21) days (unless the employee is hired before January 1, 1980, then forty-five (45) days) or less, the final determination on entitlement to COP rests with the employing agency.

111.2 Where the employee's absence from work due to a traumatic injury is over twenty-one (21) days (unless the employee is hired before January 1, 1980, then forty-five (45) days) and the employee has filed a claim for compensation, the final determination on entitlement to COP rests with the Program.

111.3 Nothing in this chapter shall be construed to preclude the Program from controverting COP independent of the employing agency's action or inaction.

111.4 COP shall continue for twenty-one (21) days (unless the employee is hired before January 1, 1980, then forty-five (45) days), unless the claim for COP is controverted, or the claim for compensation is accepted or denied by the Program.

111.5 The employing agency and/or Program's decision not to controvert COP and the Program's decision not to uphold controversion does not create a presumption, nor shall it be evidence that the injury is compensable under this chapter or the Act.

112 CALCULATION OF COP

112.1 An employee shall use sick, annual, or other available leave during the first three (3) days after making a claim for COP, unless the claim for COP is accepted and the disability:

(a) Exceeds fourteen (14) calendar days; or

(b) Is followed by permanent disability.

112.2 The first three (3) days under § 112.1 means the first three (3) days during which the employee was scheduled to work but was absent due to disability that was caused by traumatic injury.

112.3 If §§ 112.1(a) or (b) apply, then those first three (3) days of temporary disability shall count towards Continuation of Pay as provided in Section 2318(b)(2) of the Act.

112.4 Subject to the provisions at §§ 112.1 to 112.3 and 113.2, the Employing Agency shall furnish continuation of pay to the employee as follows:

(a) To employees hired before January 1, 1980, for a period not to exceed forty-five (45) consecutive days or until the Program has either accepted or denied the employee's claim for compensation, whichever occurs first; and

(b) To all other employees for a period not to exceed twenty-one (21) consecutive days or until the Program has either accepted or denied the employee's claim for compensation, whichever occurs first.

113 TERMINATION OF COP

113.1 COP shall terminate:

(a) Pursuant to Section 2318(b)(2) of the Act;

(b) For the period in which it is controverted by the Agency or the Program; or

(c) Upon acceptance or denial of an employee's claim for compensation benefits.

113.2 If COP has been paid to an employee whose claim for compensation is subsequently and finally denied or whose COP is later controverted pursuant to § 110 of this chapter, the employing agency shall forward Form CA2 to the employee for the employee to elect whether the COP payments made shall be charged to the employee's sick or annual leave. The employee shall be required to fill out and return the form to the employing agency within thirty (30) days. If the employee has insufficient sick or annual leave, the payments under this chapter shall be treated as the employee's debt to the District government under Section 2903 of the Act.

113.3 Once the employee returns Form CA2 to the employing agency, it shall forward it to the Office of Pay and Retirement Services in the Office of the Chief Financial Officer for processing.

113.4 If the employee does not return the form to the employing agency within thirty (30) days, the employing agency shall charge the COP payments to sick leave or, if the employee does not have any available sick leave, to annual leave. If the employee has no leave available, the employing agency shall treat the COP payments as the employee's debt to the District government according to Section 2903 of the Act.

113.5 If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the COP due under Section 2318(b)(2) not used during the initial period of disability where:

(a) The employee has already made a claim for COP within (thirty) 30 days of the injury;

(b) The Program has not accepted or denied the claim for disability compensation;

(c) The employee completes Form CA1 and elects to receive COP;

(d) The disability recurs and the employee stops work within twenty-one (21) or forty-five (45) calendar days (whichever is applicable under Section 2318 of the Act) of the time the employee first returned to work following the initial period of disability; and

(e) Pay has not been continued for the permitted period under Section 2318 of the Act.

114 LEAVE REINSTATEMENT

114.1 Once an employing agency accepts a claim for COP or the Program accepts a claim for indemnity compensation, an employee shall not be required to use his or her sick or annual leave while the claimant is not working as a result of the compensable injury, except as provided in § 112 of this chapter.

114.2 An employee whose claim for COP or indemnity compensation is accepted may have his or her leave hours reinstated in the following circumstances:

(a) The employee's disability exceeds fourteen (14) days or is followed by permanent disability and the claimant used three (3) days of sick, annual, or other leave during the first three (3) days of the injury, pursuant to § 112 of this chapter; or

(b) The employee used sick, annual, or other leave after the continuation of pay period and before the employee's claim was accepted.

114.3 An employee who has used leave prior to the Program's acceptance of his or her claim for indemnity compensation may apply for leave reinstatement under this section.

114.4 An employee who is eligible for leave restoration under this section may request for leave restoration by completing Form CA10 and submitting the form to:

(a) The employing agency within fourteen (14) days of approval for COP, if the employee's disability does not exceed twenty-one (21) days; or

(b) The Program within fourteen (14) days of acceptance of the claim for indemnity benefits, if the employee's disability exceeds twenty-one (21) days.

114.5 Once the Program determines that a claimant is eligible to have leave reinstated pursuant to § 114.2, sixty-six and two-thirds percent (66 $^{2}/_{3}$%) or, if the claimant is entitled to augmented pay pursuant to Section 2310 of the Act, seventy-five percent (75%), of the claimant's leave will be reinstated upon the acceptance of the claim, provided that Claimant agrees to:

(a) Off-set his or her award for retroactive benefits by the total amount needed to reinstate his or her leave;

(b) Pay, if any, the difference between sixty-six and two-thirds percent (66 $^{2}/_{3}$%) or, if the claimant is entitled to augmented pay pursuant to Section 2310 of the Act, seventy-five percent (75%), and one hundred percent (100%) of the value of the leave; and

(c) Indicate on Form 10 the employee's consent to the off-set of benefits for reinstatement of leave and returning it to the Program within seven (7) days of receiving the Program's determination made pursuant to §114.5.

114.6 Once the Program receives Form 10, the Program shall forward the form to the Office of Pay and Retirement Services in the Office of the Chief Financial Officer for processing.

115 CLAIM FOR PSWCP BENEFITS; EMPLOYEE OR REPRESENTATIVE ACTION

115.1 The employee or employee's representative shall provide all information required by the Program to make a determination on the claim.

115.2 A claim for disability compensation is deemed filed only upon the Program's receipt of the following completed documents:

(a) Form CA7, Part A – Claim for Compensation (Employee Statement);

(b) Form 3 – Physician's Report of Employee's Injury;

(c) Form 3A – Employee's Statement of Medical History;

(d) Form 4 – Employee Authorization for Release of Medical Records;

(e) Form 5 – Employee Authorization for Release of Earnings; and

(f) Form CA7, Part B – Claim for Compensation (Employing Agency Statement).

115.3 Forms shall be deemed incomplete for the purpose of § 115.2, if any information is omitted or incomplete upon submission.

115.4 The employee or employee's representative shall complete Form CA7 Claim for Compensation, Part A (Employee Statement), which shall:

(a) Be in writing;

(b) State the name and address of the employee;

(c) State the time, date and location where, the injury or death occurred;

(d) Describe the activities the employee was engaging in at the time of the injury;

(e) State the cause, mechanism and nature of the injury, or if a recurrence of disability, the causal relationship of the recurrence to the original injury, or in the case of death, the employment factors believed to be the cause;

(f) State the employee's official job title, grade and step, duties, shift and number of hours scheduled to work per day;

(g) State the employee's benefits deductions, if any, as listed in § 128 of this chapter;

(h) State whether a claim has been made against a third party as a result of the injury, disease, or death;

(i) If hired prior to January 1, 1980, or applying for death benefits, state the names, relationship, and birth dates of employee's dependents, and the amount of support paid for dependents not living with the employee;

(j) Be signed by, and contain the address of, the individual giving the notice;

(k) Have attached proof of dependency, if applicable, for example, tax returns, birth certificates and court orders;

(l) Have attached a copy of the employee's last pay stub; and

(m) In the case of the death of an employee, the employee's representative shall file the Form CA7 and provide documentation establishing the relationship to the deceased. Documentation may include:

(1) A certified copy of a birth certificate;

(2) A certified copy of a marriage license;

(3) Documentation of the executor of the employee's estate; or

(4) Other documentation satisfactory to the Program.

115.5 The employee or employee's representative shall complete and submit:

(a) Form 4 – Employee Authorization for Release of Medical Records; and

(b) Form 5 – Employee Authorization for Release of Earnings and Tax Records.

115.6 The employee or employee's representative shall have the employee's health care professional complete and return to the Program a Form 3, Physician's Report of Employee's Injury, which shall comport with the requirements of §§ 125.2 and 137.3.

115.7 The employee or employee's representative shall complete, sign, notarize and return to the Program, Form 3A, Employee's Statement of Medical History, which shall:

(a) Describe any and all accidents the employee was involved in, or physical disability or illness the employee suffered, prior or subsequent to the reported injury;

(b) For each accident, illness or disability, identify the time, date, circumstance and location of the accident, the parties involved, the disposition of any subsequent trial or legal action(s), any injuries relating from the previous accident(s), and the hospital, medical facilities, doctors, physicians, dentists, or any other individual that treated any injury;

(c) Identify the physician who treated the employee and the approximate dates of such treatments, if employee alleges aggravation of a previous injury or condition;

(d) Describe in detail each instance during the past five (5) years that employee has been absent from employment due to illnesses or injuries, including the nature and dates of such injuries or illnesses. The employee or employee's representative shall specify the date and time for all absence from employment due to injury claimed; and

(e) Describe any similar condition, disability, injury that occurred prior to the alleged injury or any pre-existing condition that may be related to the condition or disability caused by the injury.

115.8 The employee or employee's representative shall submit proper medical documentation as requested by the Program to document the employee's ongoing injury and substantiate the employee's absence from work to justify continued payment of indemnity compensation. These documents shall include, but are not limited to, the following:

(a) Statements and medical documentation regarding any similar condition, disability, injury that occurred prior to the alleged injury or any pre-existing condition that may be related to the injury;

(b) Statements and medical documentation regarding any other injury or accident of a similar character; and

(c) A written statement showing why there was a delay in seeking medical care, if applicable.

115.9 The employee or employee's representative shall complete the applicable section

of Form CA7, Part B and provide a copy to the Program and the original to the immediate supervisor for review and signature.

115.10 The employee or employee's representative shall make supplemental reports when required by the Program or when there is any change in information provided to the Program.

115.11 An employee seeking to supplement his or her original claim to add additional disability or conditions arising out of the same incident, but not already reported, shall:

(a) File a supplement to his or her claim pursuant to §§115.1 through § 115.10;

(b) Include a notarized and sworn affidavit explaining the cause for delay in reporting the additional disability or condition; and

(c) Report the additional disability or condition within two (2) years of the original injury.

115.12 Claims for aggravated injury shall be filed pursuant to Section 2321 of the Act and this §§115.1 through 115.10 of this chapter within two (2) years from the discrete event or occurrence that aggravated, worsened or exacerbated the employee's pre-existing disease, illness or condition.

115.13 Claims for latent disability, where the claimant shall be filed pursuant to Section 2322 of the Act and §§115.1 through 115.10 of this chapter within two (2) years of the earlier of:

(a) The date on which the employee first sought medical attention for the employee's condition and was aware or, by the exercise of reasonable diligence should have been aware, of the causal relationship between the claimant's condition and employment, whether or not the employee ceased work; or

(b) The date on which the employee became disabled and was aware or, by the exercise of reasonable diligence should have been aware, of the causal relationship between the claimant's disability and employment.

115.14 Claims for the recurrence of disability shall include medical evidence to establish that the recurrence is for the same condition and injury for which the claim was originally accepted and be filed pursuant to §§ 115.1 through 115.10 within one (1) year after the date indemnity compensation terminates or, if such termination is appealed, within one (1) year after the date of the final order was issued by a judicial entity, unless

(a) The inability to work occurred because a modified duty assignment made specifically to accommodate the employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

115.15 All other claims for compensation for disability or death arising out of a single injury shall be filed within two (2) years after the injury or death pursuant to Section 2321 of the Act and § 115 of this chapter.

116 CLAIM FOR PSWCP BENEFITS; EMPLOYING AGENCY ACTION

116.1 The employing agency shall supply all information requested by the Program.

116.2 No later than twenty-four (24) hours after the employee's return to work, the employing agency shall complete and return Form CA3 – Employing Agency Report of Return to Work to the Program.

117 CLAIM FOR PSWCP BENEFITS; PROGRAM ACTION - INVESTIGATIONS

117.1 The Program shall conduct any investigation that is necessary to make an initial determination (ID) of eligibility for benefits under this chapter, including directing claimants for Additional Medical Examinations pursuant to Section 2323 of the Act.

117.2 Claimants are required to cooperate with all aspects of the Program's investigation, including attending physical examinations, and providing documentation of all medical services, earnings information, and dependent and marital status.

118 SUBPOENAS

118.1 The Program may issue subpoenas as part of its authority to conduct any investigation pursuant to this chapter.

118.2 Subpoenas issued pursuant to investigations authorized under this chapter may be issued for any of the following purposes:

(a) To compel the attendance of employees, claimants, medical providers or other witnesses within a radius of one hundred miles of the District of Columbia at interviews, alive and well checks, depositions, settlement conferences, or any other inquiry being held for the purposes of obtaining information about a claim;

(b) To administer an oath or affirmation and to examine employees, claimants, medical providers or other witnesses; or

(c) To require the production of books, papers, documents, and other evidence.

118.3 A subpoena issued under this section shall provide notice to the recipient of the legal authorization for the subpoena, the testimony or evidence being sought by the Program, the deadline for providing the testimony or evidence, and the telephone number and mailing address of the authorizing official issuing the subpoena.

118.4 Subpoenas may be issued pursuant to this section only upon written authorization of the Chief Risk Officer, as attested to by the signature of the Chief Risk Officer, or his authorized designee.

118.5 Subpoenas issued pursuant to this section shall be enforced by the Superior Court of the District of Columbia.

119 EVIDENCE AND BURDEN OF PROOF; CLAIMS

119.1 For initial claims, the forms identified in § 115 of this chapter describe the basic evidence required. The Program may send a request for additional evidence to the claimant and to his or her representative, if any; however the burden of proof still remains with the claimant. Evidence should be submitted in writing. The evidence submitted must be reliable, probative, and substantial. Each claimant seeking compensation must establish, by a preponderance of the evidence, the following:

(a) The claim was filed within the time limits specified or otherwise permitted by the Act;

(b) The injured person was, at the time of injury, an employee within the meaning of 2301(1) of the Act;

(c) The fact that an injury, disease, or death occurred;

(d) The injury, disease or death occurred while the claimant was in the performance of duty;

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of District government employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship; and

(f) If the claimant seeks indemnity compensation, the nature, extent, and duration of his or her inability to work and its causal connection to the work related injury, disease, or death.

119.2 For a claim of recurrence of disability, the employee has the burden of establishing by a preponderance of the evidence that

(a) The claim was timely filed within the time limits prescribed in this chapter;

(b) That the disability is causally related to an original injury that has been accepted by the Program; and

(c) If the claimant seeks indemnity compensation, the nature and extent of his or her inability to work.

119.3 In seeking to file a supplemental claim pursuant to § 115.11, the claimant must establish the following:

(a) By a preponderance of the evidence:

(1) Good cause for the delay in reporting;

(2) That the additional disability or condition is reported within two (2) years of the original injury;

(3) That the additional disability or condition is compensable under Section 2302 of the Act;

(4) If the claimant seeks indemnity compensation, the nature and extent of his or her inability to work and its causal connection to the work related injury, disease, or death; and

(5) That the additional disability or condition is directly related to the original injury for which the claim was initially accepted.

119.4 For claims for permanent disability, including those filed pursuant to Section 2306a of the Act, the claimant must establish, by a preponderance of the evidence, that he or she has reached maximum medical improvement and suffers a permanent impairment that is compensable pursuant to Section 2307 of the Act.

119.5 In all claims, the employee is responsible for submitting, or arranging for submittal of, a medical report from the treating physician. For indemnity compensation benefits, the employee must also submit medical evidence showing that the condition claimed is disabling and the nature and extent of the disability to justify continued payment of indemnity compensation.

120 DECISIONS ON ENTITLEMENT TO BENEFITS;

120.1 The Program shall make an Initial Determination (ID) on a newly filed claim within thirty (30) days of the date the claim was first filed with the Program.

120.2 The ID shall contain findings of fact and a statement of reasons. It shall be accompanied by information about the claimant's appeal rights, which may include the right to a hearing, and/or a review by the Department of Employment Services, Office of Hearings and Adjudication or Office of Administrative Hearings, as provided in § 155 of this chapter.

120.3 In making an ID, the Program shall consider all relevant evidence in the claim file, including all relevant medical evidence, and issue awards for or against medical, temporary or permanent disability benefits, where appropriate.

120.4 An ID may deny benefits, in whole or in part, based upon the following factors:

(a) The employee's lack of a compensable injury pursuant to Section 2302 of the Act;

(b) Insufficient proof;

(c) The employee's failure to cooperate with treatment or rehabilitation recommendations or with Program requirements for providing information; or

(d) Any other grounds, such as fraud, that reasonably demonstrate, that the employee is not entitled to benefits under the Act.

120.5 The ID is effective unless the employee succeeds on a request for hearing as provided in this chapter, or unless one (1) of the following circumstances occurs:

(a) The Program decides that the ID was issued in error;

(b) The Program receives additional information after issuance of the ID that requires the Program to issue an amended ID;

(c) The Program issued the ID based on fraudulent information provided by the employee;

(d) The Program issued the ID under any other circumstance that would deem the ID legally invalid; or

(e) The Program accepts a supplemental claim filed pursuant to §115.11.

120.6 If one (1) of the circumstances in § 120.5 occurs, the Program shall issue an amended ID.

120.7 The Program shall issue an amended Initial Determination (ID), if the claimant files a supplemental claim pursuant to § 115.11 and the Program determines that a claimant is entitled to benefits for the additional disability or condition pursuant to § 119.3.

120.8 The Program shall issue a Determination of Recurrent Disability (DRD) pursuant to §§ 120.2 through 120.6 if the claimant files a claim for recurrence of disability pursuant to § 115.14 and the claimant meets the requirements of § 119.2.

120.9 The Program shall issue an Amended ID or DRD either awarding or denying the supplemental claim or claim for recurrence of disability, respectively, filed pursuant to §§ 115.11 or 115.14, within thirty (30) days of the Program's receipt of all forms required pursuant to §§115.1 through 115.10 of this chapter.

121 DECISIONS ON ENTITLEMENT TO BENEFITS; ABEYANCE STATUS

121.1 Unless a decision is held in abeyance due to extenuating circumstances, a newly filed claim for benefits shall be deemed accepted by the Program if the Program does not issue findings and an award for or against payment of compensation within thirty (30) days of the date the claim was first filed. A claim shall be deemed accepted only until such time as the Program issues an initial determination (ID), at which time the claim may be denied as though it had never been deemed accepted. This subsection only applies to newly filed claims, including supplemental claims and claims of recurrences of disability.

121.2 When a claim is deemed accepted pursuant to § 121.1 of this chapter, payment of compensation shall become effective on the thirty-first (31st) day after it is filed.

121.3 For purposes of this section "extenuating circumstances" means the Program is unable to make findings of fact in order to accept or deny an award for payment of compensation due to any of the following:

(a) The Program does not have sufficient medical evidence to make a determination;

(b) The employee has failed to cooperate with the Program in the assessment of the claim; or

(c) There is a delay in receiving information from the Employing Agency that is beyond the reasonable control of the Employing Agency.

121.4 If a decision is held in abeyance due to extenuating circumstances, the Program

shall issue a notice prior to the expiration of the thirtieth (30th) day following the filing of the claim stating in detail the reasons for the abeyance. If the notice results from insufficient medical evidence to make a determination, the claimant shall promptly provide the Program with necessary medical records and appear for any additional medical examination requested by the Program.

122 MEDICAL BENEFITS AND SERVICES; GENERAL

122.1 Pursuant to Section 2303(a) of the Act, the District government shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified treating physician, whom the Program considers likely to cure, give relief, reduce the degree or length of injury, or aid in lessening the amount of the monthly compensation.

123 MEDICAL BENEFITS AND SERVICES; EMPLOYEE RESPONSIBILITY

123.1 Payment for medical benefits and services pursuant to Section 2303 of the Act shall only be made, where an employee has complied with §§ 104 and 115 of this chapter and the claim has been accepted by the Program. After a claim is accepted, the Program may reimburse an employee for any out-of-pocket expense paid by the employee for any necessary treatment directly related to the workplace injury.

123.2 In order for the Program to pay for the services provided by a treating physician, the physician must be a member of the Program's panel of treating physicians, except as follows:

(a) An injured employee may, when the employee is first injured, select a non-panel physician to provide medical services, appliances, and supplies if the employee is unable to make an appointment with a panel physician due to the urgency of the need for treatment.

(b) If there is a need for immediate medical treatment and, due to the nature of an injury, and the injured claimant is unable to contact a physician, the injured claimant may seek treatment at an emergency care facility. Notice of the provision of emergency care shall be provided to the Program no later than thirty (30) days after the care is rendered.

123.3 If a claimant decides to receive treatment from a non-panel physician after the Program provides the claimant with a list of panel physicians, the claimant is not entitled to reimbursement for the cost of services provided by the non-panel physician.

123.4 Once a panel treating physician is selected to provide treatment under the Act, a claimant shall not change to another physician or hospital without authorization of

the Program, except in an emergency.

123.5 If the claimant is not satisfied with the medical care provided by a panel physician, claimant shall complete and return Form M3, with justification to the Program. The Program shall permit a change where the Program finds the change to be in the best interest of the claimant.

124 MEDICAL BENEFITS AND SERVICES; PROGRAM RESPONSIBILITY

124.1 The Program shall inform a claimant of the requirements in § 123 of this chapter promptly after acceptance of the claim or notification of injury, and shall provide the claimant with a list of panel physicians who provide the type of treatment needed.

124.2 Physicians shall apply to be members of the panel. The Program shall select members of the panel based on the physicians' likelihood of meeting the goals of § 122.1. The Program may add and remove physicians from the panel at its discretion.

124.3 If the Program decides to remove a physician from the panel of treating physicians, the Program shall give all of the claimants currently being treated by that physician notice of the decision, as well as a list of alternative treating physicians on the panel, thirty (30) days before the physician is removed from the panel.

124.4 Upon a request from the Program, the claimant and panel or non-panel treating physicians shall provide copies of all the claimant's medical records regardless of the source of the record(s) or the medical condition(s) addressed in the records. The Program shall take appropriate steps to ensure that the medical records provided to it are maintained in a confidential manner.

124.5 The Program may require an injured claimant to submit to physical examinations as frequently and at times and places as may be reasonably required to investigate an employee's initial eligibility for benefits under the Act, as provided at § 136 of this chapter.

125 MEDICAL BENEFITS AND SERVICES; TREATING PHYSICIAN RESPONSIBILITY

125.1 After the employee's first appointment with a treating physician, the physician shall file Form 3 or a comprehensive medical report with the Program containing a diagnosis of physical findings or examination, a statement concerning the injury's relationship to employment, the treatment plan, if any, an opinion regarding the employee's prognosis, and nature and extent of disability, within ten (10) business days of an examination of the injured employee.

125.2 The following information shall be included in Form 3 or medical reports from a physician that are used by the Program in connection with an ID, ED, or other Program decision affecting an employee's claim or claimant's benefits:

(a) Date(s) of examination and treatment, if any;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Medical records reviewed;

(f) Diagnosis;

(g) Nature of injury;

(h) Manner and mechanism of injury;

(i) Course of treatment, if any;

(j) Description of any other conditions found that are not due to the claimed injury, including indications of pre-existing conditions that may be the cause of or contribute to any alleged disabling condition;

(k) Treatment given or recommended for the claimed injury or recurrence of disability, if any;

(l) Physician's opinion, with medical reasons and bases, as to the probable cause and mechanism of injury;

(m) In the case of a claimed recurrence of disability, the physician's opinion, with medical reasons and bases, as to causal relationship between the diagnosed condition(s) and the original work-place injury and resulting condition(s);

(n) Nature, extent, and expected duration of disability affecting the employee's ability to work due to the injury;

(o) Prognosis for recovery, including an estimate regarding when the claimant will be able to return to work; and

(p) All other material findings.

125.3 Any physician who continues to treat an injured employee or claimant shall, at no

cost, provide medical reports, treatment records, and bills to the Program, no later than ten (10) days after medical examination or treatment is received.

125.4 All medical providers shall include in each medical report and bill for services rendered under the Act, the code, as published by the American Medical Association (AMA) in the most current edition of the Physicians Current Procedural Terminology (CPT Codes), for detailing the billing of all medical procedures and the codes established by the most recent edition of the International Classification of Diagnosis (ICD) code, as published by the U.S. Department of Health and Human Services, for diagnosing the conditions.

125.5 All medical providers shall provide invoices with Form 3 or medical reports to substantiate payment of bills. All reports shall be typewritten on the medical provider's letterhead and signed and dated by the attending physician and include information required under § 125.2 and adhere to the standards provided at § 137.3.

125.6 To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when the Program first accepted the claim as compensable, whichever is later.

125.7 Fees and other charges for treatment or medical services shall be limited to those that are authorized by the schedule pursuant to § 126.2 or, if not reflected in the schedule, are reasonable and customary charges prevailing in the local medical community as the Program determines.

125.8 The cost of physical examinations ordered by the Program shall be paid by the Program, unless the examination is conducted by a non-panel physician. A panel physician shall not attempt to collect a disputed payment for medical services in connection with a compensable claim under the Act from the injured employee or claimant.

126 MEDICAL BILLS

126.1 Each provider of medical care or services pursuant to the Act shall use a standard coding system for reports and bills generated pursuant to this chapter, in accordance with § 125.4.

126.2 Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Program. This fee schedule shall be based on one hundred-thirteen percent (113%) of Medicare's reimbursement amounts.

126.3 Unless the procedure is needed for emergency care, medical providers shall seek prior authorization in accordance to guidelines to be published by the Program.

126.4 Where a medical provider intends to bill for a procedure where prior authorization is required, that provider must request such authorization from the Program. All medical bills submitted to the Program lacking a required prior authorization will be automatically denied.

126.5 All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 125.2. The Program may withhold payment for services until such report or evidence is provided. The physician or provider shall itemize the charges on Form M1 (for professional services or medicinal drugs dispensed in the office), Form M2 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies) or other forms as warranted and accepted by the Program, and submit the form promptly to the Program.

126.6 No bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by the Program, whichever is later.

127 UTILIZATION REVIEW

127.1 Any medical care or service furnished or scheduled to be furnished under the Act shall be subject to utilization review. The review may be performed before, during, or after the medical care or service is provided.

127.2 A utilization review organization or individual used pursuant to the Act shall be certified by the Utilization Review Accreditation Commission.

127.3 The claimant or the Program may initiate utilization review where it appears that the necessity, character, or sufficiency of medical services is improper or clarification is needed on medical service that is scheduled to be provided.

127.4 The necessity, character or sufficiency of medical services should be reviewed for treatment of the accepted condition(s) only.

127.5 If a review of medical care or a service is initiated under this section, the utilization review organization must make a decision no later than sixty (60) days after the utilization review is requested. If the utilization review is not completed within one hundred-twenty (120) days of the request, the care or service under review shall be deemed approved.

127.6 The report of the review shall specify the medical records considered and shall set forth rational medical evidence to support each finding. The report shall be authenticated or attested to by the utilization review individual or by an officer of

the utilization review organization. The report shall be provided to the claimant and the Program.

127.7 Any decision issued by the utilization review organization under this section shall inform the claimant of his or her right to reconsideration or appeal of the decision.

127.8 A utilization review report which conforms to the provisions of this section shall be admissible in all proceedings with respect to any claim to determine whether medical care or service was, is, or may be necessary and appropriate to the diagnosis of the claimant's injury.

127.9 If the medical care provider or claimant disagrees with the opinion of the utilization review organization or individual, the medical care provider or claimant may submit a written request to the utilization review organization or individual for reconsideration of the opinion.

127.10 The request for reconsideration shall:

(a) Be in writing;

(b) Contain reasonable medical justification;

(c) Provide additional information, if the medical care or service was denied because insufficient information was initially provided to the utilization review organization; and

(d) Be made within sixty (60) calendar days of the claimant's receipt of the utilization review report if the claimant is requesting reconsideration, or within sixty (60) calendar days of the medical provider's receipt of the utilization review report, if the medical care provider is requesting reconsideration.

127.11 Disputes pursuant to Section 2323(a-2)(4) of the Act may be resolved upon an application for a hearing before the OAH within thirty (30) days of the date of the utilization review report or reconsideration decision.

127.12 Requests for a hearing pursuant to § 127.11 of this chapter may be made by the Program, medical provider, or claimant.

127.13 The Superior Court of the District of Columbia may review the OAH's decision without an appeal to the Compensation Review Board. The decision may be affirmed, modified, reversed, or remanded at the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence of the record, pursuant to the District of Columbia Superior Court Rules of Civil Procedure Agency Review.

127.14 The District of Columbia government shall pay the cost of a utilization review if the claimant seeks the review and is the prevailing party.

128 BENEFITS DEDUCTION

128.1 An employee who receives the following benefits on the date that he or she is injured shall continue to receive the following benefits if his or her claim for indemnity compensation is accepted, and the premiums, if any, shall be deducted from the claimant's indemnity compensation payments:

(a) Health care insurance;

(b) Life insurance;

(c) Dental insurance; or

(d) Vision insurance.

128.2 Employees within the meaning of Section 2301(1)(B) and (C) of the Act are not eligible for benefits deduction.

128.3 Benefits recited above shall cease upon termination of employment by the Employing Agency. Thereafter, the claimant shall be entitled to health benefits coverage pursuant to 6-B DCMR § 2130.

128.4 The premiums, if any, shall be paid by the last Employing Agency and shall be the same as any premiums paid for the same benefits by the District for active employees. The premiums paid by claimants under this section shall be the same as any premiums paid for the same benefits by active employees.

128.5 A claimant who wishes to opt out of any of the benefits listed in § 128.1 after he or she begins receiving indemnity compensation may do so by following the policies, procedures, and regulations of the District of Columbia Department of Human Resources.

129 COMPUTATION OF WAGE INDEMNITY; TOTAL DISABILITY

129.1 If the disability is total, subject to the limitations in Section 2306a, the employee's monthly monetary compensation shall be sixty-six and two-thirds percent (66 $^{2}/_{3}$%) of the employee's monthly pay.

129.2 The employee's monthly pay shall be calculated based on the employee's Average Annual Earning (AAE) as follows:

(a) One-twelfth ($^1/_{12}$) of the employee's AAE at the time of injury (or recurrence, if the employee returned to regular, full-time employment for six months or more prior to recurrence).

129.3 Average Annual Earnings (AAE) are determined based on the nature and duration of the employment in accordance with the Act as follows:

(a) Section 2314(d)(1) is used if the employee worked substantially the whole year prior to the injury.

(b) Section 2314(d)(2) is used if the employee did not work substantially the whole year prior to the injury, but would have been employed for substantially a whole year had it not been for the injury.

(c) Section 2314(d)(3) is used if the employee was not employed for substantially the whole year and the employment would not have lasted for substantially the whole of the year.

(d) Section 2314(d)(4) is used when an employee works without pay or nominal pay.

129.4 When determining a pay rate, the criteria listed at § 129.3 should be considered in the order listed, so that only if the method prescribed in Section 2314(d)(1) of the Act cannot be reasonably and fairly applied, should consideration be given to the method stated in Section 2314(d)(2), and so forth.

129.5 Substantially the Whole-Year Employment – Section 2314(d)(1) of the Act – If the claimant worked substantially the whole year prior to the injury and:

(a) Has a fixed Annual Rate of Pay, then the claimant's Average Annual Earnings (AAE) is their Annual Rate of Pay (ARP).

(b) Does not have a fixed ARP, then the claimant's AAE, shall be calculated as follows:

(1) Daily Wage multiplied by three hundred (300), if the employee regularly worked six (6) days per work week;

(2) Daily Wage multiplied by two hundred-eighty (280), if the employee regularly worked five and one-half (5½) days per work week;

(3) Daily Wage multiplied by two hundred-sixty (260), if the employee regularly worked five (5) days per work week;

(4) Daily Wage multiplied by two hundred (200), if the employee regularly worked four (4) days per work week; or

(5) Daily Wage multiplied by one hundred-fifty (150), if the employee regularly worked three (3) or fewer days per work week.

129.6 "Substantially the whole year" under Section 2314 of the Act means the employee worked in the position in which he was employed at the time of the injury for at least eleven (11) out of the immediate twelve (12) months prior to the injury, unless the employee worked in one of the following positions:

(a) Career seasonal employment – This is an arrangement where the employee regularly works just part of a calendar year, usually for the same general period each year and at the same type of job. The employee must have a prior written agreement with the employer to continue seasonal employment from year to year to be considered a career seasonal employee. Such an employee is entitled to receive compensation on the same basis as an employee with the same grade and step who has worked the whole year. An employee should not be considered career seasonal without explicit written documentation by the agency of his or her status.

(b) School year employment – Employees whose employment is limited to school years *(i.e*., teachers, bus drivers) are not considered to fall under the provisions of career seasonal employment as set forth above, but they are considered whole-year employment by nature of the position. Although "substantially the whole year" is normally defined as at least eleven (11) months, in order to determine the average annual earnings for an employee whose employment by nature is governed by school years, consideration must be given to whether the claimant worked substantially the whole actual school year, *i.e*., eleven-twelfths ($^{11}/_{12}$) of the school year, and whether he or she would have been employed for substantially a whole school year had it not been for the injury.

129.7 Concurrent employment can be included in monthly pay determinations made under Sections 2314(d)(1) and (2) of the Act only to the extent that it establishes the ability to work full time, meaning forty (40) hours per week. When a claimant has been employed for forty (40) or more hours per week for substantially the whole year prior to injury, but not all of these hours are with the District government, he or she has demonstrated the ability to work full time and is entitled to compensation at the rate of a regular full-time employee in the same position as follows:

(a) Similar Employment – If a claimant's concurrent employment was similar to his or her District employment, the Program shall combine the actual earnings from District employment with the actual earnings for the similar employment to obtain the average annual pay the employee earned. (The

combination of District and non-District employment hours shall not exceed forty (40) hours per week of employment.) District employment hours shall take precedence in this calculation. This total would be divided by twelve (12) to obtain the monthly pay.

(b) Dissimilar Employment - If a claimant's concurrent employment was dissimilar to his or her District employment and the claimant worked part-time for the District government, the Program shall treat the hours worked at the concurrent employment as a demonstrated ability to work more than part-time. The Program shall compute the claimant's weekly hours worked by adding the total number of hours worked at the District and non-District employment. The total hours worked, not to exceed forty (40) hours per week, would be multiplied by the hourly rate of pay the claimant received for his or her District employment to compute the claimants weekly pay. The weekly pay would be multiplied by fifty-two (52) and divided by twelve (12) to obtain the monthly pay.

(c) For the purpose of concurrent employment, attending school and sporadic employment does not demonstrate the ability to work more than part time.

(d) Pay rates based on full-time 40-hour per week employment may not be expanded to include pay earned in any other concurrent employment, even if that employment is similar to the District duties. Pay rate based on full-time career seasonal or school year employment may not be expanded to include the pay earned "off season" or "off school year."

129.8 Anticipated Whole-Year Employment – Section 2314(d)(2) of the Act – If the claimant did not work substantially the whole year, but the position was one which would have afforded employment for substantially a whole year, the claimant's average annual earnings are determined as described at § 129.5 and § 129.7 shall also apply.

129.9 Irregular Employment – Section 2314(d)(3) of the Act – If the claimant did not work substantially the whole year and the position was not one which would have afforded employment for substantially the whole year (for example - intermittent, non-career seasonal, on-call, and discontinuous work), the claimant's AAE are determined as follows:

(a) If the claimant is entitled to compensation for wage loss and further investigation is required to determine the claimant's AAE, the Program shall use the "150 Formula" as a provisional pay rate to calculate compensation. Compensation under the "150 Formula" pay rate shall remain in effect until the investigation is completed.

(b) In order to compute the claimant's AAE for the immediate twelve (12) months preceding the injury, the Program shall add the claimant's total

earnings per position(s) worked within that period. To do so, the Program shall pro-rate the claimant's earnings by the period worked for each position employed, in the following order:

(1) If the claimant was employed by the District in more than one (1) position within the immediate twelve (12) months preceding the injury:

(A) Calculate the claimant's total base earnings and number of weeks worked for the entire period that the claimant was employed with the District government at his or her position at the time of injury; and

(B) Calculate the claimant's total base earnings at any other District employment, not to exceed the immediate twelve (12) months prior to the date of injury. This information should be obtained from the Employing Agency or other District agency, where the claimant worked. This information shall be obtained through PeopleSoft.

(2) If the claimant was collectively employed with the District government for less than twelve (12) months, immediately preceding the injury, include one (1) or more of the following categories, if applicable, to complete the calculation such that the total wage accounts for one (1) full year of employment prior to the injury:

(A) Similarly-employed worker – The Program should determine the earnings of another District employee working the greatest number of hours during the year prior to the injury in the same or most similar class, in the same agency.

(i) "Same or most similar class" refers both to the kind of work performed and the kind of appointment held. A similarly situated employee would most likely hold the same type of appointment and the same pay grade and step as the claimant. For example, a seasonal life guard should not be compared to a career full-time life guard, as these are different types of appointments. If the claimant's job was temporary and seasonal in nature, it should be compared to that of another temporary and seasonal employee.

(ii) If the "same or most similar class" contains more

than one employee, the employing agency should be asked to state the earnings of the employee who worked the greatest number of hours and therefore had the highest earnings. If the claimant's term of employment is less than a year, the earnings of the similar employee should be pro-rated to match the same term of employment as the claimant's.

(iii) The selected employee's grade and step should also be provided for reference so that it will be on file for wage-earning capacity purposes.

(iv) If there are no other "same or most similar class" employees at the employing agency, the Program need not consider the “Similarly-employed worker” factor.

(B) Claimant's prior-year non-District employment – Only earnings in employment which is the same as, or similar to, the work the employee was doing when injured may be considered.

(i) To make this determination, the Program shall explore the claimant's full employment history for the twelve (12) months preceding the injury to determine the nature of the prior-year non-District employment.

(ii) The annual earnings should be pro-rated such that it reflects the period of time worked, not to exceed twelve (12) months preceding the date of injury.

(iii) Any other relevant factors which may pertain to the employee's AAE in the employment in which he or she was working at the time of the injury may be considered.

(C) The pay rate determined by the "150 Formula" – The “150 Formula,” provided at Section 2314(d)(3) of the Act provides that a claimant’s AAE may not be less than one hundred-fifty (150) times the average daily wage that the employee earned in the employment during the year just before the injury.

129.10 The “rate of pay” for District employment under Section 2314 of the Act shall be determined by referring to the employee’s official personnel folder.

129.11 Daily wage under Section 2314 of the Act shall be computed by dividing the employee's total earnings for the immediate twelve (12) months prior to the injury by the total number of days worked in that period.

129.12 To convert the monthly monetary compensation into bi-weekly installments, the monthly compensation rate shall be multiplied by twelve (12) and divided by twenty-six (26).

129.13 To calculate monetary compensation due between pay periods, the total number of hours that the employee was absent due to the work related injury that was not otherwise covered by COP shall be divided by the total number of hours in which the employee was scheduled to work, then multiplied by the bi-weekly compensation rate as follows:

$$\textbf{Bi-weekly Compensation Rate} \times \frac{\textbf{(Total nonCOP work hours absent during pay period)}}{\textbf{(Total hours scheduled to work during pay period)}}$$

130 COMPUTATION OF WAGE INDEMNITY; PARTIAL DISABILITY

130.1 A disability is partial, when a qualified physician determines that a claimant can perform work with restrictions, provided that:

(a) The restrictions arise out of a work-related injury;

(b) A claim has been filed for the work-related injury and accepted by the Program; and

(c) The physician has examined the employee and reviewed his or her medical records.

130.2 If the disability is partial, subject to the limitations in §1-623.06a, the claimant's monthly monetary compensation shall be sixty-six and two-thirds percent (66 $^{2}/_{3}$%) of the difference between the claimant's monthly pay, as defined at Section 2301(4) of the Act, and the claimant's monthly wage earning capacity after the beginning of the partial disability.

130.3 If the claimant has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings will form the basis for payment of compensation for partial disability. If the employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the claimant has no actual earnings, the Program shall use the factors stated in Section 2315 of the Act to select a position which represents his or her wage-earning capacity. The factors considered include the nature of the injury, the degree of physical

impairment, the usual employment, the age of the claimant, the claimant's qualifications for other employment, and the availability of suitable employment. However, the Program will not secure employment for the claimant in the position selected for establishing a wage-earning capacity.

