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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-582, Planning Actively for Comprehensive Education Facilities Amendment Act of 2016
- D.C. Council enacts Act 21-584, Campaign Finance Reform and Transparency Emergency Amendment Act of 2016
- Department of Behavioral Health establishes services and reimbursement rates for services provided by Child Choice Providers
- Department of Energy and Environment announces funding availability for the Green Building Case Studies and Green Building Historic Preservation Guidelines
- Department of Human Resources establishes rules for implementing quality step increases
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the FY2017 Benjamin Banneker Park Pedestrian Connectivity Grant

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MAYOR

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ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-166

"Financial Exploitation of Vulnerable Adults and the Elderly Amendment Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-326 on first and second readings June 28, 2016, and July 12, 2016, respectively. Following the signature of the Mayor on August 18, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-484 and was published in the August 26, 2016 edition of the D.C. Register (Vol. 63, page 10733). Act 21-484 was transmitted to Congress on August 24, 2016 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 21-484 is now D.C. Law 21-166, effective November 23, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

August	26, 29, 30, 31
September	1, 2, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30
October	3, 4, 5, 6, 7, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31
November	1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-167

"Motor Vehicle Collision Recovery Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-4 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 4, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-490 and was published in the October 14, 2016 edition of the D.C. Register (Vol. 63, page 12592). Act 21-490 was transmitted to Congress on October 13, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-490 is now D.C. Law 21-167, effective November 26, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-168

"Safe at Home Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-316 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 4, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-491 and was published in the October 14, 2016 edition of the D.C. Register (Vol. 63, page 12594). Act 21-491 was transmitted to Congress on October 13, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-491 is now D.C. Law 21-168, effective November 26, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31
November	1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-169

"Rent Control Hardship Petition Limitation Temporary Amendment Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-839 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 4, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-492 and was published in the October 14, 2016 edition of the D.C. Register (Vol. 63, page 12597). Act 21-492 was transmitted to Congress on October 17, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-492 is now D.C. Law 21-169, effective November 30, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-170

"Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-845 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 4, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-493 and was published in the October 14, 2016 edition of the D.C. Register (Vol. 63, page 12600). Act 21-493 was transmitted to Congress on October 17, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-493 is now D.C. Law 21-170, effective November 30, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-171

"Interior Design Charitable Event Regulation Temporary Amendment Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-841 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 6, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-494 and was published in the October 14, 2016 edition of the D.C. Register (Vol. 63, page 12603). Act 21-494 was transmitted to Congress on October 17, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-494 is now D.C. Law 21-171, effective November 30, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-172

"Rental Housing Late Fee Fairness Amendment Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-647 on first and second readings July 12, 2016, and September 20, 2016, respectively. Following the signature of the Mayor on October 12, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-505 and was published in the October 21, 2016 edition of the D.C. Register (Vol. 63, page 12959). Act 21-505 was transmitted to Congress on October 25, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-505 is now D.C. Law 21-172, effective December 8, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29, 30

December 1, 2, 5, 6, 7

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-173

"Omnibus Sursum Corda Development Act of 2016"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-672 on first and second readings July 12, 2016, and October 11, 2016, respectively. Following the signature of the Mayor on October 19, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-507 and was published in the October 28, 2016 edition of the D.C. Register (Vol. 63, page 13351). Act 21-507 was transmitted to Congress on October 25, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-507 is now D.C. Law 21-173, effective December 8, 2016.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 25, 26, 27, 28, 31

November 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 21, 22, 23, 25, 28, 29, 30

December 1, 2, 5, 6, 7

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-580

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 21, 2016

To amend the Prevention of Child Abuse and Neglect Act of 1977 to require the Mayor to issue rules to consolidate existing rights and responsibilities for foster parents, to require the Child and Family Services Agency to inform foster parents of their rights and responsibilities, to provide copies of the Statements of Rights and Responsibilities for Foster Parents to current foster parents, to incorporate the Statements of Rights and Responsibilities for Foster Parents into scheduled trainings for foster parents, to develop an implementation plan for the dissemination of the Statements of Rights and Responsibilities for Foster Parents, to develop a process for receiving and handling reports of violations and complaints, and to establish annual reporting requirements to the Council and the public on outcomes related to reports of violations and complaints.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Parents Statements of Rights and Responsibilities Amendment Act of 2016".

Sec. 2. The Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.01 *et seq.*), is amended as follows:

(a) A new Title III-D is added to read as follows:

"TITLE III-D

"STATEMENTS OF RIGHTS AND RESPONSIBILITIES FOR FOSTER PARENTS"

"Sec. 381. Definitions.

"For the purposes of this title, the term:

"(1) "Foster parent" means an individual licensed by a District-licensed child-placing agency, as defined under section 2 of An Act To regulate the placing of children in family homes, and for other purposes, approved April 22, 1944 (58 Stat. 193; D.C. Official Code § 4-1402), who provides 24-hour substitute care to a youth placed away from his or her parent or guardian.

"(2) "Youth" shall have the same meaning as provided in section 371.

"Sec. 382. Statements of Rights and Responsibilities for Foster Parents.

"(a) Within 180 days after the effective date of this title, the Mayor, pursuant to section 385, shall amend existing rules governing foster parents to:

"(1) Incorporate existing rights and responsibilities for foster parents provided by local law, federal law, local regulations, agency administrative issuances, and other policy documents; and

"(2) Establish a Statements of Rights and Responsibilities for Foster Parents.

"(b) The Agency shall guarantee that each foster parent shall receive the following:

"(1) A printed copy of the Statements of Rights and Responsibilities for Foster Parents in readily understandable language and in accordance with section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933);

"(2) An explanation of a foster parent's right to be informed of decisions made by the Agency that impact the foster parent, while ensuring the best interests and confidentiality of youth and families;

"(3) An explanation of a foster parent's right to report violations of the foster parent's rights to the Agency without fear of retaliation;

"(4) An explanation of the process for reporting violations of a foster parent's rights to the Agency;

"(5) An explanation of the process for reporting complaints related to the Agency's provision of services and supports; and

"(6) An explanation of the process by which reports of violations of a foster parent's rights and complaints related to the Agency's provision of services and supports are resolved, within reasonable efforts.

"Sec. 383. Dissemination of rights and responsibilities information.

"(a) When a foster parent is licensed by the Agency, the Agency shall inform the foster parent of the foster parent's rights and responsibilities and disseminate to the foster parent and the appropriate child-placing agency the Statements of Rights and Responsibilities for Foster Parents.

"(b) The Agency shall disseminate the Statements of Rights and Responsibilities for Foster Parents and related information to foster parents who were licensed by the Agency before the effective date of this title.

"(c) The Agency shall incorporate the Statements of Rights and Responsibilities for Foster Parents into scheduled trainings for foster parents, social workers, and other affected partners, including providers and other persons who are associated with the care of youth.

"Sec. 384. Implementation plan.

"(a) Within 180 days after the effective date of this title, the Agency shall establish:

"(1) A plan for the dissemination of the Statements of Rights and Responsibilities for Foster Parents to foster parents and the appropriate child-placing agency; and

"(2) A process for receiving, investigating, and resolving, within reasonable efforts, reports of violations of a foster parent's rights and complaints related to the Agency's provision of services and supports.

"(b)(1) The Agency shall have the following responsibilities regarding the implementation of this title:

"(A) To receive, investigate, and resolve, within reasonable efforts, reports of violations of a foster parent's rights and complaints related to the Agency's provision of services and supports;

"(B) To document the number, general sources and origins, and the nature of reports received about violations of foster parent's rights and complaints received about the Agency's provision of services and supports;

"(C) Beginning on January 31, 2018, and every January 31st thereafter, to make available to the Council a report containing data collected over the course of the prior year that includes the information collected pursuant to paragraph (2) of this subsection; and

"(D) By January 31, 2018, and every January 31st thereafter, to post the report required by subparagraph (C) of this paragraph on the Agency's website so that it is readily available to the public.

"(2)(A) The report required by paragraph (1)(C) of this subsection shall include the following information regarding reports received by the Agency about violations of a foster parent's rights:

"(i) The number of contacts made by telephone, website, or otherwise;

"(ii) The type and general sources of those contacts;

"(iii) The number of investigations performed;

"(iv) The number of pending investigations;

"(v) The trends and issues identified during the course of investigations; and

"(vi) The outcomes of the investigations conducted.

"(B) The report shall include the following information regarding complaints received by the Agency about its provision of services and supports to foster parents:

"(i) The number of contacts made by telephone, website, or otherwise;

"(ii) The type and general sources of those contacts;

"(iii) The number of investigations performed;

"(iv) The number of pending investigations;

"(v) The trends and issues identified during the course of investigations; and

"(vi) The outcomes of the investigations conducted.

"Sec. 385. Rules.

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 the provisions of this title. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.".

(b) Section 374(b)(2) (D.C. Official Code § 4-1303.74(b)(2)) is amended by striking the word "communication" and inserting the word "complaints" in its place.

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 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 21, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-581

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 21, 2016

To require an operator of an Internet website, online service, online application, or mobile application used for prekindergarten through grade 12 purposes to implement and maintain appropriate security measures to protect personally identifiable student information, to refrain from using personally identifiable student information for targeted advertising, and to refrain from disclosing personally identifiable student information except in limited circumstances; to prohibit an educational institution that provides a technological device to a student for overnight or at-home use from accessing or tracking the device, or activity or data on the device, except in limited circumstances; and to prohibit an educational institution from searching or compelling a student or prospective student to disclose account authentication information for a student's personal media account or personal technological device, share content accessible from the student's personal media account or technological device, add a person to the list of users who may view or access the student's personal media account or personal technological device, or change the privacy settings associated with the student's personal media account or personal technological device, except in limited circumstances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Students Digital Privacy Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "1-to-1 device" means a technological device provided to a student pursuant to a 1-to-1 program.

(2) "1-to-1 device provider" means a person or entity, or its agent, parent company, or subsidiary, that provides a 1-to-1 device to a student or educational institution pursuant to a 1-to-1 program.

(3) "1-to-1 program" means a program authorized by an educational institution in which a student is provided with a 1-to-1 device for overnight or at-home use.

(4) "De-identified student information" means data or other information related to a specific student from which all personally identifiable student information has been removed.

(5) "Disclose personally identifiable student information" means to share, transfer, or otherwise communicate personally identifiable student information to a third-party other than the LEA, educational institution, student, or student's parent.

(6) "Educational institution" means a public school or public charter school in the District of Columbia.

(7) "Interactive computer service" shall have the same meaning as provided in section 230(f)(2) of the Communications Act of 1934, approved February 8, 1996 (110 Stat. 139; 47 U.S.C. § 230(f)(2)).

(8) "Local education agency" or "LEA" means the District of Columbia Public Schools system or any individual or group of public charter schools operating under a single charter.

(9) "Location tracking technology" means hardware, software, or an application that collects or reports data that identifies the geophysical location of a technological device.

(10) "Operator" means a person that operates an Internet website, online service, online application, or mobile application:

(A) That is designed, marketed, and primarily used for pre-k through 12 purposes; and

(B) Who has actual knowledge that the person's website, online service, online application, or mobile application is being used for pre-k through 12 purposes.

(11) "Parent" includes a student's legal guardian.

(12) "Personal media account" means a student-created account with an electronic medium or service through which users may create, share, and view user-generated content, including videos, photographs, blogs, video blogs, podcasts, messages, e-mails, or Internet website profiles or locations. The term "personal media account" does not include an account opened at an educational institution's behest or provided by an educational institution.

(13) "Personal technological device" means a technological device in the possession of a student that is not the property of an educational institution or a 1-to-1 provider.

(14) "Personally identifiable student information" means data or other information that alone or in combination with other data is linked to a specific student that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, including:

(A) A student's name;

(B) The name of a student's parent or other family member;

(C) The address of a student or student's parent or other family member;

(D) A photograph, video, or audio recording that contains the student's image or voice; and

(E) Indirect identifiers, including a student's social security number, student number, telephone number, credit card account number, insurance account number, financial services account number, customer number, geolocation information, persistent unique identifier, email address, social media address, online username, or other personal electronic identifier.

(15) "Pre-k through 12 purposes" means uses that promote the functions of an educational institution serving grades prekindergarten through 12, or its agents, including uses that promote curricular, extra-curricular, and administrative activities.

(16) "School-based personnel" means an employee or volunteer of an educational institution or an employee of an entity with whom the educational institution contracts, who acts as an agent of the educational institution at the educational institution or activities sponsored by the educational institution.

(17) "Targeted advertising" means promoting for remuneration content, products, or services to a student based on information the operator obtained or inferred over time from a student's online behavior, usage of applications, or personally identifiable student information. The term "targeted advertising" does not include advertising to a student based on the student's real-time use of an operator's services or in response to a student's request for information or feedback; provided, that the operator does not retain data about the student's real-time activity for the purpose of targeting subsequent advertisements.

Sec. 3. Operator obligations.

(a) An operator providing services to an educational institution, LEA, or its agent shall:

(1) Implement and maintain reasonable security policies and procedures appropriate to the nature of the personally identifiable student information, and designed to protect that information from unauthorized access, destruction, use, modification, or disclosure; provided, that such policies and procedures shall include provisions for notifying educational institutions and LEAs in the event of unauthorized access to personally identifiable student information consistent with the requirements of the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237; D.C. Official Code § 28-3851 *et seq.*);

(2) Agree that personally identifiable student information provided to an operator by a student or educational institution to facilitate the use of the operator's pre-k through 12 purposes website, service, or application is under the control of the LEA;

(3) Delete personally identifiable student information under the control of an LEA within a reasonable period of time after termination or completion of services, unless otherwise requested by the LEA to preserve such information; and

(4) Comply with all the applicable obligations and restrictions established for operators in this act.

(b)(1) An operator shall not knowingly engage in the following activities:

(A) Sell, rent, or trade any personally identifiable student information, unless:

(i) The transaction is part of a sale, merger, or other type of acquisition of an operator by another entity; or

(ii) The operator obtained verified consent from the student, where the student is 13 years of age or older, or the student's parent, where the student is younger than

13 years of age, to sell, rent, or trade specific personally identifiable student information for the purpose of providing the student with information about employment, educational scholarship, financial aid, or postsecondary educational opportunities;

(B) Conduct targeted advertising on an operator's website, service, or application, or target advertising on any other website, service, or application when the advertising is based on information that the operator has acquired through a student's use of the operator's pre-k through 12 purposes website, service, or application;

(C) Except in furtherance of pre-k through 12 purposes, use data, including personally identifiable student information, created, gathered, or stored on the operator's pre-k through 12 purposes website, service, or application, to develop, in full or in part, a profile of a student or group of students; provided, that developing a profile does not include the collection or retention of account information generated by a student, a student's parent, or an educational institution; and

(D) Disclose personally identifiable student information unless the disclosure is consistent with the requirements of this section, and is:

(i) To further the pre-k through 12 purposes of the operator's website, service, or application, or to improve the operability or functionality of the operator's pre-k through 12 purposes website, service, or application; provided, that the operator:

(I) Prohibits the recipient from using personally identifiable student information for any purpose other than providing the contracted service;

(II) Prohibits the recipient from disclosing personally identifiable student information except in accordance with this subparagraph;

(III) Requires the recipient to implement and maintain reasonable security measures consistent with those in subsection (a)(1) of this section; and

(IV) Requires the recipient to delete the personally identifiable student information upon completion or termination of the recipient's services to the operator;

(ii) Necessary to comply with applicable District or federal laws or regulations;

(iii) In response to legal process, a judicial order, or a warrant;

(iv) Necessary to protect the safety of individuals or the security or integrity of the website, service, or application;

(v) Pursuant to the written request or consent of the LEA; or

(vi) For legitimate research purposes:

(I) As required by District or federal law; or

(II) As allowed by District or federal law under the direction or with the consent of the LEA; provided, that no personally identifiable student information is used for commercial gain or to develop a profile on a student or group of students for purposes other than pre-k through 12 purposes.