130.4 The formula which the Program uses to compute the compensation payable for partial disability employs the following terms:

(a) Pay rate for compensation purposes, which is defined in § 199.1(cc) of this chapter;

(1) Current pay rate is the "pay rate" as defined in § 199.1(cc) at the time of the determination; and

(b) Earnings, which means one-twelfth ($^{1}/_{12}$) of:

(1) The claimant's actual annual earnings, if they fairly and reasonably represent his or her wage earning capacity; or

(2) The average annual earning potential derived from the labor market survey conducted by the Program as representing the claimant's wage-earning capacity.

130.5 The phrase "labor market survey," means a determination of the types of jobs that a claimant is capable of doing, based on the following factors:

(a) The nature of his or her injury;

(b) The degree of physical impairment;

(c) His or her age;

(d) His or her qualifications for other employment;

(e) The availability of suitable employment; and

(f) Other factors or circumstances which may affect his or her wage-earning capacity as a worker with a disability.

130.6 The phrase "average annual earning potential," means the average of all annual earnings for jobs that were available and considered by the Program at the time it conducted the labor market survey.

130.7 The claimant's wage-earning capacity, in terms of percentage, is computed by dividing the claimant's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be

made as of the beginning of partial disability. The Program may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

130.8 The claimant's salary, if he or she was an employee under Section 2301(1)(A) of the Act, for the purposes of § 130 shall be determined according to grade and step reflected in the claimant's official personnel record at the time of injury, disability or recurrence.

130.9 The claimant's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the claimant's loss of wage-earning capacity.

130.10 The formula for calculating partial disability based on a monthly rate of pay shall be as follows:

$$\textbf{Partial Disability Compensation} = \tfrac{2}{3} \text{ OR } \tfrac{3}{4}\left[(\text{Pay Rate}) - \left((\text{Payrate})\left(\frac{\text{Earnings}}{\text{Current Pay Rate}}\right)\right)\right]$$

130.11 To convert the monthly partial disability monetary compensation into bi-weekly installments, the monthly compensation rate shall be multiplied by twelve (12) and divided by twenty-six (26).

130.12 Cost-of-living adjustments shall be applied to the partial disability compensation rate in accordance with § 139.2**Error! Reference source not found.** of this chapter.

131 AUGMENTED PAY

131.1 Pursuant to Section 2310 of the Act, amended September 24, 2010, only employees hired before January 1, 1980 are entitled to an augmented benefits rate for dependents.

132 COMPUTATION OF WAGE INDEMNITY; STATUTORY MAXIMUM AND MINIMUM

132.1 The statutory maximum and minimum for wage indemnity shall be calculated in accordance to Section 2312 of the Act. The calculation shall be determined by following the federal general pay scale when using Section 5332 of Title 5 of the United States Code, and by following the non-union, District career service (general) pay scale when using the District pay scale.

133 OVERPAYMENT

133.1 If the Program makes an overpayment to a claimant as a result of an error of fact or law, the Program shall recoup the overpayment from the claimant or, if a claimant is receiving compensation from the Program, adjust the claimant's compensation payments to correct and recoup the overpayment, as provided in this section.

133.2 In order to adjust or recoup an overpayment, the Program must make a preliminary finding as to whether the claimant was "at fault," as defined under Section 2329(b)(2)(A)(i) of the Act, in the creation of the overpayment.

133.3 If the Program makes a preliminary finding that the claimant was at fault in the creation of the overpayment, the Program shall issue a notice of adjustment or recoupment forthwith.

133.4 If the Program preliminarily finds that the individual was not at fault in the creation of the overpayment, a notice of adjustment or recoupment shall only issue where the Program has determined that the adjustment or recoupment would not defeat the purpose of the Act or be against equity and good conscience, as provided under Section 2329(b) of the Act.

133.5 A notice of adjustment or recoupment shall advise the claimant of the following:

(a) That the overpayment exists and the amount of the overpayment;

(b) That a preliminary finding shows that the claimant either was or was not at fault in the creation of the overpayment;

(c) That the claimant has the right to inspect and copy the Program's records relating to the overpayment;

(d) That the claimant has the right to request a waiver and present evidence within thirty (30) days of the notice to challenge

(1) The fact and amount of the overpayment; or

(2) The Program's preliminary finding of claimant's fault in the creation of the overpayment; and

(e) That the claimant's failure to present evidence within the thirty (30) days provided shall result in a final determination supporting recoupment of the overpayment, unless the deadline to present evidence is extended pursuant to § 133.9 of this chapter.

133.6 Any request for a waiver or challenge to a preliminary finding of overpayment must be submitted to the Program within thirty (30) days of the date of the overpayment notice issued by the Program.

133.7 Failure to submit evidence to challenge the overpayment or in support of a waiver pursuant to Section 2329(b-1)(2) of the Act within thirty (30) days of the date of the overpayment notice shall result in the issuance of a final determination without participation of the claimant.

133.8 Final determinations on overpayment shall be determined based Section 2329(b-1)(2) of the Act.

133.9 If a claimant fails to request a waiver or challenge a preliminary finding of overpayment within thirty (30) days of the date of the overpayment notice and

(a) A final determination has not issued pursuant to § 133.6, the claimant may submit the request directly to the Program for consideration pursuant to Section 2329(b-1)(2) of the Act.

(b) A final determination has issued pursuant to § 133.6, the claimant may appeal the Program's final determination to the Chief Risk Officer pursuant to § 156.1 of this chapter. The Chief Risk Officer shall grant the appeal and remand the belated challenge or waiver of overpayment to the Program for consideration pursuant to Section 2329(b-1)(2) of the Act, only where the claimant submits evidence that establishes the claimant's inability to timely act resulted from:

(1) Good cause;

(2) Mental or physical incapacity; or

(3) Lack of timely receipt of the notice of adjustment or recoupment.

133.10 The Program may treat any overpayment as an employee debt to the District pursuant to Section 2902 and 2904 of the Act. Pursuant to Section 2901(g) of the Act, Sections 2901(a) through (f) of the Act shall not apply to limit the Program's ability to collect overpayments; and

133.11 If the Program has reason to believe that the overpayment may have occurred as a result of fraud or other criminal activity on the part of the claimant, the Program shall refer the matter to the Office of the Inspector General, the United States Attorney's Office, or another appropriate law enforcement entity.

134 ELECTION OF COMPENSATION

134.1 A claimant receiving indemnity compensation under this chapter shall not:

(a) Receive other salary, pay, or remuneration of any type from the District of Columbia, including retirement pay for employees hired by the District of

Columbia on or after October 1, 1987. The prohibition in this paragraph does not apply to service actually performed in a part-time or modified duty capacity pursuant to § 137 of this chapter; or

(b) Recover damages from the District government because of the claimant's compensable injury or death, as a result of a judicial proceeding in a civil action or in admiralty, or by an administrative or judicial proceeding under another workers' compensation statute or federal tort liability statute.

134.2 The phrase "salary, pay, or remuneration" as used in this section includes:

(a) Severance pay, separation pay and "buy-out" payments to a claimant from the claimant's Employment Agency; and

(b) Federal retirement benefits accrued as a result of District employment.

134.3 A claimant may not receive indemnity compensation concurrently with retirement pay or PSWCP death benefits concurrently with survivor annuity from the District of Columbia. The claimant must elect the benefit that he or she wishes to receive, provided that such election is permitted per the terms of the applicable retirement pay or survivor annuity. Once made, if permitted, the election is only revocable prospectively. A claimant may, however, receive compensation schedule payments pursuant to Section 2307 of the Act, at the same time that he or she receives District government retirement pay.

134.4 A claimant may not receive indemnity compensation concurrently with federal retirement pay. Once a claimant applies and receives federal retirement pay, the claimant is no longer eligible for temporary indemnity compensation. A claimant may, however, receive compensation schedule payments pursuant to Section 2307 of the Act, at the same time that he or she receives federal civil service retirement pay.

134.5 A claimant may only receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the United States Armed Forces or other uniformed services.

134.6 When a claimant begins receiving indemnity compensation under this section, it shall be the claimant's obligation to inform the Program if the claimant receives prohibited compensation under this subsection for as long as the claimant receives indemnity compensation from the Program.

134.7 Whenever the Program determines that a claimant is receiving or may be entitled to receive the salary, pay, remuneration, or benefits listed in this section, it may forward to the claimant a form for the election of which compensation the employee or claimant wishes to receive. If the claimant has already received salary, pay, remuneration, or benefits in violation of this section, the Program

shall initiate overpayment proceedings.

134.8 A claimant shall not be eligible for indemnity compensation, if he or she was employed by the District of Columbia or the federal government before October 1, 1987, and is receiving disability benefits from the federal government for the same injury.

134.9 Remuneration, such as severance pay, received pursuant to § 134.1(a) of this chapter, shall be off-set against:

(a) Any compensation benefits due or paid to claimant; or

(b) Lump sum payment a claimant received in commutation installment payments.

135 ELIGIBILITY

135.1 Once the Program has advised the employee that it has accepted a claim and has either approved COP or paid medical benefits or compensation, the Program may modify an award of compensation if the Program has reason to believe a change of condition has occurred for one of the following reasons:

(a) The disability for which compensation was paid has ceased;

(b) The disabling condition is no longer causally related to the employment injury;

(c) The claimant is only partially disabled;

(d) The claimant has returned or been released to return to work;

(e) The claimant was convicted of fraud in connection with a claim under the Act, or the claimant was incarcerated based on any felony conviction; or

(f) The Program's initial decision regarding disability was in error.

135.2 The Program shall continue to investigate the claim throughout the life of the claim to confirm that a claimant or employee is still entitled to benefits under the Act.

135.3 Claimants and employees are required to cooperate with all aspects of the Program’s investigation, including participating in “alive and well checks,” attending physical examinations, and providing documentation of all medical services, earnings information, current medical releases, and dependent and marital status.

135.4 The Program may conduct any investigation that is necessary to monitor medical agreements, services and costs incurred.

136 ADDITIONAL MEDICAL EXAMINATIONS

136.1 The Program may require a claimant to participate in an Additional Medical Examination (AME) with a physician selected by the Program.

136.2 The Program shall maintain a list of AME physicians. AME physicians shall have expertise and board certification in various specialties that are consistent with employees' most common injuries, as determined by the Program. AME physicians shall be selected on the basis of several factors, including:

(a) Experience in their field;

(b) Experience with and understanding of workers' compensation procedures and guidelines;

(c) Reputation for honesty and integrity;

(d) Positive records with licensing boards; and

(e) Availability to provide timely appointments, reports, depositions, and court appearances.

136.3 AME physicians may be added to and removed from the Program's list of AME physicians at the discretion of the Program.

136.4 An AME shall consist of a case file review, and/or an in-person assessment or examination, by a qualified health professional other than the treating physician.

136.5 The Program may schedule an AME when:

(a) The diagnosis does not match the claim;

(b) The duration of employee's inability to work is longer than generally accepted guidelines allow for that particular injury, including the Official Disability Guidelines published by the Work Loss Data Institute, or similar guidelines;

(c) Surgery is recommended;

(d) There is a question regarding the underlying accuracy or consistency of the opinion of the treating physician; or

(e) There is any reason to verify that the treatment or care provided is

appropriate, adequate, and solely for the injury incurred in the performance of the employee's duty.

136.6 The Program shall inform a claimant in writing of the requirement that he or she attend an AME appointment, and that failure to attend the appointment, failure to bring medical records under the employee's possession and control, or any other obstruction of the examination, will result in a suspension of the claimant's benefits.

136.7 If the claimant does not attend the AME appointment, fails to bring medical records under the claimant's possession and control, or otherwise refuses or obstructs the examination, the Program may suspend the claimant's benefits.

136.8 Claimant may have a physician designated and paid by the claimant participate in the examination pursuant to Section 2323 of the Act.

136.9 Obstruction under this section means impeding or any attempt to hinder the physician's medical examination of the claimant, including not appearing for a medical examination, refusing to answer the physician's questions, refusing to cooperate with the examining physician's request, and providing the physician with false statements.

136.10 Indemnity benefits suspended under this provision shall be:

(a) Forfeited during the suspension period; and

(b) Counted towards the 500-week limitation provided in Section 2306a of the Act.

136.11 If the claimant attends a newly scheduled appointment, provides requested records, or otherwise cooperates with the examination as directed by the Program, the claimant's benefits shall be reinstated as of the date of compliance. The date of compliance is the date the claimant attends the newly scheduled appointment, the date the Program receives requested records, or the date the claimant otherwise cooperates with the examination as directed by the Program.

136.12 An AME report shall be conclusive and responsive to the requests from the Program as part of a complete professional evaluation and shall comply with the requirements of § 137.3.

136.13 Claimant may request for reimbursement of reasonable and necessary lost wages incident to AMEs by submitting a written request to the Program with supporting documentation. Requests for such reimbursement shall be made the earlier of three (3) days after receiving the AME notification or seven (7) days after the AME. "Reasonable and necessary," means:

(a) The Additional Medical Examination cannot be scheduled around claimant's work schedule; and

(b) The claimant does not have sufficient sick leave to cover for the loss of time.

137 REPORT OF MEDICAL EVIDENCE

137.1 The claimant is responsible for providing sufficient medical evidence to justify the continuation of payment of any compensation sought.

137.2 To support payment of continuing compensation where an employee has been found entitled to temporary indemnity benefits, the claimant shall:

(a) Continuously supplement medical evidence to substantiate the nature and extent of ongoing disability; and

(b) Annually submit Form 3RC – Annual Medical Recertification, from the date the compensation commenced and at the Program's requests. The medical evidence within Form 3RC must contain a physician's rationalized opinion as to the nature and extent of disability and whether the specific period of alleged disability is causally related to the employee's accepted injury and condition or disability.

137.3 The physician's rationalized opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty, and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical limitations based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation.

137.4 The Program may require any kind of non-invasive testing to determine the employee's functional capacity. Failure to undergo such testing will result in a suspension of benefits. In addition, the Program may direct the employee to undergo an Additional Medical Examination in any case it deems appropriate.

138 REPORT OF EARNINGS

138.1 If a claimant is subject to forfeiture of his or her right to workers compensation pursuant to Section 2306b(b) of the Act, such forfeiture shall commence on the earlier of:

(a) The date the report of earnings was due; or

(b) The date the Program receives a report, where the claimant knowingly

omitted or understated any part if his or her earnings.

138.2 Forfeiture under this section shall continue until a complete report is received by the Program.

138.3 A complete report shall provide the Program with earnings for the period requested and include:

(a) A signed and notarized affidavit on a form provided by the Program from the claimant;

(b) Copies of tax returns, if filed;

(c) A signed authorization authorizing the Program to obtain copies of tax documents; and

(d) Shall reflect an accurate statement of all earnings.

138.4 After ninety (90) consecutive days of forfeiture as provided in §§ 138.1 and 138.2, claimant shall be terminated from the Program with at least thirty (30) day notice. The claimant may be reinstated at the discretion of the Program only where the claimant establishes that his or her failure to act was the result of good cause.

139 COST OF LIVING ADJUSTMENTS

139.1 Cost of living adjustments shall be applied to compensation calculated pursuant to Section 2305 or 2306 of the Act.

139.2 The following cost-of-living adjustments apply in the calculation of compensation for disability or death:

(a) Cost-of-Living Adjustments under 5 U.S.C. §8146a, FECA Bulletin No. 14-03:

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
10/01/66	12.5%	06/01/75	4.1%
01/01/68	3.7%	01/01/76	4.4%
12/01/68	4.0%	11/01/76	4.2%
09/01/69	4.4%	07/01/77	4.9%
06/01/70	4.4%	05/01/78	5.3%
03/01/71	4.0%	11/01/78	4.9%
05/01/72	3.9%	05/01/79	5.5%
06/01/73	4.8%	10/01/79	5.6%

01/01/74	5.2%	04/01/80	7.2%
07/01/74	5.3%	09/01/80	4.0%
11/01/74	6.3%	03/01/81	3.6%

(b) Cost-of-Living Adjustments under D.C. Law 2-139, § 2341, (25 DCR 5740 (March 3, 1979)):

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
11/01/81	5.1%	02/01/87	3.8%
12/01/82	4.0%	12/01/87	4.2%
10/01/83	3.7%	12/01/88	4.0%
09/01/84	4.6%	05/01/89	3.7%
09/01/85	4.1%		

(c) Cost-of-Living Adjustments under D.C. Official Code § 1-623.41 (37 DCR 778 (March 15, 1990)):

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
10/03/93	5.0%	10/05/03	2.5%
04/02/95	-4.0%	07/10/05	3.5%
10/01/95	4.2%	10/02/05	4.0%
10/11/98	6.0%	10/01/06	3.0%
04/09/00	6.0%	10/14/07	3.25%
10/08/00	4.0%		

(d) Cost-of-Living Adjustments under D.C. Law 21-0039 (62 DCR 13744-13745 (October 23, 2015)):

After December 15, 2015, the percentage amount and effective date of an across-the-board salary increase reflected in any Career Service (General) District Government Salary Schedule that is approved in accordance with Sections 1105 and 1006 of the Act.

139.3 Notwithstanding consideration of any permitted premium pay, the application of any cost of living adjustment shall not result in a monthly pay rate that exceeds sixty-six and two-thirds percent (66 $^{2}/_{3}$%) (or seventy-five percent (75%), if an augmented rate of indemnity compensation is permitted) of the current monthly pay rate (*i.e.*, $^{1}/_{12}$ of the current annual salary) for the grade and step of the claimant's pre-injury position.

140 PERMANENT DISABILITY

140.1 A claimant may be eligible for permanent disability indemnity compensation

upon:

(a) Reaching maximum medical improvement for a disability and temporary disability compensation has ceased;

(b) Receiving four hundred-forty-eight (448) weeks of temporary total or partial disability; or

(c) Loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes.

140.2 Claims for permanent disability by claimants, who are eligible to request an award pursuant to § 140.1(a) of this chapter shall be filed with the Program within one hundred and eighty (180) days of the termination of temporary disability indemnity benefits. Claimants who fail to request an award within one hundred and eight (180) days of termination of temporary disability indemnity benefits shall not be entitled to permanent disability indemnity benefits thereafter, unless there is good cause to excuse the delay.

140.3 Claims for permanent disability by claimants, who are eligible to request an award pursuant to § 140.1(b) of this chapter shall be filed as a hearing for permanent disability with the Office of Administrative Hearings within fifty-two (52) weeks after receipt of the 448th week of temporary total or partial disability indemnity benefits. Claimants who fail to request a hearing within the last fifty-two (52) weeks of five hundred (500) weeks of benefits shall not be entitled to permanent temporary or partial disability indemnity benefits thereafter.

140.4 A claimant eligible for permanent disability pursuant to § 140.1(c) of this chapter may be awarded a scheduled award for permanent disability in lieu of temporary disability upon filing a claim for indemnity compensation.

140.5 To file a claim for permanent disability under Section 2307 of the Act, the claimant shall complete Form 12 and provide supporting information and documentation, including a permanent disability rating performed in accordance to the most recent edition of the AMA Guides from a qualified physician.

140.6 If a claimant requests a schedule award pursuant to § 140.1(a) of this chapter, the Program shall:

(a) Review the request;

(b) Request additional information or action as necessary, including the scheduling of a physical examination(s), to evaluate the extent of permanency; and

(c) Issue a written decision within thirty (30) days of receipt of all required documents that shall:

(1) Sets forth the basis for accepting or denying the request; and

(2) Be accompanied by information about the claimant's right to appeal the Program's decision to the Chief Risk Officer, as provided in § 156 of this chapter.

140.7 Permanent disability compensation shall be computed pursuant to § 129 of this chapter and in accordance with the schedule provided at Section 2307 of the Act and shall not be subject to cost-of-living-adjustments.

140.8 Permanent partial disability shall be computed by:

(a) Calculating the monthly compensation less COLAS pursuant to § 129 of this chapter;

(b) Converting the monthly compensation to weekly compensation by multiplying the monthly compensation rate by twelve (12) and dividing the product by fifty-two (52);

(c) The adjusted award schedule for partial disability shall be computed by multiplying the total number of weeks available for the impairment member under Section 2307(c) of the Act by the percentage impairment rating provided by the physician; and

(d) The total award for partial disability shall be computed by multiplying the adjusted award schedule for partial disability by the weekly compensation rate computed pursuant to §140.8(b).

140.9 Medical reports establishing eligibility and determination for schedule awards under Section 2307 of the Act shall be prepared by physicians with specific training and experience in the use of the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment.

140.10 A claimant who requests or receives a schedule award pursuant to Section 2307 of the Act is ineligible for further indemnity payment(s) for temporary disability arising out of the same injury for which a schedule award has been approved or paid.

140.11 A claimant may not receive indemnity compensation for temporary disability and a schedule award at the same time.

141 VOCATIONAL REHABILITATION

141.1 A claimant with a permanent or temporary disability that is compensable under the Act shall undergo vocational rehabilitation at the direction of the Program for a period not to exceed ninety (90) days.

141.2 After the ninety (90) day period has expired, the vocational rehabilitation services may be extended, at the discretion of the Program, for good cause shown, for incremental periods of ninety (90) days, not to exceed one (1) year from the initiation of the initial vocational rehabilitation plan. The term "good cause," as used in this section, means that:

(a) There is evidence that the claimant's medical condition is improving;

(b) The Program or case worker has identified viable job opportunities for the claimant; or

(c) There is evidence that continuation of participation in vocational rehabilitation is likely to result in the employment of the claimant.

141.3 While undergoing Vocational Rehabilitation at the direction of the Program, the claimant shall continue to receive monthly monetary compensation calculated pursuant to § 129 of this chapter, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation.

141.4 The claimant shall furnish the Program with an affidavit of earnings pursuant to § 138 on a monthly basis to enable the Program to calculate the claimant's outside earnings for an off-set against compensation received consistent with § 141.3 of this chapter.

141.5 If a claimant hired on or after January 1, 1980, without good cause fails to undergo vocational rehabilitation when so directed by the Program, the claimant's right to compensation under this chapter shall be suspended until the non-compliance ceases. Failure to undergo vocational rehabilitation shall include failure to attend meetings with the vocational rehabilitation case worker, failure to apply for jobs that have been identified for the claimant, or failure to otherwise participate in good faith in the job application process.

141.6 Written notice prior to suspension need not be given when an employee's benefits are suspended pursuant to this section.

142 RETURN TO WORK PROGRAM

142.1 An employee with partial disabilities shall participate in modified work programs at the direction of the Program.

142.2 An employee who is medically released to work in full or modified duty and

cannot return to work with the employing agency shall notify the Program and enroll in the Return to Work Program within three (3) days of receiving the medical release. An employee's right to compensation shall be suspended for failure to comply with the provision of this subsection.

142.3 The Program shall attempt to place injured employees within their pre-injury agency, or within another agency when modified work assignments are not available within the pre-injury employing agency. Once assigned to a modified duty placement, the pre-injury employing agency is responsible for the salary of the employee.

142.4 While on modified duty assignment, the employee's rate of pay shall be adjusted as follows:

(a) An employee who is able to perform the duties of his or her pre-injury position during the modified duty assignment period is entitled to receive compensation at the same rate of pay as received prior to the injury and indemnity compensation shall cease.

(b) An employee who is not able to perform the full scope of duties of his or her pre-injury position shall receive a modified rate of compensation closest to the rate prior to the injury, without exceeding it. A partial disability benefit will be applied if appropriate, at the rate of sixty-six and two-thirds percent ($66\ ^{2}/_{3}\%$) or, if the employee is eligible for augmented pay pursuant to Section 2310 of the Act, seventy-five percent (75%) of the difference between the pre-disability rate and the modified duty rate.

(c) The pre-injury rate of pay shall not be exceeded during the modified duty assignment.

142.5 The modified duty assignment shall be temporary. The modified duty assignment may have a minimum duration of two (2) basic nonovertime workdays, as that term is defined in § 1-612.01, and a maximum duration of 180 days (assigned in 90-day increments) in any 12-month period. For those employees whose basic nonovertime workday may exceed eight (8) hours such as police officers or firefighters, the basic nonovertime workday shall be the shift, or tour of duty, worked on a regularly recurring basis for the three (3) months immediately preceding the injury.

142.6 Employees with disabilities who are offered a modified duty assignment and elect not to accept the modified duty assignment shall forfeit any further disability compensation benefits and benefits shall terminate. If compensation benefits were paid during the period of forfeiture, the Program shall recover the payments through a deduction from future compensation benefits owed to the employee or otherwise recovered under Section 2329 of the Act.

142.7 Notice of available temporary modified duty assignment pursuant to Section 2347 of the Act shall be provided orally and in writing to the employee and the human resources advisor for the Employing Agency and agency where the employee is being assigned, if different from the employing agency.

142.8 Notice of an available temporary modified duty assignment pursuant to Section 2347 of the Act shall include:

(a) The location and hours of the assignment;

(b) The essential job functions;

(c) The restrictions specified by the physician; and

(d) The rate of compensation to be received by the employee.

142.9 An employee must elect to accept an available modified duty assignment within seven (7) days of issuance. Failure to respond to the notice shall be deemed a rejection of the proposed temporary modified duty assignment, further benefits shall be deemed forfeited and benefits shall terminate.

143 NOTICE OF RETURN TO WORK

143.1 In all cases reported to the Program, the official supervisor shall be required to notify the Program immediately when the claimant returns to work or when the injury ceases.

143.2 The immediate supervisor shall notify the Program if, after the claimant returns to work, the same injury causes the claimant to stop work again.

144 MODIFICATION, FORFEITURE, SUSPENSION OR TERMINATION OF BENEFITS

144.1 A claimant's benefits shall be modified if the Program has reason to believe that the claimant's PSWCP file and records establish the following:

(a) The disability for which compensation was paid has ceased or lessened;

(b) The disabling condition is no longer causally related to the employment;

(c) The claimant's condition has changed from total disability to partial disability;

(d) The employee has been released to return to work in a modified or light duty basis; or

(e) The Program determines based on strong compelling evidence that the initial decision was in error.

144.2 A claimant's benefits shall be forfeited if substantial evidence in the claimant's PSWCP file establishes that claimant failed to complete a report of earnings pursuant to § 138.

144.3 A claimant's benefits shall be terminated if the Program has reason to believe that the claimant's PSWCP file establishes the following:

(a) The disability for which compensation was paid has ceased;

(b) The disabling condition is no longer causally related to the employment;

(c) The employee has been released to return to work or has returned to work based upon clear evidence;

(d) The claimant has failed to complete a report of earnings for more than ninety (90) days; or

(e) The claimant has been offered a modified duty assignment and has elected not to accept the modified duty assignment.

144.4 A claimant's benefits shall be suspended if the Program has reason to believe that the claimant's PSWCP file establishes the following:

(a) The claimant failed to attend an appointment for Additional Medical Examination (AME), bring medical records under the claimant's possession and control, or any other obstruction of the examination;

(b) The claimant failed to follow prescribed and recommended course of medical treatment from the treating physician; or

(c) A claimant hired on or after January 1, 1980, without good cause failed to apply for or undergo vocational rehabilitation when so directed by the Program.

144.5 If substantial evidence in the claimant's PSWCP file establishes that a claimant hired before January 1, 1980, without good cause fails to apply for or undergo vocational rehabilitation, when directed by the Program:

(a) The Program may propose a reduction of indemnity compensation and present the proposed reduction to the Compensation Review Board (CRB) for review; and

(b) The CRB shall affirm the reduction in benefits, if it determines that there

is substantial evidence in the record to show that the wage-earning capacity of the individual would probably have substantially increased, absent the claimant's failure to attend vocational rehabilitation, as directed by the Program.

(1) "Substantially increase" means an increase in wage-earning capacity by fifty percent (50%) or more.

(2) The claimant's wage-earning capacity is computed by conducting a labor market research based on the assumption the claimant has enrolled in vocational rehabilitation to arrive at the claimant's "average annual earning potential." The average annual earning potential shall be divided by twelve to arrive at the claimant's monthly wage-earning capacity. The claimant's monthly wage earning capacity shall be compared against the claimant's monthly pay. If the claimant's wage earning capacity exceeds the claimant's monthly pay by fifty percent (50%), the Program may propose a reduction of indemnity compensation.

144.6 Failure to apply for or undergo vocational rehabilitation shall include failure to attend meetings with the vocational rehabilitation case worker, failure to apply for jobs that have been identified for the claimant, or failure to otherwise participate in good faith in the job application process.

144.7 Prior written notice need not be given when an employee's benefits are suspended or forfeited pursuant to this section.

144.8 In all claims, the claimant is responsible for continual submission, or arranging for the continual submission of, a medical report from the attending physician as evidence supporting the reason for continued payment of compensation.

144.9 For indemnity compensation benefits, "reason to believe" that the disability for which compensation was paid has ceased pursuant to §§ 144.1(a) and 144.3(a) of this chapter includes a claimant's failure to provide contemporaneous medical evidence to show that

(a) The accepted condition remains disabling; and

(b) The nature and extent of the ongoing disability necessitate a claimant's continued absence from work or restriction from performing the full scope of pre-injury duties.

144.10 For medical compensation benefits, "reason to believe" that the disability for which compensation was paid has ceased pursuant to §§ 144.1(a) and 144.3(a) of this chapter includes a claimant's lack of treatment for the accepted condition for one year or more.

145 ADJUSTMENTS AND CHANGES TO BENEFITS

145.1 Except as provided in §§ 145.3, 145.4, 145.5 and 145.6 of this chapter, the Program will provide the claimant with prior written notice of the proposed action and give the claimant thirty (30) days to submit relevant evidence or argument to support entitlement to continued payment of compensation, prior to issuance of an Eligibility Determination (ED), where the Program has a reason to believe that compensation should be either modified or terminated due to a change of condition pursuant to Sections 2324(d)(1) and (4) of the Act. An ED shall be accompanied by information about the employee's appeal rights.

145.2 Prior notice provided under this section will include a description of the reasons for the proposed action and a copy of the specific evidence upon which the Program is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until thirty (30) days have elapsed after the issuance of the notice if no additional evidence or argument is submitted.

145.3 Prior written notice will not be given when a claimant dies, when the Program either reduces or terminates compensation upon a claimant's return to work, when the Program terminates only medical benefits after a physician indicates that further medical treatment is not necessary or has ended, or when the Program denies payment for a particular medical expense.

145.4 The Program will not provide prior written notice when compensation is forfeited for:

(a) A claimant’s failure to report earnings from employment or self-employment; or

(b) A claimant’s failure to accept a modified duty assignment, when one is offered to him or her.

145.5 The Program will not provide prior written notice when compensation is suspended due to one of the following:

(a) A claimant’s failure to attend vocational rehabilitation;

(b) A claimant's failure to follow prescribed and recommended courses of medical treatment from the treating physician; or

(c) A claimant fails to cooperate with the Program’s request for a physical examination.

145.6 The Program will not provide prior written notice when compensation is

terminated due to one of the following:

(a) The award of compensation was for a specific period of time which has expired;

(b) The death of a claimant;

(c) The claimant has been released to return to work or has returned to work based upon clear evidence; or

(d) A claimant's conviction for fraud in connection with a claim under the Act.

145.7 The Program shall provide written notice, but not an ED, where there are *de minimus* adjustments resulting from the application of COLAs or corrections of technical errors that affect five percent (5%) or less of the claimant's monetary benefits over the course of a 12-month period. The reasons for such *de minimus* changes shall be documented in claimant's PSWCP file.

145.8 If the claimant submits evidence or argument prior to the issuance of the decision, the Program will evaluate the submission in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument that is repetitious, cumulative, or irrelevant will not require any further development. If the claimant does not respond within thirty (30) days of the prior written notice, the Program will issue a decision consistent with its prior written notice. The Program will not grant any request for an extension of this thirty (30) day period.

145.9 Evidence or argument that refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the claimant submits evidence or argument that fails to refute the evidence upon which the proposed action was based but which requires further development of the evidence and basis for the decision, the Program will not provide the claimant with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, the Program will either continue payment or issue a decision consistent with its prior written notice or further developed evidence.

146 WEIGHING MEDICAL EVIDENCE

146.1 When the Program receives medical evidence from more than one source, it should evaluate the relative value, or merit, of each piece of medical evidence.

146.2 In evaluating the merits of medical reports, no preference shall be given to treating physicians. The Program shall evaluate the probative value of the report and assign greater value to:

(a) An opinion based on complete factual and medical information over an opinion based on incomplete, subjective or inaccurate information. Generally, a physician who has physically examined a patient, is knowledgeable of his or her medical history, and has based the opinion on an accurate factual basis, has weight over a physician conducting a file review with no knowledge of the patient's medical history or fails to take into account or omits other relevant medical conditions that relate to or may be related to the condition at issue.

(b) An opinion based on a definitive test(s) and includes the physician's findings. Some medical conditions can be established by objective testing. Medical reports that contain objective findings shall be assigned greater weight than those that fail to account for or include objective findings, where the condition can be established or excluded by such finding.

(c) A well-rationalized opinion over one that is unsupported by affirmative evidence. The term "rationalized" means that the statements of the physician are supported by an explanation of how his or her conclusions are reached, including appropriate citations or studies. An opinion that is well-rationalized provides a convincing argument for a stated conclusion that is supported by the physician's reasonably justified analysis of relevant evidence. For example, an opinion which is supported by the interpretation of diagnostic evidence and relevant medical or scientific literature is well-rationalized. Conversely, an opinion which states a conclusion without explaining the interpretation of evidence and reasoning that led to the conclusion is not well-rationalized.

(d) The opinion of an expert over the opinion of a general practitioner or an expert in an unrelated field. However, conclusive statements of an expert without any underlying justification, other than affirmation of the physician's expertise, are not to be viewed as carrying significant probative value over that of a general practitioner report that is well-rationalized and/or supported by applicable affirmative evidence.

(e) An unequivocal opinion over one that is vague or speculative. A physician offering a clear, unequivocal opinion on a medical matter is to be viewed as more probative compared to an opinion that waivers or hesitates in its presentation or contains vague and speculative language. An opinion which contains verbiage such as "possibly could have" or "may have been" or provides a guess or estimation indicates speculation on the part of the physician.

147 GOOD CAUSE DETERMINATION

147.1 A good cause determination shall be supported by evidence that establishes good cause as defined at § 199.1(q) and the proponent's failure to act does not result in undue prejudice to the opposing party.

148 ROUNDING RULES

148.1 Except where otherwise noted under this chapter, all amounts, percentages, and other numbers are rounded down to the nearest hundredth, which is two decimal places.

149 COMPUTATION OF TIME

149.1 Any days required to be counted shall be counted commencing with the day after the date referenced in the rule, or, if a decision is issued, the date after the certificate of service attached to the decision issued by the Program or hearing forum.

149.2 If the deadline for any activity falls on a Sunday, Saturday, legal holiday, or a day that is normally a business day but on which the District government is otherwise closed, such as for snow or other emergency, the deadline will be continued to the next business day.

149.3 Whenever it is not specified by the plain language of the rule, the term "day" or "days" shall mean "calendar day" or "calendar days."

150 TRANSPORTATION AND MILEAGE

150.1 The Program may provide a claimant with transportation to and from a physical examination or medical treatment that is authorized by the Program pursuant to this chapter.

150.2 Unless § 150.3 applies, a claimant who needs transportation to and from a physical examination or medical treatment shall request such transportation from the Program by completing and submitting Form 11 with supporting documentation no later than five (5) business days before the authorized physical examination or medical treatment. Once the travel is completed, claimant must submit a request for reimbursement pursuant to § 150.7.

150.3 If there is a need for immediate medical treatment and, due to the nature of the disability and injury accepted by the Program, the injured claimant is unable to contact the Program and make a request pursuant to § 150.2, the claimant may still submit a request for reimbursement pursuant to § 150.7, provided that claimant submits medical evidence from the physician certifying that there was need for immediate medical treatment due to the nature of the disability and injury accepted by the Program.

150.4 Upon request made pursuant to §155.2, the Program may furnish necessary and reasonable transportation for:

(a) An initial examination at a physician selected by the claimant;

(b) An Additional Medical Examination required by the Program; and

(c) A routine physical examination, outpatient or inpatient surgical procedure, or any services under Section 2303(d)(1) of the Act.

150.5 For purposes of this section, "necessary," means that the claimant is not capable of driving himself or herself or using public transportation to get to the examination, due to the accepted medical condition or disability and injury. To establish that transportation is necessary, the claimant must provide the Program with medical documentation from his or her treating physician certifying that the transportation is necessary within the meaning of this section.

150.6 For purposes of this section, "reasonable transportation," is

(a) Public transportation, mileage, or parking;

(b) Transportation to an examination that is located within twenty-five (25) miles of the District of Columbia; and

(c) A total distance of travel to and from the examination not to exceed fifty (50) miles.

150.7 To request reimbursement of necessary and reasonable transportation expenses pursuant to §§ 150.2 and 150.3, the claimant shall:

(a) Submit Form 11 to the Program within thirty (30) days of the date that the claimant incurred the expense; and

(b) Include verifiable supporting evidence of the expenditures at the time Form 11 is submitted to the Program.

150.8 Failure to comply with § 150.7 will result in denial of claimant's request for reimbursement.

150.9 Reimbursements for mileage shall be based upon the distance from either the claimant's place of employment or home to the physician's office or treating facility. The cost per mile reimbursed by the Program shall be at the same rate as the United States General Services Administration Privately Owned Vehicle Mileage Reimbursement Rates. The cost per mile shall be included on Form 11.

150.10 Decisions on requests made pursuant to §§ 150.2 and 150.3 shall be made within

ninety (90) days of the date the request was received by the Program.

150.11 Subject to the provisions of this section, the Program shall furnish or authorize necessary and reasonable transportation to claimants within thirty (30) days after the Program receives notice that the claimant was injured.

151 THIRD PARTY RECOVERY

151.1 If the Program determines that an injury or death for which indemnity compensation is payable under this chapter is caused under circumstances creating a legal liability on the part of a third party to pay the District or the employee damages, the employee (or authorized representative if the employee is deceased) shall prosecute the action within sixty (60) days of the incident.

151.2 If the employee (or authorized representative if the employee is deceased) does not prosecute the action within sixty (60) days of the incident, the employee (or authorized representative, as applicable) shall assign to the District of Columbia government:

(a) Any right of action the employee or employee's estate may have to enforce the liability; or

(b) Any right that the employee or employee's estate may have to share in money or other property received in satisfaction of that liability.

151.3 If an employee or authorized representative refuses to assign or prosecute an action in his or her own name when required to do so by the Program pursuant to §§ 151.1 and 151.2, the Program shall suspend the employee's current or prospective benefits, unless the employee provides the Program with evidence of extenuating circumstances that prevents the employee from prosecuting the action at the time required by the Program. A claimant's continual refusal to assign or prosecute an action for more than twelve (12) months from the date of the incident without an accepted excuse from the Program shall result in termination of the claimant's indemnity compensation.

151.4 The Program may refer to the Office of the Attorney General (OAG) for civil prosecution a cause of action assigned to the District of Columbia government under § 151.2.

151.5 Recoveries by the Program following an assignment shall be distributed pursuant to Section 2331(c) of the Act.

(a) If there are any funds remaining after the deductions and payments made pursuant to § 151.6, the Program shall deposit the remaining funds into the Employees' Compensation Fund and the funds shall be used to pay the employee's future compensation payable for the same injury.

151.6 If an employee claimant prosecutes a third party for an injury or death for which compensation is payable under this chapter and recovers money or other property in satisfaction of the third party's liability, the employee, after deducting the costs of the prosecution, reasonable attorneys' fees, and one-fifth ($^1/_5$) of the net amount of money or property remaining after payment of expenses and attorneys' fees, shall pay to the Program the amount of compensation already paid by the Program to the employee under this chapter. The payment shall be credited to the Employees' Compensation Fund. If there are any funds remaining after the employee's payment to the Program, the remaining sum shall be a credit for the same amount of future payments of compensation by the Program for which the employee is eligible. The Program shall not pay the employee the number of future payments that totals the amount of the credit.

(a) The amount due to the District pursuant to this section shall be calculated as of the date of the settlement. Any indemnity or medical compensation received by the employee after the date of the settlement shall be treated as "future payments of compensation" within the meaning Section 2332 of the Act. If the Program has already paid the employee "future payments of compensation" at the time the settlement is reported, "future payments of compensation" that total the amount of the credit or surplus shall be treated as debt to the District of Columbia.

(b) "Costs of suit" under Section 2332 if the Act means court filing, non-expert witness fees, deposition transcript, subpoena and photocopying fees, excluding transportation fees.

151.7 If an employee or claimant successfully prosecutes a claim against a third party pursuant to § 151.1 of this chapter and fails to remit payment to the Program, the amount owed shall be:

(a) Withheld from the claimant's indemnity compensation payments.

(b) If the employee or claimant is not receiving indemnity compensation payments, the amount due shall be treated as an employee debt to the District pursuant to Section 2902 and 2904 of the Act and subject to civil prosecution in the Superior Court for the District of Columbia. Pursuant to Section 2901(g) of the Act, Sections 2901(a) through (f) of the Act shall not apply to limit the Program's ability to collect on overpayments.

(c) Recovery of the amounts owed pursuant to 2904 of the Act includes an offset against claimant's indemnity compensation payments.

151.8 No court, insurer, attorney, defendant, or other person shall pay or distribute to the claimant or his or her designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the District of Columbia

government pursuant to § 151.6.