(2) A sale, merger, or acquisition of an operator shall not void or nullify any contracts or agreements entered into pursuant to this act or regulations issued to enforce it.

(c) An operator that provides digital storage, management, and retrieval of student records shall comply with subsections (a) and (b) of this section.

(d) Nothing in this section shall be construed to prohibit the operator from:

(1) Internally using personally identifiable student information to maintain, develop, support, improve, or diagnose the operator's pre-k through 12 purposes website, service, or application;

(2) Internally using personally identifiable student information for adaptive learning or customized student learning purposes;

(3) Using, sharing, or selling de-identified student information;

(4) Using its pre-k through 12 purposes website, service, or application to recommend products, content, or services to a student related to educational, learning, or employment opportunities; provided, that the recommendation is not determined, in whole or in part, by remuneration from a third party;

(5) Responding to a student's request for information or feedback; provided, that the response is not determined, in whole or in part, by remuneration from a third party; or

(6) Marketing products directly to parents if the marketing did not result from the use of personally identifiable student information obtained by the operator through the provision of services covered under this section.

(e) Nothing in this section shall be construed to:

(1) Limit the authority of a law enforcement agency to obtain content or information from an operator as authorized by law or pursuant to a judicial order or warrant;

(2) Prohibit a student from downloading, editing, exporting, transferring, saving, or otherwise maintaining the student's own student-created data or documents on an operator's website, service, or application;

(3) Limit Internet service providers from providing Internet connectivity to schools or students and their families;

(4) Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's website, service, or application may be used to access those general audience sites, services, or applications;

(5) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading an operator's software or applications to review or enforce a third-party operator's compliance with this section;

(6) Impose a duty upon a provider of an interactive computer service to review or enforce a third-party operator's compliance with this section;

(7) Impose a duty on an operator to comply with the provisions of this section with respect to sites, services, or applications it operates that are not primarily used for pre-k through 12 purposes; or

(8) Affect the rights or obligations of operators, educational institutions, parents, or students in a manner inconsistent with otherwise applicable federal law.

Sec. 4. 1-to-1 programs.

(a) School-based personnel shall not access the data or functions of a 1-to-1 device provided to a student pursuant to a 1-to-1 program without the student or the student's parent's written consent except in accordance with the provisions of this section.

(b) School-based personnel shall not access, analyze, share, or transfer data on a student's 1-to-1 device, including its browser history, key stroke history, or location history, unless:

(1) The data will be used exclusively for an educational purpose consistent with the school-based personnel's professional duties;

(2) The data will be used exclusively to ensure compliance with District or federal law;

(3) Reasonable suspicion exists that the student has violated or is violating an educational institution policy or law and reasonable suspicion exists that the data on the 1-to-1 device contains evidence of the suspected violation;

(4) Doing so is necessary to update or upgrade the 1-to-1 device's software, or to protect the device from cyber-threats, and access is limited to that purpose;

(5)(A) Doing so is necessary in response to a threat to life or safety and access is limited to that purpose; and

(B) Within 72 hours of accessing, analyzing, sharing, or transferring a 1-to-1 device's data in response to a threat to life or safety, the educational institution that authorized access to the 1-to-1 device shall provide the student to whom the device was provided and the student's parent with a written description of the precise threat that prompted the access and what data was accessed; or

(6) The data is otherwise posted on an electronic medium that is accessible by the general public or by school-based personnel who are granted permission to view the content.

(c) School-based personnel shall not use a student's 1-to-1 device's location tracking technology to track a device's real-time or historical location, unless:

(1) The student to whom the device was provided, or the student's parent, has notified the educational institution or law enforcement that the device is missing or stolen;

(2) The device was not returned to the educational institution at the end of the permitted period of use;

(3) Such use is ordered pursuant to a judicial order or warrant; or

(4)(A) Doing so is necessary in response to a threat to life or safety and access is limited to that purpose; and

(B) Within 72 hours of accessing a 1-to-1 device's location tracking technology, the educational institution that authorized access to the device shall provide the student to whom the device was provided and the student's parent with a written description of the precise threat that prompted the access and what data and features were accessed.

(d) School-based personnel shall not activate or access any audio or video receiving, transmitting, or recording functions on a student's 1-to-1 device remotely, unless:

(1) A student initiates video or audio communication with the school-based personnel or 1-to-1 device provider;

(2) The activation or access is ordered pursuant to a judicial order or warrant; or

(3)(A) Doing so is necessary in response to an imminent threat to life or safety and access is limited to that purpose; and

(B) Within 72 hours of accessing or activating a 1-to-1 device's audio or video receiving, transmitting, or recording function, the educational institution that authorized the access or activation shall provide the student to whom the device was provided and the student's parent with a written description of the precise threat that prompted the access or activation and what data and features were accessed or activated.

(e) When a student permanently returns a 1-to-1 device to an educational institution, the educational institution shall erase all the data stored on the device.

(f) Before issuing a student a 1-to-1 device, an educational institution shall provide the student with written notice that the device can be searched, tracked, or accessed by school-based personnel pursuant to subsections (b), (c), and (d) of this section.

Sec. 5. Privacy of student personal accounts and devices.

(a) An educational institution or school-based personnel shall not take or threaten to take action against a student or prospective student, including discipline, expulsion, unenrollment, refusal to admit, or prohibiting participation in a curricular or extracurricular activity, because the student or prospective student refused to:

(1) Disclose a username, password, or other means of account authentication used to access the student's personal media account or personal technological device;

(2) Access the student's personal media account or personal technological device in the presence of school-based personnel in a manner that enables the school-based personnel to observe data on the account or device;

(3) Add a person to the list of users who may view the student's personal media account or access a student's personal technological device; or

(4) Change the privacy settings associated with the student's personal media account or personal technological device.

(b) If an educational institution or school-based personnel inadvertently receives the username, password, or other means of account authentication for the personal media account or personal technological device of a student or prospective student through otherwise lawful means, the educational institution or school-based personnel shall:

(1) Not use the information to access the personal media account or personal technological device of the student or prospective student;

(2) Not share the information with anyone; and

(3) Delete the information immediately or as soon as is reasonably practicable.