151.9 The employee or claimant, insurer, attorney, or other person, shall notify the District of any settlement or judgment entered within fourteen (14) days of the settlement of or entry of judgment in any third-party claim filed pursuant to § 151.1.

151.10 An attorney, who represents a District employee, who was injured during the course of his or her employment, against a third-party tort-feasor shall not be excused of his or her obligation to satisfy the District's interest in the proceeds of such suit or settlement, unless, the attorney has received written confirmation from the District that it does not have a lien against any such recovery.

151.11 Any employee or claimant, insurer, defendant, or other person who fails to comply with §§ 151.6 through 151.9 of this chapter shall be held jointly and severally liable to the District of Columbia government for the amount due as calculated pursuant to § 151.6 of this chapter, plus pre-judgment interest, reasonable attorney's fees and costs incurred by the District.

(a) Pre-judgment interest shall be calculated pursuant to D.C. Official Code § 28-3302(c) starting on the fifteenth (15^{th}) day after settlement or entry of judgment.

151.12 If an employee returns to work and is then required to appear as a party or witness in the prosecution of an action under this section, the employee shall be considered to be in an active duty status while so engaged.

151.13 The Program may treat any payment due to the District under Section 2332 of the Act as an employee debt to the District pursuant to Section 2902 and 2904 of the Act. Pursuant to Section 2901(g) of the Act, Sections 2901(a) through (f) of the Act shall not apply to limit the Program's ability to collect on debt due under this section.

152 DEATH BENEFITS

152.1 In the case of the death of an employee, the Program shall determine the compensation owed to the employee's beneficiary or beneficiaries by following the requirements of Section 2333 of the Act.

152.2 The maximum and minimum limits on compensation included in Section 2333 of the Act shall be determined by following the federal general pay scale when using Section 5332 of Title 5 of the United States Code, and by following the non-union, District career service (general) pay scale when using the District pay scale.

152.3 A beneficiary or beneficiaries receiving death benefits are not entitled to

continuation of pay pursuant to § 107 of this chapter.

152.4 When a beneficiary begins to receive compensation under this section, the Program shall notify the beneficiary of the condition(s) under which death benefits may cease, including upon the beneficiary's marriage, re-marriage, or entering into a domestic partnership, or upon the beneficiary's reaching eighteen (18) years of age, pursuant to Section 2333 of the Act.

152.5 On a regular basis, the Program may require a beneficiary to confirm his or her marital or domestic partnership status and age, and the Program may conduct any investigation necessary pursuant to §§ 135.2 - 135.3 to confirm this information. Any beneficiary receiving death benefits under this section shall cooperate with such investigation by providing all relevant information that the Program requests and by notifying the Program when his or her eligibility for benefits under this section changes. A beneficiary's failure to notify the Program of changes in eligibility for benefits under this section may result in the Program initiating overpayment proceedings pursuant to § 133 of this chapter.

153 REQUESTS FOR AUDIT OF INDEMNITY BENEFITS

153.1 A claimant who believes that the Program has incorrectly calculated his or her indemnity benefit may request an audit of the Program's calculation by completing Form A-1 and submitting it to the Chief Risk Officer.

153.2 The Chief Risk Officer shall affirm the Program's calculations, if it is supported by substantial evidence in the record. Otherwise, at the discretion of the Chief Risk Officer, the Program's decision may be modified, revised or remanded to the Program with instructions.

153.3 The Chief Risk Officer shall notify the claimant in writing of his or her decision on the audit request within thirty (30) days of the Program's receipt of the request, unless the Chief Risk Officer provides notice in writing that extenuating circumstances preclude him or her from making a decision within this period.

153.4 If no decision or notice of extenuating circumstances is issued within thirty (30) days, the calculation which forms the basis of the claimant's request for an audit shall be deemed the final decision of the agency in response to the claimant's request and the claimant may seek review of the calculations before the Superior Court of the District of Columbia on timely petition for review by the claimant.

153.5 Any retroactive benefits due to the claimant as result of a request made under this chapter are subject to the limitations of D.C. Official Code § 12-301(8).

154 ASSIGNMENT OF CLAIM AND DELIVERY OF COMPENSATION

154.1 An assignment for a claim of compensation under this chapter is void.

154.2 Compensation received under this chapter is exempt from the claims of creditors. This subsection does not apply in the case of a valid court order to garnish wages for child support or other lawful purposes.

154.3 A payment of compensation, schedule award, settlement payment, or any other payment made under this chapter shall not be delivered to any person other than the claimant entitled to that payment or that claimant's legal guardian unless the claimant has submitted a request in writing that the payment be delivered to another specified person, including the claimant's attorney, and which is not in violation of Section 2330 or any provision of the Act. This subsection shall not apply to attorneys' fees that a judicial entity may order the Program to pay an attorney under the Act.

155 OFFICE OF ADMINISTRATIVE HEARINGS (OAH) AND OFFICE OF HEARINGS AND ADJUDICATION (OHA), JURISDICTION

155.1 Beginning December 1, 2016, the following decisions shall be appealed to the Office of Administrative Hearings (OAH):

(a) Initial awards for or against compensation benefits pursuant to Section 2324(b) of the Act;

(b) Final decisions concerning the necessity, character or sufficiency of medical care or services following an appeal to a utilization review pursuant to Section 2323(a-2)(4) of the Act; and

(c) Modification of awarded benefits pursuant to Section 2324(d) of the Act.

155.2 Requests for determination of whether claimant has a permanent disability pursuant to Section 2306a shall be made to the Office of Administrative Hearings (OAH).

155.3 All appeals filed prior to December 1, 2016, for decisions described at 7 DCMR §§ 144.1 (a), (b), and (c) (repealed by adoption of these regulations) shall be made to the Department of Employment Services, Office of Hearings and Adjudications (OHA).

156 OFFICE OF RISK MANAGEMENT, JURISDICTION

156.1 A claimant who is dissatisfied with any other decision issued by the Program may only appeal the decision to the Chief Risk Officer.

156.2 Appeals to the Chief Risk Officer shall:

(a) Be filed within ten (10) days from the date the decision was issued, unless otherwise provided;

(b) Contain information required under this chapter; and

(c) Include all documents and other evidence in support of the claimant's arguments.

156.3 The Chief Risk Officer shall affirm the Program's decision, if it is supported by substantial evidence in the record. Otherwise, at the discretion of the Chief Risk Officer, the Program's decision may be modified, revised or remanded to the Program with instructions.

156.4 The Chief Risk Officer shall notify the claimant in writing of his or her decision within thirty (30) days of the Program's receipt of the appeal. If no decision is issued within those thirty (30) days, the Program's decision shall be deemed the final decision of the agency.

156.5 The final decision of the agency under § 156.4 may be reviewed by the Superior Court of the District of Columbia on timely petition for review by the employee pursuant to District of Columbia Superior Court Rules of Civil Procedure Agency Review Rule 1.

157 OAH AND OHA, HEARING RULES

157.1 OAH Rules 2950 through 2969 contain the Rules for management of PSWCP cases filed pursuant to Section 2324 of the Act with the Department of Employment Services, Office of Hearings and Adjudications (OHA) and Office of Administrative Hearings (OAH).

157.2 If no procedure is specifically prescribed by these Rules, the Superior Court for the District of Columbia Rules may be used as guidance, to the extent practicable.

157.3 The rules shall govern the conduct of hearing, unless the ALJ determines its application impairs the ALJ's ability to ascertain the claimant's rights pursuant to Section 2324(b)(2) of the Act.

158 HEARINGS, STANDARD OF REVIEW

158.1 All appeals of Program decisions before the OAH and OHA shall be reviewed under a de novo standard of review.

159 HEARINGS, BURDEN OF PROOF

159.1 Burden of Proof, Initial Determination. Claimant has the burden to prove, by a preponderance of the evidence (more likely than not)

(a) That the injury was work related; and

(b) The extent and nature of Claimant's injuries and disability.

159.2 Burden of Proof, Termination or Modification of Award. If the Agency seeks to terminate or modify an award, it must present substantial evidence that the Program had reason to believe the claimant's condition has sufficiently changed to warrant modification or termination of benefits. Once the Agency presents such evidence, the claimant has the burden to prove, by a preponderance of the evidence, the entitlement to ongoing benefits, as well as the nature and extent of disability.

159.3 Burden of Proof, Recurrence of Disability. The claimant has the burden to prove by clear and convincing evidence that a recurrence of disability is causally related to the original injury.

159.4 Burden of Proof, Permanent Disability. The claimant has the burden to prove, by a preponderance of the evidence that he or she is entitled to an award for permanent disability.

160 HEARING DECISIONS, COMPLIANCE AND ENFORCEMENT

160.1 The ALJ shall issue an order to reverse, modify, affirm, or remand a determination rendered by the claims examiner within thirty (30) days after the hearing ends or the record closes.

160.2 Unless the OHA or OAH decision is appealed or otherwise stayed by a reviewing administrative or judicial forum, the Program shall comply with the decision within thirty (30) calendar days from the date the decision becomes final.

160.3 If the Program fails to comply with the final decision within the time prescribed at § 160.2 of this chapter:

(a) The claimant shall file Form A-1 with the General Counsel for the Office of Risk Management to request computation of benefits due pursuant to the compensation order;

(b) Within thirty (30) days from the date the request was received, the Program shall certify an amount due to the claimant under the compensation order; and

(c) Once a certification of compensation is issued, the claimant may file for a lien in the amount certified against the Disability Compensation Fund, the General Fund, or any other District fund or property to pay the compensation award with the Superior Court of the District of Columbia.

160.4 A claimant may dispute the amount calculated and certified by the Program by appealing the decision to the Chief Risk Officer pursuant to §156.

160.5 Increases in awards available under Section 2324(g) of the Act shall be limited to awards for indemnity compensation.

161 INTEREST ON COMPENSATION AWARDS

161.1 Interest may only be awarded where the Program fails to make payment toward the compensation award within twelve (12) months after the date of the compensation order.

161.2 Interest on compensation awards, when awarded, shall:

(a) Be the lower of four percent (4%) per annum or the rate provided under D.C. Official Code § 28-3302(c),

(b) Not begin to accrue until twelve (12) months have elapsed after the date of the compensation order; and

(c) Not apply to any increase in award payment pursuant to Section 2324(g) of the Act.

161.3 Interest on compensation awards shall be limited to simple interest.

162 ATTORNEY'S FEES

162.1 "Actual benefits secured" for the purpose of Section 2327 means the total amount of benefits secured by an attorney in connection with a hearing through the date of the compensation order only and shall not include future benefits.

162.2 Attorney's fees awarded under Section 2327 of the Act shall be computed at fifty percent (50%) of the most current United States Attorney's Office Attorney's Fees Matrix. In no event shall the attorney's fees exceed twenty percent (20%) of the lump sum indemnity benefit secured as of the issuance date of the compensation order.

163 ADMINISTRATIVE AND JUDICIAL REVIEW

163.1 The provisions of 7 DCMR §§ 250 to 271 concerning administrative appeals to the Compensation Review Board (sometimes referred to in these regulations as the Board) established pursuant to the Directive of the Director of the Department of Employment Services (Director), Administrative Policy Issuance No. 05-01 (February 5, 2005), are incorporated herein by reference as fully as if stated and set forth in their entirety in this section.

163.2 Any party adversely affected or aggrieved by a compensation order or final decision issued by the OHA or OAH with respect to a claim for workers' compensation benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code §§ 1-623.1 *et seq*. (2014 Repl. & 2016 Supp.)) may appeal said compensation order to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR §258.

199 DEFINITIONS

199.1 The definitions set forth in Section 2301 of Title 23 (Workers' Compensation) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-623.01 *et seq.* (2014 Repl. & 2016 Supp.)) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply and have the meanings ascribed:

(a) **The Act** -- the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-623.01 *et seq*. (2014 Repl. & 2016 Supp.)), as amended and as it may be hereafter amended.

(b) **Administrative Law Judge or ALJ** -- a hearing officer of the Office of Hearings and Adjudication in the Administrative Hearings Division of the Department of Employment Services or Administrative Law Judge in the Office of Administrative Hearings.

(c) **Aggravated injury** -- The exacerbation, acceleration, or worsening of pre-existing disability or condition caused by a discrete event or occurrence and resulting in substantially greater disability or death.

(d) **Alive and well check** -- an inquiry by the Program to confirm that a claimant who is receiving benefits still meets the eligibility requirements of the Program.

(e) **Beneficiary** -- an individual who is entitled to receive death benefits under the Act.

(f) **Claim** -- an assertion properly filed and otherwise made in accordance with the provisions of this chapter that an individual is entitled to compensation benefits under the Act.

(g) **Claim file** -- all program documents, materials, and information, written

and electronic, pertaining to a claim, excluding that which is privileged or confidential under District of Columbia law.

(h) **Claimant** -- an individual who receives or claims benefits under the Act.

(i) **Claimant's Representative --** means an individual or law firm properly authorized by a claimant of this chapter to act for the claimant in connection with a claim under the Act or this chapter.

(j) **Controversion** -- means to dispute, challenge or deny the validity of a claim for Continuation of Pay.

(k) **Disability --** means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(l) **Earnings** -- for the purposes of § 138, any cash, wages, or salary received from self-employment or from any other employment aside from the employment in which the worker was injured. It also includes commissions, bonuses, and cash value of all payments and benefits received in any form other than cash. Commissions and bonuses earned before disability but received during the time the employee is receiving workers' compensation benefits do not constitute earnings that must be reported.

(m) **Eligibility Determination (ED)** -- a decision concerning, or that results in, the termination or modification of a claimant's existing Public Sector Workers' Compensation benefits that is brought about as a result of a change to the claimant's condition.

(n) **Employee** – means

(1) A civil officer or employee in any branch of the District of Columbia government, including an officer or employee of an instrumentality wholly owned by the District of Columbia government, or of a subordinate or independent agency of the District of Columbia government;

(2) An individual rendering personal service to the District of Columbia government similar to the service of a civil officer or employee of the District of Columbia, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual, but does not include a member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department who has retired or is eligible for retirement pursuant to

D.C. Official Code §§ 5-707 through 5-730 (2012 Repl. & 2016 Supp.)). The phrase "personal service to the District of Columbia government" as used for the definition of employee means working directly for a District government agency or instrumentality, having been hired directly by the agency or instrumentality; it does not mean working for a private organization or company that is providing services to the District government or its instrumentalities; and

(3) An individual selected pursuant to federal law and serving as a petit or grand juror and who is otherwise an employee for the purposes of this chapter as defined by paragraphs (i) and (ii) above.

(o) **Employee's Representative** -- means an individual or law firm properly authorized by an employee in writing of this chapter to act for the employee in connection with a request for continuation of pay under the Act or this chapter.

(p) **Employing agency** -- the agency or instrumentality of the District of Columbia government which employs or employed an individual who is defined as an employee by the Act.

(q) **Good cause** -- omissions caused by "excusable" neglect or circumstances beyond the control of the proponent. Inadvertence, ignorance or mistakes construing law, rules and regulations do not constitute "excusable" neglect.

(r) **Health care professional** -- means a person who has graduated from an accredited program for physicians, advance practice nurses, physician assistants, clinical psychologist, and is licensed to practice in the jurisdiction where care is provided.

(s) **Immediate supervisor** -- the District government officer or employee having responsibility for the supervision, direction, or control of the claimant, or one acting on his or her behalf in such capacity.

(t) **Indemnity compensation** -- the money allowance paid to a claimant by the Program to compensate for the wage loss experienced by the claimant as a result of a disability directly arising out of an injury sustained while in the performance of his or her duty, calculated pursuant to the provisions of this chapter.

(u) **Initial Determination (ID)** -- a decision regarding initial eligibility for benefits under the Act, including decisions to accept or deny new claims, pursuant to this chapter.

(v) **Latent disability** -- a condition, disease or disability that arises out of an injury caused by the employee's work environment, over a period longer than one workday or shift and may result from systemic infection, repeated physical stress or strain, exposure to toxins, poisons, fumes or other continuing conditions of the work environment.

(w) **Mayor** -- the Mayor of the District of Columbia or a person designated to perform his or her functions under the Act.

(x) **Medical opinion** -- a statement from a physician, as defined in Section 2301 of the Act, that reflects judgments about the nature and severity of impairment, including symptoms, diagnosis and prognosis, physical or mental restrictions, and what the employee or claimant is capable of doing despite his or her impairments.

(y) **Office of Administrative Hearings (OAH)** -- the office where Administrative Law Judges adjudicate public sector workers' compensation claims under Sections 2323(a-2)(4), 2324(b)(1), and (d)(2) of the Act, pursuant to jurisdiction under D.C. Official Code § 2-1831.03 (b)(1) (2012 Repl.), Section 2306a of the Act, and rules set forth in this chapter.

(z) **Office of Hearings and Adjudication (OHA)** -- the office in the Administrative Hearings Division of the Department of Employment Services where Administrative Law Judges adjudicate workers' compensation claims, including public sector workers' compensation claims under Sections 2323(a-2)(4), 2324(b)(1), and (d)(2) of the Act , and rules set forth in this chapter.

(aa) **Office of Risk Management (ORM)** -- the agency within the Government of the District of Columbia that is responsible for the District of Columbia's Public Sector Workers' Compensation Program (PSWCP).

(bb) **Panel physician –** means a physician approved by the Program pursuant to § 124.2 of this chapter to provide medical treatment to persons covered by the Act.

(cc) **Pay rate for compensation purposes --** means the employee's pay, as determined under Section 2314 of the Act, at the time of injury, the time disability begins, or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the District of Columbia government, whichever is greater, except as otherwise determined under Section 2313 of the Act with respect to any period. Consideration of additional remuneration in kind for services shall be limited to those expressly authorized under Section 2314(e) of the Act.

(dd) **Permanent partial disability payment (PPD)** -- schedule award indemnity compensation payable to a partially disabled claimant pursuant to Section 2307 of the Act and § 139.3 of this chapter.

(ee) **Permanent total disability payment (PTD)** -- schedule award indemnity compensation payable to a completely disabled claimant pursuant to Section 2307 of the Act and § 139.3 of this chapter, when a qualified physician has determined that a claimant has reached maximum medical improvement and is unable to work on a permanent basis.

(ff) **Program** -- the Public Sector Workers' Compensation Program of the Office of Risk Management, including a third party administrator thereof.

(gg) **Qualified health professional or qualified physician** -- includes a surgeon, podiatrist, dentist, clinical psychologist, optometrist, orthopedist, neurologist, psychiatrist, chiropractor, or osteopath practicing within the scope of his or her practice as defined by state law. The term includes a chiropractor only to the extent that reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Mayor.

(hh) **Recurrence of disability** – means a disability that reoccurs within one (1) year after the date indemnity compensation terminates or, if such termination is appealed, within one (1) year after the date of the final order issued by a judicial entity, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a modified duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations. A recurrence of disability does not apply when a modified duty assignment is withdrawn for reasons of misconduct, non-performance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.

(ii) **Recurrence of medical condition** -- means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.

(jj) **Return to "Regular Full-Time" position** -- means the claimant returned to employment or a position that is established and not fictitious, odd-lot or sheltered, not a job created especially for a claimant, for the same number of hours of work per week as prior to injury.

(kk) **Traumatic injury** -- means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including physical stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

(ll) **Temporary partial disability payment (TPD)** -- indemnity compensation payable to a claimant, who has a wage earning capacity and has not reached maximum medical improvement, calculated pursuant to Section 2306 of the Act and § 130 of this chapter.

(mm) **Temporary total disability payment (TTD)** -- indemnity compensation payable to a claimant, who has a complete loss of wage earning capacity and has not reached maximum medical improvement, calculated pursuant to Section 2305 of the Act and § 129 of this chapter.

(nn) **Treating physician** -- the physician, as defined in Section 2301 of the Act, who provided the greatest amount of treatment and who had the most quantitative and qualitative interaction with the employee or claimant.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than forty-five (45) days after the publication of this notice in the *D.C. Register*, with Michael Krainak, General Counsel, Office of Risk Management, 441 4th Street, N.W., Suite 800S, Washington, D.C. 20001. Comments may be submitted by U.S. Mail to this address or by electronic mail to orm.regulations@dc.gov. Copies of this proposed rulemaking are available upon written request to the above addresses, and are also available electronically on the Office of Risk Management's website at www.orm.dc.gov.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3) and (11) and § 34-2202.16 (2012 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2012 Repl.), hereby gives notice that at its regularly scheduled meeting on December 1, 2016, adopted Board Resolution #16-103 to propose the amendment of Section 4102 (Customer Assistance Program) of Chapter 41 (Retail Water and Sewer Rates) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this amendment is to expand the Customer Assistance Program for eligible single-family residential accounts and individually metered tenant accounts to include a fifty percent (50%) credit off of the monthly billed Clean Rivers Impervious Surface Area Charge.

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

Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 4102, CUSTOMER ASSISTANCE PROGRAM, is amended as follows:

4102 CUSTOMER ASSISTANCE PROGRAM

4102.1 CUSTOMER ASSISTANCE PROGRAM FOR HOUSEHOLDS AND TENANTS

(a) Participation in the Customer Assistance Program (CAP) shall be limited to single-family residential accounts and individually metered tenant accounts when the eligible applicant is responsible for paying for water and sewer services and/or the Clean Rivers Impervious Surface Area Charge (CRIAC).

(b) Eligibility shall be determined by the District of Columbia Department of Energy and Environment and as provided in Subsection 4102.1(a).

(c) Eligible households and tenants shall receive an exemption from water service charges, sewer service charges, Payment-in-Lieu of Taxes (PILOT) and Right-of-Way (ROW) fees for the first Four Hundred Cubic Feet (4 Ccf) per month of water used. If the customer uses less than Four

Hundred Cubic Feet (4 Ccf) of water in any month, the exemption will apply based on the amount of that month's billed water usage.

(d) Eligible households and tenants shall receive a credit of one hundred percent (100%) off of the monthly billed Water System Replacement Fee.

(e) Eligible households and tenants shall receive a credit of fifty percent (50%) off of the monthly billed CRIAC.

Comments on these proposed rules should be submitted in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, by email to Lmanley@dcwater.com, or by FAX at (202) 787-2795. Copies of these proposed rules may be obtained from the DC Water at the same address or by contacting Ms. Manley at (202) 787-2332.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 04-33G
(Text Amendment – 11 DCMR)
(Location of Inclusionary Units in Inclusionary Developments Subject to 11-C DCMR § 1001.4)

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 Subtitle C (General Rules) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The Inclusionary Zoning (IZ) Regulations contained in Chapter 10 of Title 11-C DCMR establish mandatory affordable housing requirements for developments subject to its provisions, while also granting bonus density and providing for modifications to certain development standards. Paragraph 1001.2(b) of Chapter 10 subjects developments located in the zone districts identified in Paragraph 1002.1 (a) to IZ if the development is proposing to add new gross floor area that would result in ten (10) or more dwelling units. Subsection 1001.4 further provides that if the new gross floor area comprising ten (10) or more units would result in an increase of fifty percent (50%) or more in the floor area of an existing building, IZ applies to both the existing and the increased gross floor area.

Dwelling units resulting from IZ are defined by 11-B DCMR § 100.2 as "inclusionary units." The development standards for inclusionary units are set forth in § 1005 of Subtitle C. The proposed amendment would add a new § 1005.6 to allow inclusionary units in developments subject to § 1001.4 to be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of Chapter 10 are met.

The text of this amendment was advertised in the notice of public hearing for this case, but was inadvertently omitted from the notice of proposed rulemaking published in the *D.C. Register* on September 9, 2016, at 63 DCR 11434. When the Commission took final action on the proposed amendments, it authorized the publication of this notice of proposed rulemaking.

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*.

T**he following amendments to Title 11 DCMR are proposed**:

Chapter 10, INCLUSIONARY ZONING, of Title 11-C DCMR, GENERAL RULES, is amended as follows:

§ 1005, DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS, is amended by adding a new § 1005.6 to read as follows:

1005.6 In an inclusionary development subject to § 1001.4 of Subtitle C, inclusionary units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.

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.

OFFICE OF RISK MANAGEMENT

NOTICE OF EMERGENCY RULEMAKING

The Chief Risk Officer of the Office of Risk Management (ORM), Executive Office of the Mayor, pursuant to the authority set forth in Section 2344 of the District of Columbia Government Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.44 (2016 Supp.)); the Office of Administrative Hearings Establishment Act of 2001 (OAH Act), effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 1-1831.01 *et seq.* (2014 Repl.)); Section 7 of Reorganization Plan No. 1 of 2003 for the Office of Risk Management, December 15, 2003; and Mayor's Order 2004-198, dated December 14, 2004, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapters 1 (Public Sector Workers' Compensation Benefits) and 33 (Revised Public Sector Workers' Compensation Benefits) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

Concurrent with this emergency rulemaking, ORM is publishing a Notice of Proposed Rulemaking to add new Sections 100 through 199 to Chapter 1 (Public Sector Workers' Compensation Benefits) (PSWCP) of Title 7 DCMR, and replacing Sections 100-199 of said chapter in their entirety. To avoid confusion during the comment period, the emergency rules that will be in place during the comment period will be placed in Chapter 33, except Subsections 100.5, 111.6 – 111.11, 112.1 and 120.4. The last two digits of the emergency rules in Chapter 33 correspond to the last two digits in the proposed rules. Subsection 100.5 will be adopted and Subsections 111.6 – 111.11, 112.1 and 120.4 of the current rules will be amended to conform with the emergency rules.

The purpose of these rules is to establish that portion of the proposed rulemaking that needs to take effect as of November 30, 2016. The need for these rules to take effect on that date is for the immediate preservation and promotion of the health, safety, and welfare of the residents of the District by establishing: (1) new PSWCP hearing procedures and standards to be employed by the Office of Administrative Hearings for the adjudication of public sector workers' compensation claims under Sections 2323(a-2)(4), 2324(b)(1), and (d)(2) of the CMPA, pursuant to jurisdiction established in Office of Administrative Hearings (OAH) by D.C. Official Code § 2-1831.03(b)(1) (2012 Repl.); (2) uniform procedures for accurate calculation and timely delivery of benefits; and (3) support for the direct payment of benefits to injured workers through the District's payroll system, rather than through a third-party vendor.

The emergency rules were adopted on November 17, 2016 and became effective on November 30, 2016. They will remain in effect for a period of one hundred twenty (120) days from adoption, until March 17, 2017, or until the publication of a Notice of Final Rulemaking, whichever occurs first.

Chapter 1, PUBLIC SECTOR WORKERS' COMPENSATION BENEFITS, of Title 7 DCMR, EMPLOYMENT BENEFITS, is amended as follows:
The following sections are repealed in their entirety:

101, FORMS;

105, PROGRAM NOTICES OF INITIAL DETERMINATIONS AND ELIGIBILITY DETERMINATIONS;

106, COMPUTATION OF TIME;

114, COMPUTATION OF INDEMNITY PAYMENTS;

115, MAXIMUM AND MINIMUM RATES OF COMPENSATION

116, COST-OF-LIVING ADJUSTMENT OF COMPENSATION

118, ELECTION OF COMPENSATION;

121, SCHEDULE AWARDS;

126, UTILIZATION REVIEW;

127, MODIFYING, SUSPENDING OR TERMINATION BENEFITS;

128, APPEAL OF INITIAL DETERMINATIONS AND ELIGIBILITY DETERMINATIONS;

129, REQUEST FOR HEARING;

130, HEARING PROCEDURES;

132, CLAIMS FOR FEES FOR REPRESENTATION;

134, PAYMENT OF COMPENSATION BENEFITS ON REMAND FROM APPEAL;

135, ADMINISTRATIVE AND JUDICIAL REVIEW;

141, LOSS OF WAGE EARNING CAPACITY;

142, OVERPAYMENT;

144, LIMITATION ON BENEFITS; and

199, DEFINITIONS.

Section 100, GENERAL PROVISIONS, is amended as follows:

A new Subsection 100.5 is adopted to read as follows:

100.5 These regulations shall apply to all new, pending, and existing claims, whether the injury giving rise to such claim, occurred before or after the date of these rules.

Section 111, INITIAL DETERMINATIONS, is amended as follows:

Subsections 111.6 – 111.11, are amended to read as follows:

111.6 If one (1) of the circumstances in § 111.5 occurs, the Program shall issue an amended ID.

111.7 The Program shall issue an amended ID pursuant to § 111.5(b) if the Program determines that a claimant is entitled to benefits for an additional body part or injury that is related to the original injury claim. A body part or injury shall be added to an accepted claim if the Program determines after considering all relevant factual evidence, including all relevant medical evidence received pursuant to §§ 123 and 124, that the injury or injury to the body part is directly related to the original injury for which the claim was initially accepted.

111.8 Before the Program may issue an amended ID pursuant to § 111.7, the claimant shall provide notice of the additional body part or injury within thirty (30) days of the new injury or within thirty (30) days of when the claimant first became aware or reasonably should have become aware that an additional body part or injury is directly related to the original claim.

111.9 A claimant seeking to amend an ID pursuant to §§ 111.7 and 111.8 shall make a claim for the additional body part or injury by completing a supplemental Form CA-7, Claim for Compensation, Part A, Employee Statement, in accordance with § 108.4 of this chapter; a Form 3, Physician's Report of Employee's Injury, pursuant to § 108.6; and any other medical or supplemental reports required pursuant to §§ 108.7 and 108.10. The claimant shall return the forms to the Program within fifteen (15) days of the date from which the forms are mailed to the employee.

111.10 If a claimant suffers a new injury or an injury to an additional body part pursuant to § 111.8 while at work, the claimant's official superior shall fill out the forms required in §§ 107.4 through 107.7 within fifteen (15) days of the date from which the forms are mailed to the employer.

111.11 The Program shall issue an amended ID either awarding or denying the claim for an amended ID within thirty (30) days of the Program's receipt of all forms required pursuant to §§ 111.8 through 111.10. The Program may controvert a claim for an amended ID pursuant to §§ 112.3 through 112.7 of this chapter.

Section 112, CLAIMS DEEMED ACCEPTED AND CONTROVERSION, is amended as follows:

Subsection 112.1 is amended to read as follows:

112.1 A newly filed claim for benefits shall be deemed accepted by the Program if the Program does not issue an initial notice of determination or notice of controversion within thirty (30) days of the date the claim was first reported to the Program. This subsection only applies to newly filed claims and does not apply to any other request for compensation or benefits under this chapter, including

claims for amended IDs under § 111.5(b) or claims of recurrences of injuries under § 120 of this chapter.

Section 120, RECURRENCE OF INJURY, is amended as follows:

Subsection 120.4 is amended to read as follows:

120.4 The Program shall issue a Decision on Recurrence of Disability (DRD) either awarding or denying the claim for a recurrence of injury within thirty (30) days of the Program's receipt of the information required in § 120.2. The Program may controvert a claim for a recurrence of injury pursuant to §§ 112.3 through 112.7 of this chapter. DRDs shall be issued in accordance to the manner in which the Program issues IDs, as provided at §111.3 of this chapter.

A new Chapter 33 entitled "REVISED PUBLIC SECTOR WORKERS' COMPENSATION BENEFITS" is adopted to read as follows:

CHAPTER 33 – REVISED PUBLIC SECTOR WORKERS' COMPENSATION BENEFITS

3302 FORMS

3302.1 Any notices, claims, requests, applications, or certificates that the Act or this chapter requires to be made shall be on approved forms.

3302.2 All approved forms shall be obtained from the Program.

3302.3 The following forms are approved:

(a) Form A-1 – Employee Request for Calculation and Certification of Award;

(b) Form 1 – Employee's Notice of Injury / Claim for Continuation of Pay;

(c) Form CA1 – Request to Reinstate COP;

(d) Form 2 – Employing Agency's Report of Injury / Response to COP Request;

(e) Form CA2 – Election of COP Charge Back;

(f) Form 3 – Physician's Report;

(g) Form 3RC – Annual Medical Recertification;

(h) Form 3A – Employee Statement of Medical History;

(i) Form CA3 – Employing Agency Report of Return to Work;

(j) Form 4 – Employee Authorization for Release of Medical Records;

(k) Form 5 – Employee Authorization for Release of Earnings and Tax Records;

(l) Form 6 – Employee Authorization for Release of PSWCP Records;

(m) Form 7 – Employee Request for PSWCP File;

(n) Form CA7, Part A – Employee Claim for Compensation;

(o) Form CA7, Part B – Employing Agency Statement;

(p) Form 8 – Employee Report of Earnings;

(q) Form 9 – Employee Application for Hearing;

(r) Form CA10 – Request for Leave Restoration;

(s) Form 10 – Agreement to Off-set;

(t) Form 11 – Employee Request for Travel Reimbursement;

(u) Form 12 – Employee Claim for Permanent Disability Compensation;

(v) Form 12A – Employee Request for Hearing on Permanent Disability;

(w) Form M1 – Itemization of Professional Services of Medicinal Drugs;

(x) Form M2 – Itemization of Hospital Charges;

(y) Form M3 – Request to Change Treating Physician; and

(z) Form M4 – Request for Pre-authorization of Medical Procedure.

3302.4 Nothing in this section shall be construed to limit the number of forms approved by the Program.

3326 MEDICAL BILLS

3326.2 Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Program. This fee schedule shall be based on one hundred-thirteen percent (113%) of Medicare's reimbursement amounts.

3327 UTILIZATION REVIEW

3327.1 Any medical care or service furnished or scheduled to be furnished under the Act shall be subject to utilization review. The review may be performed before, during, or after the medical care or service is provided.

3327.2 A utilization review organization or individual used pursuant to the Act shall be certified by the Utilization Review Accreditation Commission.

3327.3 The claimant or the Program may initiate utilization review where it appears that the necessity, character, or sufficiency of medical services is improper or clarification is needed on medical service that is scheduled to be provided.

3327.4 The necessity, character or sufficiency of medical services should be reviewed for treatment of the accepted condition(s) only.

3327.5 If a review of medical care or a service is initiated under this section, the utilization review organization must make a decision no later than sixty (60) days after the utilization review is requested. If the utilization review is not completed within one hundred-twenty (120) days of the request, the care or service under review shall be deemed approved.

3327.6 The report of the review shall specify the medical records considered and shall set forth rational medical evidence to support each finding. The report shall be authenticated or attested to by the utilization review individual or by an officer of the utilization review organization. The report shall be provided to the claimant and the Program.

3327.7 Any decision issued by the utilization review organization under this section shall inform the claimant of his or her right to reconsideration or appeal of the decision.

3327.8 A utilization review report which conforms to the provisions of this section shall be admissible in all proceedings with respect to any claim to determine whether medical care or service was, is, or may be necessary and appropriate to the diagnosis of the claimant's injury.

3327.9 If the medical care provider or claimant disagrees with the opinion of the utilization review organization or individual, the medical care provider or claimant may submit a written request to the utilization review organization or individual for reconsideration of the opinion.

3327.10 The request for reconsideration shall:

(a) Be in writing;

(b) Contain reasonable medical justification;

(c) Provide additional information, if the medical care or service was denied because insufficient information was initially provided to the utilization review organization; and

(d) Be made within sixty (60) calendar days of the claimant's receipt of the utilization review report if the claimant is requesting reconsideration, or within sixty (60) calendar days of the medical provider's receipt of the utilization review report, if the medical care provider is requesting reconsideration.

3327.11 Disputes pursuant to Section 2323(a-2)(4) of the Act may be resolved upon an application for a hearing before the OAH within thirty (30) days of the date of the utilization review report or reconsideration decision.

3327.12 Requests for a hearing pursuant to § **Error! Reference source not found.** of this chapter may be made by the Program, medical provider, or claimant.

3327.13 The Superior Court of the District of Columbia may review the OAH's decision without an appeal to the Compensation Review Board. The decision may be affirmed, modified, reversed, or remanded at the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence of the record, pursuant to the District of Columbia Superior Court Rules of Civil Procedure Agency Review.

3327.14 The District of Columbia government shall pay the cost of a utilization review if the claimant seeks the review and is the prevailing party.

3329 COMPUTATION OF WAGE INDEMNITY; TOTAL DISABILITY

3329.1 If the disability is total, subject to the limitations in Section 2306a, the employee's monthly monetary compensation shall be sixty-six and two-thirds percent (66 $^{2}/_{3}$%) of the employee's monthly pay.

3329.2 The employee's monthly pay shall be calculated based on the employee's Average Annual Earning (AAE) as follows:

(a) One-twelfth ($^{1}/_{12}$) of the employee's AAE at the time of injury (or recurrence, if the employee returned to regular, full-time employment for six months or more prior to recurrence).

3329.3 Average Annual Earnings (AAE) are determined based on the nature and duration of the employment in accordance with the Act as follows:

(a) Section 2314(d)(1) is used if the employee worked substantially the whole year prior to the injury.

(b) Section 2314(d)(2) is used if the employee did not work substantially the whole year prior to the injury, but would have been employed for substantially a whole year had it not been for the injury.

(c) Section 2314(d)(3) is used if the employee was not employed for substantially the whole year and the employment would not have lasted for substantially the whole of the year.

(d) Section 2314(d)(4) is used when an employee works without pay or nominal pay.

3329.4 When determining a pay rate, the criteria listed at § **Error! Reference source not found.** should be considered in the order listed, so that only if the method prescribed in § 2314(d)(1) of the Act cannot be reasonably and fairly applied, should consideration be given to the method stated in § 2314(d)(2), and so forth.

3329.5 Substantially the Whole-Year Employment – Section 2314(d)(1) of the Act – If the claimant worked substantially the whole year prior to the injury and:

(a) Has a fixed Annual Rate of Pay, then the claimant's Average Annual Earnings (AAE) is their Annual Rate of Pay (ARP).

(b) Does not have a fixed ARP, then the claimant's AAE, shall be calculated as follows:

(1) Daily Wage multiplied by three hundred (300), if the employee regularly worked six (6) days per work week;

(2) Daily Wage multiplied by two hundred-eighty (280), if the employee regularly worked five and one-half (5½) days per work week;

(3) Daily Wage multiplied by two hundred-sixty (260), if the employee regularly worked five (5) days per work week;

(4) Daily Wage multiplied by two hundred (200), if the employee regularly worked four (4) days per work week; or

(5) Daily Wage multiplied by one hundred-fifty (150), if the employee regularly worked three (3) or fewer days per work week.

3329.6 "Substantially the whole year" under Section 2314 of the Act means the employee worked in the position in which he was employed at the time of the injury for at

least eleven (11) out of the immediate twelve (12) months prior to the injury, unless the employee worked in one of the following positions:

(a) Career seasonal employment – This is an arrangement where the employee regularly works just part of a calendar year, usually for the same general period each year and at the same type of job. The employee must have a prior written agreement with the employer to continue seasonal employment from year to year to be considered a career seasonal employee. Such an employee is entitled to receive compensation on the same basis as an employee with the same grade and step who has worked the whole year. An employee should not be considered career seasonal without explicit written documentation by the agency of his or her status.

(b) School year employment – Employees whose employment is limited to school years (*i.e.*, teachers, bus drivers) are not considered to fall under the provisions of career seasonal employment as set forth above, but they are considered whole-year employment by nature of the position. Although "substantially the whole year" is normally defined as at least eleven (11) months, in order to determine the average annual earnings for an employee whose employment by nature is governed by school years, consideration must be given to whether the claimant worked substantially the whole actual school year, *i.e.*, eleven-twelfths ($^{11}/_{12}$) of the school year, and whether he or she would have been employed for substantially a whole school year had it not been for the injury.

3329.7 Concurrent employment can be included in monthly pay determinations made under Sections 2314(d)(1) and (2) of the Act only to the extent that it establishes the ability to work full time, meaning forty (40) hours per week. When a claimant has been employed for forty (40) or more hours per week for substantially the whole year prior to injury, but not all of these hours are with the District government, he or she has demonstrated the ability to work full time and is entitled to compensation at the rate of a regular full-time employee in the same position as follows:

(a) Similar Employment – If a claimant's concurrent employment was similar to his or her District employment, the Program shall combine the actual earnings from District employment with the actual earnings for the similar employment to obtain the average annual pay the employee earned. (The combination of District and non-District employment hours shall not exceed forty (40) hours per week of employment.) District employment hours shall take precedence in this calculation. This total would be divided by twelve (12) to obtain the monthly pay.

(b) Dissimilar Employment - If a claimant's concurrent employment was dissimilar to his or her District employment and the claimant worked part-time for the District government, the Program shall treat the hours worked

at the concurrent employment as a demonstrated ability to work more than part-time. The Program shall compute the claimant's weekly hours worked by adding the total number of hours worked at the District and non-District employment. The total hours worked, not to exceed forty (40) hours per week, would be multiplied by the hourly rate of pay the claimant received for his or her District employment to compute the claimants weekly pay. The weekly pay would be multiplied by fifty-two (52) and divided by twelve (12) to obtain the monthly pay.

(c) For the purpose of concurrent employment, attending school and sporadic employment does not demonstrate the ability to work more than part time.

(d) Pay rates based on full-time 40-hour per week employment may not be expanded to include pay earned in any other concurrent employment, even if that employment is similar to the District duties. Pay rate based on full-time career seasonal or school year employment may not be expanded to include the pay earned "off season" or "off school year."