(c) Notwithstanding subsection (a) of this section, school-based personnel may search a student's personal media account or personal technological device or compel a student to produce data accessible from the student's personal media account or personal technological device, in the following circumstances:

(1)(A) The school-based personnel has a reasonable suspicion that the student has used or is using the student's personal media account or personal technological device in furtherance of a violation of an educational institution policy and a reasonable suspicion that the personal media account or personal technological device contains evidence of the suspected violation;

(B) Before searching or compelling production, the school-based personnel:

(i) Documents the reasonable suspicion giving rise to the need for the search or production; and

(ii) Notifies the student and the student's parent of the suspected violation and the data or components to be searched or that the student will be compelled to produce;

(C) The search or compelled production is limited to data accessible from the account or device or components of the device reasonably likely to yield evidence of the suspected violation; and

(D) No person shall be permitted to copy, share, or transfer data obtained pursuant to a search or compelled production under this subsection that is unrelated to the suspected violation that prompted the search; or

(2)(A) Doing so is necessary in response to an imminent threat to life or safety;

(B) The scope of the search or compelled production is limited to that purpose; and

(C) Within 72 hours of compelling production or searching a student's personal media account or personal technological device, the educational institution that authorized access or compelled production shall provide the student and the student's parent with a written description of the precise threat that prompted the search and the data that was accessed.

(d) An educational institution may seize a student's personal technological device to prevent data deletion pending notification required by subsection (c)(1)(B) of this section; provided, that:

(1) The pre-notification seizure period is no greater than 48 hours; and

(2) The personal technological device is stored securely on the educational institution's property and not accessed during the pre-notification seizure period.

(e) Nothing in this section shall prevent an educational institution from:

(1) Accessing information about a student or prospective student that is publicly available;

(2) Requesting a student or prospective student to voluntarily share specific content accessible from a personal media account or personal technological device for the purpose of ensuring compliance with applicable laws or educational institution policies; provided, that the request complies with the prohibitions in subsection (a) of this section;

(3) Prohibiting a student or prospective student from accessing or operating a personal media account or personal technological device during school hours or while on school property;

(4) Monitoring the usage of the educational institution's computer network; or

(5) Revoking a student's access, in whole or in part, to equipment or computer networks owned or operated by the educational institution.

(f) This section shall apply to media accounts that are created or provided by or at the behest of the educational institution if the educational institution fails to provide a student with notice, at the time the account is created or within 60 days of the applicability date of this act, that the account may be monitored at any time by school-based personnel.

Sec. 6. Rules.

Within 180-days of the effective date of this act, 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 the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve the proposed rules, in whole or in part, by resolution within the 45-day period, the proposed rules shall be deemed approved.

Sec. 7. Applicability.

Sections 3, 4, and 5 shall apply as of August 1, 2017.

Sec. 8. Fiscal impact statement.

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

Sec. 9. Effective date.

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

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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 21, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-582

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 21, 2016

To amend the School Based Budgeting and Accountability Act of 1998 to require a 10-year Master Facilities Plan that considers the facility planning needs of each local education agency in the District of Columbia, and to amend the requirements for the formulation of the 6-year District of Columbia Public Schools capital improvement plan.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Planning Actively for Comprehensive Education Facilities Amendment Act of 2016".

Sec. 2. The School Based Budgeting and Accountability Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 38-2801 *et seq.*), is amended as follows:

(a) Section 1102a (D.C. Official Code § 38-2801.01) is amended as follows:

(1) Redesignate paragraph (1) as paragraph (1A).

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

"(1) "At-risk" shall have the same meaning as provided in section 102(2A) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2901(2A)).".

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

"(1B) "Educational specification" means a description, complete to the degree that an architect may use it as the basic document from which to create a school facility design, of the educational program that a proposed school facility and grounds are intended to support and the types of spaces needed to accommodate those educational program requirements.".

(4) New paragraphs (2A), (2B), (2C), (2D), (2E), and (2F) are added to read as follows:

"(2A) "Feeder pattern" means the collection of DCPS elementary, middle, and high schools to or from which a student enrolled in a DCPS school may matriculate, by right, due to the student's geographic attendance zone.

"(2B) "Full-funded cost estimate" means all projected costs over a capital project's entire active period, not limited to 6 fiscal years, including costs for necessary swing space and soft costs such as architectural design, engineering, project management, project contingency, moving expenses, and other pre- and post-construction expenses.

"(2C) "Local education agency" or "LEA" means the District of Columbia Public Schools system or any individual or group of public charter schools operating under a single charter.

"(2D) "Major construction" means a capital improvement to a school facility that is not limited in scope to the ordinary repair or replacement of an element of a school facility's central mechanical and electrical systems, water systems, building structure, physical plant support spaces, hard and soft landscaping, or building envelope, including walls, floors, roof, windows, and doors.

"(2E) "Neighborhood cluster" means an apolitical geographic boundary made up of 3 to 5 neighborhoods defined by the Office of Planning for use in budgeting, planning, service delivery, and analysis purposes by the District government.

"(2F) "Rough order of magnitude estimate" means an estimate of a specific project's level of effort and cost to complete based on preliminary observations, quantities, and a reasonably foreseeable scope of work. These estimates are subject to change as specific project scope is established based on educational specifications.".

(b) Section 1104 (D.C. Official Code § 38-2803) is amended as follows:

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

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

"(1) Beginning on December 15, 2017, and every 10 years thereafter, the Mayor shall prepare and submit to the Council for its review and approval a comprehensive 10-year Master Facilities Plan for public education facilities, along with a proposed resolution, in accordance with this section. The Council shall vote on the 10-year Master Facilities Plan concurrently with its vote on the Mayor's capital budget proposal. If approved by the Council, the 10-year Master Facilities Plan shall take effect on the first day of the succeeding fiscal year.".

(B) Paragraph (2) is amended by striking the phrase "5-year Master Facilities Plan" and inserting the phrase "10-year Master Facilities Plan" in its place.

(C) Paragraph (3) is amended by striking the phrase "5-year Master Facilities Plan" and inserting the phrase "10-year Master Facilities Plan" in its place.

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

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

(i) Subparagraph (A) is amended by striking the semicolon at the end and inserting the phrase "("DCPS") and each public charter school campus;" in its place.

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

(I) The lead-in language is amended by striking the phrase "5-year facility needs" and inserting the phrase "10-year facility needs" in its place.

(II) Sub-subparagraph (ii) is amended by striking the word "and".

(III) Sub-subparagraph (iii) is amended by striking the semicolon at the end and inserting the phrase "; and" in its place.

(IV) A new sub-subparagraph (iv) is added to read as follows:

"(iv) DCPS school attendance zone boundaries;".

(iii) Subparagraph (C) is amended by striking the semicolon at the end and inserting the phrase "for each DCPS school and public charter school;" in its place.

(iv) Subparagraph (H) is amended to read as follows:

"(H) A communications and community involvement plan for each neighborhood cluster that includes engagement of students, school-based personnel, parents, and key stakeholders throughout the community, including:

"(i) Advisory Neighborhood Commissions;

"(ii) Local school advisory teams;

"(iii) School improvement teams; and

"(iv) Ward-based and city-wide volunteer civic groups;".

(v) Subparagraph (I) is amended by striking the phrase "housing, health, and welfare sectors," and inserting the phrase "the District's housing sector" in its place.

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

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

(I) Sub-subparagraph (i) is amended by striking the phrase "it considers".

(II) Sub-subparagraph (iii) is amended to read as follows:

"(iii) Its 10-year enrollment projections for each school under its jurisdiction; and".

(III) Sub-subparagraph (iv) is amended by striking the phrase "5-year" and inserting the phrase "10-year" in its place.

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

(I) Strike the phrase "5-year" and insert the phrase "10-year" in its place.

(II) Strike the phrase "facilities-related needs" and insert the phrase "each public charter LEA's 10-year projection of facility needs" in its place.

(iii) Subparagraph (D) is repealed.