3329.8 Anticipated Whole-Year Employment – Section 2314(d)(2) of the Act – If the claimant did not work substantially the whole year, but the position was one which would have afforded employment for substantially a whole year, the claimant's average annual earnings are determined as described at § **Error! Reference source not found.** and § **Error! Reference source not found.** shall also apply.

3329.9 Irregular Employment – Section 2314(d)(3) of the Act – If the claimant did not work substantially the whole year and the position was not one which would have afforded employment for substantially the whole year (for example - intermittent, non-career seasonal, on-call, and discontinuous work), the claimant's AAE are determined as follows:

(a) If the claimant is entitled to compensation for wage loss and further investigation is required to determine the claimant's AAE, the Program shall use the "150 Formula" as a provisional pay rate to calculate compensation. Compensation under the "150 Formula" pay rate shall remain in effect until the investigation is completed.

(b) In order to compute the claimant's AAE for the immediate twelve (12) months preceding the injury, the Program shall add the claimant's total earnings per position(s) worked within that period. To do so, the Program shall pro-rate the claimant's earnings by the period worked for each position employed, in the following order:

(1) If the claimant was employed by the District in more than one (1) position within the immediate twelve (12) months preceding the injury:

(A) Calculate the claimant's total base earnings and number of weeks worked for the entire period that the claimant was employed with the District government at his or her position at the time of injury; and

(B) Calculate the claimant's total base earnings at any other District employment, not to exceed the immediate twelve (12) months prior to the date of injury. This information should be obtained from the Employing Agency or other District agency, where the claimant worked. This information shall be obtained through PeopleSoft.

(2) If the claimant was collectively employed with the District government for less than twelve (12) months, immediately preceding the injury, include one (1) or more of the following categories, if applicable, to complete the calculation such that the total wage accounts for one (1) full year of employment prior to the injury:

(A) Similarly-employed worker – The Program should determine the earnings of another District employee working the greatest number of hours during the year prior to the injury in the same or most similar class, in the same agency.

(i) "Same or most similar class" refers both to the kind of work performed and the kind of appointment held. A similarly situated employee would most likely hold the same type of appointment and the same pay grade and step as the claimant. For example, a seasonal life guard should not be compared to a career full-time life guard, as these are different types of appointments. If the claimant's job was temporary and seasonal in nature, it should be compared to that of another temporary and seasonal employee.

(ii) If the "same or most similar class" contains more than one employee, the employing agency should be asked to state the earnings of the employee who worked the greatest number of hours and therefore had the highest earnings. If the claimant's term of employment is less than a year, the earnings of the similar employee should be pro-rated to match the same term of employment as the claimant's.

(iii) The selected employee's grade and step should also be provided for reference so that it will be on file for wage-earning capacity purposes.

(iv) If there are no other "same or most similar class" employees at the employing agency, the Program need not consider the “Similarly-employed worker” factor.

(B) Claimant's prior-year non-District employment – Only earnings in employment which is the same as, or similar to, the work the employee was doing when injured may be considered.

(i) To make this determination, the Program shall explore the claimant's full employment history for the twelve (12) months preceding the injury to determine the nature of the prior-year non-District employment.

(ii) The annual earnings should be pro-rated such that it reflects the period of time worked, not to exceed twelve (12) months preceding the date of injury.

(iii) Any other relevant factors which may pertain to the employee's AAE in the employment in which he or she was working at the time of the injury may be considered.

(C) The pay rate determined by the "150 Formula" – The “150 Formula,” provided at section 2314(d)(3) of the Act provides that a claimant’s AAE may not be less than one hundred-fifty (150) times the average daily wage that the employee earned in the employment during the year just before the injury.

3329.10 The “rate of pay” for District employment under Section 2314 of the Act shall be determined by referring to the employee’s official personnel folder.

3329.11 Daily wage under Section 2314 of the Act shall be computed by dividing the employee’s total earnings for the immediate twelve (12) months prior to the injury by the total number of days worked in that period.

3329.12 To convert the monthly monetary compensation into bi-weekly installments, the monthly compensation rate shall be multiplied by twelve (12) and divided by

twenty-six (26).

3329.13 To calculate monetary compensation due between pay periods, the total number of hours that the employee was absent due to the work related injury that was not otherwise covered by COP shall be divided by the total number of hours in which the employee was scheduled to work, then multiplied by the bi-weekly compensation rate as follows:

$$\textbf{Bi-weekly Compensation Rate} \times \frac{\textbf{(Total nonCOP work hours absent during pay period)}}{\textbf{(Total hours scheduled to work during pay period)}}$$

3330 COMPUTATION OF WAGE INDEMNITY; PARTIAL DISABILITY

3330.1 A disability is partial, when a qualified physician determines that a claimant can perform work with restrictions, provided that:

(a) The restrictions arise out of a work-related injury;

(b) A claim has been filed for the work-related injury and accepted by the Program; and

(c) The physician has examined the employee and reviewed his or her medical records.

3330.2 If the disability is partial, subject to the limitations in § 1-623.06a, the claimant's monthly monetary compensation shall be sixty-six and two-thirds percent (66 $^{2}/_{3}$%) of the difference between the claimant's monthly pay, as defined at Section 2301(4) of the Act, and the claimant's monthly wage earning capacity after the beginning of the partial disability.

3330.3 If the claimant has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings will form the basis for payment of compensation for partial disability. If the employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the claimant has no actual earnings, the Program shall use the factors stated in Section 2315 of the Act to select a position which represents his or her wage-earning capacity. The factors considered include the nature of the injury, the degree of physical impairment, the usual employment, the age of the claimant, the claimant's qualifications for other employment, and the availability of suitable employment. However, the Program will not secure employment for the claimant in the position selected for establishing a wage-earning capacity.

3330.4 The formula which the Program uses to compute the compensation payable for partial disability employs the following terms:

(a) Pay rate for compensation purposes, which is defined in § 3399.1(cc) of this chapter;

(1) Current pay rate is the "pay rate" as defined in § 3399.1(cc) at the time of the determination; and

(b) Earnings, which means one-twelfth ($^{1}/_{12}$) of:

(1) The claimant's actual annual earnings, if they fairly and reasonably represent his or her wage earning capacity; or

(2) The average annual earning potential derived from the labor market survey conducted by the Program as representing the claimant's wage-earning capacity.

3330.5 The phrase "labor market survey," means a determination of the types of jobs that a claimant is capable of doing, based on the following factors:

(a) The nature of his or her injury;

(b) The degree of physical impairment;

(c) His or her age;

(d) His or her qualifications for other employment;

(e) The availability of suitable employment; and

(f) Other factors or circumstances which may affect his or her wage-earning capacity as a worker with a disability.

3330.6 The phrase "average annual earning potential," means the average of all annual earnings for jobs that were available and considered by the Program at the time it conducted the labor market survey.

3330.7 The claimant's wage-earning capacity, in terms of percentage, is computed by dividing the claimant's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. The Program may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

3330.8 The claimant's salary, if he or she was an employee under Section 2301(1)(A) of the Act, for the purposes of § **Error! Reference source not found.** shall be determined according to grade and step reflected in the claimant's official

personnel record at the time of injury, disability or recurrence.

3330.9 The claimant's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the claimant's loss of wage-earning capacity.

3330.10 The formula for calculating partial disability based on a monthly rate of pay shall be as follows:

$$\textbf{Partial Disability Compensation} = \frac{2}{3} \text{ OR } \frac{3}{4}\left[(\text{Pay Rate}) - \left((\text{Payrate})\left(\frac{\text{Earnings}}{\text{Current Pay Rate}}\right)\right)\right]$$

3330.11 To convert the monthly partial disability monetary compensation into bi-weekly installments, the monthly compensation rate shall be multiplied by twelve (12) and divided by twenty-six (26).

3330.12 Cost-of-living adjustments shall be applied to the partial disability compensation rate in accordance with § 3339.2**Error! Reference source not found.** of this chapter.

3331 AUGMENTED PAY

3331.1 Pursuant to Section 2310 of the Act, amended September 24, 2010, only employees hired before January 1, 1980 are entitled to an augmented benefits rate for dependents.

3332 COMPUTATION OF WAGE INDEMNITY; STATUTORY MAXIMUM AND MINIMUM

3332.1 The statutory maximum and minimum for wage indemnity shall be calculated in accordance to Section 2312 of the Act. The calculation shall be determined by following the federal general pay scale when using Section 5332 of Title 5 of the United States Code, and by following the non-union, District career service (general) pay scale when using the District pay scale.

3333 OVERPAYMENT

3333.1 If the Program makes an overpayment to a claimant as a result of an error of fact or law, the Program shall recoup the overpayment from the claimant or, if a claimant is receiving compensation from the Program, adjust the claimant's compensation payments to correct and recoup the overpayment, as provided in this section.

3333.2 In order to adjust or recoup an overpayment, the Program must make a preliminary finding as to whether the claimant was "at fault," as defined under Section 2329(b)(2)(A)(i) of the Act, in the creation of the overpayment.

3333.3 If the Program makes a preliminary finding that the claimant was at fault in the creation of the overpayment, the Program shall issue a notice of adjustment or recoupment forthwith.

3333.4 If the Program preliminarily finds that the individual was not at fault in the creation of the overpayment, a notice of adjustment or recoupment shall only issue where the Program has determined that the adjustment or recoupment would not defeat the purpose of the Act or be against equity and good conscience, as provided under Section 2329(b) of the Act.

3333.5 A notice of adjustment or recoupment shall advise the claimant of the following:

(a) That the overpayment exists and the amount of the overpayment;

(b) That a preliminary finding shows that the claimant either was or was not at fault in the creation of the overpayment;

(c) That the claimant has the right to inspect and copy the Program's records relating to the overpayment;

(d) That the claimant has the right to request a waiver and present evidence within thirty (30) days of the notice to challenge

(1) The fact and amount of the overpayment; or

(2) The Program's preliminary finding of claimant's fault in the creation of the overpayment; and

(e) That the claimant's failure to present evidence within the thirty (30) days provided shall result in a final determination supporting recoupment of the overpayment, unless the deadline to present evidence is extended pursuant to § 3333.9 of this chapter.

3333.6 Any request for a waiver or challenge to a preliminary finding of overpayment must be submitted to the Program within thirty (30) days of the date of the overpayment notice issued by the Program.

3333.7 Failure to submit evidence to challenge the overpayment or in support of a waiver pursuant to Section 2329(b-1)(2) of the Act within thirty (30) days of the date of the overpayment notice shall result in the issuance of a final determination without participation of the claimant.

3333.8 Final determinations on overpayment shall be determined based Section 2329(b-1)(2) of the Act.

3333.9 If a claimant fails to request a waiver or challenge a preliminary finding of overpayment within thirty (30) days of the date of the overpayment notice and

(a) A final determination has not issued pursuant to § 3333.6, the claimant may submit the request directly to the Program for consideration pursuant to Section 2329(b-1)(2) of the Act.

(b) A final determination has issued pursuant to § 3333.6, the claimant may appeal the Program's final determination to the Chief Risk Officer pursuant to § 3356.1 of this chapter. The Chief Risk Officer shall grant the appeal and remand the belated challenge or waiver of overpayment to the Program for consideration pursuant to Section 2329(b-1)(2) of the Act, only where the claimant submits evidence that establishes the claimant's inability to timely act resulted from:

(1) Good cause;

(2) Mental or physical incapacity; or

(3) Lack of timely receipt of the notice of adjustment or recoupment.

3333.10 The Program may treat any overpayment as an employee debt to the District pursuant to Section 2902 and 2904 of the Act. Pursuant to Section 2901(g) of the Act, Sections 2901(a) through (f) of the Act shall not apply to limit the Program's ability to collect overpayments; and

3333.11 If the Program has reason to believe that the overpayment may have occurred as a result of fraud or other criminal activity on the part of the claimant, the Program shall refer the matter to the Office of the Inspector General, the United States Attorney's Office, or another appropriate law enforcement entity.

3334 ELECTION OF COMPENSATION

3334.1 A claimant receiving indemnity compensation under this chapter shall not:

(a) Receive other salary, pay, or remuneration of any type from the District of Columbia, including retirement pay for employees hired by the District of Columbia on or after October 1, 1987. The prohibition in this paragraph does not apply to service actually performed in a part-time or modified duty capacity pursuant to § 3337 of this chapter; or

(b) Recover damages from the District government because of the claimant's compensable injury or death, as a result of a judicial proceeding in a civil

action or in admiralty, or by an administrative or judicial proceeding under another workers' compensation statute or federal tort liability statute.

3334.2 The phrase "salary, pay, or remuneration" as used in this section includes:

(a) Severance pay, separation pay and "buy-out" payments to a claimant from the claimant's Employment Agency; and

(b) Federal retirement benefits accrued as a result of District employment.

3334.3 A claimant may not receive indemnity compensation concurrently with retirement pay or PSWCP death benefits concurrently with survivor annuity from the District of Columbia. The claimant must elect the benefit that he or she wishes to receive, provided that such election is permitted per the terms of the applicable retirement pay or survivor annuity. Once made, if permitted, the election is only revocable prospectively. A claimant may, however, receive compensation schedule payments pursuant to Section 2307 of the Act, at the same time that he or she receives District government retirement pay.

3334.4 A claimant may not receive indemnity compensation concurrently with federal retirement pay. Once a claimant applies and receives federal retirement pay, the claimant is no longer eligible for temporary indemnity compensation. A claimant may, however, receive compensation schedule payments pursuant to Section 2307 of the Act, at the same time that he or she receives federal civil service retirement pay.

3334.5 A claimant may only receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the United States Armed Forces or other uniformed services.

3334.6 When a claimant begins receiving indemnity compensation under this section, it shall be the claimant's obligation to inform the Program if the claimant receives prohibited compensation under this subsection for as long as the claimant receives indemnity compensation from the Program.

3334.7 Whenever the Program determines that a claimant is receiving or may be entitled to receive the salary, pay, remuneration, or benefits listed in this section, it may forward to the claimant a form for the election of which compensation the employee or claimant wishes to receive. If the claimant has already received salary, pay, remuneration, or benefits in violation of this section, the Program shall initiate overpayment proceedings.

3334.8 A claimant shall not be eligible for indemnity compensation, if he or she was employed by the District of Columbia or the federal government before October 1, 1987, and is receiving disability benefits from the federal government for the same injury.

3334.9 Remuneration, such as severance pay, received pursuant to § 3334.1(a) of this chapter, shall be off-set against:

(a) Any compensation benefits due or paid to claimant; or

(b) Lump sum payment a claimant received in commutation installment payments.

3339 COST OF LIVING ADJUSTMENTS

3339.1 Cost of living adjustments shall be applied to compensation calculated pursuant to Section 2305 or 2306 of the Act.

3339.2 The following cost-of-living adjustments apply in the calculation of compensation for disability or death:

(a) Cost-of-Living Adjustments under 5 U.S.C. § 8146a, FECA Bulletin No. 14-03

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
10/01/66	12.5%	06/01/75	4.1%
01/01/68	3.7%	01/01/76	4.4%
12/01/68	4.0%	11/01/76	4.2%
09/01/69	4.4%	07/01/77	4.9%
06/01/70	4.4%	05/01/78	5.3%
03/01/71	4.0%	11/01/78	4.9%
05/01/72	3.9%	05/01/79	5.5%
06/01/73	4.8%	10/01/79	5.6%
01/01/74	5.2%	04/01/80	7.2%
07/01/74	5.3%	09/01/80	4.0%
11/01/74	6.3%	03/01/81	3.6%

(b) Cost-of-Living Adjustments under D.C. Law 2-139, § 2341 (25 DCR 5740 (March 3, 1979)):

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
11/01/81	5.1%	02/01/87	3.8%
12/01/82	4.0%	12/01/87	4.2%
10/01/83	3.7%	12/01/88	4.0%
09/01/84	4.6%	05/01/89	3.7%
09/01/85	4.1%		

(c) Cost-of-Living Adjustments under D.C. Official Code § 1-623.41, (37 DCR 778 (March 15, 1990)):

EFFECTIVE DATE	RATE	EFFECTIVE DATE	RATE
10/03/93	5.0%	10/05/03	2.5%
04/02/95	-4.0%	07/10/05	3.5%
10/01/95	4.2%	10/02/05	4.0%
10/11/98	6.0%	10/01/06	3.0%
04/09/00	6.0%	10/14/07	3.25%
10/08/00	4.0%		

(d) Cost-of-Living Adjustments under D.C. Law 21-0039 (62 DCR 13744-13745 (October 23, 2015)):

After December 15, 2015, the percentage amount and effective date of an across-the-board salary increase reflected in any Career Service (General) District Government Salary Schedule that is approved in accordance with Sections 1105 and 1006 of the Act.

3339.3 Notwithstanding consideration of any permitted premium pay, the application of any cost of living adjustment shall not result in a monthly pay rate that exceeds sixty-six and two-thirds (66 $^{2}/_{3}$) percent (or seventy-five percent (75%), if an augmented rate of indemnity compensation is permitted) of the current monthly pay rate (*i.e.*, $^{1}/_{12}$ of the current annual salary) for the grade and step of the claimant's pre-injury position.

3340 PERMANENT DISABILITY

3340.1 A claimant may be eligible for permanent disability indemnity compensation upon:

(a) Reaching maximum medical improvement for a disability and temporary disability compensation has ceased;

(b) Receiving four hundred-forty-eight (448) weeks of temporary total or partial disability; or

(c) Loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes.

3340.2 Claims for permanent disability by claimants, who are eligible to request an award pursuant to § **Error! Reference source not found.Error! Reference source not found.** of this chapter shall be filed with the Program within one hundred and eighty (180) days of the termination of temporary disability indemnity benefits. Claimants who fail to request an award within one hundred

and eight (180) days of termination of temporary disability indemnity benefits shall not be entitled to permanent disability indemnity benefits thereafter, unless there is good cause to excuse the delay.

3340.3 Claims for permanent disability by claimants, who are eligible to request an award pursuant to § **Error! Reference source not found.Error! Reference source not found.** of this chapter shall be filed as a hearing for permanent disability with the Office of Administrative Hearings within fifty-two (52) weeks after receipt of the 448th week of temporary total or partial disability indemnity benefits. Claimants who fail to request a hearing within the last fifty-two (52) weeks of five hundred (500) weeks of benefits shall not be entitled to permanent temporary or partial disability indemnity benefits thereafter.

3340.4 A claimant eligible for permanent disability pursuant to § **Error! Reference source not found.Error! Reference source not found.** of this chapter may be awarded a scheduled award for permanent disability in lieu of temporary disability upon filing a claim for indemnity compensation.

3340.5 To file a claim for permanent disability under Section 2307 of the Act, the claimant shall complete Form 12 and provide supporting information and documentation, including a permanent disability rating performed in accordance to the most recent edition of the AMA Guides from a qualified physician.

3340.6 If a claimant requests a schedule award pursuant to § **Error! Reference source not found.Error! Reference source not found.** of this chapter, the Program shall:

(a) Review the request;

(b) Request additional information or action as necessary, including the scheduling of a physical examination(s), to evaluate the extent of permanency; and

(c) Issue a written decision within thirty (30) days of receipt of all required documents that shall:

(1) Sets forth the basis for accepting or denying the request; and

(2) Be accompanied by information about the claimant's right to appeal the Program’s decision to the Chief Risk Officer, as provided in § **Error! Reference source not found.** of this chapter.

3340.7 Permanent disability compensation shall be computed pursuant to § 3329 of this chapter and in accordance with the schedule provided at Section 2307 of the Act and shall not be subject to cost-of-living-adjustments.

3340.8 Permanent partial disability shall be computed by:

(a) Calculating the monthly compensation less COLAS pursuant to § 3329 of this chapter;

(b) Converting the monthly compensation to weekly compensation by multiplying the monthly compensation rate by twelve (12) and dividing the product by fifty-two (52);

(c) The adjusted award schedule for partial disability shall be computed by multiplying the total number of weeks available for the impairment member under Section 2307(c) of the Act by the percentage impairment rating provided by the physician; and

(d) The total award for partial disability shall be computed by multiplying the adjusted award schedule for partial disability by the weekly compensation rate computed pursuant to § **Error! Reference source not found.Error! Reference source not found.**.

3340.9 Medical reports establishing eligibility and determination for schedule awards under Section 2307 of the Act shall be prepared by physicians with specific training and experience in the use of the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment.

3340.10 A claimant who requests or receives a schedule award pursuant to Section 2307 of the Act is ineligible for further indemnity payment(s) for temporary disability arising out of the same injury for which a schedule award has been approved or paid.

3340.11 A claimant may not receive indemnity compensation for temporary disability and a schedule award at the same time.

3344 MODIFICATION, FORFEITURE, SUSPENSION OR TERMINATION OF BENEFITS

3344.1 A claimant's benefits shall be modified if the Program has reason to believe that the claimant's PSWCP file and records establish the following:

(a) The disability for which compensation was paid has ceased or lessened;

(b) The disabling condition is no longer causally related to the employment;

(c) The claimant's condition has changed from total disability to partial disability;

(d) The employee has been released to return to work in a modified or light

duty basis; or

(e) The Program determines based on strong compelling evidence that the initial decision was in error.

3344.2 A claimant's benefits shall be forfeited if substantial evidence in the claimant's PSWCP file establishes that claimant failed to complete a report of earnings pursuant to § **Error! Reference source not found.**.

3344.3 A claimant's benefits shall be terminated if the Program has reason to believe that the claimant's PSWCP file establishes the following:

(a) The disability for which compensation was paid has ceased;

(b) The disabling condition is no longer causally related to the employment;

(c) The employee has been released to return to work or has returned to work based upon clear evidence;

(d) The claimant has failed to complete a report of earnings for more than ninety (90) days; or

(e) The claimant has been offered a modified duty assignment and has elected not to accept the modified duty assignment.

3344.4 A claimant's benefits shall be suspended if the Program has reason to believe that the claimant's PSWCP file establishes the following:

(a) The claimant failed to attend an appointment for Additional Medical Examination (AME), bring medical records under the claimant's possession and control, or any other obstruction of the examination;

(b) The claimant failed to follow prescribed and recommended course of medical treatment from the treating physician; or

(c) A claimant hired on or after January 1, 1980, without good cause failed to apply for or undergo vocational rehabilitation when so directed by the Program.

3344.5 If substantial evidence in the claimant's PSWCP file establishes that a claimant hired before January 1, 1980, without good cause fails to apply for or undergo vocational rehabilitation, when directed by the Program:

(a) The Program may propose a reduction of indemnity compensation and present the proposed reduction to the Compensation Review Board (CRB) for review; and

(b) The CRB shall affirm the reduction in benefits, if it determines that there is substantial evidence in the record to show that the wage-earning capacity of the individual would probably have substantially increased, absent the claimant's failure to attend vocational rehabilitation, as directed by the Program.

(1) "Substantially increase" means an increase in wage-earning capacity by fifty percent (50%) or more.

(2) The claimant's wage-earning capacity is computed by conducting a labor market research based on the assumption the claimant has enrolled in vocational rehabilitation to arrive at the claimant's "average annual earning potential." The average annual earning potential shall be divided by twelve to arrive at the claimant's monthly wage-earning capacity. The claimant's monthly wage earning capacity shall be compared against the claimant's monthly pay. If the claimant's wage earning capacity exceeds the claimant's monthly pay by fifty percent (50%), the Program may propose a reduction of indemnity compensation.

3344.6 Failure to apply for or undergo vocational rehabilitation shall include failure to attend meetings with the vocational rehabilitation case worker, failure to apply for jobs that have been identified for the claimant, or failure to otherwise participate in good faith in the job application process.

3344.7 Prior written notice need not be given when an employee's benefits are suspended or forfeited pursuant to this section.

3344.8 In all claims, the claimant is responsible for continual submission, or arranging for the continual submission of, a medical report from the attending physician as evidence supporting the reason for continued payment of compensation.

3344.9 For indemnity compensation benefits, "reason to believe" that the disability for which compensation was paid has ceased pursuant to §§ 3344.1(a) and 3344.3(a) of this chapter includes a claimant's failure to provide contemporaneous medical evidence to show that

(a) The accepted condition remains disabling; and

(b) The nature and extent of the ongoing disability necessitate a claimant's continued absence from work or restriction from performing the full scope of pre-injury duties.

3344.10 For medical compensation benefits, "reason to believe" that the disability for which compensation was paid has ceased pursuant to §§ 3344.1(a) and 3344.3(a)

of this chapter includes a claimant's lack of treatment for the accepted condition for one year or more.

3345 ADJUSTMENTS AND CHANGES TO BENEFITS

3345.1 Except as provided in §§ 3345.3, 3345.4, 3345.5 and 3345.6 of this chapter, the Program will provide the claimant with prior written notice of the proposed action and give the claimant thirty (30) days to submit relevant evidence or argument to support entitlement to continued payment of compensation, prior to issuance of an Eligibility Determination (ED), where the Program has a reason to believe that compensation should be either modified or terminated due to a change of condition pursuant to Section 2324(d)(1) and (4) of the Act. An ED shall be accompanied by information about the employee's appeal rights.

3345.2 Prior notice provided under this section will include a description of the reasons for the proposed action and a copy of the specific evidence upon which the Program is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until thirty (30) days have elapsed after the issuance of the notice if no additional evidence or argument is submitted.

3345.3 Prior written notice will not be given when a claimant dies, when the Program either reduces or terminates compensation upon a claimant's return to work, when the Program terminates only medical benefits after a physician indicates that further medical treatment is not necessary or has ended, or when the Program denies payment for a particular medical expense.

3345.4 The Program will not provide prior written notice when compensation is forfeited for:

(a) A claimant's failure to report earnings from employment or self-employment; or

(b) A claimant's failure to accept a modified duty assignment, when one is offered to him or her.

3345.5 The Program will not provide prior written notice when compensation is suspended due to one of the following:

(a) A claimant's failure to attend vocational rehabilitation;

(b) A claimant's failure to follow prescribed and recommended courses of medical treatment from the treating physician; or

(c) A claimant fails to cooperate with the Program's request for a physical examination.

3345.6 The Program will not provide prior written notice when compensation is terminated due to one of the following:

(a) The award of compensation was for a specific period of time which has expired;

(b) The death of a claimant;

(c) The claimant has been released to return to work or has returned to work based upon clear evidence; or

(d) A claimant's conviction for fraud in connection with a claim under the Act.

3345.7 The Program shall provide written notice, but not an ED, where there are *de minimus* adjustments resulting from the application of COLAs or corrections of technical errors that affect five percent (5%) or less of the claimant's monetary benefits over the course of a 12-month period. The reasons for such *de minimus* changes shall be documented in claimant's PSWCP file.

3345.8 If the claimant submits evidence or argument prior to the issuance of the decision, the Program will evaluate the submission in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument that is repetitious, cumulative, or irrelevant will not require any further development. If the claimant does not respond within thirty (30) days of the prior written notice, the Program will issue a decision consistent with its prior written notice. The Program will not grant any request for an extension of this thirty (30) day period.

3345.9 Evidence or argument that refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the claimant submits evidence or argument that fails to refute the evidence upon which the proposed action was based but which requires further development of the evidence and basis for the decision, the Program will not provide the claimant with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, the Program will either continue payment or issue a decision consistent with its prior written notice or further developed evidence.

3346 WEIGHING MEDICAL EVIDENCE

3346.1 When the Program receives medical evidence from more than one source, it should evaluate the relative value, or merit, of each piece of medical evidence.

3346.2 In evaluating the merits of medical reports, no preference shall be given to

treating physicians. The Program shall evaluate the probative value of the report and assign greater value to:

(a) An opinion based on complete factual and medical information over an opinion based on incomplete, subjective or inaccurate information. Generally, a physician who has physically examined a patient, is knowledgeable of his or her medical history, and has based the opinion on an accurate factual basis, has weight over a physician conducting a file review with no knowledge of the patient's medical history or fails to take into account or omits other relevant medical conditions that relate to or may be related to the condition at issue.

(b) An opinion based on a definitive test(s) and includes the physician's findings. Some medical conditions can be established by objective testing. Medical reports that contain objective findings shall be assigned greater weight than those that fail to account for or include objective findings, where the condition can be established or excluded by such finding.

(c) A well-rationalized opinion over one that is unsupported by affirmative evidence. The term "rationalized" means that the statements of the physician are supported by an explanation of how his or her conclusions are reached, including appropriate citations or studies. An opinion that is well-rationalized provides a convincing argument for a stated conclusion that is supported by the physician's reasonably justified analysis of relevant evidence. For example, an opinion which is supported by the interpretation of diagnostic evidence and relevant medical or scientific literature is well-rationalized. Conversely, an opinion which states a conclusion without explaining the interpretation of evidence and reasoning that led to the conclusion is not well-rationalized.

(d) The opinion of an expert over the opinion of a general practitioner or an expert in an unrelated field. However, conclusive statements of an expert without any underlying justification, other than affirmation of the physician's expertise, are not to be viewed as carrying significant probative value over that of a general practitioner report that is well-rationalized and/or supported by applicable affirmative evidence.

(e) An unequivocal opinion over one that is vague or speculative. A physician offering a clear, unequivocal opinion on a medical matter is to be viewed as more probative compared to an opinion that waivers or hesitates in its presentation or contains vague and speculative language. An opinion which contains verbiage such as "possibly could have" or "may have been" or provides a guess or estimation indicates speculation on the part of the physician.

3347 GOOD CAUSE DETERMINATION

3347.1 A good cause determination shall be supported by evidence that establishes good cause as defined at § 3399.1(q) and the proponent's failure to act does not result in undue prejudice to the opposing party.

3353 REQUESTS FOR AUDIT OF INDEMNITY BENEFITS

3353.1 A claimant who believes that the Program has incorrectly calculated his or her indemnity benefit may request an audit of the Program's calculation by completing Form A-1 and submitting it to the Chief Risk Officer.

3353.2 The Chief Risk Officer shall affirm the Program's calculations, if it is supported by substantial evidence in the record. Otherwise, at the discretion of the Chief Risk Officer, the Program's decision may be modified, revised or remanded to the Program with instructions.

3353.3 The Chief Risk Officer shall notify the claimant in writing of his or her decision on the audit request within thirty (30) days of the Program's receipt of the request, unless the Chief Risk Officer provides notice in writing that extenuating circumstances preclude him or her from making a decision within this period.

3353.4 If no decision or notice of extenuating circumstances is issued within thirty (30) days, the calculation which forms the basis of the claimant's request for an audit shall be deemed the final decision of the agency in response to the claimant's request and the claimant may seek review of the calculations before the Superior Court of the District of Columbia on timely petition for review by the claimant.

3353.5 Any retroactive benefits due to the claimant as result of a request made under this chapter are subject to the limitations of D.C. Official Code § 12-301(8).

3355 OFFICE OF ADMINISTRATIVE HEARINGS (OAH) AND OFFICE OF HEARINGS AND ADJUDICATION (OHA), JURISDICTION

3355.1 Beginning December 1, 2016, the following decisions shall be appealed to the Office of Administrative Hearings (OAH):

(a) Initial awards for or against compensation benefits pursuant to Section 2324(b) of the Act;

(b) Final decisions concerning the necessity, character or sufficiency of medical care or services following an appeal to a utilization review pursuant to Section 2323(a-2)(4) of the Act; and

(c) Modification of awarded benefits pursuant to Section 2324(d) of the Act.

3355.2 Requests for determination of whether claimant has a permanent disability pursuant to Section 2306a shall be made to the Office of Administrative Hearings (OAH).

3355.3 All appeals filed prior to December 1, 2016, for decisions described at 7 DCMR §§ 3344.1(a), (b), and (c) (repealed by adoption of these regulations) shall be made to the Department of Employment Services, Office of Hearings and Adjudications (OHA).

3356 OFFICE OF RISK MANAGEMENT, JURISDICTION

3356.1 A claimant who is dissatisfied with any other decision issued by the Program may only appeal the decision to the Chief Risk Officer.

3356.2 Appeals to the Chief Risk Officer shall:

(a) Be filed within ten (10) days from the date the decision was issued, unless otherwise provided;

(b) Contain information required under this chapter; and

(c) Include all documents and other evidence in support of the claimant's arguments.

3356.3 The Chief Risk Officer shall affirm the Program's decision, if it is supported by substantial evidence in the record. Otherwise, at the discretion of the Chief Risk Officer, the Program's decision may be modified, revised or remanded to the Program with instructions.

3356.4 The Chief Risk Officer shall notify the claimant in writing of his or her decision within thirty (30) days of the Program's receipt of the appeal. If no decision is issued within those thirty (30) days, the Program's decision shall be deemed the final decision of the agency.

3356.5 The final decision of the agency under § **Error! Reference source not found.** may be reviewed by the Superior Court of the District of Columbia on timely petition for review by the employee pursuant to District of Columbia Superior Court Rules of Civil Procedure Agency Review Rule 1.

3357 OAH AND OHA, HEARING RULES

3357.1 OAH Rules 2950 through 2969 contain the Rules for management of PSWCP cases filed pursuant to Section 2324 of the Act with the Department of Employment Services, Office of Hearings and Adjudications (OHA) and Office of Administrative Hearings (OAH).

3357.2 If no procedure is specifically prescribed by these Rules, the Superior Court for the District of Columbia Rules may be used as guidance, to the extent practicable.

3357.3 The rules shall govern the conduct of hearing, unless the ALJ determines its application impairs the ALJ's ability to ascertain the claimant's rights pursuant to Section 2324(b)(2) of the Act.

3358 HEARINGS, STANDARD OF REVIEW

3358.1 All appeals of Program decisions before the OAH and OHA shall be reviewed under a *de novo* standard of review.

3359 HEARINGS, BURDEN OF PROOF

3359.1 Burden of Proof, Initial Determination. Claimant has the burden to prove, by a preponderance of the evidence (more likely than not)

(a) That the injury was work related; and

(b) The extent and nature of Claimant's injuries and disability.

3359.2 Burden of Proof, Termination or Modification of Award. If the Agency seeks to terminate or modify an award, it must present substantial evidence that the Program had reason to believe the claimant's condition has sufficiently changed to warrant modification or termination of benefits. Once the Agency presents such evidence, the claimant has the burden to prove, by a preponderance of the evidence, the entitlement to ongoing benefits, as well as the nature and extent of disability.

3359.3 Burden of Proof, Recurrence of Disability. The claimant has the burden to prove by clear and convincing evidence that a recurrence of disability is causally related to the original injury.

3359.4 Burden of Proof, Permanent Disability. The claimant has the burden to prove, by a preponderance of the evidence that he or she is entitled to an award for permanent disability.

3360 HEARING DECISIONS, COMPLIANCE AND ENFORCEMENT

3360.1 The ALJ shall issue an order to reverse, modify, affirm, or remand a determination rendered by the claims examiner within thirty (30) days after the hearing ends or the record closes.

3360.2 Unless the OHA or OAH decision is appealed or otherwise stayed by a reviewing administrative or judicial forum, the Program shall comply with the decision within thirty (30) calendar days from the date the decision becomes final.

3360.3 If the Program fails to comply with the final decision within the time prescribed at § 3360.2 of this chapter:

(a) The claimant shall file Form A-1 with the General Counsel for the Office of Risk Management to request computation of benefits due pursuant to the compensation order;

(b) Within thirty (30) days from the date the request was received, the Program shall certify an amount due to the claimant under the compensation order; and

(c) Once a certification of compensation is issued, the claimant may file for a lien in the amount certified against the Disability Compensation Fund, the General Fund, or any other District fund or property to pay the compensation award with the Superior Court of the District of Columbia.

3360.4 A claimant may dispute the amount calculated and certified by the Program by appealing the decision to the Chief Risk Officer pursuant to § **Error! Reference source not found.**.

3360.5 Increases in awards available under Section 2324(g) of the Act shall be limited to awards for indemnity compensation.

3361 INTEREST ON COMPENSATION AWARDS

3361.1 Interest may only be awarded where the Program fails to make payment toward the compensation award within twelve (12) months after the date of the compensation order.

3361.2 Interest on compensation awards, when awarded, shall:

(a) Be the lower of four percent (4%) per annum or the rate provided under D.C. Official Code § 28-3302(c),

(b) Not begin to accrue until twelve (12) months have elapsed after the date of the compensation order; and

(c) Not apply to any increase in award payment pursuant to Section 2324(g) of the Act.

3361.3 Interest on compensation awards shall be limited to simple interest.

3362 ATTORNEY'S FEES

3362.1 "Actual benefits secured" for the purpose of Section 2327 means the total amount

of benefits secured by an attorney in connection with a hearing through the date of the compensation order only and shall not include future benefits.

3362.2 Attorney's fees awarded under Section 2327 of the Act shall be computed at fifty percent (50%) of the most current United States Attorney's Office Attorney's Fees Matrix. In no event shall the attorney's fees exceed twenty percent (20%) of the lump sum indemnity benefit secured as of the issuance date of the compensation order.

3363 ADMINISTRATIVE AND JUDICIAL REVIEW

3363.1 The provisions of 7 DCMR §§ 250 to 271 concerning administrative appeals to the Compensation Review Board (sometimes referred to in these regulations as the Board) established pursuant to the Directive of the Director of the Department of Employment Services (Director), Administrative Policy Issuance No. 05-01 (February 5, 2005), are incorporated herein by reference as fully as if stated and set forth in their entirety in this section.

3363.2 Any party adversely affected or aggrieved by a compensation order or final decision issued by the OHA or OAH with respect to a claim for workers' compensation benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code §§ 1-623.1, *et seq.* (2014 Repl. & 2016 Supp.)) may appeal said compensation order to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR § 258.

3399 DEFINITIONS

3399.1 The definitions set forth in Section 2301 of Title 23 (Workers' Compensation) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-623.01 *et seq.* (2014 Repl. & 2016 Supp.)) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply and have the meanings ascribed:

(a) **The Act** -- the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-623.01 *et seq*. (2014 Repl. & 2016 Supp.)), as amended, and as it may be hereafter amended.

(b) **Administrative Law Judge or ALJ** -- a hearing officer of the Office of Hearings and Adjudication in the Administrative Hearings Division of the Department of Employment Services or Administrative Law Judge in the Office of Administrative Hearings.

(c) **Aggravated injury** -- The exacerbation, acceleration, or worsening of pre-existing disability or condition caused by a discrete event or occurrence and resulting in substantially greater disability or death.

(d) **Alive and well check** -- an inquiry by the Program to confirm that a claimant who is receiving benefits still meets the eligibility requirements of the Program.

(e) **Beneficiary** -- an individual who is entitled to receive death benefits under the Act.

(f) **Claim** -- an assertion properly filed and otherwise made in accordance with the provisions of this chapter that an individual is entitled to compensation benefits under the Act.

(g) **Claim file** -- all program documents, materials, and information, written and electronic, pertaining to a claim, excluding that which is privileged or confidential under District of Columbia law.

(h) **Claimant** -- an individual who receives or claims benefits under the Act.

(i) Claimant's Representative -- means an individual or law firm properly authorized by a claimant of this chapter to act for the claimant in connection with a claim under the Act or this chapter.

(j) **Controversion** -- means to dispute, challenge or deny the validity of a claim for Continuation of Pay.

(k) **Disability** -- means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(l) **Earnings** -- for the purposes of § 138, any cash, wages, or salary received from self-employment or from any other employment aside from the employment in which the worker was injured. It also includes commissions, bonuses, and cash value of all payments and benefits received in any form other than cash. Commissions and bonuses earned before disability but received during the time the employee is receiving workers' compensation benefits do not constitute earnings that must be reported.

(m) **Eligibility Determination (ED)** -- a decision concerning, or that results in, the termination or modification of a claimant's existing Public Sector Workers' Compensation benefits that is brought about as a result of a change to the claimant's condition.

(n) **Employee** – means

(1) A civil officer or employee in any branch of the District of Columbia government, including an officer or employee of an instrumentality wholly owned by the District of Columbia government, or of a subordinate or independent agency of the District of Columbia government;

(2) An individual rendering personal service to the District of Columbia government similar to the service of a civil officer or employee of the District of Columbia, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual, but does not include a member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department who has retired or is eligible for retirement pursuant to D.C. Official Code §§ 5-707 through 5-730 (2012 Repl. & 2016 Supp.). The phrase "personal service to the District of Columbia government" as used for the definition of employee means working directly for a District government agency or instrumentality, having been hired directly by the agency or instrumentality; it does not mean working for a private organization or company that is providing services to the District government or its instrumentalities; and

(3) An individual selected pursuant to federal law and serving as a petit or grand juror and who is otherwise an employee for the purposes of this chapter as defined by paragraphs (i) and (ii) above.

(o) **Employee's Representative** -- means an individual or law firm properly authorized by an employee in writing of this chapter to act for the employee in connection with a request for continuation of pay under the Act or this chapter.

(p) **Employing agency** -- the agency or instrumentality of the District of Columbia government which employs or employed an individual who is defined as an employee by the Act.

(q) **Good cause** -- omissions caused by "excusable" neglect or circumstances beyond the control of the proponent. Inadvertence, ignorance or mistakes construing law, rules and regulations do not constitute "excusable" neglect.

(r) **Health care professional** -- means a person who has graduated from an accredited program for physicians, advance practice nurses, physician

assistants, clinical psychologist, and is licensed to practice in the jurisdiction where care is provided.

(s) **Immediate supervisor** -- the District government officer or employee having responsibility for the supervision, direction, or control of the claimant, or one acting on his or her behalf in such capacity.

(t) **Indemnity compensation** -- the money allowance paid to a claimant by the Program to compensate for the wage loss experienced by the claimant as a result of a disability directly arising out of an injury sustained while in the performance of his or her duty, calculated pursuant to the provisions of this chapter.

(u) **Initial Determination (ID)** -- a decision regarding initial eligibility for benefits under the Act, including decisions to accept or deny new claims, pursuant to this chapter.

(v) **Latent disability** -- a condition, disease or disability that arises out of an injury caused by the employee's work environment, over a period longer than one workday or shift and may result from systemic infection, repeated physical stress or strain, exposure to toxins, poisons, fumes or other continuing conditions of the work environment.

(w) **Mayor** -- the Mayor of the District of Columbia or a person designated to perform his or her functions under the Act.

(x) **Medical opinion** -- a statement from a physician, as defined in Section 2301 of the Act, that reflects judgments about the nature and severity of impairment, including symptoms, diagnosis and prognosis, physical or mental restrictions, and what the employee or claimant is capable of doing despite his or her impairments.

(y) **Office of Administrative Hearings (OAH)** -- the office where Administrative Law Judges adjudicate public sector workers' compensation claims under Sections 2323(a-2)(4), 2324(b)(1), and (d)(2) of the Act, pursuant to jurisdiction under D.C. Official Code § 2-1831.03 (b)(1) (2012 Repl.), Section 2306a of the Act, and rules set forth in this chapter.

(z) **Office of Hearings and Adjudication (OHA)** -- the office in the Administrative Hearings Division of the Department of Employment Services where Administrative Law Judges adjudicate workers' compensation claims, including public sector workers' compensation claims under Sections 2323(a-2)(4), 2324(b)(1), and (d)(2) of the Act , and rules set forth in this chapter.

(aa) **Office of Risk Management (ORM)** -- the agency within the Government of the District of Columbia that is responsible for the District of Columbia's Public Sector Workers' Compensation Program (PSWCP).

(bb) **Panel physician –** means a physician approved by the Program pursuant to § **Error! Reference source not found.** of this chapter to provide medical treatment to persons covered by the Act.

(cc) **Pay rate for compensation purposes --** means the employee's pay, as determined under Section 2314 of the Act, at the time of injury, the time disability begins, or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the District of Columbia government, whichever is greater, except as otherwise determined under Section 2313 of the Act with respect to any period. Consideration of additional remuneration in kind for services shall be limited to those expressly authorized under Section 2314(e) of the Act.

(dd) **Permanent partial disability payment (PPD)** -- schedule award indemnity compensation payable to a partially disabled claimant pursuant to Section 2307 of the Act and § **Error! Reference source not found.** of this chapter.

(ee) **Permanent total disability payment (PTD)** -- schedule award indemnity compensation payable to a completely disabled claimant pursuant to Section 2307 of the Act and § **Error! Reference source not found.** of this chapter, when a qualified physician has determined that a claimant has reached maximum medical improvement and is unable to work on a permanent basis.

(ff) **Program** -- the Public Sector Workers' Compensation Program of the Office of Risk Management, including a third party administrator thereof.

(gg) **Qualified health professional or qualified physician** -- includes a surgeon, podiatrist, dentist, clinical psychologist, optometrist, orthopedist, neurologist, psychiatrist, chiropractor, or osteopath practicing within the scope of his or her practice as defined by state law. The term includes a chiropractor only to the extent that reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Mayor.

(hh) **Recurrence of disability** – means a disability that reoccurs within one (1) year after the date indemnity compensation terminates or, if such termination is appealed, within one (1) year after the date of the final order issued by a judicial entity, caused by a spontaneous change in a medical

condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a modified duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations. A recurrence of disability does not apply when a modified duty assignment is withdrawn for reasons of misconduct, non-performance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.

(ii) **Recurrence of medical condition** -- means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.

(jj) **Return to "Regular Full-Time" position** -- means the claimant returned to employment or a position that is established and not fictitious, odd-lot or sheltered, not a job created especially for a claimant, for the same number of hours of work per week as prior to injury.

(kk) **Traumatic injury** -- means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including physical stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

(ll) **Temporary partial disability payment (TPD)** -- indemnity compensation payable to a claimant, who has a wage earning capacity and has not reached maximum medical improvement, calculated pursuant to Section 2306 of the Act and § **Error! Reference source not found.** of this chapter.

(mm) **Temporary total disability payment (TTD)** -- indemnity compensation payable to a claimant, who has a complete loss of wage earning capacity and has not reached maximum medical improvement, calculated pursuant to Section 2305 of the Act and § 3329 of this chapter.

(nn) **Treating physician** -- the physician, as defined in Section 2301 of the Act, who provided the greatest amount of treatment and who had the most quantitative and qualitative interaction with the employee or claimant.

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF EMERGENCY & PROPOSED RULEMAKING

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

The amendment adds new Sections 4385 (Advance Payments for Books from Birth Program), 4386 (Application for Advance Payments), and 4387 (Interest on Advance Payments). The purpose of these amendments is to provide advance funds to the Books from Birth vendor so that contract services can be provided to children in the District without interruption. D.C. Official Code § 39-115 authorizes the Executive Director to enter into contracts to provide books to all children under the age of five (5) residing in the District. These proposed rules will allow vendors to be paid in advance so the vendor has funds to order and mail the books to the children.

Per D.C. Official Code § 2-505(c), emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. There is an urgent need to adopt these emergency regulations to uphold the District's promise to deliver one book a month to each child under the age of five (5) residing in the District. These rules are in the best interest of the children of the District because these rules will ensure that the program is able to operate without interruptions caused by the vendor's inability to procure funds in advance of the purchase and mailing of books.

The Board of Trustees has appointed the Chief Librarian/Executive Director, through D.C. Official Code § 39-105(a)(10) (2012 Repl.), to establish rules and manage the day-to-day operations of the library. On December 6, 2016, Executive Director of the District of Columbia Public Library ("DCPL") approved the adoption of the emergency regulations. These rules become effective immediately upon publication in the register and shall remain in effect for up to one hundred twenty (120) days from the date of adoption, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The District of Columbia Public Library also gives notice of intent to take rulemaking action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

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

New Sections 4385 - 4387 are added as follows:

4385 ADVANCE PAYMENTS FOR BOOKS FROM BIRTH PROGRAM

4385.1 The DCPL Chief Procurement Officer ("CPO") **may** authorize advance payments to a responsible contractor who is a provider for the Books from Birth program upon the determination that such advance payments are appropriate and necessary to achieve the goals of the Books from Birth program.

4385.2 The CPO shall not authorize the use of advance payments unless the following criteria are met:

(a) The contractor has a need for contract financing in order to fulfill the contract;

(b) The contractor is unable to obtain private financing or private financing is insufficient;

(c) Use of progress payments would be insufficient to meet the contractor's financing needs; and

(d) The use of advance payments would be in the best interests of the District;

4385.3 Before authorizing any advance payments allowed under this section, the DCPL CPO complete a written determination and findings which sets forth the contracting officer's findings on each of the criteria set forth in § 4385.2.

4385.4 If a contractor requesting advance payments is also receiving advance payments under another District contract, the DCPL CPO shall include this information in the determination and findings, and shall consider the additional financial risk to the District when making his or her recommendation.

4385.5 If the request for advance payments is approved, the DCPL CPO shall ensure that the advance payments do not exceed three (3) months of payments within the annual contract.

4385.6 The contractor shall submit an invoice for the proposed amount of the advance based on estimated costs before the advance is issued. Once the advance has been

issued, the contractor shall submit invoices of the actual cost incurred on a monthly basis or as determined by the DCPL CPO.

4385.7 When advance payments are made under a contract, the contract administrator shall closely monitor the performance of the contractor and the contractor's financial condition. A contractor receiving advance payments shall be subject to audit at any time, as determined by the DCPL CPO or contract administrator.

4385.8 The DCPL CPO may suspend or terminate advance payments if the contractor fails to account adequately for the use of advance funds or fails to use the funds to meet obligations related to the contract, including but not limited to the following:

(a) Failure to pay wages due to contract personnel;

(b) Failure to escrow withholding and payroll taxes and make required periodic tax deposits; or

(c) Any other failure to meet any other financial obligation under the contract for which advance payments are intended.

4385.9 At the end of each fiscal year, the contractor shall refund DCPL any monies owed as a result of advance payments issued to the contractor.

4385.10 The DCPL CPO shall charge interest on the daily balance of the advance payments due to be refunded to DCPL at the rate of interest the District allows in judgments and decrees as set forth in the D.C. Code §28-3302(c) (1981), unless the balance is repaid within 30 days of the end of the fiscal year.

4385.11 The DCPL CPO shall not allow interest charges for advance payments as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

4386 APPLICATION FOR ADVANCE PAYMENTS

4386.1 An eligible contractor may apply for advance payments before or after the award of a contract.

4386.2 The contractor or prospective contractor shall submit an advance payment request to the DCPL CPO in writing, which provides the following information:

(a) A reference to the contract, if the request concerns an existing contract, or a reference to the solicitation, if the request concerns a proposed contract;

(b) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance;

(c) The proposed total amount of advance payments;

(d) A description of the contractor's efforts to obtain private financing;

(e) Whether the contractor is receiving or has applied to receive advance payments under any other current District contracts or solicitations; and

(f) Other information appropriate to an understanding of the following:

(1) The contractor's financial condition and need;

(2) The contractor's ability to perform the contract without loss to the District; and

(3) Financial safeguards that will be used to protect the District's interests.

4387 INTEREST ON ADVANCE PAYMENTS

4387.1 The DCPL CPO shall charge interest on the daily balance of all advance payments at the rate of interest in the District allowed in judgments and decrees as set forth in the D.C. Official Code § 28-3302(c) (1981 ed.).

4387.2 The interest rate for advance payments shall be adjusted for changes in the prime rate or any change in rate established under D.C. Official Code §28-3302(c) (1981 ed.).

4387.3 Interest shall be computed at the end of each month on the daily balance of advance payments at the applicable daily interest rate, unless the balance is repaid within thirty (30) days.

4387.4 The DCPL CPO shall not allow interest charges for advance payments as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be submitted to Grace Perry-Gaiter, General Counsel, DCPL, Martin Luther King Jr. Memorial Library, 901 'G' Street, N.W., 4th Floor, Washington, D.C. 20001, via telephone at (202) 727-1134, or via e-mail at general.counsel@dc.gov. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. Copies of the proposed rulemaking may be obtained by writing to the address stated above or at www.dcregs.dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-194
December 7, 2016

SUBJECT: Reappointments and Appointments — Committee on Metabolic Disorders

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) and (11) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2014 Repl. and 2016 Supp.), and in accordance with the District of Columbia Newborn Screening Act of 1979, effective April 29, 1980, D.C. Law 3-65, D.C. Official Code § 7-835 (2012 Repl.), it is hereby **ORDERED** that:

1. The following persons are reappointed as licensed physician members of the Committee on Metabolic Disorders ("**Committee**") for terms to end September 30, 2019:

    a. **DEEPIKA SAXENA DABARI**

    b. **MARY ELLEN REVENIS**

2. **NICHOLAS AH MEW** is appointed as Chairperson to the Committee, replacing Joanne Adelberg, for a term to end December 31, 2016, and for a new term to begin January 1, 2017, and end December 31, 2017.

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

MURIEL BOWSER
MAYOR

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

DISTRICT OF COLUMBIA BOARD OF ELECTIONS
MONTHLY MEETINGS

Scheduled for the months of January 2017 through December 2017

(All meetings are held at 441 Fourth Street, NW, Room 280 North)

DATE	TIME	ROOM NUMBER
Wednesday, January 4, 2017	10:30 AM	Room 280 North
Wednesday, February 1, 2017	10:30 AM	Room 280 North
Wednesday, March 1, 2017	10:30 AM	Room 280 North
Wednesday, April 5, 2017	10:30 AM	Room 280 North
Wednesday, May 3, 2017	10:30 AM	Room 280 North
Wednesday, June 7, 2017	10:30 AM	Room 280 North
Wednesday, July 5, 2017	10:30 AM	Room 280 North
Wednesday, August 2, 2017	10:30 AM	Room 280 North
Wednesday, September 6, 2017	10:30 AM	Room 280 North
Wednesday, October 4, 2017	10:30 AM	Room 280 North
Wednesday, November 1, 2017	10:30 AM	Room 280 North
Wednesday, December 6, 2017	10:30 AM	Room 280 North

Please note: This Schedule is subject to change.

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

WARD	DEM	REP	STG	OTH	N-P	TOTALS
1	45,579	2,971	646	326	11,475	**60,997**
2	30,904	5,904	210	333	10,846	**48,197**
3	38,504	6,730	345	293	11,198	**57,070**
4	49,586	2,315	528	241	8,944	**61,614**
5	51,555	2,318	556	305	9,056	**63,790**
6	54,619	7,037	489	442	13,544	**76,131**
7	47,943	1,277	430	207	6,666	**56,523**
8	46,224	1,372	418	224	7,242	**55,480**
Totals	364,914	29,924	3,622	2,371	78,971	**479,802**
Percentage By Party	**76.06%**	**6.24%**	**.75%**	**.49%**	**16.46%**	**100.00%**

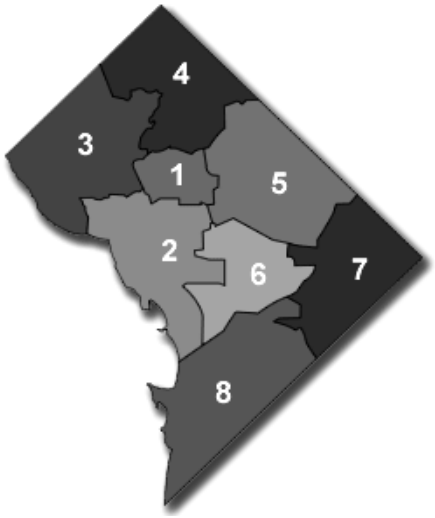
DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF

VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS

AS OF THE END OF NOVEMBER 30, 2016

COVERING CITY WIDE TOTALS BY:

WARD, PRECINCT AND PARTY



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

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 1 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
20	1,472	29	10	9	252	**1,772**
22	3,942	397	31	26	1,031	**5,427**
23	2,886	201	42	28	775	**3,932**
24	2,664	259	31	32	804	**3,790**
25	3,827	449	47	23	1,094	**5,440**
35	3,550	228	50	21	829	**4,678**
36	4,353	270	59	26	1,077	**5,785**
37	3,406	164	48	24	820	**4,462**
38	2,855	127	46	27	713	**3,768**
39	4,234	217	73	22	967	**5,513**
40	4,049	192	92	29	1,035	**5,397**
41	3,597	207	61	27	1,022	**4,914**
42	1,845	79	33	14	456	**2,427**
43	1,786	62	16	10	358	**2,232**
137	1,113	90	7	8	242	**1,460**
TOTALS	**45,579**	**2,971**	**646**	**326**	**11,475**	**60,997**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 2 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	NP	TOTALS
2	836	178	8	22	491	**1,535**
3	1,658	396	23	23	665	**2,765**
4	1,937	504	5	21	768	**3,235**
5	2,147	619	12	24	784	**3,586**
6	2,335	909	19	29	1,270	**4,562**
13	1,291	241	5	10	411	**1,958**
14	2,934	505	21	27	954	**4,441**
15	3,071	408	28	36	902	**4,445**
16	3,569	442	24	33	975	**5,043**
17	4,768	622	29	40	1,485	**6,944**
129	2,393	391	13	24	909	**3,730**
141	2,424	325	13	22	646	**3,430**
143	1,541	364	10	22	586	**2,523**
TOTALS	**30,904**	**5,904**	**210**	**333**	**10,846**	**48,197**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 3 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
7	1,290	396	16	11	558	**2,271**
8	2,476	644	30	15	773	**3,938**
9	1,199	506	7	21	488	**2,221**
10	1,826	418	19	19	696	**2,978**
11	3,496	968	40	49	1,298	**5,851**
12	477	196	0	6	211	**890**
26	2,970	357	21	16	876	**4,240**
27	2,528	268	23	13	612	**3,444**
28	2,448	499	36	14	759	**3,756**
29	1,363	255	12	19	427	**2,076**
30	1,311	216	12	10	296	**1,845**
31	2,464	310	20	17	572	**3,383**
32	2,733	303	20	13	586	**3,655**
33	2,945	312	22	10	696	**3,985**
34	3,725	439	33	25	1,094	**5,316**
50	2,145	270	15	13	479	**2,922**
136	857	103	7	2	269	**1,238**
138	2,251	270	12	20	508	**3,061**
TOTALS	**38,504**	**6,730**	**345**	**293**	**11,198**	**57,070**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 4 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
45	2,273	69	30	13	390	**2,775**
46	2,912	98	35	18	522	**3,585**
47	3,383	163	42	26	771	**4,385**
48	2,849	136	28	10	545	**3,568**
49	918	48	17	7	205	**1,195**
51	3,394	521	26	14	639	**4,594**
52	1,275	162	8	2	238	**1,685**
53	1,285	75	22	6	242	**1,630**
54	2,450	98	24	6	464	**3,042**
55	2,517	81	17	12	439	**3,066**
56	3,126	93	33	22	626	**3,900**
57	2,538	82	34	17	476	**3,147**
58	2,299	66	20	11	366	**2,762**
59	2,631	87	31	14	431	**3,194**
60	2,153	72	21	13	594	**2,853**
61	1,608	54	14	3	275	**1,954**
62	3,236	128	25	7	382	**3,778**
63	3,715	130	55	20	644	**4,564**
64	2,340	74	19	12	343	**2,788**
65	2,684	78	27	8	352	**3,149**
Totals	**49,586**	**2,315**	**528**	**241**	**8,944**	**61,614**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 5 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
19	4,371	198	61	21	978	**5,629**
44	2,785	240	25	27	659	**3,736**
66	4,439	101	43	18	560	**5,161**
67	2,883	107	22	13	402	**3,427**
68	1,898	166	23	12	381	**2,480**
69	2,065	66	18	10	274	**2,433**
70	1,462	79	21	6	221	**1,789**
71	2,370	68	25	12	317	**2,792**
72	4,273	135	36	33	709	**5,186**
73	1,903	97	21	13	344	**2,378**
74	4,453	242	57	25	905	**5,682**
75	3,844	216	49	30	817	**4,956**
76	1,456	66	23	12	294	**1,851**
77	2,850	118	23	16	467	**3,474**
78	3,005	94	39	16	481	**3,635**
79	2,121	87	20	16	376	**2,620**
135	3,046	186	37	19	593	**3,881**
139	2,331	52	13	6	278	**2,680**
TOTALS	**51,555**	**2,318**	**556**	**305**	**9,056**	**63,790**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 6 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
1	4,755	580	48	47	1,273	**6,703**
18	4,887	372	44	38	1,060	**6,401**
21	1,207	58	9	6	264	**1,544**
81	4,661	387	45	32	966	**6,091**
82	2,624	264	36	17	578	**3,519**
83	4,995	703	36	44	1,355	**7,133**
84	2,005	412	21	15	548	**3,001**
85	2,761	521	16	21	738	**4,057**
86	2,189	257	25	18	464	**2,953**
87	2,733	275	17	14	581	**3,620**
88	2,176	289	15	10	519	**3,009**
89	2,610	655	19	21	773	**4,078**
90	1,628	260	13	14	479	**2,394**
91	4,059	389	38	37	979	**5,502**
127	4,057	302	41	38	853	**5,291**
128	2,521	214	30	18	650	**3,433**
130	804	311	6	5	295	**1,421**
131	2,385	617	15	32	753	**3,802**
142	1,562	171	15	15	416	**2,179**
TOTALS	**54,619**	**7,037**	**489**	**442**	**13,544**	**76,131**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 7 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
80	1,562	87	18	9	267	**1,943**
92	1,579	35	13	7	228	**1,862**
93	1,534	41	18	7	231	**1,831**
94	1,997	56	20	6	301	**2,380**
95	1,599	47	14	5	268	**1,933**
96	2,366	65	20	12	357	**2,820**
97	1,452	40	14	8	198	**1,712**
98	1,890	42	23	9	253	**2,217**
99	1,469	49	15	9	214	**1,756**
100	2,240	46	13	11	269	**2,579**
101	1,578	29	13	7	183	**1,810**
102	2,406	54	20	9	324	**2,813**
103	3,564	84	42	12	526	**4,228**
104	2,989	86	29	21	420	**3,545**
105	2,394	60	21	12	376	**2,863**
106	2,830	56	17	14	385	**3,302**
107	1,796	64	16	9	225	**2,110**
108	1,117	29	7	3	133	**1,289**
109	948	36	5	0	88	**1,077**
110	3,681	93	20	15	412	**4,221**
111	2,704	72	31	7	414	**3,228**
113	2,134	54	22	10	270	**2,490**
132	2,114	52	19	5	324	**2,514**
TOTALS	**47,943**	**1,277**	**430**	**207**	**6,666**	**56,523**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 8 REGISTRATION SUMMARY

As Of NOVEMBER 30, 2016

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
112	2,144	64	18	11	291	**2,528**
114	3,469	127	28	22	562	**4,208**
115	2,876	73	21	19	595	**3,584**
116	4,084	100	36	18	635	**4,873**
117	2,101	50	18	14	345	**2,528**
118	2,795	74	32	13	421	**3,335**
119	2,950	115	36	15	531	**3,647**
120	1,996	39	17	4	278	**2,334**
121	3,365	82	26	10	470	**3,953**
122	1,796	42	19	9	244	**2,110**
123	2,292	151	25	25	371	**2,864**
124	2,680	61	19	8	356	**3,124**
125	4,589	111	36	18	721	**5,475**
126	3,778	135	44	22	687	**4,666**
133	1,311	42	10	0	172	**1,535**
134	2,155	46	26	8	288	**2,523**
140	1,843	60	7	8	275	**2,193**
TOTALS	**46,224**	**1,372**	**418**	**224**	**7,242**	**55,480**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 10/31/2016 and 11/30/2016

NEW REGISTRATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Beginning Totals	**363,642**	**29,862**	**3,621**	**2369**	**78,599**	**478,093**
BOEE Over the Counter	251	21	2	4	108	**386**
BOEE by Mail	0	0	0	0	0	**0**
BOEE Online Registration	220	24	0	4	130	**378**
Department of Motor Vehicle	273	10	4	3	107	**397**
Department of Disability Services	0	0	0	0	0	**0**
Office of Aging	0	0	0	0	0	**0**
Federal Postcard Application	1	0	0	0	1	**2**
Department of Parks and Recreation	0	0	0	0	0	**0**
Nursing Home Program	0	0	0	0	1	**1**
Dept. of Youth Rehabilitative Services	0	0	0	0	0	**0**
Department of Corrections	2	0	0	0	3	**5**
Department of Human Services	0	0	0	0	0	**0**
Special / Provisional	115	4	1	1	20	**141**
All Other Sources	157	9	1	2	58	**227**
+Total New Registrations	**1,019**	**67**	**8**	**14**	**428**	**1,536**

ACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Reinstated from Inactive Status	381	23	4	2	73	**483**
Administrative Corrections	10	0	0	0	95	**105**
+TOTAL ACTIVATIONS	**391**	**23**	**4**	**2**	**168**	**588**

DEACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Changed to Inactive Status	1	0	0	0	0	**1**
Moved Out of District (Deleted)	0	0	0	0	0	**0**
Felon (Deleted)	0	0	0	0	0	**0**
Deceased (Deleted)	10	0	0	0	3	**13**
Administrative Corrections	428	18	11	6	30	**493**
-TOTAL DEACTIVATIONS	**439**	**18**	**11**	**6**	**33**	**507**

AFFILIATION CHANGES	DEM	REP	STG	OTH	N-P	N-P
+ Changed To Party	436	48	19	15	215	733
- Changed From Party	-135	-58	-19	-23	-406	-641
ENDING TOTALS	**364,914**	**29,924**	**3,622**	**2,371**	**78,971**	**479,802**

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#7056) to American University Washington College of Law to construct and operate one Cummins 500 kWe emergency generator set with a 803 bhp natural gas-fired engine at the American University Washington College of Law, located at 4300 Nebraska Avenue NW, Washington, DC. The contact person for the facility is Anthony Roane, Assistant Director of Facilities, at (202) 274-4008.

Equipment Location	**Address**	**Generator (Engine) Size**	**Engine Model No/Serial No..**	**Permit No.**
4300 Nebraska Avenue, NW	4300 Nebraska Ave., NW Washington, DC 20016	500 kWe (803 hp)	GTA38/25400241	7056

The proposed emission limits are as follows:

a. Emissions from this unit shall not exceed those in the following table [40 CFR 60.4233(e) and Subpart JJJJ, Table 1]:

Pollutant Emission Limits[1]					
g/HP-hr			**ppmvd at 15% O_2**		
NOx	CO	VOC[2]	NOx	CO	VOC[2]
2.0	4.0	1.0	160	540	86

[1]The Permittee may choose to comply with the emission standards in this table in units of either g/HP-hr or ppmvd at 15 percent O_2.

[2]For purposes of this requirement, when calculating emissions of VOCs, emissions of formaldehyde should not be included.

b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated maximum emissions from the emergency generator set are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	1.0
Oxides of Nitrogen (NO_x)	3.75
Total Particulate Matter (PM Total)	0.12
Volatile Organic Compounds (VOCs)	0.11
Sulfur Dioxide (SO_x)	1.18

The application to construct and operate the emergency generator set and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after January 16, 2017 will be accepted.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – 1583-001 – Post-Employment Restrictions

November 22, 2016

Thomas A. Gibson
WinnCompanies
4319 Third Street S.E.
Washington, D.C. 20032

Dear Mr. Gibson:

This responds to your request for a formal opinion as to whether, in your new role as Project Director at WinnCompanies ("Winn"), you are subject to any of the District's post-employment restrictions due to your previous employment with the District's Office of the Deputy Mayor for Planning and Economic Development ("DMPED") and the Department of Housing and Community Development ("DHCD").

Background

Prior to joining Winn, you worked at DHCD as a Housing and Development Project Manager from March 2014 until April 2015. While you were at DHCD, you worked on several projects; however, you explained that Winn did not and will not work on any of those specific projects. In addition, you stated that Winn intends to seek Housing Production Trust Funds ("HPTF"), which are administered by DHCD. You did not review or work on HPTF applications and distributions while you were at DHCD.

After leaving DHCD in April 2015, you joined DMPED, where you were employed as a Real Estate Development Project Manager until March 2016. While you were at DMPED, you worked on a number of different projects with varying levels of involvement. Winn will not be working on any of those projects, with the exception of Sursum Corda, a project over which you had minor administrative involvement.

A. Post-Employment Restrictions

The District Personnel Manual identifies the post-employment restrictions that apply to District employees and requires that District employees comply with the provisions of the federal post-employment restrictions, codified at 18 U.S.C. § 207, and its implementing regulations set

forth in the Code of Federal Regulations.[1] As explained below, these restrictions are intended to prevent former District employees from leveraging their previous employment with the District to gain an unfair advantage when dealing with the District government upon joining the private sector.[2]

Importantly, these restrictions do not prohibit District employees from working within the private sector after leaving government service altogether. Rather, the postemployment rules set forth varying restrictions upon the ways in which a former employee may or may not interact with his or her prior government agency (or in your case, agencies). These restrictions are broken down into three categories: (1) permanent ban; (2) two-year cooling off period; and (3) one-year cooling off period.

1. Permanent Restrictions

A former District employee is "permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular matter involving a specific party if the employee *participated personally* and *substantially* in that matter as a government employee."[3] In addition, a former employee is "permanently prohibited from making any oral or written communication to an agency with the intent to influence that agency on behalf of another person as to a particular government matter involving a specific party if the employee *participated personally* and *substantially* in that matter as a government employee."[4]

The Code of Federal Regulations explains that to "participate personally" in a matter means that an employee, either directly or through direct and active supervision, took action through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action, to affect the outcome of a matter.[5] An employee's participation is "substantial" if it is of "significance to the matter."[6] Merely having "official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue," does not amount to "substantial participation."[7] Instead, whether an employee's participation in a matter is "substantial" turns on the amount of effort an employee devoted to the matter and the importance of the employee's effort to the issue.[8] Therefore, if an employee "participates in the substantive merits of a matter," that participation "may be substantial even though his role in the matter, or

[1] 6 DCMR § 1811.1 ("District employees shall comply with the provisions of 18 U.S.C. 207 and implementing regulations set forth at 5 C.F.R. Part 2641, Subparts A and B.")
[2] 6B DCMR §1811.11.
[3] *Id*. at § 1811.3 (emphasis added).
[4] *Id*. at § 1811.4 (emphasis added).
[5] 5 C.F.R. §2641.201(i), (2)(i).
[6] *Id*. at §2641.201(i)(3).
[7] *Id*. at §2641.201(3).
[8] *Id*.

the aspect of the matter in which he is participating, may be minor in relation to the matter as a whole."[9]

This permanent prohibition lasts the lifetime of the particular matter and bars the former employee from appearing before or communicating with the agency on that particular matter.[10]

2. Two-Year Cooling Off Period

Former District government employees are subject to a two-year ban that can take two forms. The first prohibits former District employees from working on matters over which they had *official responsibility*. Specifically, former District employees are prohibited for two years from knowingly "acting as an attorney, agent, or representative in any formal or informal matter before an agency if [they] previously had official responsibility for that matter".[11]This two-year restriction period is measured from the date on which the former employee's responsibility for a particular matter ends, not the termination of government service, unless the two occur simultaneously.[12]

"Matter" refers to any matter that was "actually pending under the former employee's responsibility within a period of one (1) year before the termination of such responsibility."[13] The District Personnel Manual defines "official responsibility" to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."[14] The scope of an employee's official responsibility is determined by "those functions assigned by statute, regulation, Executive order, job description or delegation of authority."[15]

The second two-year restriction applies if a former District employee participated *personally and substantially* over a particular matter involving a specific party. In that case, not only is that employee *permanently* banned from appearing before or communicating with his or her former agency regarding that matter,[16] but the employee also is prohibited for two years from providing behind-the-scenes advice or assistance to any other person regarding the specific matter.[17] Specifically, the former employee cannot "knowingly represent, aid, counsel, advise, consult, or assist" in representing any other person before any agency regarding the specific matter over which he personally and substantially participated.[18] This two-year restriction is measured from

[9] *Id.*
[10] 5 C.F.R. §2641.201(c).
[11] 6B DCMR § 1811.5
[12] *Id*. at § 1811.7.
[13] § 1811.6.
[14] 6B DCMR § 1899.1.
[15] 5 C.F.R. § 2641.202(j).
[16] 6B DCMR §§1811.3 and 1811.4.
[17] 6B DCMR § 1811.8.
[18] *Id.*

the date of termination of employment in the employee position held by the former employee when he or she participated personally and substantially in the matter involved.[19]

3. One-Year Cooling Off Period

A former District employee is prohibited, for one year, from having *any* transactions with the employee's agency that are intended to influence the agency in connection with *any* particular government matter pending before the agency or in which it has a direct or substantial interest. Specifically, 6B DCMR §1811.10 provides that:

> A former employee (other than a special government employee who serves for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one (1) year from having any transactions with the former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct or substantial interest, whether or not such matter involves a specific party.

B. Analysis

You have asked what, if any, post-employment restrictions apply to you now that you are employed with WinnCompanies as a Project Director, given the fact that you previously worked for two District agencies: the Department of Housing and Community Development ("DHCD") and the Deputy Mayor for Planning and Economic Development ("DMPED"). For the reasons discussed below, I find that the only post-employment restriction that applies to you is a one-year ban on appearing before your former agency, DMPED, which expires in March 2017.

1. DHCD

You were employed from March 2014 until April 2015 as a Housing and Development Project Manager in the Development Finance Division within the Department of Housing and Community Development ("DHCD"). That Division is responsible for oversight and rehabilitation and/or new construction of multi-family residential properties and economic development in the District of Columbia primarily for the benefit of low and moderate income individuals. Your duties were to:

- Assess the feasibility and appropriateness of real estate financing, land acquisition proposals, and economic development and - housing proposals which are submitted to the Department by private developers and property owners.
- Coordinate large-scale development projects and special development programs, *as assigned*.

[19] 6B DCMR § 1811.9.

- Provide guidance and assistance to lower graded professional staff in the review and processing of applications for housing rehabilitation or development.
- Make recommendations to the supervisor relative to the policies and operational procedures of the Division and assists in implementing those recommendations and strategic objective accepted.
- Conduct investment and credit analyses for financing and acquisition proposals and interpret these analyses using local economic conditions. Produce and present these analyses in report form using the computer and spreadsheet software.
- Screen program applicants for program eligibility, financial viability, and community impact.
- Assist developers with securing and maintaining involvement and commitment of private sector financial institutions.
- Carry out functions related to closing financing and acquisition proposals approved by the Department.
- Provide advice and assistance to financing applicants with the preparation and presentation of materials.
- Coordinate activities with appropriate District of Columbia Government and Federal Government agencies.
- Request title reports and property appraisals as appropriate.
- Prepare cost benefit analyses comparative analyses, and economic feasibility studies to support decisions made on development projects.
- Prepare requests for proposals for, residential and commercial development projects and manage the evaluation and selection process of these projects.
- Advise prospective developers regarding the Department's administered development plans, zoning requirements, and project objectives.
- Coordinate the preparation of disposition documents for long—term leases. Monitor construction projects through to completion. Track performance data from development projects.
- Monitor projects post-completion to ensure repayment and compliance with agreements.
- Perform other related duties as assigned.

General Prohibition

As a former District employee with DHCD you were prohibited for one year from the date of your separation from service, April 2015, from having *any* transactions with DHCD that were intended to influence DHCD on any particular government matter pending before DHCD or in

which DHCD had a substantial interest.[20] This one-year prohibition has already run in your case (it expired April 2016), so there is no general prohibition against you communicating with, or appearing before, DHCD with the intent to influence the agency.

Specific Prohibitions

There are no specific prohibitions that I can identify at this stage that would prevent you from appearing before or communicating with DHCD given that Winn has not and will not work on any of the projects that you previously worked on while you are at DHCD. If, however, Winn were to work on projects over which you participated personally and substantially while you were at DHCD, then you would be permanently prohibited from communicating with or appearing before DCHD with respect to those projects because of the permanent bans set forth at 6 DCMR §§1811.3 and 1811.4. If this were the case, you would also be subject to a two-year ban on giving behind-the-scenes advice or assistance to Winn (or any other person) regarding the specific projects over which you had substantial and personal participation because of the two-year restriction set forth at 6 DCMR §1811.8. The two-year restriction would run from the date of your termination of employment in your position at DCHD when you participated personally and substantially in the specific matter.[21] In addition, if Winn were to work on projects for which you had official responsibility, you would be subject to the two-year prohibition which would bar you from "knowingly acting as an attorney, agent, or representative" to Winn (or any other person) for those matters.[22] This two-year prohibition runs from the date on which your official responsibility over the matter ended, not from the termination of your service (April 2015), unless the two occurred simultaneously.[23]

In addition, you have asked whether you can work on Winn projects seeking Housing Production Trust Fund ("HPTF") funding from DHCD. During your time at DHCD, you did not work on HPTF funding or allocation; your involvement in projects came *after* HPTF funding was already approved. Given that HPTF administration did not fall under your official responsibility and because none of the projects you worked on at DHCD will be worked on by Winn, there is nothing that prohibits you from appearing before DHCD with respect to requesting funding for those new projects for which Winn is seeking funding, given that the one year general prohibition against appearing before your former agency as to any transaction has already run.

2. DMPED

You were employed at DMPED as a Real Estate Development Project Manager from April 2015 through March 2016. In that capacity, you were tasked with managing a portfolio of real estate development, financing, and related projects. Typically, specific real estate projects were

[20] 6 DCMR § 1811.10.
[21] §1811.9.
[22] §1811.5.
[23] § 1811.7.

assigned to you; however, you occasionally performed small tasks, such as drafting paperwork for the Deputy Mayor to sign, for projects that were not officially assigned to you. With respect to the projects that were assigned to you, your specific responsibilities included:

- Administering multiple real estate and/or financing transactions.
- Negotiating disposition contracts, leases, and funding agreements.
- Reviewing and analyzing detailed financial models of development projects.
- Proactively managing project milestones and budgets.
- Managing solicitation processes by drafting requests for proposals, reviewing submissions, connecting with the community and stakeholders, and making recommendations for award.
- Analyzing and presenting findings and recommendations to senior staff in written and verbal form.
- Briefing DMPED senior staff and elected officials on project status.
- Conducting presentations and meetings with community stakeholders.

General Prohibition

As a former District employee with DMPED, you are prohibited for one year from the date of your separation from service, March 2016, from having any transactions with DMPED that are intended to influence DMPED on any particular government matter pending before DMPED or in which DMPED has a substantial interest.[24] This prohibition applies regardless of whether the particular government matter involves a specific party and regardless of whether you participated in or had responsibility for that particular matter when you were a DMPED employee. In addition, this one-year prohibition applies to matters that arose *after* you left District service. Therefore, according to the post-employment rules, you cannot have any transactions or communications with DPMED with the intent to influence DMPED until March 2017.

Specific Prohibitions

You explained that during your time at DMPED, you did "extensive work" on four projects: (1) The St. Elizabeth's East Campus Redevelopment; (2) The MLK Gateway Community; (3) Waterfront Station II; and (4) 1125 Spring Road, and that you did "some preliminary work" on two projects: (1) Truxton Circle; and (2) 8th & O Street, N.W. However, you indicated that Winn will not be working on *any* these projects. As such, no post-employment

[24] *See* 6 DCMR § 1811.10.

restrictions apply to you at this time (besides the one-year cooling off period) with respect to these projects because you have indicated that Winn (and therefore you) will not be working on them.[25]

In addition, you noted that Winn may respond to the "Northwest One/ Our RFP" project or other projects at DPMED *that you did not work on*. Because you did not work on or have responsibility over those projects, the only post-employment bar that would apply to you is the one-year ban, which expires in March 2017.[26]

You noted that in addition to those above-referenced projects, you also assisted in putting together Planned Unit Development ("PUD") submission documents for the Deputy Mayor to sign in connection with Sursum Corda, a neighborhood located several blocks north of Union Station. You explained that the District owns the land at Sursum Corda, but it is "not an official project" of DMPED and you did no "official work" on Sursum Corda. Instead, you explained that an attorney from the Sursum Corda Cooperative Association (the "Co-Op") submitted the PUD paperwork to the Zoning Commission and the Deputy Mayor had to sign off on the PUD forms, which you helped to assemble. You have indicated that Winn will partner with the Co-Op to do pre-development work on Sursum Corda, but you also stated that it is unlikely that Winn will appear before DMPED with respect to Sursum Corda.

Your stated involvement over Sursum Corda while you were at DMPED does not amount to "personal and substantial participation" which would permanently bar you from appearing before or communicating with DMPED regarding Sursum Corda. Instead, I find that your participation in this project was minor and administrative, given that it was limited to preparing forms and did not involve any decision-making or recommendations on your part.

In addition, based on the position description you provided and your stated involvement in the project, I also conclude that you did not have "official responsibility" over Sursum Corda, which would warrant a two-year cooling off period. As the District Personnel Manual provides, official responsibility means having "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct governmental action."[27] This definition usually applies to former managers or agency heads who had oversight of many matters under their jurisdiction, but generally did not perform work on those matters. Instead, these individuals provided general supervision over the matters for which they were ultimately responsible. In your case, Sursum Corda was not an official project that was assigned to you to manage. Instead, you were asked to perform small tasks with respect to Sursum Corda. As such, your role in that regard - preparing administrative paperwork - does not amount to official responsibility, as that

[25] The same analysis discussed at page 6 regarding specific prohibitions would apply in the event that Winn began working on DMPED projects over which you participated personally and substantially or had official responsibility.
[26] 6B DCMR § 1811.10.
[27] 6 DCMR § 1899.1.

term is defined and understood. Consequently, other than the one-year general restriction prohibiting you from communicating with DMPED, there are no specific post-employment restrictions that apply to you with respect to Sursum Corda.

This advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for a violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You are also advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

Pursuant to section 219(c)(1) of the Ethics Act (D.C. Official Code § 1-1162.19 (c)(1)), you may appeal this determination to the Ethics Board. If you wish to do so, please send a written appeal to: Board of Ethics and Government Accountability, Attn: John Grimaldi, Esq., 441 4th Street, N.W. Suite 830 South, Washington, D.C. 20001, or email to bega@dc.gov.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

#1583-001

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide**; Copier Equipment Leasing & Maintenance Services**. 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, January 16th, 2017. 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.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-46

March 22, 2016

VIA ELECTRONIC MAIL

Mr. Steven Sushner

RE: FOIA Appeal 2016-46

Dear Mr. Sushner:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to a request you submitted to DCRA on January 28, 2016, relating to certain email messages.