(iv) Subparagraph (E) is amended to read as follows:

"(E) The Department of General Services, which shall:

"(i) Implement the Master Facilities Plan consistent with the policy priorities set forth in this act; and

"(ii) In collaboration with the Deputy Mayor for Education, DCPS, and the Public Charter School Board, conduct an annual survey to update information on the condition of each DCPS and public charter school facility, including whether each facility has a working carbon monoxide detector, the results of the most recent water tests at each facility for sources of lead, and potential asbestos hazards at each facility. The survey results shall be disaggregated by facility, made publicly available, and transmitted to OPEFP.".

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

"(5) The Mayor may levy a fine against the Public Charter School Board for the failure of a public charter LEA to cooperate in providing the data required pursuant to paragraph

(3)(E)(ii) of this subsection for the development of the Master Facilities Plan and annual supplement. The cumulative value of such fines shall not annually exceed $10,000.".

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

(A) Paragraph (2) is repealed.

(B) Paragraph (4) is amended by striking the word "and" at the end.

(C) Paragraph (6) is amended by striking the period at the end and inserting a semicolon in its place.

(D) New paragraphs (7), (8), and (9) are added to read as follows:

"(7) The Office of Planning;

"(8) The Department of General Services; and

"(9) The District of Columbia Public Schools.".

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

"(c-1) The Master Facilities Plan shall not affect the duties, powers, or control afforded to public charter schools under section 2204 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.04), to the extent the Master Facilities Plan is inconsistent with that law.".

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

(A) Paragraph (1) is amended by striking the phrase "Beginning in fiscal year 2010" and inserting the phrase "Beginning in Fiscal Year 2017" in its place.

(B) Paragraphs (2) and (3) are amended to read as follows:

"(2) The School Facility CIP shall include:

"(A) A description of guiding principles to frame decisions within the School Facility CIP; provided, that these guiding principles shall be revisited with each new School Facility CIP to ensure that they are consistent with the DCPS strategic plan, the Master Facilities Plan, and the needs of the community;

"(B) A description of the process and timeline used to develop the School Facility CIP, including community engagement;

"(C) A longitudinal and future analysis of DCPS student enrollment and school facility capacity needs;

"(D) School-specific project recommendations on the timing and funding for modernization of existing school facilities, new school facility construction, and other school facility capital improvements planned for the next fiscal year and the succeeding 5 fiscal years; and

"(E) For each project identified pursuant to subparagraph (D) of this paragraph:

"(i) A description of the scope of work to be done, schedule of achieved and projected major milestones, and an explanation for any delay in meeting projected milestones;

"(ii) A justification for the modernization, new construction, or other capital improvements supported by the educational specification, student enrollment

projections, school facility condition assessment, and assessment of need for use as an educational facility;

"(iii) A full-funded cost estimate of improvements, except that for projects slated for modernization, new construction, or other capital improvements in years 4 through 6 of the School Facility CIP, the School Facility CIP may include rough order of magnitude estimates of improvements based on the required general design and feasibility analysis completed pursuant to paragraph (4)(C) of this subsection;

"(iv) A cost estimate of improvements planned for the next fiscal year and the succeeding 5 fiscal years and a detailed explanation for any proposed increases over 10% from the prior-year School Facility CIP estimate;

"(v) The estimated cost of annual maintenance and operations of the improved school facility;

"(vi) The lifetime expenditure for the school facility; and

"(vii) The name, address, and ward of each school facility.

"(3)(A) Major construction and capital improvements for existing school facilities shall be prioritized for inclusion in the School Facility CIP based on certain objective criteria contained in this paragraph.

"(B)(i) By September 30, 2017, and every 5 years thereafter, DCPS shall calculate a final prioritization score for each school facility in its portfolio by assigning each facility a score from one to 10 based on the normal distribution of the raw data obtained for every school facility in each of the following subcategories, multiplying that score by the subcategory weight as follows, and summing the weighted subcategory scores for each school facility:

Category	Category Total	Subcategory	Subcategory Weight
Facility Condition	0.55	Date and type of last major construction through the preceding fiscal year	0.20
		Expenditures for major construction projects for the preceding 10 fiscal years per square feet of the school facility	0.15
		School facility condition score based on the most recent assessment completed by the Department of General Services	0.20
Demand	0.20	Average percentage of the school's enrollment growth over the past 5 school years based on audited enrollment	0.10

		Average percent of school facility's building utilization over the past 5 school years	0.10
Community Need	0.10	Number of in-boundary children who would be served by the school facility's educational program divided by the school facility's capacity	0.05
		Projected percent change in the number of children who would be served by the school facility's educational program in the neighborhood cluster over a prospective 6-year time period	0.05
Equity	0.15	Total number of square feet in the school's feeder pattern that have had a major construction in the preceding 10 fiscal years divided by total square footage of the feeder pattern	0.05
		Number of at-risk students enrolled in the school based on the current school year enrollment projection	0.10

"(ii) For a school that is considered citywide for the purposes of the enrollment lottery, the entire District shall be considered the school's boundary and neighborhood cluster.

"(iii) For a high school that is considered citywide for the purposes of the enrollment lottery, the feeder pattern shall be all other citywide high schools.

"(C) By September 30, 2017, and every 5 years thereafter, DCPS shall transmit to the Council all of the prioritization scores and raw data, and shall make the information publicly available online.

"(D) In addition to the prioritization score based on criteria outlined in subparagraph (B) of this paragraph, DCPS shall consider the following factors when determining the prioritization and inclusion of projects in the School Facility CIP:

"(i) Availability of capital funding in the budget;

"(ii) Availability of appropriate swing space;

"(iii) Immediate life and safety concerns;

"(iv) Need for additional planning for a project;

"(v) New education program space requirements; and

"(vi) Scope and sequence of projects due to planned grade configuration changes, boundary changes, school facility consolidations, or school facility closures.

"(E) Within 180 days of the release of the prioritization data pursuant to subparagraph (C) of this paragraph, DCPS shall conduct at least 3 public meetings to discuss school facility modernizations. DCPS shall conduct explicit outreach with the parent and school community for each school facility project likely to be added, removed, or extensively modified in the next fiscal year's 6-year School Facility CIP.

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

"(4) Before adding a school or other education facility project to a School Facility CIP, the project shall have the following completed:

"(A) An educational specification approved by DCPS;

"(B) A rough order of magnitude estimate, except that for projects slated for modernization, new construction, or other capital improvements in years one through 3 of the School Facility CIP, the project shall have a full-funded cost estimate of improvements; and

"(C) A general design and feasibility analysis that is developed with parent, school, and community engagement and is made publicly available, which includes the following:

"(i) An analysis of educational programming needs as they relate to the current or projected school facility;

"(ii) An evaluation of whether the existing building and site conditions can accommodate the educational specification and programming needs; and

"(iii) An evaluation of whether swing space on-site or off-site will be needed.".

Sec. 3. Applicability.

(a) Section 2(b)(1)-(4) shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

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

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

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

Sec. 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 21, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-583

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 21, 2016

To amend, on an emergency basis, An Act To provide for the payment and collection of wages in the District of Columbia to clarify that the Office of Administrative Hearings judges will hear wage theft cases, to exempt an employer from being required to pay wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, to clarify that subcontractors include intermediate subcontractors, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify that the Attorney General can bring civil enforcement actions in court and inspect business records, to incorporate record-keeping requirements from the Minimum Wage Act Revision Act, to allow businesses to challenge a demand for business records before a neutral decision-maker, to revise criminal penalties for violations of the act, to clarify the remedies and processes for civil and administrative actions to enforce wage theft laws, to clarify deadlines pertaining to service of wage theft complaints and that membership organizations may bring civil actions on behalf of their members, to clarify the Mayor's authority to issue rules, to require the Mayor to issue rules identifying relevant prevailing federal standards for record keeping requirements; to amend the Minimum Wage Act Revision Act of 1992 to remove the exclusion of parking lot and garage attendants from receiving the protections of the District's minimum and overtime laws, to require the Mayor to issue rules identifying relevant prevailing federal standards for record-keeping requirements, to exempt employers from keeping precise time records for bona fide executive, administrative, professional non-hourly employees, to allow businesses to challenge a demand for business records before a neutral decision-maker, to clarify when an employer or a temporary staffing firm must provide notices to an employee in a second language, to require the Mayor to publish translations of notices and sample templates online in all the languages required by the Language Access Act of 2004, to clarify how the Mayor shall make certain information available to employers, to clarify that general contractors and clients of temporary staffing agencies may waive their right to indemnification, to clarify the remedies and procedures available in civil and administrative actions; to repeal an obsolete provision of the Wage Theft Prevention Amendment Act of 2014; to amend the Accrued Sick and Safe Leave Act of 2008 and the Living Wage Act of 2006 to require the Mayor to issue rules identifying relevant prevailing federal standards for record-keeping requirements; and to provide that all rules, forms, and regulations issued pursuant to the Wage Theft Prevention Amendment

Act of 2014 and to any emergency and temporary amendments to that act shall remain in force until repealed or superseded.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Clarification and Overtime Fairness Emergency Amendment Act of 2016".

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Official Code § 32-1301) is amended as follows:

(1) Paragraph (1) is designated paragraph (1B).

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

"(1) "Administrative Law Judge" means an administrative law judge of the Office of Administrative Hearings, established by section 5 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.02).

"(1A) "Attorney General" means the Attorney General for the District of Columbia, as established by section 435 of the District of Columbia Home Rule Act, effective May 28, 2011 (D.C. Law 18-160A; D.C. Official Code § 1-204.35).".

(b) Section 2 (D.C. Official Code § 32-1302) is amended by striking the phrase "Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer;" and inserting the phrase "An employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month; except, that all bona fide administrative, executive, and professional employees (those employees employed in a bona fide administrative, executive, or professional capacity, as defined in section 7-999.1 of the District of Columbia Municipal Regulation (7 DCMR 999.1)) shall be paid at least once per month;" in its place.

(c) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

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

"(5) A subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in a contract between the subcontractor and the general contractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this act, the Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.".

(2) Paragraph 6 is amended by striking the phrase "Unless otherwise agreed to by the parties, the temporary staffing firm shall indemnify the employer as a result of the temporary staffing firm's violations" and inserting the phrase "Except as otherwise provided in a contract

between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the temporary staffing firm's violations" in its place.

(d) Section 6 (D.C. Official Code § 32-1306) is amended as follows:

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

"(2)(A) The Attorney General, acting in the public interest, including the need to deter future violations, may bring a civil action in a court of competent jurisdiction against an employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act for restitution or for injunctive, compensatory, or other authorized relief for any individual or for the public at large. Upon prevailing in court, the Attorney General shall be entitled to:

"(i) Reasonable attorneys' fees and costs;

"(ii) Statutory penalties equal to any administrative penalties provided by law; and

"(iii) On behalf of an aggrieved employee:

"(I) The payment of back wages unlawfully withheld;

"(II) Additional liquidated damages equal to treble the back wages unlawfully withheld; and

"(III) Equitable relief as may be appropriate.

"(B) The Attorney General shall not in any action brought pursuant to this section be awarded an amount already recovered by an employee.".

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

(i) The existing text is designated paragraph (1).

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

"(2) The Attorney General shall have the power to investigate whether there are violations of this act, the Living Wage Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act, and administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in connection with any such investigation.".

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

"(c) A person to whom a subpoena authorized by this section has been issued shall have the opportunity to move to quash or modify the subpoena in the Superior Court of the District of Columbia. In case of failure of a person to comply with any subpoena lawfully issued under this section, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia, or any judge thereof, upon application by the Mayor or the Attorney General, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify therein.".

(3) New subsections (d) and (e) are added to read as follows:

"(d)(l) Every employer subject to any provision of this act or of any regulation or order issued pursuant to this act shall make, keep, and preserve, for a period of not less than 3 years, or

the prevailing federal standard at the time the record is created (which shall be identified in rules issued pursuant to this act), whichever is greater, a record of:

"(A) The name, address, and occupation of each employee;

"(B) A record of the date of birth of an employee under 19 years of age;

"(C) The rate of pay and the amount paid each pay period to each employee;

"(D) The precise time worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a) of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1004(a)); and

"(E) Any other records or information as the Mayor may prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act.

"(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor's authorized representative, or the Office of the Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor's authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

"(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General's demand before a judge, including an administrative law judge.

"(e) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the:

"(1) Date of the wage payment;

"(2) Gross wages paid;

"(3) Deductions from and additions to wages;

"(4) Net wages paid;

"(5) Hours worked during the pay period; and

"(6) Any other information as the Mayor may prescribe by regulation.".

(e) Section 7(a) (D.C. Official Code § 32-1307(a)) is amended to read as follows:

"(a)(l) An employer who negligently fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

"(A) For the first offense, an amount per affected employee of not more than $2,500; and

"(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

"(2) An employer who willfully fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

"(A) For the first offense, be fined not more than $5,000 per affected employee, or imprisoned not more than 30 days; or

"(B) For any subsequent offense, be fined not more than $10,000 per affected employee, or imprisoned not more than 90 days.

"(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).".

(f) Section 8 (D.C. Official Code § 32-1308) is amended as follows:

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

"(a)(1)(A) Subject to subparagraph (B) of this paragraph, a person aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act may bring a civil action in a court of competent jurisdiction against the employer or other person violating this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and entitled to restitution including:

"(i) The payment of any back wages unlawfully withheld;

"(ii) Liquidated damages equal to treble the amount of unpaid wages;

"(iii) Statutory penalties; and

"(iv) Such legal or equitable relief as may be appropriate, including reinstatement of employment, and other injunctive relief.

"(B) No person in any action brought pursuant to this section shall be awarded any amount already recovered by an employee.

"(C) Actions may be maintained by one or more employees, who may designate an agent or representative to maintain the action for themselves, or on behalf of all employees similarly situated as follows:

"(i) Individually by an aggrieved person;

"(ii) Jointly by one or more aggrieved persons;

"(iii) Consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b);

"(iv) As a class action;

"(v) Initially as a collective action pursuant to the procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), and subsequently as a class action;

"(vi) By a labor organization or association of employees whose member is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act; or

"(vii) By the Attorney General for the District of Columbia, pursuant to section 6.".

(2) Subsection (b)(4) is amended by striking the word "Mayor" and inserting the word "District" in its place.

(g) Section 8a (D.C. Official Code § 32-1308.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "A signed complaint" and inserting the phrase "A physically or electronically signed complaint" in its place.

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

(A) Paragraph (1) is amended by striking the word "deliver" and inserting the word "serve" in its place.

(B) Paragraph (2) is amended by striking the word "receipt" and inserting the phrase "receipt of service" in its place.

(C) Paragraph (3) is amended by striking the word "mailed" and inserting the word "served" in its place.