Upon receiving your appeal, this Office notified DCRA and requested a response from the agency. DCRA advised us today that on March 17, 2016, it disclosed responsive documents to you through the FOIAxpress system.

Since your appeal was based on DCRA's failure to respond to your FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCRA's substantive response.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-47

March 28, 2016

VIA ELECTRONIC MAIL

Mr. Radcliffe Lewis

RE: FOIA Appeal 2016-47

Dear Mr. Lewis:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal relates to the DC Lottery's response to an inquiry you submitted regarding the jackpot winner of the December 11, 1999 Powerball Game. The DC Lottery is a subordinate office within the Office of the Chief Financial Officer ("OCFO").

Background

According to your submission to the Mayor through the FOIAXpress system, you are appealing the "failure of the DC Lottery to give clear answers in relation to this matter," and you believe the DC Lottery is keeping your request open without explanation.[1] You offer no insight as to the history of your request or how the DC Lottery's response is inadequate under DC FOIA.

We asked the DC Lottery to provide this Office with a response to your appeal. In a response dated March 22, 2016, the agency explained that you submitted an inquiry intended for the DC Lottery through the FOIAXpress system; however, the DC Lottery does not use or have access to the FOIAXpress system. As a result, the DC Lottery did not become aware of your inquiry until the Mayor's Correspondence Unit forwarded it on February 4, 2015.

Despite the fact that you posed a question to the DC Lottery ("I would like to know who is the jackpot winner of the December 11, 1999 Powerball Game?"), as opposed to requesting a public record, the DC Lottery conducted a search of its prize claim files to determine if it maintains any records pertaining to the lottery about which you inquired. On February 5, 2015, the OCFO/DC Lottery sent you a response indicating that it conducted a review of its records and found that "there was no winning jackpot ticket submitted for the December 11, 1999 Powerball drawing. Accordingly, there are no documents responsive to your request."

In addition to providing this Office with the background of your request and the response it sent you, the DC Lottery submitted a declaration from Craig Lindsey, the interim chief operating

[1] According to FOIAXpress, your request was closed on February 5, 2015. We do not know why you believe your request is being kept open.

officer and agency fiscal officer of the DC Lottery and Charitable Games Control Board ("DCLB"). Mr. Lindsey states that lottery prize winner claim files are maintained in the DCLB's Financial Administration Division, and generally the claim files are kept for seven years. At his direction a search was conducted for documents responsive to your inquiry; however, none was located.[2]

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

An agency has no duty either to answer questions unrelated to document requests or to create documents. *See Forsham v. Harris*, 445 U.S. 169, 186 (1980) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975)); *accord Yeager v. DEA*, 678 F.2d 315, 321, (D.C. Cir. 1982) ("It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request."). Even if the request "is not a model of clarity," an agency should carefully consider the nature of each request and give a reasonable interpretation to its terms. *LaCedra v. EOUSA*, 317 F.3d 345, 347-48 (D.C. Cir. 2003). Here, the OCFO reasonably interpreted your question as a request for records of lottery prize winner claim files for the December 11, 1999 Powerball.

Since the OCFO asserts that no responsive records exist, the primary issue in this appeal is your belief that records should exist and that OCFO has not provided an adequate explanation of the records' absence. As a result, the crux of your appeal is whether OCFO conducted an adequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

[2] A copy of OCFO/DC Lottery's response, including Mr. Lindsey's declaration, is attached.

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, OCFO has provided two potential explanations for the lack of lottery prize winner claim files for the December 11, 1999 Powerball. In its initial response to your request, OCFO stated that no records exist because no winning jackpot ticket was submitted. In response to your appeal, however, OCFO stated that its document retention policy is to destroy lottery prize winner claim files after 7 years. Further, in response to your appeal OCFO identified the relevant location for records responsive to your request as the files maintained by the DCLB's Financial Administration Division. OCFO's response also affirms that the relevant location was searched, and that no responsive records were located. Under applicable FOIA law, the test is not whether the documents related to the 1999 Powerball winner might conceivably exist, but whether OCFO's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on OCFO's description in response to your appeal, we find that the search it conducted was adequate. We therefore accept its representation that no responsive records exist, whether because no winning ticket was submitted, or because the files were destroyed in accordance with OCFO's document retention policy.

Conclusion

Based on the foregoing, we affirm the OCFO's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

/s John A. Marsh

John A. Marsh
Staff Attorney
Mayor's Office of Legal Counsel

cc: Ridgely C. Bennett, Chief Counsel, OCFO (via email)
Charles Barbera, Attorney Advisor, OCFO (via email)
LaVerne Lee, FOIA Officer, OCFO (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-48

March 28, 2016

VIA REGULAR MAIL

Ronald L. Legg

RE: FOIA Appeal 2016-48

Dear Mr. Legg:

I am writing in response to the appeal you sent to the Mayor under the Freedom of Information Act, in which you indicate that the Washington Metropolitan Area Transit Authority ("WMATA") has denied your request for documents. Under the District of Columbia Freedom of Information Act ("D.C. FOIA"), the Mayor is authorized to review public records determinations made by a public body, with the exception of the Council of the District of Columbia. *See* D.C. Official Code § 2-537(a). The term "public body" means the Mayor, a District agency, or the Council of the District of Columbia. D.C. Official Code § 2-502. The WMATA is not a District agency but is instead a "joint state oversight agency." D.C. Official Code § 9-1109.02. Accordingly, the WMATA is not subject to the D.C. FOIA, and the Mayor has no jurisdiction to review your appeal.

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-49

April 12, 2016

VIA EMAIL

Ms. Maggie Ruth

RE: FOIA Appeal 2016-49

Dear Ms. Ruth:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly denied records you requested under the DC FOIA.

Background

On March 11, 2016, you submitted a request to MPD for any records pertaining to a patrolman you believe was employed by MPD from approximately 1970 to 1975. In specific, you requested records reflecting the patrolman's dates of employment, reasons for hiring, and reasons for termination. MPD denied your request on March 18, 2016, asserting that the records are exempt from disclosure in their entirety pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[1]

On appeal, you contend that the information you requested should be disclosed because the individual whose records you seek is a figure of public interest. In response to your appeal, MPD conducted a search of electronic and paper files in MPD's personnel office and did not locate any responsive documents or verification that the individual was ever hired by MPD. MPD further indicated that if you provide identifying information such as a social security number and date of birth, a further search could be conducted of MPD's archived records.[2]

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public

[1] Exemption 2 prevents disclosure of information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy.
[2] A copy of MPD's response is attached.

records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Although MPD's initial denial of your request was based on Exemption 2, after your appeal was filed MPD revised its position to state that no responsive records were located. Under the DC FOIA, an agency is required to disclose materials only if they are "retained by a public body." D.C. Official Code § 2-502(18). We therefore affirm MPD's position on appeal that its denial was proper because no responsive documents were located.

Ordinarily, we would not address MPD's initial denial of your request under Exemption 2 since ultimately no responsive records were retrieved. In this instance, however, several issues are worth nothing. First, we discourage MPD - and all District agencies - from denying FOIA requests before conducting a search for responsive documents. Second, if responsive records existed here, a blanket denial based on Exemption 2 would be improper because part of the request sought employment dates, which are considered information "specifically made public" under D.C. Official Code § 2-536(a). Lastly, your request was for *any* records related to a particular former employee, rendering a blanket denial improper since certain information about District employees is deemed public under D.C. Official Code § 2-536(a) and Chapter 31 of the District Personnel Manual (e.g., salaries and titles). Even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the requested documents. D.C. Official Code § 2-534(b). *See also, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). As a result, if responsive documents existed, MPD would be required to review them for segregability.

Conclusion

Based on the foregoing, we affirm MPD's denial and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-50

April 20, 2016

Mr. Maceo Jones

RE: FOIA Appeal 2016-50

Dear Mr. Jones:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Department of Corrections ("DOC") improperly withheld records you requested under the DC FOIA.

Background

On September 9, 2015, you submitted a request under the DC FOIA to DOC seeking documents relating to your "computation sheet." DOC responded to you on October 13, 2015, indicating that it had conducted a search of its records for the case number you provided. Because DOC's search had yielded no results, DOC requested additional information from you, such as your social security number and date of birth so that it could conduct a further search.

You replied to DOC in a letter dated October 21, 2015, and subsequently DOC conducted an additional search with the additional information you provided. On November 16, 2015, DOC informed you by letter of the outcome of the additional search, which was that no computation sheet was found.

On appeal you challenge the adequacy of DOC's search on the grounds that you believe additional responsive documents should exist that have not been provided to you. DOC provided this Office with a response to your appeal on April 13, 2016.[1] In its response, DOC states that it has searched for responsive records but has not found any. DOC provided us with a declaration from a DOC Legal Instruments Examiner/Archivist who describes the searches the agency conducted to locate records responsive to your request. DOC asserts that its searches were reasonable, and that DOC cannot provide records that it no longer maintains or possesses.

Discussion

[1] A copy of DOC's response is attached for your reference.

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Since DOC asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that more records exist and your contention that DOC conducted an inadequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, DOC identified the relevant locations for records responsive to your request: Jail and Community Corrections System, the Inmate Records Office, and the DOC

archives. DOC further indicated that it conducted searches of these locations; however no responsive records were located. Additionally, in DOC's November 16, 2015 letter to you, DOC indicates that institutional files are only retained for 10 years and that as a result your record would have left the retention period in 2011. Although you believe DOC has failed to disclose additional records that may exist, under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether DOC's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the declaration DOC provided this Office in response to your appeal, we find that the searches it conducted were adequate.

Conclusion

Based on the foregoing, we affirm the DOC's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Oluwasegun Obebe, FOIA Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-51

April 21, 2016

VIA U.S. Mail

Rev. George L. Bailey

RE: FOIA Appeal 2016-51

Dear Rev. Bailey:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly denied records you requested under the DC FOIA.

Background

In a letter dated December 18, 2015, you submitted a request to MPD for arrest photographs, ("mug shots") of two individuals. MPD denied your request on January 7, 2016, asserting that absent authorization from the individuals photographed, the photographs are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[1]

On appeal, you assert that Exemption 2 cannot prevent the disclosure of mug shots because a decision issued by the United States Court of Appeals for the Sixth Circuit requires that mug shots be released. *See Detroit Free Press, Inc. v. DOJ*, 73 F.3d 93, 99 (6th Cir. 1996). On April 20, 2016, MPD sent this Office a response to your appeal in which it reaffirmed its decision to deny your FOIA request.[2] MPD clarified that in addition to Exemption 2, a more precise basis for its denial is § 2-534(a)(3)(C) ("Exemption 3(C)").[3]

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public

[1] Exemption 2 prevents disclosure of information of a personal nature where public disclosure would constitute a clearly unwarranted invasion of personal privacy.
[2] A copy of MPD's response is enclosed.
[3] Exemption 3(C) prevents disclosure of investigatory records compiled for law-enforcement purposes that would constitute an unwarranted invasion of privacy.

records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Your primary argument for the release of the mugs shots you requested is that the District should follow federal precedent. In the context of federal FOIA, the issue of whether a mug shot may be properly withheld has been addressed by three appellate courts. The first was the Sixth Circuit decision that you cited ordering release of mug shots when certain conditions were met. *See Detroit Free Press*, 73 F.3d at 99. Subsequently, two more recent decisions in the United States Court of Appeals for the Tenth and Eleventh Circuits conclude that mug shots may be properly withheld after balancing the sensitive nature of the photographs with the lack of a clear indication of how release would inform the public about government operations. *See World Pub'g Co. v. DOJ*, 672 F.3d 825, 827-32 (10th Cir. 2012); *Karantsalis v. DOJ*, 635 F.3d 497, 503-04 (11th Cir. 2011). As a result, a majority of the federal appellate courts that have addressed the issue have determined that mug shots may be withheld in consideration of privacy interests.

Under DC FOIA, Exemptions 2 and 3(C) both protect privacy interests, but the protection of Exemption 3(C) is broader than Exemption 2. Whereas Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). There is a privacy interest in preventing the disclosure of mug shots because a mug shot captures its subject in a vulnerable and embarrassing moment and serves as a powerful visual indicator of a connection to criminal activity. *See Karantsalis*, 635 F.3d at 503; *Times Picayune Publ'g Corp. v. DOJ*, 37 F. Supp. 2d 472, 477 (E.D. La. 1999).

Even when a privacy interest under Exemption 3(C) applies, disclosure is warranted when the privacy interest is outweighed by a greater public interest *See DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). This balancing of private and public interests must be conducted with respect to the purpose of FOIA, which is "'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)). Official information that sheds light on an agency's performance of its statutory duties falls squarely within the statutory purpose of FOIA. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. *DOJ v. Reporters Comm.*, 489 U.S. at 772-773. Here, your appeal does not clearly assert a public interest that would overcome the individual privacy interests. Additionally, we find that disclosure of mug shots would not advance significantly the public understanding of the operations or activities of the District government or MPD's performance. *See World Pub'g Co.*, 672 F.3d at 827-32; *Karantsalis*, 635 F.3d at 503-04.

Conclusion

Based on the foregoing, we affirm MPD's denial of your request and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-52

April 26, 2016

VIA EMAIL

Mr. Todd Davis

RE: FOIA Appeal 2016-52

Dear Mr. Davis:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Department of Corrections ("DOC") did not adequately respond to your request for records under the DC FOIA.

Background

You are seeking records related to an inmate you believe was incarcerated at Lorton Reformatory in Virginia from 1936 until his death in 1952. You attempted to obtain the information from DOC between December 2015 and March 2016. On March 4, 2016, the agency began processing your inquiry as a FOIA request. Although you provided DOC with all of the identifying and corroborating information in your possession pertaining to the records you seek, the agency informed you on March 8 and 9, 2016 that its searches did not retrieve any responsive records.

On appeal, you acknowledge that the records may no longer exist due to their age; however, you contend that DOC's response to you was not sufficient to demonstrate that the agency conducted an adequate search for the records. Further, you challenge the adequacy of DOC's search on the grounds that you believe additional responsive documents should exist that have not been provided to you.

DOC provided this Office with a response to your appeal on April 25, 2016.[1] In its response, DOC: (1) clarified its efforts to search for the records you requested; (2) reaffirmed that its searches were adequate; and (3) restated that it did not possess records responsive to your request. DOC's response included a declaration from the DOC archivist who conducted the search pursuant to your request, the relevant portion of DOC's record retention schedule, and emails from an archivist at the Office of Public Records.

Due to inconsistencies in the declaration contained in DOC's response, notably the declaration stated that the inmate's date of birth was not provided to DOC[2] or used in DOC's search, we

[1] DOC provided a copy of its response to you.
[2] The inmate's date of birth was provided in your email on March 4, 2016.

asked DOC to review and accurately describe the searches it conducted. DOC provided a revised declaration on April 26, 2016.[3]

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issues in this appeal are whether DOC conducted an adequate search for the records at issue and sufficiently described the search to you. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files

[3] DOC provided a copy of its revised declaration to you.

that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

The initial descriptions DOC provided to you of its search efforts were brief and conclusory. In response to your appeal, however, DOC provided a detailed description of the searches it conducted, as well as its document retention schedule, and affirmed that no responsive records were found. DOC identified the relevant locations for records responsive to your request as the electronic and paper files maintained by the Inmates Records Office and the archive holdings of the Office of Public Records. DOC's response also affirmed that the relevant locations were searched with the identifying information available. You acknowledge that records may no longer exist, and DOC confirms that ordinarily inmate records are not retained for more than 10 years after an inmate leaves custody. Based on the description and documentation DOC provided in response to your appeal, we find that the search it conducted was adequate.

Conclusion

Based on the foregoing, we affirm DOC's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-53

May 4, 2016

VIA E-MAIL

Mr. Joseph Golinker

RE: FOIA Request 2016-53

Dear Mr. Golinker:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of the State Superintendent of Education ("OSSE") improperly withheld evaluations of independent hearing officers and the statistical analysis of those evaluations, which you requested.

Background

On October 30, 2015, you sent a request to OSSE for documents related to independent hearing officer ("IHO") contracts and evaluations.

On February 18, 2016, OSSE granted in part and denied in part your request. OSSE provided you with certain documents, including the IHO contracts and a blank evaluation matrix. OSSE withheld completed IHO evaluations and completed evaluation matrices on the grounds that they are protected by Exemptions 2[1] and 4.[2] OSSE did not provide a statistical analysis because it maintains that none exists.[3]

On April 12, 2016, you appealed OSSE's denial, arguing that the evaluations are not "invasive, are not intra-agency communications, and are not deliberative." In support of this, you posit that IHO names are published online and are therefore not personal information, and that "The remainder of the information on a performance evaluation is inherently professional, rather than personal, information." Additionally, you argue that the documents are not protected by the deliberative process because in your view they are neither deliberative nor predecisional.

[1] D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides for the withholding of "Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]").
[2] D.C. Official Code § 2-534(a)(4) ("Exemption 4") vests public bodies with discretion to withhold "[i]nter-agency or intra-agency memorandums and letters … which would not be available by law to a party other than a public body in litigation with the public body."
[3] OSSE is not required under DC FOIA to create a document that does not exist; the representation OSSE made to you that it would initiate a data request on your client's behalf is beyond the scope of our review.

We advised OSSE of your appeal and asked the agency to respond. We received a response on April 25, 2016, in which OSSE reiterated its position that: (1) disclosing the requested records would constitute a clearly unwarranted invasion of personal privacy; (2) the documents are part of the deliberative process of hiring and retaining IHOs; (3) an OAG legal opinion asserted that the withheld documents are protected by both Exemptions 2 and 4.[4] At our request, OSSE provided us with representative samples of the two types of withheld documents – the matrices and the evaluations - for our *in camera* review.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether OSSE was overbroad in its application of Exemptions 2 and 4 in withholding the evaluations and matrices in their entirety in lieu of reasonably redacting them.

First, this Office shall determine the applicability of the asserted exemptions to the two types of requested documents. Second, this Office shall evaluate whether the documents can be reasonably redacted.

Evaluations

Exemption 2

The first document this Office reviewed appears to be an evaluation of an IHO's conduct while presiding over a hearing. As has long been established, the process of conducting an evaluation invokes a protected privacy interest:

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or

[4] A copy of OSSE's response is attached. The OAG's legal opinion is protected by the attorney-client privilege.

> stigma wrought by negative disclosures. *See Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Here, you have not articulated a public interest in the disclosure of the performance evaluation that would outweigh the invasion of an IHO's privacy. Instead, you have asserted, without citation, that the information is "inherently professional rather than personal, information." We disagree. An evaluation is a review of an employee's job performance and therefore implicates a privacy interest protected by Exemption 2.

Exemption 4

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

While the ability to pinpoint a final decision or policy may bolster the claim that an earlier document is predecisional, courts have found that an agency does not necessarily have to point specifically to an agency's final decision to demonstrate that a document is predecisional. *See e.g., Gold Anti-Trust Action Comm. Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 762 F. Supp. 2d 123, 136 (D.D.C. 2011) (rejecting plaintiff's contention that "the Board must identify a specific decision corresponding to each [withheld] communication"); *Techserve Alliance v. Napolitano*, 803 F. Supp. 2d 16, 26-27 (D.D.C. 2011).

The evaluations at issue here are arguably predecisional in that they were created before a decision was made regarding the IHO's continued employment. They are deliberative because they reflect the thoughts and opinions of the evaluator as to the performance of the IHO. The evaluations are thus protected by the deliberative process privilege.

Matrices

Exemption 2

The matrices are considered a part of an employee's personnel file for the same reasons as the evaluations. They constitute reviews of job performance and therefore implicate privacy interests protected under Exemption 2.

Exemption 4

The matrices are arguably predecisional because they were created before a final decision was made regarding the IHO's continued employment. The matrices are not deliberative, however, as they consist entirely of ratings ("satisfactory," "unsatisfactory," and "N/A") and do not reflect the back and forth process of decision making. As a result, the matrices are not protected from disclosure under Exemption 4.

Reasonable Redaction

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an asserted exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)).

It appears that OSSE withheld completed evaluations and matrices from you under Exemptions 2 and 4 without considering whether they could be reasonably redacted. As previously discussed, we find that the evaluations are exempt under Exemptions 2 and 4 and the matrices are exempt under Exemption 2. Nevertheless, having reviewed sample versions of both types of documents, we also conclude that they can be released subject to certain redactions.

The sample evaluation we reviewed consists largely of the evaluator's account of the hearing he/she observed, accompanied by comments about the IHO's conduct at the hearing. The factual narrative about the hearing is not deliberative and does not contain information that would constitute a clearly unwarranted invasion of personal privacy. The identities of the IHO and any other individual named in the evaluation are protected from disclosure under Exemption 2. Portions of the evaluation that review the IHO's conduct are deliberative and should be redacted as well. Accordingly, OSSE should review the evaluations to determine which portions are factual and which are deliberative and whether they can be reasonably redacted.[5]

[5] We are mindful of the small sample size here, as there are only 5 IHOs who are evaluated. Nevertheless, redaction of the IHOs identities is sufficient to protect their privacy interests under the law. In *Citizens for Envtl. Quality, Inc. v. United States Dep't of Agric.*, 602 F. Supp. 534, 536 (D.D.C. 1984), the court considered whether redaction would be sufficient to protect the privacy interests of an individual who was the sole subject of a medical study, in which he participated in consideration of a promise of confidentiality by the government. Despite the alleged ease in which the sole subject of the study could

The sample matrix we reviewed, entitled "Hearing Officer Evaluation Criteria," contains a list of conduct evaluated (e.g., "Hearing began substantially on time," "Audio record is clear and comprehensible") and whether the IHO performed satisfactorily or unsatisfactorily in the category or whether the category did not apply to the matter. The identity of the IHO evaluated is clearly protected from disclosure by Exemption 2. In addition, because OSSE publishes dated hearing officer determinations on its website, there is a cognizable argument that certain dates in the matrix should be redacted because one could easily deduce from the dated decisions on the website the IHO being reviewed in a particular evaluation. The remainder of the evaluation is neither personally identifiable nor deliberative and may be disclosed.

Conclusion

Based on the foregoing, we remand this matter to the OSSE to, within 10 business days from the date of this decision, provide you with matrices and evaluations redacted in accordance with the guidance in this decision.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Mona Patel, FOIA Officer, OSSE (via email)

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be identified, the court in *Citizen* concluded that reasonable redaction would protect the individual's privacy rights under FOIA because:

> the exemption applies only if the government's records on the medical condition of the subject of the USDA's test "can be identified as applying to that individual. . . ." An increased likelihood of speculation as to the subject of the test is insufficient to invoke the exception. Only the likelihood of actual identification justifies withholding the requested documents under exemption 6.

Citizens for Envtl. Quality, Inc. v. United States Dep't of Agric., 602 F. Supp. 534, 538 (D.D.C. 1984) (citations omitted).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-54

April 29, 2016

VIA REGULAR MAIL

Mr. William F. Quezada

RE: FOIA Request 2016-54

Dear Mr. Quezada:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act in your capacity as Chairman of the Board of the Latino Civil Rights Committee for the Greater Washington Area ("Committee"). In your appeal, you assert that the Mayor's Office on Latino Affairs ("MOLA") failed to respond to a request the Committee sent to MOLA for various records.

In specific, you contend that the Committee submitted a request to MOLA on December 31, 2015, for documents pertaining to nonprofit organizations that received District funds over the past three years, the names and addresses of the members of such organizations, and copies of certain performance reports. Upon being notified of your appeal, the MOLA advised this Office that MOLA's FOIA officer was unaware of your initial request and would promptly contact you and search for responsive documents.

On April 19, 2016, we received a copy of a letter MOLA's director sent to you indicating that the Committee's request is in progress and asking for a telephone number or email address to better communicate with the Committee.[1]

We hereby direct MOLA to respond to your request within 7 business days of the date of this decision. In light of MOLA's representation to this Office that it will do so, we consider the Committee's appeal to be moot and it is dismissed; however, the dismissal shall be without prejudice to the Committee to assert any challenge, by separate appeal, to MOLA's subsequent response or failure to respond.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

[1] It is our understanding that MOLA would like to speak or meet with you to clarify aspects of the request.

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Julio Guity-Guevara, Deputy Director, MOLA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-55

May 11, 2016

VIA ELECTRONIC MAIL

El Rey

RE: FOIA Request 2016-55

Dear Sir or Madam:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of the Attorney General ("OAG") failed to timely respond to a request for records that you sent to the OAG.

In specific, you contend that you submitted a request for certain records on March 7, 2016, which the OAG received on March 9, 2016. In support of this, you attached to your appeal a certified mail receipt addressed to a "Karl A. Racine"[1] at "441 4th Street NW, WDC 2001." You also included a printout from USPS's website showing a tracking number that corresponds to the certified mail receipt and indicates that your request was delivered. You appealed to the Mayor after the OAG failed to timely respond to your request.

When this Office notified the OAG of your appeal, the OAG responded that it never received your initial request[2] and that it would answer you within the statutory time period under the DC FOIA. On May 8, 2016, the OAG advised us that it was invoking its right to an extension of 10 business days and would respond to your initial request by May 23, 2016.

The OAG's position is essentially that your right to records was never constructively denied under D.C. Official Code § 2-532(e) because the OAG did not receive your request until April 18, 2016. This is a correct interpretation of DC FOIA. A denial under D.C. Official Code § 2-532(e) occurs when an agency fails to meet the time requirements established in D.C. Official Code §§ 2-532(c) and (d). Under DC FOIA, "a request is deemed received when the designated Freedom of Information Officer . . . receives the request submitted in compliance with the Act and this chapter." *See* 1 DCMR 405.6. This Office's jurisdiction is limited to reviewing a District agency's denial of the right to inspect public records. *See* D.C. Official Code §2-537. Because OAG's FOIA Officer did not receive your request until April 18, 2016, the OAG is still within its statutory timeframe to respond to your request. Therefore, you have not yet been denied a record and your appeal is not ripe for our review.

[1] Mr. Racine is the Attorney General of the District of Columbia.
[2] The OAG noted that the address on the certified mail receipt lacks a suite number, which may have contributed to the OAG not receiving your request.

In light of the foregoing, we hereby dismiss your appeal as prematurely filed; however, the dismissal is without prejudice to you to assert any challenge, by separate appeal, to OAG's subsequent response or failure to respond.[3]

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Lateefah Williams, Attorney Advisor, OAG (via email)

[3] If OAG fails to respond to you by May 23, 2016, your request will have been constructively denied.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-56

May 4, 2016

VIA ELECTRONIC MAIL

Mr. Adrian Madsen

RE: FOIA Appeal 2016-56

Dear Mr. Madsen:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). The crux of your appeal is that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted on March 29, 2016, for records relating to "bar notices within the meaning of §§14-9600 *et seq*. of the District of Columbia Municipal Regulations."

When this Office asked MPD for its response to your appeal, MPD indicated that it was unaware of your underlying request. In further correspondence dated May 3, 2016, MPD advised us that it responded to your request on April 28, 2016.

Since your appeal was based on MPD's failure to respond to your FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-57

May 11, 2016

VIA EMAIL

Mr. Robert Edwards

RE: FOIA Appeal 2016-57

Dear Mr. Edwards:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department on Disability Services ("DDS") improperly denied records you requested under the DC FOIA.

Background

On April 13, 2016, you submitted a request to DDS on behalf of your mother for any records pertaining to the death of your brother, "A.E.," while he was in the care of a DDS facility. On April 22, 2016, DDS denied your request, asserting that the records are exempt from disclosure in their entirety pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2")[1] and D.C. Official Code §§7-1301.01 *et seq*. through D.C. Official Code § 2-534(a)(6) ("Exemption 6").[2] DDS stated that although the records cannot be released under DC FOIA, they may be released to the executor or personal representative of A.E.'s estate.

You appealed DDS's denial, indicating that you would like a comprehensive, detailed report of an incident involving your brother on January 28, 2016. DDS provided this Office with a response to your appeal on May 3, 2016,[3] in which it reaffirmed its position that the records at issue are exempt from public disclosure under Exemptions 2 and 6 of the DC FOIA, as well as federal law. DDS also reiterated that while the records are not publicly available, the person designated or appointed to handle the affairs of A.E.'s estate may be legally entitled to receive them. To that end, DDS provided this Office with a copy of the release form to be used by the appropriate individual to request the records on behalf of A.E.'s estate.[4]

[1] Exemption 2 exempts from disclosure information of a personal nature where public release would constitute a clearly unwarranted invasion of personal privacy.
[2] Exemption 6 exempts from disclosure information that is specifically protected from disclosure by other statutes.
[3] A copy of DDS's response is attached.
[4] The release form is attached.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

Here, DDS contends that the Citizens with Intellectual Disability Constitutional Rights and Dignity Act of 1978 ("Act") provides that "[a]ll information contained in an individual's records shall be considered privileged and confidential," including "[a] description of any extraordinary incident or accident in the facility involving [an] individual, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of [the] individual's mistreatment." *See* D.C. Official Code § 7-1305.12(a) and (13). As a result, DDS maintains that it is prohibited under the Act from publicly releasing the records pursuant to a DC FOIA request.

We agree with DDS that D.C. Official Code § 7-1305.12(a) applies to the records you seek and exempts them from public disclosure under Exemption 6 of the DC FOIA. Because we find that the records are exempt under Exemption 6, we need not address whether they are also exempt under Exemption 2 or applicable federal law. We note, however, that DDS has indicated that the records may be available to the executor or personal representative of A.E.'s estate upon the submission to DDS of appropriate documentation, as more fully described in DDS' May 3, 2016 response to this Office.

Conclusion

Based on the foregoing, we affirm DDS's denial and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Jason C. Botop, Assistant General Counsel, DDS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-58

May 2, 2016

VIA REGULAR MAIL

Mr. Raoul Hughes

RE: FOIA Request 2016-58

Dear Mr. Hughes:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537. In your appeal, you assert that you submitted initial and amended requests for certain records to the Department of Motor Vehicles ("DMV") in February 2016, but you have not received a response to either.

This Office notified the DMV of your appeal on April 29, 2016. The DMV advised us on today's date that it never received your initial or amended requests. The DMV further indicated that upon being notified by our Office of your appeal, the agency processed your request and mailed you a response.

Since the DMV has represented to this Office that it never received your initial requests but has since responded to them, we consider your appeal to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the DMV's subsequent response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: David Glasser, General Counsel, DMV (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-59

May 16, 2016

VIA ELECTRONIC MAIL

Mr. Arthur Spitzer

RE: FOIA Appeal 2016-59

Dear Mr. Spitzer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). The basis of your appeal is that the Office of the State Superintendent of Education ("OSSE") failed to respond to a request you submitted on March 11, 2016, for records relating to OSSE's "Advanced Notice of Proposed Rulemaking regarding Child Development Facilities Licensing."

When this Office asked OSSE to respond to your appeal, OSSE indicated that it was still processing your request. On May 12, 2016, OSSE advised us that it responded to your request and did not withhold any records.

Since your appeal was based on OSSE's failure to respond to your FOIA request, we now consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OSSE's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Mona K. Patel, FOIA Officer, OSSE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-60

May 16, 2016

Mr. Raoul Hughes

RE: FOIA Appeal 2016-60

Dear Mr. Hughes:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On or about January 21, 2016, you sent a request to MPD for a copy of any documents and photos related to the theft and recovery of a vehicle reported to MPD as stolen. You identified the documents you were seeking by the date of the initial report, the location, and the complainant. You asked that MPD provide you with incident reports, towing receipts, case summaries, and other related records.

The MPD denied your request on February 5, 2016, on the grounds that "[a] request for such records under the Freedom of Information Act on someone other than yourself, absent authorization, cannot be granted. A release of such information and/or records would constitute a clearly unwarranted invasion of privacy and is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2)."

Subsequently, you appealed MPD's denial and this Office issued a decision on March 28, 2016, ordering MPD to produce previously withheld documents subject to redaction.

As a result of our March 28, 2016 decision, MPD provided you with redacted copies of previously withheld documents. Based on MPD's production, you filed this appeal to challenge the adequacy of MPD's search on the grounds that you believe additional responsive documents should exist that have not been provided to you. MPD provided this Office with a response to your appeal on May 9, 2016.[1] In its response, MPD states that it has twice searched for responsive records but has not found any beyond those already disclosed to you.

Discussion

[1] A copy of MPD's response is attached for your reference.

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Since MPD asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that more records exist and your contention that MPD conducted an inadequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). The first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to this appeal, MPD asserts that it conducted two searches of "electronic and paper files." MPD did not specify the specific document repositories and search terms entailed in the

search it conducted; however, MPD states that its investigation into the incident that is the subject of your request was closed after a day. As a result, MPD contends that additional documents are unlikely to exist.

Although you believe MPD has failed to disclose additional records that may exist, under applicable FOIA law, the test is not whether any additional documents might conceivably exist but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. As we have noted in past decisions, an administrative appeal under DC FOIA is a summary process.[2] The underlying matter about which you seek information was investigated by MPD for only one day. We accept MPD's representation that the two reports it already provided to you are the only records generated by MPD related to this matter. As a result, we find that MPD's search was adequate.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[2] *See* FOIA Appeal 2015-03.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-61

May 16, 2016

VIA ELECTRONIC MAIL

Mr. Francis Nugent

RE: FOIA Appeal 2016-61

Dear Mr. Nugent:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). The basis of your appeal is the failure of the Office of the State Superintendent of Education ("OSSE") to respond to a request you submitted on February 23, 2016, for records related to the Eagleton School.

On May 12, 2016, OSSE advised us that it responded to your request. Since your appeal was based on OSSE's failure to respond to your FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OSSE's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Mona K. Patel, FOIA Officer, OSSE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-62

May 16, 2016

VIA ELECTRONIC MAIL

Mr. Francis Nugent

RE: FOIA Appeal 2016-62

Dear Mr. Nugent:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). The basis of your appeal is the failure of the Office of the State Superintendent of Education ("OSSE") to respond to a request you submitted on March 4, 2016, for records related to psychiatric services.

On May 12, 2016, OSSE advised this Office that it responded to your request. Since your appeal was based on OSSE's failure to respond to your FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OSSE's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Mona K. Patel, FOIA Officer, OSSE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-63

May 20, 2016

VIA EMAIL

Mr. Andrew Bastnagel

RE: FOIA Appeal 2016-63

Dear Mr. Bastnagel:

This letter responds to the administrative appeal you submitted on behalf of the Catholic University of America Columbus School of Law Clemency Project ("Clemency Project") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). The Clemency Project's appeal asserts that the Metropolitan Police Department of the District of Columbia ("MPD") did not adequately search for records responsive to its request under the DC FOIA.

Background

On December 8, 2015, the Clemency Project submitted a FOIA request to MPD for records related to evidence in an inmate's case. The records the Clemency Project sought were primarily chain of custody documents created between 1979 and 1980. On January 21, 2016, MPD denied the request stating that "[a]fter a careful search, [MPD was] unable to locate any responsive documents."

On appeal, the Clemency Project asserts that MPD's response was not sufficient to demonstrate that an adequate search was conducted. Further, the Clemency Project asserts suspicion that, aside from electronic records, physical records were not carefully searched. Additionally, the Clemency Project states that a more thorough response would be helpful to improve the Clemency Project's understanding of the MPD's available records for future FOIA requests.

MPD provided this Office with a response to the Clemency Project's appeal on May 18, 2016.[1] In its response, MPD: (1) states the relevant portion of MPD's record retention schedule; (2) clarifies its efforts to search for responsive records; (3) reaffirms that its searches were adequate; and (4) restates that it did not possess records responsive to the request. MPD's response states that its record retention schedule requires the MPD to retain sex offense case files "for five years and thereafter in the federal records center for ten years." As a result, MPD asserts that the records requested could begin being disposed in 1994. MPD asserts that it identified the Evidence Control Branch, Department of Forensic Sciences, and Crime Scene Investigations

[1] A copy of MPD's response is attached.

Division[2] as the relevant locations for records responsive to the FOIA request. MPD states that searches were conducted in response to both the initial FOIA request and the FOIA appeal. MPD indicates that physical records were not searched because none of the locations maintained relevant physical records old enough to be responsive.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issues in this appeal are whether MPD conducted an adequate search for the records at issue and sufficiently described the search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C.*

[2] MPD clarified that it was unlikely for the Crime Scene Investigations Division to have documents responsive to the request, but its database was checked as a precaution.

Metro. Police Dep't, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

The initial descriptions MPD provided of its search efforts were brief only stating that no responsive records were found. In response to the appeal, however, MPD provided a detailed description of the searches it conducted, as well as the relevant timeframe of its document retention schedule, and affirmed that no responsive records were found. MPD identified the relevant locations for records responsive as the files maintained by the Evidence Control Branch, Department of Forensic Sciences, and Crime Scene Investigations Division. MPD's response affirmed that the relevant locations were searched with the information available. Additionally, MPD's describes its record retention in a manner that can be useful for future FOIA requests. Based on the description MPD provided in response to the appeal, we find that the search it conducted was adequate.

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-64

May 26, 2016

Mr. Adrian Madsen

RE: FOIA Appeal 2016-64

Dear Mr. Madsen:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On March 29, 2016, you sent a request to MPD for a copy of any documents related to barring notices. You identified the documents you were seeking by listing nine subcategories of information relating to barring notices, and you requested that MPD provide you with responsive documents regardless of their form.

On April 20, 2016, you submitted an appeal to the Mayor due to MPD's failure to respond to your request. Upon receipt of the appeal, MPD informed this Office that it was the first time MPD had seen the request, and that it would respond to you. On April 28, 2016, MPD produced to you one responsive document and stated that no further documents existed. On May 4, 2016, this Office dismissed your appeal without prejudice.

On May 9, 2016, you filed the instant appeal, challenging the adequacy of MPD's search. This Office received an initial response to your appeal on May 16, 2016, and an amended response accompanied by a declaration on today's date.[1]

In its May 9, 2016, response, MPD explained that MPD does not "issue" barring notices; MPD officers assist in the serving of barring notices by witnessing the service effected by the property owner and by maintaining the peace. MPD does not create or serve barring notices except in special circumstances enumerated in the document MPD disclosed to you. When an MPD officer obtains a barring notice, the officer provides it to the attorney prosecuting the associated legal matter. MPD further explained that it has no mechanism to determine whether an unlawful entry file contains a barring notice unless a physical search is conducted of the files. MPD maintains 13,724 unlawful entry files for the time period you have specified.

[1] Copies of MPD's responses are attached for your reference.

Today, MPD advised this Office in an amended response that it contacted personnel in MPD's Records Branch to further inquire about the location of barring notices. Sergeant Blonese Thomas, a supervisor in the Records Branch of MPD's Corporate Support Bureau, submitted a declaration to this Office along with MPD's amended response. The declaration asserts, in relevant part, that:

> [T]he Records Branch does not file copies of barring notices . . . such notices would have to be obtained by the courts . . . I surveyed staff members, some of whom have been assigned to the Records Branch for up to twenty years. All staff members that I surveyed stated that barring notices have never been retained by the Records Branch. Additionally, a barring notice is not a department generated form and as such would not be maintained in the Records Branch.

Declaration at paragraph 4.[2]

According to MPD's amended response, MPD apprised you of its position that it does not possess barring notices. MPD further indicated that you have requested that MPD conduct an email search for responsive documents, which MPD has agreed to do.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Since MPD asserts that it has not withheld any responsive records from you, the primary issue in this appeal is your belief that more records exist and your contention that MPD conducted an inadequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

[2] A copy of the declaration is attached for your reference.

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). The first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, MPD has made a reasonable determination that barring notices would be located in the Records Branch if MPD maintained them. MPD confirmed this determination with six different divisions and seven police districts. By declaration from the supervisor of the Records Branch, MPD has further attested that no staff member has observed a barring notice maintained in a file at the Records Branch in approximately 20 years. As for email messages that are responsive to your request, MPD has acknowledged that it has not conducted a search but advised you and this Office that it will do so.

Conclusion

Although you believe MPD has failed to disclose additional records that may exist, under applicable FOIA law, the test is not whether any additional documents might conceivably exist but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351.

Based on MPD's above-described efforts to determine whether it maintains barring notices, in conjunction with the declaration of the Records Branch supervisor that staff has not seen any in at least 20 years, we conclude that MPD has conducted an adequate search for the paper records you are seeking. With respect to the email messages you have requested, we direct MPD to, within 10 business days of this decision, conduct an electronic search and provide you with responsive documents, subject to applicable redactions.
This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-65

May 25, 2016

VIA ELECTRONIC MAIL

Mr. Adrian Madsen

RE: FOIA Appeal 2016-65

Dear Mr. Madsen:

This letter responds to the administrative appeal you submitted on behalf of D.C. Law Students in Court to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Housing Authority ("DCHA") improperly redacted records you requested under the DC FOIA.