(D) Paragraph (4) is amended to read as follows:

"(4) If a respondent admits the allegation, the Mayor shall issue an administrative order requiring the respondent to provide restitution, including the payment of any back wages unlawfully withheld, liquidated damages equal to the amount of unpaid wages, reasonable attorney fees and costs, and other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief, and which may include statutory penalties. The Mayor or Attorney General may also proceed with an audit or subpoena to determine if the rights of employees other than the complainant have also been violated.".

(E) Paragraph (5) is amended by striking the word "mailed" and inserting the word "served" in its place.

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

(i) Strike the word "delivered" and insert the word "served" in its place.

(ii) Strike the phrase "pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations." and insert the phrase "provide restitution including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief." in its place.

(G) Paragraph (7) is amended to read as follows:

"(7) The Mayor shall issue an initial determination within 60 days after the date the complaint is served. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and an order requiring the respondent to provide restitution, including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, and other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief. The initial determination shall be provided to both parties and set forth the losing party's right to appeal under this section or to seek other relief available under this act.".

(H) Paragraph (9) is amended by striking the word "filing" and inserting the word "serving" in its place.

(3) Subsection (e)(1) is amended by striking the phrase "administrative law judge shall issue an order based on the findings from the hearing. The".

(4) Subsection (f)(2) is amended read as follows

"(2) Appropriate relief shall include the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, and other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.".

(5) Subsection (m)(4) is amended by striking the word "Mayor" and inserting the word "District" in its place.

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

"(n) Appeals of any order issued or fine assessed under this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District of Columbia Court of Appeals.".

(h) A new section 8b is added to read as follows:

"Sec. 8b. Interpretation of fees.

No inference shall be drawn, or precedent established, based on the provisions in section 8 or section 8a that provide that attorney fees shall be calculated pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F.Supp.2d 8 (D.D.C. 2000) that the fees are reasonable for any law other than this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act.".

(i) A new section 10b is added to read as follows:

"Sec. 10b. Rules.

"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 the provisions of this act.".

(j) Section 212(a) (D.C. Official Code § 32-1331.12(a)) is amended by striking the phrase "3 years, in or about its place of business," and inserting the phrase "3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, in or about its place of business," in its place.

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

(a) Section 5(b) (D.C. Official Code § 32-1004(b)) is amended as follows:

(1) Paragraph (3) is amended by adding the word "or" at the end.

(2) Paragraph (5) is repealed.

(b) Section 8 (D.C. Official Code § 32-1007) is amended to read as follows:

"(a) The Mayor and the Attorney General shall each have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any meeting of any committee or for the use of the Mayor or the Attorney General in securing compliance with this act.

"(b) In case of disobedience to a subpoena, the Mayor or the Attorney General may invoke the aid of the Superior Court of the District of Columbia to require the attendance and testimony of witnesses and the production of documentary evidence.

"(c) In case of contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance before the Mayor or the Attorney General, the production of documentary evidence, and the giving of evidence.

"(d) A person or an entity to whom a subpoena has been issued may move to quash or modify the subpoena.

"(e) Any failure to obey the order of the Court may be punished by the Court as contempt.".

(c) Section 9 (D.C. Official Code § 32-1008) is amended as follows:

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

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

(i) The lead-in language is amended striking the phrase "or whatever the prevailing federal standard is," and inserting the phrase "or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act," in its place.

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

"(D) The precise times worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under section 5(a); and".

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

"(2)(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor's authorized representative, or the Office of the Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor's authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

"(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General's demand before a judge, including an administrative law judge.".

(2) Subsection (c) is amended by striking the phrase "shall furnish to each employee at the time of hiring a written notice, both in English and in the employee's primary language, containing the following information:" and inserting the phrase "shall furnish to each employee at the time of hiring, and whenever any of the information contained in the written notice changes, a written notice in English; provided, that if the Mayor has made a sample template available in a language other than English that the employer knows to be the employee's primary language or that the employee requests, the employer shall furnish the written notice to the employee in that other language also. The notice required by this subsection shall contain:" in its place.

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

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

"(l)(A) Within 90 days of February 26, 2015, and within 30 days of any change to the information contained in the prior written notice, an employer, except in those instances where notice is provided pursuant to section 9a, shall furnish each employee with an updated notice containing the information required under subsection (c) of this section in English and in any additional language required by subsection (c) of this section.

"(B) To show proof of compliance with these notice requirements, an employer shall retain either copies of the written notice furnished to employees that are signed and dated by the employer and by the employee acknowledging receipt or electronic records

demonstrating that the employee received and acknowledged the notice via email or other electronic means.".

(B) Paragraph (3) is amended by striking the phrase "subsections (b) and (c) of".

(4) Subsection (e) is amended by adding a sentence at the end to read as follows:

"On or before February 26, 2017, the Mayor also shall publish online a translation of the sample template in any languages required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.".

(d) Section 9a (D.C. Official Code § 32-1008.01) is amended as follows:

(1) Section (a)(1) is amended by adding a sentence at the end to read as follows:

"The notice shall be provided in English and, if the Mayor has made available a translation of the sample template in a language that is known by the temporary staffing firm to be the employee's primary language or that the employee requests, the temporary staffing firm shall furnish written notice to the employee in that other language also.".

(2) The lead-in language to subsection (b) is amended to read as follows:

"(b) When a temporary staffing firm assigns an employee to perform work at, or provide services for, a client, the temporary staffing firm shall furnish the employee a written notice in English, and in another language that the employer knows to be the employee's primary language or that the employee requests, if a sample template has been made available pursuant to subsection (c) of this section, of:".

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

"(c) On or before February 26, 2017, the Mayor shall publish online a translation of the sample template of the notice required by this section in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933). The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.".

(e) Section 12(d)(1)(C) (D.C. Official Code § 32-1011(d)(1)(C)) is amended by striking the phrase "or whatever the prevailing federal standard is, whichever is greater" and inserting the phrase "or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater," in its place.

(f) Section 12a (D.C. Official Code § 32-1011.01) is amended by striking the phrase "liquidated damages of not less than $1,000 and not more than $10,000" and inserting the phrase "all appropriate relief provided for under section 10a of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 979; D.C. Official Code § 32-1311)" in its place.

(g) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "according to" and inserting the phrase "according to, and with all the remedies provided under," in its place.

(2) Subsection (b)(2) is amended by striking the phrase "The court may award an amount of liquidated damages less than treble the amount of unpaid wages, but not less than the

amount of unpaid wages. In any action commenced to recover unpaid wages or liquidated damages, the employer shall demonstrate" and inserting the phrase "The court may award an additional amount of liquidated damages less than treble the amount of unpaid wages, but not less than the amount of unpaid wages, only if the employer demonstrates" in its place.

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

"(c) A subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this act. Except as otherwise provided in a contract between the subcontractor and the general contractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this act, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.".

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

"(f)(1) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the client shall be jointly and severally liable for violations of this act to the employee and to the District.

"(2) The District, the employee, or the employee's representative shall notify the temporary staffing firm of the alleged violations at least 30 days before filing a claim for a violation against a client who was not the employee's direct employer.

"(3) Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the temporary staffing firm's violations of this act.".

(h) Section 13a (D.C. Official Code § 32-1012.01) is amended to read as follows

"Administrative complaints filed for violations of this act shall be considered under the same procedures and with all the same legal and equitable remedies available for violations of title I of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat 976; D.C. Official Code § 32-1301 *et seq.*).".

Sec. 4. Conforming amendments.

(a) Section 11b(a) of the Accrued Sick and Safe Leave Act, effective February 22, 2014 (D.C. Law 20-89; D.C. Official Code § 32-131.10b(a)), is amended by striking the phrase "3 years," and inserting the phrase "3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater," in its place.