Background

On March 29, 2016, D.C. Law Students in Court submitted a FOIA request to DCHA for records related to barring notices issued from 2011 to the present. On April 28, 2016, DCHA responded to the request by producing all the responsive records in its possession, with redactions made to personally identifiable information, names and birthdates, pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[1]

The appeal of D.C. Law Students in Court asserts that redactions on the basis of privacy are improper because under D.C. Municipal Regulations, a list of barred individuals is required to be posted in the property management office of each public housing property. Due to the requirement to post a list of barred individuals, the appeal asserts that the information at issue is distinguishable from cases holding that individuals have a right to control dissemination of their personal information. *See, e.g.*, *Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 769 (1989); *Havemann v. Colvin*, 537 Fed. Appx, 142, 147 (4th Cir. 2013). Additionally, the appeal asserts that there is a public interest in disclosure because the information would reveal how DCHA enforces barring notices based on alleged criminal or illegal activity and whether DCHA enforcement differs based on demographics of the individuals barred.

On May 16, 2016, DCHA provided this Office with a response to the appeal, in which it reaffirms its redactions under Exemption 2 and adds that the information is also properly

[1] Exemption 2 protects "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

redacted under the Privacy Act of 1974.[2] DCHA asserts that the findings in the *Havemann* and *Reporters Comm.* cases support DCHA's redactions pursuant to Exemption 2 because even if names of barred individuals are posted in property management offices, those barred individuals still have an interest in restricting access to compilations of additional personal information. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 762-65.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The only issue in this appeal is whether names and birthdates in the records at issue were properly redacted. Under Exemption 2, determining whether disclosure of a record would constitute a clearly unwarranted invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 762. The first part of the analysis is determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Additionally, "individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity." *Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)). As a result, individuals barred due to alleged illegal activity have a strong privacy interest in the requested records.

Here, there is a sufficient privacy interest in the names and birthdates of barred individuals. *See FLRA*, 510 U.S. at 500. We agree with DCHA's assessment that the fact that the names of barred individuals are posted in property management offices does not diminish the privacy interest of

[2] A copy of DCHA's response is attached.

those individuals in the requested records because the records sought connect the individuals with additional information (e.g. the reason for issuance of the barring notice).

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. D.C. Law Students in Court argues generally that the redacted information would shed light on DCHA's enforcement of barring notices. The redacted information, however, does not contain the demographic specificity that the appeal claims would be of public benefit. Further, it is not clear from the appeal how releasing barred individuals' names and birthdates would provide insight into DCHA's performance. The Supreme Court has held that "[m]ere speculation about hypothetical public benefits cannot outweigh a demonstrably significant invasion of privacy." *Department of State v. Ray*, 502 U.S. 164, 179 (1991). As a result, we find that DCHA properly redacted the names and birthdates of barred individuals under Exemption 2.

Having found the redactions proper under Exemption 2, we need not analyze DCHA's claim that the information is also protected by 5 U.S.C. §552a. We note that the requirements of 5 U.S.C. §552a are applicable to DC FOIA under D.C. Official Code § 2-534(a)(6) ("Exemption 6"), which exempts information from disclosure that is specifically protected from disclosure by other statutes.

Conclusion

Based on the foregoing, we affirm DCHA's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Qwendolyn Brown, Associate General Counsel, DCHA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-66

May 24, 2016

VIA ELECTRONIC MAIL

Inocencio De Los Reyes Velis

RE: FOIA Appeal 2016-66

Dear Mr. De Los Reyes Velis:

I am writing in response to the appeal you submitted to the Mayor under the Freedom of Information Act. It appears that you sent your appeal to the Mayor in error, as the mailing address on your appeal is associated with U.S. Citizenship and Immigration Services ("USCIS") in Lee's Summit, Missouri, and your appeal concerns USCIS' partial denial of a previous FOIA request you submitted to USCIS.

The Mayor has jurisdiction to review FOIA decisions issued by District agencies; however, USCIS is a federal agency. As a result, the Mayor has no authority to adjudicate your appeal. This Office recommends that you forward your correspondence to USCIS at the address provided in USCIS' initial response to your request.

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

DISTRICT DEPARTMENT OF PARKS AND RECREATION

NOTICE OF FUNDING AVAILABILITY

A GRANT FOR
FORT DUPONT ICE ARENA PROGRAMMING
IN THE DISTRICT OF COLUMBIA

The District of Columbia District Department of Parks and Recreation ("DPR") will be accepting applications from nonprofit organizations to provide programming for low-income children at Fort Dupont Ice Arena. This funding opportunity is in accordance with the "Fort Dupont Ice Arena Programming Temporary Amendment Act of 2016".

Beginning Monday, December 19, 2016, the full text of the Request for Applications ("RFA") will be available online at DPR's web site. ***Download****, by visiting DPR's website, www.dpr.dc.gov*.

The deadline to submit an application for funding, is Friday, January 20, 2017, at 4:30 p.m. A complete electronic copy must be e-mailed to dprpartnerships@dc.gov prior to the deadline for consideration.

Eligibility: A nonprofit 501(c)(3) organization in good standing, with a focus on programs involving ice skating. The grantee shall have demonstrated experience in providing programming to low-income children at the For Dupont Ice Arena and shall not charge a participation fee to low-income residents.

Period of Award: A one-time grant shall be awarded to a single grantor to cover FY17 (October 1, 2016 – September 31, 2017) programming.

Available Funding: This will be a one-time grant in the amount of $235,000.00.

For additional information regarding this RFA, please contact DPR as instructed in the RFA document, or after reviewing the document, at www.dpr.dc.gov.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF 2017 BOARD MEETINGS

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

Monday, January 23, 2017

Monday, February 27, 2017

Monday, March 20, 2017

Monday, April 24, 2017

Tuesday, April 19, 2017

Monday, May 15, 2017

Monday, June 19, 2017

Monday, July 17, 2017

Monday, August 21, 2017

Monday, September 18, 2017

Monday, October 16, 2017

Monday, November 20, 2017

Monday, December 18, 2017

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

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

CHANGE IN BOARD MEETING DATE

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice of a date change for its December 2016 public board meeting. The December board meeting will be on Monday, December 19, 2016 at 6:30pm. An agenda will be published on our website at www.dcpcsb.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

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

and

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

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to Section 2-505 of the District of Columbia Code and in accordance with Section 34-802 of the District of Columbia Code,[1] hereby gives notice of its intent to act upon the Potomac Electric Power Company's ("Pepco" or "Company") Rider "RADS" – Residential Aid Discount Surcharge ("Rider Update")[2] in not less than 30 days from the date of publication of this Notice of Proposed Tariff ("NOPT") in the *D.C. Register.*

2. In *Formal Case No. 1053,* the Commission established the Residential Aid Discount ("RAD") Surcharge, the means by which Pepco recovers the costs of the subsidy for the RAD Program for low-income electricity customers in the District of Columbia.[3] Furthermore, pursuant to the Residential Aid Discount Subsidy Stabilization Amendment Act of 2010 ("the Act of 2010"),[4] the Commission directed Pepco to seek a true-up for the surcharge on an annual basis, commencing January 2011, in the event of an over or under collection of the RAD Surcharge and to address any changes in income eligibility criteria.[5] In Order No. 18061,

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

[2] *PEPRADR 2015-01 - The Potomac Electric Power Company's Residential Aid Discount Compliance Reports and Filings* and *Formal Case No. 1120, In the Matter of the Investigation into the Structure and Application of Low Income Assistance for Electricity Customers in the District of Columbia* ("*Formal Case No. 1120*"), Letter to Ms. Brinda Westbrook-Sedgwick, Commission Secretary, from Peter Meier, Vice President Legal Services, re: *Formal Case Nos. 945 and 813*, filed October 25, 2016 (hereinafter referred to as "Rider Update"). This filing revised and replaced the Pepco RAD Filing filed September 30, 2016, striking a portion of a sentence in the proposed tariff. The Commission's review analyzed the attachments filed with the September 30, 2016 RAD Filing as these were not included in the October 25, 2016 Rider Update. The September 30, 2016 RAD Filing replaced the May 27, 2016 Errata Filing, which, in turn, replaced the original May 13, 2016 Rider Filing.

[3] *Formal Case No. 1053, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1053*"), Order No. 14712, rel. January 30, 2008.

[4] D.C. Law 18-195, Residential Aid Discount Subsidy Stabilization Amendment Act of 2010; D.C. Code § 8-1774.14 (2016).

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

the Commission approved Pepco's requested adjustment of the Rider "RADS" from $0.000294 to the current surcharge of $0.000159.[6]

3. In Order No. 18059, the Commission adopted a new methodology for computing the RAD subsidy, the Residential Aid Credit ("RAC"), which now will serve as the form of the discount on the bills of eligible low-income customers in the District of Columbia.[7] The new methodology for calculating the RAD subsidy became effective June 1, 2016.[8] Under the new methodology, the monthly RAC is equal to the full Distribution Charge plus certain applicable surcharges. On October 25, 2016, in compliance with the Act of 2010 and Order No. 18061, Pepco filed its annual update to the Rider "RADS." Based on our preliminary review of the Rider Update, Pepco's filing is consistent with the changes made to the methodology for computing the RAC. In the Rider Update, Pepco proposes to amend the following tariff page:

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

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

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

4. According to Pepco, the funding level for the restructured program is approximately $4.898 million, up from $3.54 million in the previous year.[9] This is an increase of $1.358 million over the previous year. One reason the program costs have increased is because the number of customers who qualify for assistance has increased since the March 2, 2015 RAD filing. To be more specific, the number of RAD customers increased from 17,118 to 18,964, from 2014 to 2015.[10] In addition, under the restructured program, the RAC is available for customers of competitive electric suppliers as well as for customers who receive standard offer service.[11] To recover the higher cost for the RAD program, Pepco proposes to increase the current surcharge of $0.000159 to a new surcharge of $0.000442.[12]

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6 *PEPRADR 2015-01* and *Formal Case No. 1120*, Order No. 18061, rel. December 18, 2015.

7 *Formal Case No. 1120, In the Matter of the Investigation into the Structure and Application of Low Income Assistance for Electricity Customers in the District of Columbia* ("*Formal Case No. 1120*"), Order No. 18059, rel. December 15, 2015.

8 *Formal Case No. 1120*, Order No. 18059 at ¶ 35.

9 *See PEPRADR 2015-01* and *Formal Case No. 1120*, the September 30, 2016 RAD Filing, Attachment B; and the March 2, 2015 RAD filing.

10 See *PEPEMMR 2016-01*, Pepco's Monthly Market Monitoring Report, filed November 15, 2016. Pepco's Monthly Market Monitoring Report also provides that average monthly number for RAD customers from January 2016 to October 2016 is 19,190, which is higher than the monthly average of 18,964 for 2015.

11 *See PEPRADR 2015-01* and *Formal Case No. 1120*, the September 30, 2016 Rider Filing. Pepco's proposed 2016 funding level of $4.898 million (based on 18,964 RAD participants in 2015) exceeds the 2015 RAD program funding level of $3.54 million (based on 17,118 RAD participants in 2014) provided in the March 2, 2015 RAD filing. This increase in required funding appears to be due to (i) an increase in the number of RAD customers

5. Additionally, in the October 25, 2016 Rider Update, the Company requested that the revised Rider "RADS" become effective with service on and after November 1, 2016.[13] The revised Rider "RADS" tariff pages are provided in the Rider Update.

6. This Rider Update 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 website at www.dcpsc.org. Copies of the tariff are available upon request, at a per-page reproduction cost.

7. Comments and reply comments on the Rider Update must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the above address. All comments and reply comments must be received within 30 and 45 days, respectively, of the date of publication of this Notice in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on Pepco's Rider Update.

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and (ii) an increase in the effective subsidy applicable to RAD customers that switch to competitive electric suppliers. Under the previous RAD discount approach, shopping customers did not receive the generation portion of the RAD subsidy; *See also,* Order No. 18059 at ¶ 33.

[12] *See PEPRADR 2015-01* and *Formal Case No. 1120,* the September 30, 2016 RAD Filing, Attachment B.

[13] *PEPRADR 2015-01* and *Formal Case No. 1120,* Rider Update at 1.

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

December 15, 2016
10:00 a.m.

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

On Thursday, December 15, 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

December 15, 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, December 15, 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	Ms. Collins
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 January 15, 2017.

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 December 16, 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: January 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 2**

Anderson	Connie	State Farm - Sonia Ntuk Agency 4701 Wisconsin Avenue, NW	20016
Anderson	Sharlyn	DC Workspaces 1025 Connecticut Avenue, NW, Suite 1000	20036
Barnes	Glider D.	Self (Dual) 3907 9th Street, SE	20057
Barton	Taranja C.	US Department of Justice Federal Bureau of Investigation 601 4th Street, NW	20535
Bima	Elona	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Brandon	JoAnn	Howard University Hospital 2041 Georgia Avenue, NW	20060
Brice Sr.	Marc D.	Citibank Friendship Heights FC 5001 Wisconsin Avenue, NW	20016
Buell	Elizabeth A.	US Authentication Services 1629 K Street, NW, Suite 300	20006
Carpenter	Melinda L.	AMT, LLC 10 G Street, NE, Suite 430	20002
Carter	April M.	Department of Energy and Environment Energy Administration Affordability & Efficiency Division 1200 First Street, NE	20002
Cartwright	Linda M.	Baker Botts, LLP 1299 Pennsylvania Avenue, NW	20004
Chamoun	Aspasia	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Cohen	Ramona C.	Kator Parks Weiser & Harris 1200 18th Street, NW, #100	20036

D.C. Office of the Secretary **Effective: January 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 3**

Coleman	Keshell	Department of Energy and Environment 2100 Martin Luther King Jr. Avenue, SE	20020
Collins	Manley M.	Collins Incorporated 455 Massachusetts Avenue, NW, Suite 161	20001
Diggs	Gwendolyn A.	Self (Dual) 2327 Pomeroy Road, SE	20020
Dixon	Dorita	Self 5727 Chillum Place, NE	20011
Durham	Doreen	Women for Women International 2000 M Street, NW, Suite 200	20036
Evans	Andia Ashley	Department of Behavioral Health - Comprehensive Psychiatric Emergency Program 1905 E Street, SE, Building 14	20003
Fisher	Elizabeth A.	Office of Disciplinary Counsel 515 5th Street, NW, Building A, Room 117	20001
Forster	Michael C.	Forster Law Firm, PLLC 2007 Vermont Avenue, NW	20001
Francis	Shirrita L.	Pillsbury Winthrop Shaw Pittman LLP 1200 17th Street, NW	20036
Garnica	Cinthia	International Association of Bridge, Structure, Ornamental and Reinforcing Iron Workers 1750 New York Avenue, NW	20006
Gilbert	Laura Gisolfi	Self 2400 Monroe Street, NE	20018
Gray	Nichelle A.	Action on Smoking and Health 1250 Connecticut Avenue, NW	20036
Hampton	Quiana Cherie	M and T Bank 1899 L Street, NW	20036

D.C. Office of the Secretary **Effective: January 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 4**

Howard	Jennifer Kirkpatrick	Lockton Companies 1801 K Street, NW	20006
Humphreys	Emma Louise	Jemsek Specialty Clinic, PLLC 2440 M Street, NW, Suite 205	20037
James	Gloria J.	Self 3348 Dubois Place, SE	20019
Johnson	Ernest E.	Self (Dual) 1451 Parkwood Place, NW	20010
Johnson	Tenaya	Society for Women's Health Research 1025 Connecticut Avenue, NW, Suite 601	20036
Jones	Shamika	Agriculture Federal Credit Union 1400 Independence Avenue, SW, Room SM-2	20250
Joynes	Annette	Self 1356 Perry Place, NW	20005
Kincer	Leigh Hamilton	Jemsek Specialty Clinic, PLLC 2440 M Street, NW, Suite 205	20037
King	Nicole L.	American Beverage Association 1275 Pennsylvania Avenue, NW, Suite 1100	20004
Kwak	Johnathan	American Association of State Highway and Transportation Officials 444 North Capitol Street, NW, Suite 249	20001
Lazo	Kimberly	DC Metropolitan Police Department, Fleet Management Division 2175 West Virginia Avenue, NE	20002
Mann	Linda M.	The Bernstein Companies 3299 K Street, NW, Suite 700	20007
Martin Jr.	Robert Preston	Charles Schwab 1845 K Street, NW	20006

D.C. Office of the Secretary **Effective: January 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 5**

McBurrows	Kimberly L.	Patrick Malone & Associates, PC 1310 L Street, NW, Suite 800	20005
McKenna	Kristen L.	RoseMcKenna, PLLC 919 18th Street, NW, Suite 625	20006
Membreno	Kenia M.	State Farm Insurance - Jon Laskin Agent 5600 Connecticut Avenue, NW, Suite 400	20015
Miller	Rachel E.	Housing and Urban Development - ORCF 4571 7th Street, SW	20410
Miller	Samantha F.	RoseMcKenna, PLLC 919 18th Street, NW, Suite 625	20006
Moore	Danielle M.	Loss, Judge & Ward, LLP 600 14th Street, NW, Suite 450	20005
Peele	Lyndsae'	Wells Fargo 1901 7th Street, NW	20001
Peterson	Krista	Broadspectrum Infastructure Inc 840 1st Street, NE, 3rd Floor	20002
Pitts	Annis	Self 5215 Banks Place, NE	20019
Portillo	Wendy V.	Wells Fargo Bank 1901 7th Street, NW	20001
Rainey	Brandon P.	Wells Fargo Bank 2000 L Street, NW	20036
Ramos Soto	Yoliara M.	Self 4849 Connecticut Avenue, NW, Apartment 520	20008
Raymond	Kevin	Navy Federal Credit Union 9th & M Street, SE, Building 218 Ground Floor	20374
Rodriguez	Cynthia D.	Wells Fargo 1800 K Street, NW	20006

Scott	Betty A.	Self (Dual) 2725 31st Place, NE	20024
Shyllon	Angela R.	International Union of Operating Engineers 1125 17th Street, NW	20036
Smith	LaToya R.	So Others Might Eat 60 O Street, NW	20001
Sobel	Evelyn	Heritage Reporting 1220 L Street, NW, Suite 206	20005
Starr	Michelle	Self 3732 Burnham Place, NE	20019
Steele	Susan	National Public Radio, Inc 1111 North Capitol Street, NE	20002
Taylor	Rashia	The UPS Store #1736 1220 L Street, NW, Suite 100	20005
Thompson	Jennifer	Wilson Elser Moskowitz & Dicker, LLP 700 11th Street, NW, Suite 400	20001
Thompson	Veronica	Baker & Hostetler, LLP 1050 Connecticut Avenue, NW, Suite 1100	20036
Tran	Michelle M.	US Authentication Services 1629 K Street, NW, Suite 300	20006
Traore	Oumou A.	National Institute of Health Federal Credit Union 2200 Pennsylvania Avenue, NW, Suite E160	20037
Trowell	Christopher F.	TD Bank N.A. 1030 15th Street, NW	20005
Underwood	Khalila-Taji	Charles Schwab 1100 H Street, NW, Suite 100	20005
Venson	Lisa	First Home Care 1012 14th Street, NW, Suite 1000	20005

D.C. Office of the Secretary **Effective: January 15, 2017**
Recommendations for appointment as DC Notaries Public **Page 7**

Viera Adrianza	Danielena	Innovo Construction, LLC 6230 Georgia Avenue, NW, Suite 200	20011
Williams	Sylvia D.	DC Office Of Attorney General LSS CSSD Intake 1 441 4th Street, NW, Suite 550 North	20001
Winstead II	Claudette M.	Diversified Environmental Inc 7600 Georgia Avenue, NW, Suite 402	20012
Zelaya	Kathleen	American Forest & Paper Association 1101 K Street, NW, Suite 700	20005

D.C. SENTENCING COMMISSION

NOTICE OF MEETING CANCELLATION

The D.C. Sentencing Commission hereby gives notice that the Commission meeting on Tuesday, December 6, 2016 is cancelled. Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or Mia.Hebb@dc.gov.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER INTO A SOLE SOURCE CONTRACT
Dated: 12-09-2016

Pursuant to the School Reform Act, D.C. 38-1802 (SRA) and the D.C. Public Charter Schools procurement policy, Washington Latin Public Charter School (WLPCS) hereby submits this public notice of intent to award the following sole source contract:

Contract: Echo Hill Outdoor School Inc.

WLPCS intends to enter into a sole source contract with Echo Hill Outdoor School Inc. Echo Hill is an outdoor school that teaches students myriad skills and concepts through hands-on, experiential practices. The students are working and learning in the outdoors and seeing first-hand examples of the material they are covering in Science class. This relates most directly to the units covered in the beginning of the year in Ms. Olney's class (ecology and interdependence of life), but will incorporate ideas learned throughout the year. Moreover, students will also have an opportunity to extend their learning from the classroom by applying what they already know to new situations. The total will be $27,450.00

For further information regarding this sole source notice, please contact Geovanna Izurieta via email by no later than 4:00 pm December 16 2016.

Gizurieta@latinpcs.org

YOUTHBUILD PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Project Management and Consulting Services

Issued: Dec 16, 2016 | Questions due: Dec 19, 2016 | Submissions due: Dec 27, 2016

YouthBuild Public Charter School solicits proposals from vendors to provide **Project Management and Consulting Services** for leasing or purchasing a new facility for the school for SY 2017-18.

Selected service provider shall provide oversight of the project, act as the owner's representative, and agent. This includes managing any renovation / construction required to ready the facility for YBPCS and securing financing (as needed). Vendor will also secure a new tenant for YBPCS' current facility.

To obtain copies of the full RFPs, please contact ybpcs.rfps@gmail.com.

The full RFP can also be found on our website at www.youthbuildpcs.org.

Proposals must include all elements identified in the scope of work.

Please send proposals to ybpcs.rfps@gmail.com

Questions Deadline (by 5:00 PM):	Dec 19, 2016
Submission Deadline (by 5:00 PM):	Dec 27, 2016

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19366 of Residence Panache Condominium Unit Owners' Association[1], pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle F § 304.1[2] to construct three balconies to the rear of an existing 16-unit apartment building in the RA-2 Zone at premises 1829 California Street, N.W. (Square 2554, Lot 4).

HEARING DATE: November 30, 2016
DECISION DATE: November 30, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1C, which is automatically a party to this application. The ANC submitted a report dated November 18, 2016 recommending approval of the application. The ANC's report indicated that at a duly noticed public meeting on November 2, 2016, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 39.)

The Office of Planning ("OP") submitted a timely report dated November 18, 2016 recommending approval of the application. (Exhibit 40.) OP also testified at the hearing in

[1] The Applicant's representative stated at the hearing that since filing the application, ownership of the property has changed from "California Land Company LLC" to "Residence Panache Condominium Unit Owners' Association". A new authorization letter was submitted into the record from the new owner. (See Exhibit 42.) The name of the current owner is reflected in the caption.

[2] The caption above reflects the relief requested in the Applicant's zoning self-certification - Subtitle F § 304 - which pertains to the RA zones. The lot occupancy relief was inadvertently misstated in the originally-published caption as Subtitle E § 304 which pertains to the lot occupancy provision in the *RF* zones.

support of the application.

The District Department of Transportation ("DDOT") submitted a timely report dated November 15, 2016, indicating that it had no objection to the grant of the application. (Exhibit 38.)

Variance Relief

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, and the lot occupancy requirements of Subtitle F § 304.1 to construct three balconies to the rear of an existing 16-unit apartment building in the RA-2 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 averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C § 202.2 and Subtitle F § 304.1, 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.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 – ARCHITECTURAL PLANS & ELEVATIONS**.

VOTE: 4-0-1 (Frederick L. Hill, Anthony J. Hood, Anita Butani D'Souza, 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: December 5, 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. 19372 of Glenn Counts, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to construct an accessory garage in the RF-1 Zone at premises 440 N Street, N.W. (Square 513, Lot 932).

HEARING DATE: November 30, 2016
DECISION DATE: November 30, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 7, 2016, from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report, dated October 23, 2016, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 4, 2016, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated November 18, 2016 (Exhibit 36) and testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a timely report, dated November 15, 2016, expressing no objection to the approval of the application. (Exhibit 35.)

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 E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to construct an accessory garage in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant

[1] The caption has been amended to include the reference to the special exception provision "under Subtitle D § 5201" which was inadvertently omitted from the relief in the Zoning Administrator's memorandum (Exhibit 8).

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, and Subtitle E §§ 5201 and 304.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR 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 6 - ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Anthony J. Hood, Anita Butani D'Souza, 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.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 5, 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. 19373 of Stephen Babatunde, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2(m), to expand an existing four-unit apartment house in the RF-1 Zone at premises 911 T Street, N.W. (Square 361, Lot 803).

HEARING DATE: November 30, 2016
DECISION DATE: November 30, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report, dated November 11, 2016, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 11, 2016, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report dated November 18, 2016 (Exhibit 39), and testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a timely report, dated November 15, 2016, expressing no objection to the approval of the application. (Exhibit 37.)

[1] The Applicant initially requested special exception relief under the RF-use requirements of Subtitle U § 320.2(c); however, the citation was modified to Subtitle U § 320.2(m), based on a technical correction to ZR16. The caption has been amended accordingly.

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 the RF-use requirements of Subtitle U § 320.2(m) to expand an existing four-unit apartment house in the RF-1 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, and the RF-use requirements of Subtitle U § 320.2(m), 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 ARCHITECTURAL PLANS AND ELEVATIONS AT EXHIBIT 7.**

VOTE: **4-0-1** (Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D'Souza, and Anthony J. 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.

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 FINAL RULEMAKING
AND
Z.C. ORDER NO. 04-33G
Z.C. Case No. 04-33G
(Text Amendment – Inclusionary Zoning – Amendments to Subtitle C, Chapter 10)
October 17, 2016

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 04-33H
Z.C. Case No. 04-33H
(Text Amendment - 11 DCMR)
(Addition of Affordable Housing Required by District Law to Exemptions from Inclusionary Zoning)
November 14, 2016

The full text of this Zoning Commission Order is published in the "Final Rulemaking" section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03C
Z.C. Case No. 09-03C
Skyland Holdings, LLC
(PUD Time Extension @ Square 5633)
October 17, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 17, 2016. At that meeting, the Commission approved the request of Skyland Holdings, LLC ("Applicant") for a one-year time extension ("Request"), until September 10, 2017, in which to start construction of one of the buildings in the Skyland Town Center project planned unit development ("PUD") approved by Z.C. Order No. 09-03, as amended and extended by ZC Order Nos. 09-03A and 09-03B. The property (Lot 22 in Square 5633) that is the subject of this application is bound by Good Hope Road, S.E., Naylor Road, S.E. and Alabama Avenue, S.E. ("Property"). The Request was made pursuant to § 705 of the Zoning Commission's Rules of Practice and Procedure, which is contained in Subtitle Z of Title 11 DCMR.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Property was rezoned to the C-3-A Zone District pursuant to a PUD-related map amendment granted in Z.C. Order No. 09-03. The PUD approved in Z.C. Order No. 09-03 created a Town Center with mixed-use retail and residential buildings, accompanying parking facilities, and townhouses on five different Blocks. The original PUD project consisted of approximately 311,000 square feet of retail- and service-related uses and a large format retail store, as well as neighborhood-serving retailers. The residential component of the original PUD project created 450-500 residential units, including a number of affordable housing units, and 20 townhouses. The original PUD project also included transportation infrastructure improvements to foster safe pedestrian and vehicular interaction along the adjacent major streets (Good Hope Road, Naylor Road, and Alabama Avenue). Z.C. Order No. 09-03 became effective on September 10, 2010.

2. On November 8, 2012, the Applicant filed a request to modify the original PUD project. The PUD modification application, Z.C. Case No. 09-03A, did not propose significant changes to the original PUD project. The number of residential units in the modified PUD project remained in the approved range of 450-500 units and the amount of retail- and service-related uses is approximately 342,000 square feet. The modified PUD project included modifications to all five Blocks. The majority of the Commission's attention to these modifications focused on the proposed Walmart shopping center to be located on Block 1 and the mixed-use residential building located along Block 2, which included frontage along Naylor Road, S.E. and Good Hope Road, S.E. Z.C. Order No. 09-03A became effective on January 17, 2014.

3. On November 9, 2012, the Applicant requested a time extension of the period of approval for the modified PUD project. Condition No. 17 of Z.C. Order No. 09-03 stated that the "PUD shall be valid for a period of three years from the effective date of this Order [September 10, 2010]. Within such time, an application must be filed for a building permit

for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid." The Applicant requested that the Commission extend the time period in which it is required to file a building permit application for the construction of a building on Block 1, 2, 3, or 4 until September 10, 2015 and that construction of that building must start by September 10, 2016. The Commission approved this time extension request and Z.C. Order No. 09-03B became effective on January 17, 2014.

4. Consistent with Z.C. Order No. 09-03B, the Applicant filed a building permit application for the construction of the building on Block 2 of the approved Skyland Town Center with the Department of Consumer and Regulatory Affairs ("DCRA") on August 6, 2015. This building permit application was given a permit/tracking number of B1511201. On August 26, 2016, DCRA completed its review of the building permit application and issued an invoice noting the building permit fee. Once the fee is paid, the building permit for Block 2 will be issued.

CURRENT APPLICATION

5. The Applicant filed the current Request on August 31, 2016. The Applicant provided a certificate of service which noted that the time extension application was served on all parties to the original PUD, which were Advisory Neighborhood Commissions ("ANC") 7B and 8B, and the Ft. Baker Drive Party ("FBDP"). (Exhibit ["Ex."] 1.)

6. The Applicant indicated that there has been no substantial change of material facts that affect the Property since the Commission's approval of the PUD modification and time extension applications. The Applicant provided evidence that it had undertaken significant demolition, site preparation, and grading work in order to prepare the Property for the development of the Skyland Town Center project. To date, the Applicant has spent approximately $17,410,946 in order to bring the Skyland Town Center project closer to reality. This amount was spent on the following scope of work:

- Land cost;
- PUD approvals;
- Production of approved site plans;
- Preparation and submission of building permit plans for Block 2;
- Demolition of existing structures, except former CVS and Post Office buildings;
- Preliminary grading of site, installation of sediment traps;
- Preliminary excavation of Block 1; and
- Construction of two (2) retaining walls. (Ex. 1.)

7. The Applicant stated that it was unable to start construction of Block 2 by September 10, 2016 for two reasons. First, DCRA only completed its review and granted approval of the building permit application for the construction of Block 2 on August 26, 2016. While the Applicant has diligently pursued the processing of the building permit application and will be able to obtain the building permit upon the payment of the $309,100 permit fee, there is not sufficient time for the Applicant to start construction activity on Block 2 prior to

September 10, 2016. The second reason that the Applicant was unable to start construction of the building on Block 2 was related to Walmart's announcement (in January of 2016) that it was pulling out of the Skyland Town Center project. As a result of Walmart's decision, the Applicant was forced to revisit and rework the financing for the entire project. Since January 2016, the Applicant has worked diligently with the Office of the Deputy Mayor for Planning and Economic Development to update the Development Finance Agreement for the Skyland Town Center project in order to allow land development to continue and to begin construction on Block 2. The Applicant noted that the approval of the one-year time extension requested in this application will allow the Applicant to secure the necessary financing to allow for the continued development of the entire Skyland Town Center project. (Ex. 1, 1D.)

8. Neither ANC 7B nor ANC 8B submitted a written report into the record pertaining to this Request.

9. The Ft. Baker Drive Party did not submit anything into the record regarding this Request.

10. The Office of Planning ("OP") submitted a report on October 7, 2016. The OP report stated that OP had no objection to the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of Subtitle Z, Section 705.2. (Ex. 4.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the Request on all parties and that all parties are allowed 30 days to respond. ANCs 7B and 8B were served with this Request, as was FBDP. Neither ANC 7B, ANC 8B, nor FBDP responded to this Request.

Subsection Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subsection 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

(1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to start construction of the building on Block 2. The Commission takes notice that DCRA's review and approval of the building permit for construction of the building on Block 2 was completed on August 26, 2016, despite the Applicant's diligent efforts to move the building permit application forward, and to start construction before September 10, 2016 was therefore not feasible. In addition, the Commission agrees with the Applicant's statement that Walmart's unilateral decision to pull out of this project in January of 2016 resulted in the Applicant's inability to obtain sufficient project financing. Therefore, the Commission finds that approval of this time extension request is consistent with §§ 705.2(c)(1) and 705.2(c)(2). The Commission believes that granting the one-year time extension request, to allow the Applicant until September 10, 2017 to start construction of the building on Block 2, is an appropriate amount of time.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP had no objection to the time extension request.

The Commission is required under 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)) to give great weight to the issues and concerns raised in an affected ANC's written report. As noted neither ANC 7B nor 8B submitted such a report.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 09-03C for a one-year time extension of the consolidated PUD application approved in Z.C. Order Nos. 09-03 and 09-3A, and extended in Z.C. Order No. 09-03B. The validity of the consolidated PUD approved by the Zoning Commission is extended until September 10, 2017, by which time the Applicant must start construction of the building on Block 2 for the PUD to remain valid. Condition No. 17 of Z.C. Order No. 09-03, as modified by Z.C. Order No. 09-03A, sets forth the Applicant's obligation to file building permit applications for and commence construction of the remaining portions of the PUD and the timeframe for doing so.

On October 17, 2016, upon the motion of Chairman Hood, as seconded by Vice Chairperson Miller, the Zoning Commission **APPROVED** this Request at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on December 16, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 16-27
(251 Massachusetts Avenue, LLC –
Consolidated PUD and Related Map Amendment @ Square 560)
December 5, 2016

THIS CASE IS OF INTEREST TO ANC 6E

On November 29, 2016, the Office of Zoning received an application from 251 Massachusetts Avenue, LLC (the "Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 852 and 853 in Square 560 in northwest Washington, D.C. (Ward 6), on property located at 251 H Street, N.W. The property is currently zoned MU-6. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to the D-6 zone.

The subject property is in the southern portion of Square 560, which is a rectangular–shaped block bound by H Street, N.W., 2nd Street, N.W., 3rd Street, N.W., and K Street, N.W. The proposed PUD will result in the expansion of an existing office building on H Street, N.W. to meet the immediate and future needs of the existing occupant, a non-profit organization. The Applicant proposes to modify the existing building slightly by adding an 8th story and to construct a new 11-story commercial office addition. The proposed addition will have a maximum height of 130 feet and the overall density for the the two buildings combined will be 9.18 floor area ratio ("FAR"). The project will include 28 parking spaces and will be constructed to a minimum of LEED-Gold.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, AFL-CIO Local 2553	
Petitioner,	PERB Case No. 16-A-14
v.	Opinion No. 1597
District of Columbia Water and Sewer Authority	
Respondent.	

DECISION AND ORDER

I. Introduction

On June 14, 2016, the American Federation of Government Employees, AFL-CIO Local 2553 ("the Union") filed an Arbitration Review Request ("Request"), pursuant to D.C. Official Code § 1-605.02(6). The Union seeks review of an Arbitration Award ("Award") on the grounds that it violates Article 26 of the parties' Working Conditions Agreement and the Comprehensive Merit Personnel Act, D.C. Official Code § 1-611.01(2), requiring equal pay for substantially equal work.[1] The Union seeks review on the grounds that the award is contrary to law and public policy.

For the reasons stated herein, Petitioner's Request is denied.

II. Statement of the Case

In 2014 the District of Columbia Water and Sewer Authority ("the Authority") reorganized its operating divisions, combining the water delivery and sewer collections systems.[2] On March 14, 2014, as part of the reorganization, the Authority revised the Utility Systems Operator I ("Operator I") and Utility Systems Operator II ("Operator II") job descriptions. The revisions required both Operator I and Operator II employees to become certified in both water delivery and sewer collections rather than specialize in one, as was done in the past.[3] The job

[1] *See* D.C. Code § 1-605.02(6) (2014).
[2] Award at 3
[3] *Id.*

descriptions for Operator I and Operator II are identical except the Operator II position has the additional duty of "Operator in Charge" of the shift.[4] The Operator I position is classified at Salary Grade 10 and the Operator II position is at Salary Grade 11.[5]

A grievance was filed by the Union on June 18, 2015, demanding that all Operators be classified at the Operator II rate at Grade 11 with back pay.[6] The Union claimed that the Authority assigned one Operator to each shift to perform the functions of the "Operator in Charge" regardless of the grade level. The Authority denied the grievance stating that an Operator II was assigned to each shift as the Operator in Charge.[7] The Union appealed the grievance. No settlement was reached and the grievance was advanced to arbitration.[8]

III. Arbitrator's Award

Though the Arbitration Award addressed three issues; the Union requests review of the Award only with respect to the issue of equal pay for Operators I and II.[9]

Reviewing the functions of the two Operator positions, the Arbitrator noted that it was apparent that the two positions contain significant overlap in content; however, an Operator II is responsible for the entire shift including water delivery and sewer collections, while an Operator I is responsible for either water or sewer on a given shift, but not both.[10] He further found that the Operator II responsibility is broad and includes interactions with other employees on the same shift working both water delivery and sewer collection whereas Operator I workers have a narrower scope and are primarily responsible for their own work.[11] These distinctions were based on the essential function present in the Operator II job description, "operator in charge of shift."[12] The Arbitrator concluded that these distinctions were enough to warrant a pay grade differential between the two classifications looking solely at the job descriptions.

Addressing whether the Operator II workers were in fact functioning as "operator in charge of the shift" as stated in their job description, the Arbitrator relied on the testimony of Charles Sweeney, the Director of Distributions and Conveyance Systems. The Arbitrator concluded that training all operators in both water and sewer systems and then training Operator II workers in the requirements of performing their "in charge" function would require significant time and that the Authority had not yet completed all the training.[13] The Authority's reorganization began in November of 2014 and was ongoing when the grievance was filed in

[4] *Id.* at 3-4.
[5] *Id.* at 3.
[6] *Id.* at 6.
[7] *Id*.
[8] *Id*.
[9] The three issues reviewed by the Arbitrator were (1) whether the grievance was timely under Article 58.H of the Working Conditions Agreement, (2) whether the grievance should be dismissed for the Union's failure to exhaust contractual remedies provided in Article 23.B and (3) whether the employer is required to compensate Operator I employees at the same pay rate as Operator II employees based on Article 26 of the Working Conditions Agreement.
[10] Award at 9.
[11] *Id*. at 8.
[12] *Id*.
[13] *Id.* at 11.

June of 2015.[14] The Arbitrator concluded that when the grievance was filed, the Union was premature in its claim that Operator I employees were performing substantially the same work as Operator II employees.[15]

The Union filed this Arbitration Review Request seeking to have the Arbitrator's Award reversed on the grounds that it is contrary to law and public policy.[16]

IV. Discussion

The Comprehensive Merit Personnel Act places specific limits on the Board's review of arbitration awards.[17] Under D.C. Official Code § 1-605.02(6), the Board is authorized to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[18]

The Union cites D.C. Official Code § 1-611.01(2) which states that "the principle of equal pay for substantially equal work will be supported." Article 26 of the parties' working conditions agreement incorporates this law into the parties' collective bargaining agreement ("CBA").[19] The Union argues that the Arbitration Award is contrary to law and public policy because the Arbitrator's decision violates Article 26 and D.C. Official Code § 1-611.01(2) which requires equal pay for substantially equal work, based on the actual job duties performed by employees.[20]

According to the Union, the Arbitrator's determination of separate duties based on the job descriptions is insufficient because it does not consider the actual duties performed by employees.[21] The Union looks to testimony of employees they presented during arbitration to show that Operator II employees were not being required to perform any different duties than Operator I employees.[22] The Union further argues that the proper standard of review for equal pay is whether the job requires equal skill, effort and responsibility and is performed under similar conditions.[23] The Union cites *Washington Convention Center Authority v. Johnson*[24] and *Corning Glass Works v. Brennan*[25] to support the argument that the Equal Pay Act recognized the need to pay similar wages for work which required equal skill, effort and responsibility when performed under the same working conditions.[26]

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[14] *Id*.
[15] *Id*.
[16] Request at 10.
[17] *See Fraternal Order of Police v. District of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 176 (2009).
[18] *UDC v. PERB*, 2012 CA 8393 P(MPA)(2014).
[19] Request at 7.
[20] *Id*. at 2.
[21] *Id* at 8.
[22] *Id*. at 9.
[23] *Id*. at 7.
[24] 953 A.2d. 1064, 1078-9 (D.C. 2008).
[25] 417 U.S. 188, 195 (1974).
[26] Request at 7. The Arbitrator does not address the standard of review for equal pay.

In order for the Board to find that the Award was on its face contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.[27] In this case, the Union cites D.C. Official Code § 1-611.01(2) as incorporated by Article 26 of parties' working conditions agreement. The Arbitrator considered Article 26 and found that the Operator I and Operator II positions are not equal because of the Operator II's additional duty of operator in charge of shift.[28]

The Arbitrator further found that once reorganization is complete; "in charge" duties will be more apparent based on testimony by Mr. Sweeney and Jacob Kelly, an employee who was promoted to an Operator II position.[29] Mr. Sweeney's testified that Operator II employees are to perform an important role in the reorganization because they will be taking on the global operation of both water distribution and sewer collection, a higher level of work than Operator I.[30] Mr. Kelly testified that upon his promotion to Operator II, he knew he was to be in charge of the shift rather than just his own station.[31] According to the Arbitrator these statements show there are differences between the two positions; however this may not seem clear until the reorganization is complete. The Arbitrator concluded that as of the filing of the grievance in June of 2015, the evidence is insufficient to state that Operator I employees perform substantially equal work as Operator II employees.[32]

The Union's argument that the Award is contrary to law and public policy is based on a disagreement with the Arbitrator's interpretation of Article 26 and the factual findings based on testimony from both the Union and the Authority's witnesses. The Board has long held that it will not overturn an Arbitrator's findings on the basis of a disagreement with the Arbitrator's determination.[33] By submitting a matter to arbitration, parties are bound by the Arbitrator's interpretation of the CBA, related rules and regulations, and evidentiary and factual findings.[34] Accordingly, the Board finds that the Union's request is merely a dispute of the Arbitrator's evidentiary findings and conclusions.

V. Conclusion

The Board finds that the Union has not cited any specific law or public policy that was violated by the Arbitrator's Award. Thus, the Board rejects the Union's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, the Union's request is denied and the matter is dismissed in its entirety with prejudice.

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[27] See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p. 8.
[28] Award at 10.
[29] *Id*. at 12
[30] *Id*. at 11.
[31] *Id*. at 12.
[32] *Id*.
[33] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).
[34] *See D.C. Dep't of Health v. AFGE, Local 2725, AFL-CIO*, Slip Op. No. 1383, PERB Case No. 13-A-01 (2013); see also *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012).

ORDER

IT IS HEREBY ORDERED THAT:

1. **The arbitration review request is hereby denied.**

2. **Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

October 20, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-14, Op. No. 1597 was sent by File and ServeXpress to the following parties on this the 31 day of October, 2016.

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/s/ Sheryl Harrington

PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 15-A-13
and	Opinion No. 1598
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Justin Linville),	
Respondent.	

DECISION AND ORDER

I. Introduction

On June 22, 2015, the Metropolitan Police Department ("MPD," or "Petitioner") filed this Arbitration Review Request ("Request") pursuant to D.C. Official Code § 1-605.02(6).[1] MPD seeks review of Arbitrator Sean Rogers' Arbitration Award ("Award") that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") on behalf of Officer Justin Linville ("Grievant"). The Arbitrator found that MPD violated Article 12, Section 6 of the parties' Collective Bargaining Agreement ("CBA') referred to as the "55-day rule," by failing to serve the Grievant with a Final Notice within the required time frame.[2] MPD seeks review on the grounds that the Arbitrator exceeded his jurisdiction and the Award is contrary to law and public policy."[3]

For the reasons stated herein, the Board affirms the Award and denies the Request.

[1] D.C. Code § 1-605.02(6) (2014).
[2] Article 12, Section 6 of the parties' CBA states, in pertinent part, "The employee shall be given a written decision and the reasons therefore no later than fifty-five (55) business days after the date the employee is notified in writing of the charge or the date the employee elects to have a departmental hearing…."
[3] Request at 7; *See* D.C. Code § 1-605.02(6) (2014).

II. Statement of the Case

On May 1, 2009, following an investigation, MPD issued a Notice of Proposed Adverse Agency Action to the Grievant, proposing to remove him based on charges alleging neglect of duty, conviction of a criminal or quasi-criminal offense, and conduct prejudicial to MPD.[4] In accordance with Article 12, Section 6 of the parties' CBA, on May 21, 2009, the Grievant requested a departmental hearing.[5] Under this provision, referred to as the "55-day rule," MPD is allowed 55 days from the date the grievant requests a departmental hearing to provide the grievant with a written decision.[6] On September 17 and 23, 2009, the Grievant appeared before the Adverse Action Panel ("Panel").[7] At the close of the Panel hearing, a Panel member noted the 55th day as being November 20, [2009]."[8] Ultimately, the Grievant was found guilty of all three charges and specifications, and the Panel recommended termination.[9]

On November 2, 2009, MPD attempted to serve the Grievant with the Final Notice of Adverse Action ("Final Notice"), which stated that the Grievant's removal was to become effective on December 18, 2009.[10] Attached to the Final Notice was a return of service sheet ("Return").[11] However, the Final Notice was undated and the Return was incomplete.[12] At the bottom of the Return, a handwritten note stated, "No answer, left @ door."[13] There was no delivery address listed, which would have established where the Final Notice was delivered and the Return was not signed by the Grievant despite the wording of the return, "I admit personal service."[14]

The Grievant's termination became effective on December 18, 2009.[15] On January 12, 2010,[16]as a result of a phone call from MPD's Human Resources division, the Grievant learned that he was terminated.[17] The Grievant retrieved the Final Notice from MPD on January 15, 2010.[18]

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[4] Award at 8.
[5] *Id*.
[6] *Id.* at 3.
[7] *Id.* at 8.
[8] *Id.* at 10. Before the Arbitrator, FOP maintained that the 55th days was November 30, 2009. However, the Arbitrator found that the difference was "not material to the resolution of the issue whether the MPD violated the 55-day rule.
[9] *Id.* at 8. The Arbitrator noted that the Panel's Findings of Facts and Conclusions is undated.
[10] *Id*. The Arbitrator noted that the Final Notice is undated.
[11] *Id.* at 9.
[12] *Id*.
[13] Answer at 9. The Arbitrator noted that the Panel record establishes that the Grievant provided his address to MDP at the hearing on September 23, 2009.
[14] *Id*. at 10.
[15] *Id.*
[16] January 12, 2010 was 87 days after the Grievant requested for an Adverse Action Hearing.
[17] Award at 10.
[18] *Id*. The Arbitrator noted that "The Record is silent on Linville's duty status from December 18, 2009, the effective date of his removal, to January 15, 2010, the date he retrieved the Final Notice." (Award at 10).

On January 19, 2010, the Grievant timely filed an appeal with the Office of Employee Appeals ("OEA").[19] FOP appealed his termination to the Chief of Police on January 20, 2010, which was denied on February 8, 2010.[20] On March 2, 2010, FOP demanded arbitration.[21] At this time, the Grievant had two appeals of his termination: one pending before OEA; and another pending for arbitration, pursuant to the parties' grievance procedure. On November 26, 2012, the Grievant withdrew his OEA appeal.[22]

In its first submission to the Arbitrator, MPD challenged arbitrability.[23] MPD argued that Grievant's initial appeal to OEA foreclosed him from pursuing an arbitration appeal.[24] In an Arbitrability Award dated November 19, 2014, the Arbitrator determined that the grievance was arbitrable.[25] Applying D.C. Official Code § 1-616.52(d), (e), and (f) to the "unique facts" and particularly, "the clear statutory language that a CBA challenge to an adverse action 'shall take precedence,'" the Arbitrator found that the Grievant filed two timely appeals of his termination in order to protect his appeal rights[26] Since one appeal, the CBA appeal, took precedence over the OEA appeal, the Arbitrator determined that the Grievant had the right to revoke his OEA appeal.[27]

As to the merits of the case, MPD contended that it properly served the Grievant by the 55th business day and that the termination must be affirmed.[28] MPD maintained that the date of service, November 2, 2009, falls within the 55-day period, and argued that FOP failed to establish that leaving the Final Notice at the Grievant's door prior to the expiration of the 55-business days was a CBA violation.[29] MPD argued that since the Grievant gave MPD his address prior to the Final Notice being served, the Final Notice was served to the correct address.[30] Additionally, MPD noted that the Advanced Written Notice requirement has authorized exceptions for alternative service designed to effect actual notice of constructive service under MPD General Order 120.21.[31] Lastly, MPD asserted that the General Order states that the Final

[19] Request, Ex. 9 at 7 (Arbitrability Award). Under the Comprehensive Merit Personnel Act ("CMPA"), (DC Official Code § 1-616.52(b)), an appeal from a removal may be made to OEA. DC Code § 1-616.52(b) (2014),
[20] Award at 10. CBA Article 12, Section 7 "provides for an employee's appeal of termination to the Chief of Police within ten (10) days of receipt of the *Decision* and, thereafter, FOP may file an appeal to arbitration pursuant to CBA Article 19." (Request, Exhibit 9 at 7).
[21] Award at 10.
[22] Request, Ex. 9 at 7.
[23] Request, Exhibit 9 at 1-2. FOP first raised a timeliness challenge to MPD's arbitrability dispute. In a *Procedural Decision*, which is not of record, dated October 17, 2014, the Arbitrator concluded that the CBA is silent on time limits to raise an arbitrability challenge. The Arbitrator also found that the clear language of CBA establishes that the arbitrator must rule on arbitrability as a threshold issue before ruling on the merits. (Request, Exhibit 9 at 9).
[24] *Id.* at 2.
[25] *Id.* at 9.
[26] *Id.* at 7.
[27] *Id.* at 11.
[28] Award at 11.
[29] *Id.* at 11-12; *See* D.C. Code § 1-616.53(d) (2014).
[30] *Id.* at 12.
[31] *Id.* at 11.

Notice must be served in compliance with DC Personnel Rules and regulations and the CBA Article 12, Section 6.[32]

FOP countered that MPD violated the 55-day rule when it failed to timely serve the Grievant with the Final Notice.[33] FOP contended that MPD's attempted service on November 2, 2009 by leaving the package at the door was ineffective as it did not meet the requirements of the General Order and violated the parties' CBA.[34] Accordingly, FOP argued that this was a "substantive violation" of the Grievant's rights, which consequentially required that the disciplinary action be rescinded and that the Grievant be reinstated with full back pay and benefits.[35]

III. Arbitrator's Merits Award

The issues, as clarified by the Arbitrator, were as follows:

(1) Whether MPD violated the 55-day Rule as set forth in Article 12, Section 6 of the Parties' applicable Collective Bargaining Agreement, when it failed to serve the Grievant with its Final Notice of Adverse Action within the required time frame?
(2) Whether the evidence presented by the MPD was sufficient to support the alleged charges?
(3) Whether termination is the appropriate remedy?

(Award at 6.)

Based on a review of the evidence before him, the Arbitrator sustained FOP's grievance, finding that MPD violated the 55-day Rule in Article 12, Section 6 of the CBA, by failing to serve the Grievant with a Final Notice within the required time frame.[36] Accordingly, the Arbitrator found that the termination must be rescinded and the Grievant must be reinstated with back pay and benefits.[37]

The Arbitrator determined that taken together, the DPM regulations, the General Order, the CBA, and the Return, establish that MPD was required to deliver the Final Notice to the Grievant 55 days after May 21, 2009, the date he requested an Adverse Action Hearing—and there is no proof that MPD did so.[38] First, the Arbitrator found that when read together, DPM §§ 1614.5 and 1614.6, "establish that acknowledged, personal service is the preferred method of

[32] *Id.*
[33] *Id.* at 13.
[34] *Id.* at 14.
[35] *Id.*
[36] *Id.* at 15.
[37] *Id.*
[38] *Id.* at 16.

delivery of the Final Notice."[39] The Arbitrator stated, "Together, the regulations' clear intent is to ensure that the affected employee **receives** the Final Notice and that the agency can **prove** delivery to the affected employee."[40] Additionally, the Arbitrator noted that the General Order requires that a Final Notice "**shall** be issued in compliance with D.C. Personnel rules and…the CBA."[41] Furthermore, the Arbitrator noted that the parties' CBA Article 12, Section 6 requires that an employee "**shall** be given" the Final Notice "no later than fifty-five (55) business days after…the date the employee elects to have a departmental hearing, where applicable."[42] Finally, the Arbitrator noted that the "express, clear language" on the Return, which states, "I admit personal service…," establishes that it was the intent of MPD that service of the Final Notice was to be "personal service."[43] Taken together, in the current matter, this required MPD to deliver the Final Notice to the Grievant within 55 days after May 21, 2009.[44] Instead, the Arbitrator found that MPD left the Final Notice at the door of an "unknown, unnamed address" which violated the CBA, the General Order, and the requirements of the Return.[45]

The Arbitrator dismissed MPD's arguments that since the Grievant provided his address at the close of the Adverse Action Hearing, the Final Notice must have been left at the door of that address on November 2, 2009.[46] The Arbitrator stated, "This argument is fatally flawed."[47] There is no evidence proving at what address the notice was left or that the grievant received it. Further, the Arbitrator found no merit in MPD's argument that the service requirements for the Final Notice are less stringent than service requirements of the Proposed Notice of Adverse Action.[48] The Arbitrator also found "unreasonable" MPD's argument that the Grievant should have to prove that service of the Final Notice did not occur.[49]

The Arbitrator, finding that MPD's failure to serve the Grievant with the Final Notice or to prove delivery and receipt, was a violation of a "bargained-for, significant, mandatory, procedural due process notice requirement of the collective bargaining agreement."[50] Thus, the Arbitrator determined that MPD violated the 55-day rule and sustained FOP's grievance.[51] To

[39] DPM § 1614.5 requires that an employee when a Final Notice "is delivered shall be asked to acknowledged its receipt." DPM § 1614.6 provides for the receipt of a Final Notice when an employee is not a duty status to include that "the notice of final decision shall be sent to the employee's last known address by courier, or by certified or registered mail, return receipt requested.
[40] Award at 15. (Emphasis added by Arbitrator.)
[41] *Id*. (Emphasis added by Arbitrator).
[42] *Id.* at 16. (Emphasis added by Arbitrator).
[43] *Id*.
[44] *Id*.
[45] *Id*. Additionally, the Arbitrator determined that "the Record establishes that, to the present time, MPD has never served or delivered the Final Notice to [the Grievant] and cannot prove otherwise." *Id*.
[46] *Id.* at 17.
[47] *Id.* at 17. "*Post hoc ergo propter hoc"* is a formula designating an error in logic that accepts as a cause something that merely occurred earlier in time. Dictionary.com, http://www.dictionary.com/browse/post-hoc-ergo-propter-hoc (last visited October 13, 2016).
[48] *Id.* at 17-18.
[49] *Id.* at 18.
[50] *Id*.
[51] *Id*.

remedy the violation, the Arbitrator rescinded the termination and reinstated the Grievant with back pay and benefits.[52] The Arbitrator did not review the merits of the Grievant's termination.[53]

IV. Discussion

The Board has limited authority to review an arbitration award. In accordance with D.C. Official Code § 1-605.02(6), the Board is permitted to modify or set aside an arbitration award in only three narrow 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.[54]

Although MPD asserted before the Arbitrator on the merits that it had not violated the 55-day rule, it no longer makes that argument before PERB. MPD's Request is confined to a dispute over the Arbitrator's Arbitrability Award dated November 19, 2010. MPD concedes that "a mere disagreement with the Arbitrator's interpretation…does not make the award contrary to law."[55] MPD contends, however, that "the Grievant's claim was not arbitrable; by extension, the arbitrator exceeded his authority and his award is contrary to law and public policy.[56] The Board finds that MPD has not met the narrow test for setting aside the decision of an arbitrator by whom it has agreed to be bound.

MPD's first argument appears to imply that the Award should be set aside because the Arbitrator exceeded his jurisdiction. MPD first points to the CMPA, which provides that aggrieved employees that are covered both under the CMPA and a negotiated labor agreement, may in their discretion, raise their grievance before OEA or utilize the negotiated grievance procedure, "but not both."[57] Furthermore, the statute states that an employee is deemed to exercise his or her option to appeal under the CMPA or CBA based on "whichever event occurs first" in writing.[58] Here, MPD notes, the Grievant first filed an appeal with OEA, before withdrawing and proceeding with the negotiated grievance procedure.[59] MPD contends that although the Grievant's act of proceeding with the negotiated grievance procedure was "clearly prohibited by the statute," the Arbitrator "chose to circumvent the explicit requirements of the statute and render an award."[60] For support, MPD cites to *Brown v. Watts*, in which the D.C. Superior Court, in dicta, stated that a grievant must choose between the OEA process and the CBA process "at the outset of the appeal."[61]

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[52] *Id.*
[53] *Id.*
[54] *Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 62 D.C. Reg. 12587, Slip Op. 1531, PERB Case No. 15-A-10 (2015) (citing D.C. Code § 1-605.02(6)).
[55] Request at 10 (citing *MPD v. FOP/MPD Labor Comm.*, Slip Op. 933, PERB Case No. 07-A-08).
[56] *Id.* at 7.
[57] *Id.* at 9 (citing D.C. Code § 1-616.52).
[58] D.C. Code § 1-616.52(f).
[59] Request at 11.
[60] *Id.*
[61] *Id.* at 12; *See Brown v. Watts*, 993 A.2d 529, 533 (D.C. 2010).

The test the Board uses to determine whether an Arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement."[62]

The Board has also held that by agreeing to submit a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, for which the parties have bargained.[63] 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, related rules and regulations, as well as the evidentiary findings on which the decision is based."[64] Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."[65] A party's disagreement with an arbitrator's interpretation of a provision in the parties' collective bargaining agreement does not mean that the arbitrator exceeded his jurisdiction.[66]

The Board finds that MPD's request is merely a disagreement with the Arbitrator's evidentiary findings and conclusions. MPD's position is a reiteration of the argument presented before the Arbitrator and rejected in the Arbitrability Award issued on November 19, 2010.[67] As previously noted, the Arbitrator determined that Grievant's claim was arbitrable as a threshold issue. In that decision, the Arbitrator rejected MPD's reliance on *Brown*, stating, "The unique facts in [the Grievant's] case are entirely different than in *Brown* such that *Brown* provides no precedent, but only useful dicta."[68] MPD's Request on this point is only a disagreement with the Arbitrator's application of D.C. Official Code § 1-616.52(d), (e), and (f). This disagreement is not a basis for the Board to overturn the Award.

MPD's final argument is that the Award is "contrary to law and public policy." It cites the "well-defined public policy in favor of creating uniformity in personnel administration and preventing employees from forum-shopping when the employee has more than one means of redress" and argues that allowing the Arbitrator's decision to stand "would nullify the purpose of the CMPA."[69] But while the Board does not dispute the importance of these governmental

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[62] *DC Metro. Police Dep't and Fraternal Order of Police, Metro. Police Dep't Labor Comm., (OBO Charles Jacobs)*, 60 DC Reg. 3060, Slip Op. 1366, PERB Case No. 12-A-04 (2013); *See Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Comm. (OBO Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (quoting *D.C. Pub. Schools v. AFSCME, Dst. 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 America*, 813 F.2d 85 (6th Cir. 1987).
[63] *See UDC and UDC Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).
[64] *DC 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); *DC Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004).
[65] *DC Dep't of Corr. and Int'l Bhd. of Teamsters, Local Union No. 246*, 34 DC Reg. 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987).
[66] *DC Dept. Pub. Works v. AFSCME Local 2091*, Slip Op. 194, PERB Case No. 87-A-08 (1988).
[67] Request, Ex. 9 at 7.
[68] *Id.* at 11.
[69] Request at 12.

interests, the question remains whether it suffices to invoke the "extremely narrow" public policy exception to enforcement of arbitration awards.[70]

The U.S. Court of Appeals, District of Columbia Circuit, observed that "the Supreme Court has explained that, in order to provide a basis for an exception, the public policy question must be well defined and dominant," and is to be ascertained "by reference to the law and legal precedents and not from general considerations of supposed public interest."[71] The exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration under the guise of "public policy."[72] Even where an employer invoked a "policy against the operation of dangerous machinery [by employees] while under the influence of drugs" a policy judgment "firmly rooted in common sense," the Supreme Court reiterated "that a formation of public policy based only on 'general considerations of supposed public interest' is not the sort of thing that permits a court to set aside an arbitration award entered in accordance with a valid collective bargaining agreement."[73]

MPD can point to no "law and legal precedents" preventing the Arbitrator in this case from interpreting D.C. Official Code § 1-616.52(d), (e), and (f) to allow the Grievant to withdraw his appeal at OEA, and proceed with the CBA appeal. MPD's concern that the Arbitrator's decision would "nullify the purpose of the CMPA," is inadequate to set aside an award. A close reading of the Arbitrator's decision here leaves doubtful that it would have a binding effect on subsequent cases, as the "unique facts and circumstances of this case" compelled the Arbitrator's remedy.[74] As addressed in the Arbitrability Award, Grievant's OEA filing was a "protective" maneuver to prevent a waiver of his OEA rights resulting from "MPD's inadequate and haphazard service of the [Final Notice]."[75] In this regard, the Arbitrator found that Grievant did not know of his termination until seven days before his deadline for filing an appeal with OEA. His right to seek arbitration did not ripen until FOP timely learned of his termination, grieved it with the Chief of Police who denied the grievance. Under these particular circumstances, Grievant protected his rights to the extent allowed by law and the CBA. Following FOP's appeal through the grievance/arbitration procedure of the CBA at the earliest allowable time, the Grievant withdrew his OEA appeal.[76] Further, the Arbitrator noted that D.C. Official Code § 1-616.52 does not state a grievant's choice of an appeal forum is irrevocable.[77] As previously stated, it is the Arbitrator's interpretation for which the parties have bargained. For these reasons, the Board finds no basis upon which to set aside the Arbitrator's Award.

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[70] *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Service*, 252 U.S. App. DC 169, 176, 789 F.2d 1, 8 (D.C. Cir. 1986).
[71] *D.C. Metro. Police Dep't v. Fraternal Order of Police/ D.C Metro. Police Dep't Labor Comm.*, 63 D.C. Reg. 4573, Slip Op. 1561, PERB Case No. 14-A-09 (2016) (citing *Am. Postal Workers Union*, 789 F.2d at 8.
[72] *Id.*
[73] *FOP/Dept. Of Corrections Labor Comm v. D.C. Dept. of Corrections*, Slip Op. 1303, PERB Case No. 1303 (citing *United Paperworkers International Union, AFL-CIO v. Miso, Inc.*, 484 U.S. 29 (1987)).
[74] Request, Ex. 9 at 11.
[75] *Id.*
[76] *Id.*
[77] *Id.*

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority and that MPD has not cited any specific law or public policy that was violated by the Arbitrator's Award. The Board rejects MPD's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, MPD's request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. **The arbitration review request is hereby denied.**

2. **Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman, Yvonne Dixon, and Douglas Warshof.

October 20, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-13, Op. No. 1598 was sent by File and ServeXpress to the following parties on this the 31st day of October, 2016.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Service Employees International Union Local 500,	
Petitioner,	PERB Case No. 16-CU-04
and	Opinion No. 1599
University of the District of Columbia	
Respondent.	

DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION

On April 30, 2014, the D.C. Public Employee Relations Board, in Opinion No. 1464, certified the Service Employees International Union ("SEIU") as the exclusive representative for the following unit within the University of the District of Columbia ("UDC"):

> INCLUDED:
>
> All part-time faculty paid by the course, employed by the University of the District of Columbia other than through the Law School.
>
> EXCLUDED:
>
> All other employees, including all employees in positions within other collectively-bargained bargaining units, including all full-time faculty; all employees of the Law School including adjunct faculty of the law school; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical

> employees, guards and security personnel, managerial and supervisory employees.[1]

On September 21, 2016, SEIU and UDC (collectively "Petitioners") filed a Joint Petition for Compensation Unit Determination ("Petition"), in which Petitioners requested that PERB create a new compensation unit for a bargaining unit in UDC that is represented by SEIU.[2] On September 23, 2016, PERB issued a Notice to UDC with instructions to post the Notice "conspicuously on the bulletin boards at the University of the District of Columbia where notices to employees are customarily posted." PERB further instructed that the notices "are to be posted no later than September 30, 2016, and must remain posted for a period of fourteen (14) consecutive days." The Notice solicited comments concerning the establishment of a new compensation unit for the employees covered by SEIU. Any labor organizations that wished to intervene in the matter must do so in accordance with PERB's Rules within fourteen (14) days after the Notice was posted.[3] No comments or intervention petitions having been received, the Petition is now before the Board for disposition.

The Board authorizes compensation units pursuant to D.C. Official Code § 1-617.16(b), which provides:

> In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupation groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

The compensation unit proposed by Petitioners is as follows:

> All part-time faculty paid by the course, employed by the University of the District of Columbia other than through the Law School.
>
> EXCLUDED:
>
> All other employees, including all employees in positions within other collectively-bargained bargaining units, including all full-time faculty; all employees of the Law School including adjunct faculty of the law school; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct

[1] *Service Emps. Int'l Union, Local 500 and UDC*, Slip Op. No. 1464, PERB Case No. 13-RC-06 (2014).
[2] Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act ("CMPA") to represent units of employees that have been determined to be appropriate for the purpose of a non-compensation terms-and-conditions bargaining. Once this determination is made, upon request, the Board then determines the compensation unit in which the employees should be placed. The determination of a terms-and-conditions unit is governed by criteria set forth under D.C. Official Code § 1-617.09. Unit placement for purposes of authorizing collective bargaining over compensation is governed by D.C. Official Code § 1-617.16(b).

> appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees.[4]

Petitioners contend that the part-time adjunct faculty workforce is appointed and compensated differently than other employees within UDC. Petitioners believe that a new compensation unit is necessary because of these differences.[5] In accordance with Petitioners' request, and because no individuals or labor organizations filed any comments or intervention petitions to challenge the proposed compensation unit, the Board finds that a separate compensation unit is appropriate.[6] Accordingly, the Board grants Petitioners' Joint Petition for a separate compensation unit consisting of:

> All part-time faculty paid by the course, employed by the University of the District of Columbia.
>
> EXCLUDED:
>
> All other employees, including all employees in positions within other collective bargaining units, including all full-time faculty; all employees of the David A. Clarke School of Law including adjunct faculty and part-time faculty paid by the course; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

[4] Petition at 2-3.
[5] Letter at 1.
[6] See *Am. Fed'n of Gov't Emp., Local 1403 and Pub. Serv. Comm'n of the Dist. Of Columbia*, 52 D.C. Reg. 1600, Slip Op. No. 772, PERB Case No. 04-CU-05 (2005) (finding that when special circumstances make it impractical to place a bargaining unit into an existing broad compensation unit, the creation of a separate compensation unit for the employee is appropriate).

ORDER

IT IS HEREBY ORDRED THAT:

1. The Petitioners' Joint Petition for Compensation Unit Determination is granted.

2. The unit of all part-time employees that was found to be appropriate for terms and conditions bargaining in *Service Emps. Int'l Union, Local 500 and UDC*, Slip. Op. 1464, PERB Case No. 13-RC-06 (2014), is also authorized as a separate unit for the purpose of negotiations concerning compensation, as follows:

   Compensation Unit No. 36:

   > All part-time faculty paid by the course, employed by the University of the District of Columbia.
   >
   > EXCLUDED:
   >
   > All other employees, including all employees in positions within other collective bargaining units, including all full-time faculty; all employees of the David A. Clarke School of Law including adjunct faculty and part-time faculty paid by the course; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE REALTIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman and Douglas Warshof. Member Barbara Somson was not present.

October 20, 2016

Washington, D.C.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Service Employees International Union Local 500,	
Petitioner,	PERB Case No. 16-CU-04
and	Opinion No. 1599
University of the District of Columbia	
Respondent.	

AUTHORIZATION

Pursuant to D.C. Official Code §§ 1-605.02 and 1-617.16, the Public Employee Relations Board has determined that all part-time employees that were found to be appropriate for terms and conditions bargaining in *Service Emps. Int'l Union, Local 500 and UDC*, Slip. Op. 1464, PERB Case No. 13-RC-06 (2014), shall constitute a unit for the purpose of compensation bargaining, as follows:

COMPENSATION UNIT No. 36:

> All part-time faculty paid by the course, employed by the University of the District of Columbia.
>
> EXCLUDED:
>
> All other employees, including all employees in positions within other collective bargaining units, including all full-time faculty; all employees of the David A. Clarke School of Law including adjunct faculty and part-time faculty paid by the course; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

BY AUTHORITY OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

October 20, 2016

Clarene Phyllis Martin
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-CU-04, Op. No. 1599 was sent by File and ServeXpress to the following parties on this the 31 day of October, 2016.

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/s/ Sheryl Harrington

PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department,	
Petitioner,	PERB Case No. 16-A-05
v.	Opinion No. 1600
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Edward Bush),	
Respondent.	

DECISION AND ORDER

I. Introduction

On December 28, 2015, Petitioner the District of Columbia Metropolitan Police Department ("MPD") filed this Arbitration Review Request ("Request"), pursuant to D.C. Official Code § 1-605.02(6). MPD seeks review of the Arbitration Award ("Award") that overturned MPD's termination of Officer Edward Bush ("Officer Bush").[1] The arbitrator determined that MPD failed to commence an adverse action against Officer Bush within 90 days of when it knew or should have known of alleged misconduct; a violation of D.C. Official Code § 5-1031(a) (also referred to as the "90-day rule"). The issue before the Board is whether the Award on its face is contrary to law and public policy.[2]

For the reasons stated herein, Petitioner's Request is denied.

[1] MPD filed an initial Arbitration Review Request on December 28, 2015, along with a Motion to Extend Time to Submit a Statement of the Reasons for Appealing the Award, requesting an extension of time, through and including January 11, 2016. On January 11, 2016, MPD filed a Statement of Reasons for Appealing the Arbitration Award. On January 15, 2016 FOP filed a Consent to the Motion for an Enlargement of Time and moved for an enlargement of time until February 3, 2016 in order to file its opposition to MPD's Arbitration Review Request. On January 22, 2016, FOP's Motion for Extension of Time was granted.

[2] *See* D.C. Code § 1-605.02(6) (2014).

II. Statement of the Case

Officer Bush joined MPD in February of 2006.[3] Before joining MPD, Officer Bush served in the U.S. Army for approximately twenty-one (21) years before retiring.[4] His application to MPD included an August 15, 2005 Personal History Statement ("PHS") as part of his application for employment to the MPD.[5] The PHS included questions concerning his medical condition. In his response to the medical questions he indicated that while he was allergic to mold, he never had any medical problems and he did not anticipate the possibility of ever filing a claim with the Department of Veterans Affairs ("VA") for any physical or mental disability.[6] On October 27, 2005, Officer Bush began his out-processing from active service with the Army. As part of that process he appointed the Veterans of Foreign Wars ("VFW") to represent him in order to assure he received all the benefits to which he was entitled. To Officer Bush's knowledge, no medical claim was made at that time.[7] He officially retired from active military duty on January 31, 2006 and joined MPD as an officer on February 6, 2006.[8]

On May 11, 2006, the VA issued a "Rating Decision" based on a disability claim filed on Officer Bush's behalf on October 27, 2005. The VA determined that several medical conditions, including asthma, lumbar strain and left shoulder tendinitis, were related to Officer Bush's military service.[9]

In early 2009, Officer Bush requested MPD adjust his annual leave entitlement to reflect his military service.[10] MPD informed Officer Bush that his military service could not be credited unless he was a disabled veteran.[11] On March 27, 2009, Officer Bush submitted a Request for Reconsideration to MPD and attached with his request various documents in support of his position that he was a disabled veteran, including the May 11, 2006 Rating Decision from the VA.[12] On April 21, 2009 Assistant Chief of the Professional Development Bureau, Winston Robinson, issued a memorandum requesting an internal investigation into Officer Bush's failure to disclose his disability claim to the MPD at the time of his application.[13]

On August 24, 2009, Officer Bush was served with a "Notice of Proposed Adverse Action" to terminate his employment for the following reasons:

Charge No. 1:	Violation of General Order 120.21, Attachment A, Part A-17, which states, "Fraud in securing appointment, or falsification of official records or reports."

[3] Award at 4.
[4] *Id.* at 2.
[5] *Id*. at 3.
[6] *Id*.
[7] *Id*. at 4.
[8] *Id*.
[9] *Id* at 5.
[10] *Id*.
[11] *Id*. at 6.
[12] *Id*.
[13] *Id*. at 7.

Specification No. 1:	In that, on June 11, 2009, during your Internal Affairs interview, you stated you did not file a disability claim with the Department of Veterans Affairs, knowing that to be untrue. Your original claim for disability was received by the Department of Veterans Affairs on October 27, 2005, and you learned of your disability award on May 11, 2006.
Specification No. 2:	In that on August 15, 2005, you indicated in the Metropolitan Police Department (MPD) Personal History Booklet, that you did not have any past or present shoulder problems, when you in fact had shoulder problems in the past. You indicated such, knowing it to be untrue.
Specification No. 3:	In that on August 15, 2005, you indicated in the Metropolitan Police Department (MPD) Personal History Booklet, that you did not have any past or present ankle problems, when you in fact had a sprained ankle in the past. You indicated such, knowing it to be untrue.[14]

An Adverse Action Panel was convened on October 15, 2009 to consider the Charge and Specifications alleged in the Notice of Proposed Adverse Action. The majority of the Panel recommended that Officer Bush be given a 30-day suspension from the MPD. On December 24, 2009, Diana Haines-Walton, Director of Human Resources Management Division, issued a Final Notice of Adverse Action requiring Officer Bush be removed from the MPD effective February 5, 2010.[15] Director Haines-Walton imposed the penalty of termination, proposed in the Notice of Proposed Adverse Action, rather than the 30-day suspension recommended by the Adverse Action Panel.

The Fraternal Order of Police/Metropolitan Police Department ("FOP") subsequently filed a grievance on his behalf and sought arbitration.[16]

III. Arbitrator's Award

Based on a review of the evidence before him, the Arbitrator sustained FOP's grievance, finding that MPD failed to commence an adverse action against Officer Bush within 90 days of when MPD knew or should have known of the act allegedly constituting cause as required by the 90-day rule.[17] In this regard, on March 27, 2009, Officer Bush submitted his Rating Decision and other documents to MPD to support his disabled veteran claim for additional annual leave.[18] The Arbitrator noted that Officer Bush's March 27, 2009 Request for Reconsideration was sent "thru" Assistant Chief Robinson making it reasonable to conclude that Assistant Chief Robinson

[14] Award at 8.
[15] *Id*. at 12.
[16] *Id*. at 13.
[17] D.C. Official Code § 5-1031(a)
[18] Award at 16.

knew or should have known of Officer Bush's disability claim at that time, or at least five business days after March 27, 2009.[19]

The Arbitrator also found that MPD could not impose a higher level of discipline than what was recommended by the Panel, based on the meaning of the relevant regulations. Director Haines-Walton had no authority to increase the Panel's penalty.[20]

MPD has filed this Arbitration Review Request seeking to have the Arbitrator's Award reversed on the grounds that it is contrary to law and public policy.[21]

IV. Discussion

Under D.C. Official Code § 1-605.02(6), the Board is authorized to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[22]

MPD argues that the Arbitrator's decision was contrary to law and public policy because it commenced the adverse action against Officer Bush within 90 days after it knew or should have known of the matters constituting the alleged misconduct in accordance with D.C. Official Code § 5-1031(a).[23] According to MPD, there is no evidence in the record that shows Assistant Chief Robinson received the Request for Reconsideration on March 27, 2009, or even five business days after that date. MPD further states, that it is unreasonable to assume that Assistant Chief Robinson knew or should have known of the misconduct immediately after receiving the Request for Reconsideration.[24] MPD argues that the record supports April 21, 2009 as the start of the 90-day period, when Assistant Chief Robinson issued a memorandum requesting an internal investigation into Office Bush's failure to disclose certain medical information.[25] If the calculation of the 90-day period began on April 21, 2009 then MPD would have been within the required time period when it served Officer Bush with the Notice of Proposed Adverse Action on August 24, 2009.

In response, FOP argues that the request is a mere disagreement with the Arbitrator's findings, which is an insufficient basis for concluding that an Arbitration Award is contrary to law or public policy.[26] FOP states that "MPD's argument demonstrates a fundamental misunderstanding of D.C. Code § 5-1031 and its calculation" because MPD incorrectly

[19] The Arbitrator stated that March 27, 2009, or at least 5 days afterward is the start date of the 90-day period. MPD claimed that not every official who reviewed Officer Bush's request should have been able to immediately identify the discrepancy between his MPD application and his disability claim. The Arbitrator stated that it is reasonable to conclude that Assistant Chief Robinson, who authorized the request for an investigation of Officer Bush, should have known of Officer Bush's disability claim when he submitted his Request for Reconsideration or at least five days afterward.
[20] *Id*. at 21.
[21] Request at 13.
[22] *University of the District of Columbia v. PERB,* 2012 CA 8393 P(MPA) (2014).
[23] Request at 7
[24] *Id* at 8.
[25] *Id*.
[26] Response at 6.

calculates the date from when it knew of the alleged misconduct rather than when it should have known.[27] FOP agrees with the Arbitrator that March 27, 2009, is the date that should begin the 90-day period.[28]

The Board has long held that it will not overturn an Arbitrator's findings on the basis of a disagreement with the Arbitrator's determination.[29] By submitting a matter to arbitration, parties are bound by the arbitrator's interpretation of the CBA, related rules and regulations, and evidentiary and factual findings. The Board has held that a mere disagreement with the Arbitrator's interpretation is no basis for vacating an Award.[30] In order for the Board to find that the Arbitrator's Award was on its face contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.[31] In this case, MPD has failed to point to any specific law or public policy violated by the Award. Accordingly, the Board finds that MPD's request is merely a disagreement with the Arbitrator's evidentiary findings and conclusions.

MPD further asserts that the Arbitrator's determination that Director Haines-Walton did not have the authority to increase the Panel's recommended penalty is contrary to law.[32] MPD states that 6-B DCMR § 1613.2 refers to the penalty originally proposed in the Advance Written Notice of Proposed Discipline, not the penalty recommended by the hearing officer/adverse action panel.[33] MPD cites to *Hutchinson v. District of Columbia Office of Employee Appeals*[34] because the language of DPM § 1614.4 (1987) is identical in every pertinent respect to the language of its successor provision, 6B DCMR §1613.2.[35] *Hutchinson* dealt with the termination of an employee of the District of Columbia Fire Department subject to 6-B DCMR § 1613.2. The Court of Appeals, in *Hutchinson*, upheld OEA's interpretation that the deciding official may increase the penalty proposed by the proposing official.

The Board has previously held that §§1613.1 and 2 prohibit MPD from imposing a higher penalty than what the adverse action panel recommends.[36] In Slip Op. No. 1344, the Board upheld the arbitrator's findings, stating:

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[27] *Id*. at 8.
[28] *Id*. at 9.
[29] *Fraternal Order of Police/Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't,* 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).
[30] *See D.C. Dep't of Health v. AFGE, Local 2725, AFL-CIO,* Slip Op. No. 1383, PERB Case No. 13-A-01 (2013); see also *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012).
[31] See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p. 8.
[32] Request at 9.
[33] *Id*.
[34] 710 A.2d 227 (D.C. 1998).
[35] Request at 10.
[36] *See D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm. (on Behalf of Jose Medina),* Slip Op. No. 1516, PERB Case No. 14-A-12 (2015).

> On the question raised by this case[…]: neither § 1001.5 nor the new regulations adopted pursuant to the CMPA permit the assistant chief to increase the recommended penalty. Section 1613 provides:
>
> > 1613.1 The deciding official, after considering the employee's response in the report and recommendation of the hearing officer pursuant to section 1612, when applicable, shall issue a final decision.
> >
> > 1613.2 The deciding official shall either sustain the penalty proposed, reduce it, remand the action with instruction for further consideration, or dismiss the action with or without prejudice, but in no event shall he or she increase the penalty.
>
> Thus, § 1613.2 precludes a deciding official from increasing the penalty recommended by a hearing officer by whatever name. If § 1613.2 did not preclude increasing the penalty, then § 1001.5 would supersede it and still preclude the assistant chief from increasing the penalty. […] All of these regulations supersede a General Order of the MPD. *See District of Columbia v. Henderson,* 7 l0 A.2d 874, 877 (D.C. 1998).
>
> If a recommended penalty appears insufficient, the regulations give the assistant chief the option of remanding the case, but they do not give her the option of increasing the penalty on her own. Accordingly, the Award's reduction of the penalty imposed on the Grievant is consistent with the CMPA as well as the D.C. Municipal Regulations and is not contrary to law or public policy.[37]

On August 4, 2016, the D.C. Court of Appeals affirmed the Board's findings in Slip Op. No. 1344.[38] Therefore, the Board finds that MPD has not demonstrated that the Award constitutes a violation of law or public policy that would compel setting aside the Arbitrator's Award.

V. Conclusion

The Board finds that MPD has not cited any specific law or public policy that was violated by the Arbitrator's Award. Thus, the Board rejects MPD's arguments and finds no

[37] *MPD v. FOP*, *supra*, Slip Op. No. 1344 at ps. 5-6, PERB Case No. 12-A-05.
[38] Dist. of Columbia Metro. Police Dept. v. Dist. of Columbia Pub. Employee Relations Bd., 144 A.3d 14, (D.C. 2016)

cause to set aside or modify the Arbitrator's Award. Accordingly, MPD's request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. **The arbitration review request is hereby denied.**

2. **Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, and Douglas Warshof. Member Barbara Somson was not present.

October 20, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-05, Op. No. 1600 was sent by File and ServeXpress to the following parties on this the 31 day of October, 2016.

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PERB

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

THE ELECTORAL COLLEGE VOTING AGENDA

Monday, December 19, 2016
5:00 PM-5:15 PM
1350 Pennsylvania Avenue, NW, Room 509

I. Call to Order
II. Introduction of Electors
III. Vote
IV. Signing of Certificates
V. Adjourn

District of Columbia REGISTER – December 16, 2016 – Vol. 63 - No. 52 015285 – 015688