(b) Section 107 of the Living Wage Act, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.07), is amended by striking the phrase "3 years from the payroll date" and inserting the phrase "3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this act, whichever is greater, from the payroll date" in its place.

(c) Paragraph 11 of section 105.3 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR 105.3(11)) is amended as follows:

(1) Strike the phrase "general contractor or construction manager," and insert the phrase "general contractor, construction manager, and each subcontractor," in its place.

(2) Strike the phrase "general constructor or construction manager is selected" and insert the phrase "general contractor, construction manager, or any subcontractor is selected" in its place.

Sec. 5. Continuation of rules, forms, and regulations.

All rules, forms, and regulations issued pursuant to the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), ("act") and any rules, forms, and regulations issued pursuant to the act, including the Wage Theft Prevention Clarification Temporary Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-101; 63 DCR 2220), or the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), or any like succeeding emergency and temporary acts, shall continue in effect according to their terms until lawfully amended, repealed, or superseded.

Sec. 6. Repealers.

(a) Section 7 of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), is repealed.

(b) The Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2016, enacted on October 4, 2016 (D.C. Act 21-493; 63 DCR 12600), is repealed.

(c) The Revised Wage Theft Prevention Clarification Emergency Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Enrolled version of Bill 21-928), is repealed.

(d) The Revised Wage Theft Prevention Clarification Temporary Amendment Act of 2016, passed on an emergency basis on November 1, 2016 (Engrossed version of Bill 21-929), is repealed.

(e) The Wage Theft Prevention Correction and Clarification Second Congressional Review Emergency Amendment Act of 2016, effective October 27, 2016 (D.C. Act 21-512; 63 DCR 13577), is repealed.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Wage Theft Prevention Clarification and Overtime Fairness Amendment Act of 2016, passed on 2nd reading on December 6, 2016 (Enrolled version of Bill 21-120), 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).

ENROLLED ORIGINAL

Sec. 8. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 21, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-584

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 24, 2016

To amend, on an emergency basis, 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.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Campaign Finance Reform and Transparency Emergency Amendment Act of 2016".

Sec. 2. 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 § 1-1161.01 *et seq.*), is amended as follows:

(a) Section 309(b) (D.C. Official Code § 1-1163.09(b)) is amended as follows:

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

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

"(2) In addition to the reporting requirements in paragraph (1) of this subsection, the treasurer of each political action committee and independent expenditure committee shall file the reports required by subsection (a) of this section on the 10th day of April and October of each year in which there is no election. The reports shall be complete as of the date prescribed by the Director of Campaign Finance, which shall not be more than 5 days before the date of filing.".

(b) Section 333 (D.C. Official Code § 1-1163.33) is amended by adding a new subsection (f-1) to read as follows:

"(f-1) Limitations on contributions under this section shall apply to political action committees during nonelection years.".

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
December 22, 2016

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PROPOSED RESOLUTION

PR21-1108 American Geophysical Union Revenue Bonds Project Approval Resolution of 2016

Intro. 12-16-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B21-999, Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Temporary Amendment Act of 2016 was adopted on first reading on December 20, 2016. This temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on January 10, 2017.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017
Protest Hearing Date:	April **12, 2017

License No.:	ABRA-104945
Licensee:	Event Space, LLC
Trade Name:	21
License Class:	Retailer's Class "C" Tavern
Address:	2121 K Street, N.W.
Contact:	Jeff Jackson: (202) 251-1566

WARD 2 ANC 2A SMD 2A06

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 **Roll Call Hearing date on February **21, 2017 at 10 a.m., 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 **April **12, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Class "C" Tavern with 100 seats and a Total Occupancy Load of 100. Tavern will serve American food and crepes for private events only. Tavern will not be open to the general public.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION AND ENTERTAINMENT FOR PREMISES
Sunday through Thursday 10 am - 2 am, Friday and Saturday 10 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ
Sunday through Saturday 10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017
Protest Hearing Date:	April **19, 2017

License No.:	ABRA-104945
Licensee:	Event Space, LLC
Trade Name:	21
License Class:	Retailer's Class "C" Tavern
Address:	2121 K Street, N.W.
Contact:	Jeff Jackson: (202) 251-1566

WARD 2 ANC 2A SMD 2A06

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 **Roll Call Hearing date on February **20, 2017 at 10 a.m., 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 **April **19, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Class "C" Tavern with 100 seats and a Total Occupancy Load of 100. Tavern will serve American food and crepes for private events only. Tavern will not be open to the general public.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION AND ENTERTAINMENT FOR PREMISES
Sunday through Thursday 10 am - 2 am, Friday and Saturday 10 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ
Sunday through Saturday 10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**CORRECTION

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017
Protest Hearing Date:	April **12, 2017

License No.:	ABRA-104996
Licensee:	MassKap, LLC
Trade Name:	Arroz
License Class:	Retailer's Class "C" Restaurant
Address:	901 Massachusetts Avenue NW
Contact:	Jeff Jackson, Agent: 202-251-1566

WARD 2 ANC 2F SMD 2F06

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 **Roll Call Hearing date on February **21, 2017 at 10 a.m., 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 **April **12, 2017 at 4:30 p.m.**

NATURE OF OPERATION

Full-service restaurant serving Spanish cuisine and seafood. Total Occupancy Load of 270 and a Summer Garden with 70 seats.

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

Sunday 11 am – 11 pm, Monday through Thursday 11:30 am – 11 pm, Friday 11:30 am – 12 am, and Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**RESCIND

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017
Protest Hearing Date:	April **19, 2017

License No.:	ABRA-104996
Licensee:	MassKap, LLC
Trade Name:	Arroz
License Class:	Retailer's Class "C" Restaurant
Address:	901 Massachusetts Avenue NW
Contact:	Jeff Jackson, Agent: 202-251-1566

WARD 2 ANC 2F SMD 2F06

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 **Roll Call Hearing date on February **20, 2017 at 10 a.m., 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 **April **19, 2017 at 4:30 p.m.**

NATURE OF OPERATION

Full-service restaurant serving Spanish cuisine and seafood. Total Occupancy Load of 270 and a Summer Garden with 70 seats.

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

Sunday 11 am – 11 pm, Monday through Thursday 11:30 am – 11 pm, Friday 11:30 am – 12 am, and Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/30/2016

Notice is hereby given that:
License Number: ABRA-098902 **License Class/Type: C Tavern**
Applicant: BIG CHIEF DC, LLC
Trade Name: Big Chief
ANC: 5D01

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

2002 FENWICK ST NE, WASHINGTON, DC 20002

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

2/13/2017

A HEARING WILL BE HELD ON:

2/27/2017

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8AM - 2AM	8AM - 2AM	6PM - 2AM
Monday:	8AM - 2AM	8AM - 2AM	6PM - 2AM
Tuesday:	8AM - 2AM	8AM - 2AM	6PM - 2AM
Wednesday:	8AM - 2AM	8AM - 2AM	6PM - 2AM
Thursday:	8AM - 2AM	8AM - 2AM	6PM - 2AM
Friday:	8AM - 3AM	8AM - 3AM	6PM - 3AM
Saturday:	8AM - 3AM	8AM - 3AM	6PM - 3AM

	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	8AM - 2AM	8AM - 2AM
Monday:	8AM - 2AM	8AM - 2AM
Tuesday:	8AM - 2AM	8AM - 2AM
Wednesday:	8AM - 2AM	8AM - 2AM
Thursday:	8AM - 2AM	8AM - 2AM
Friday:	8AM - 3AM	8AM - 3AM
Saturday:	8AM - 3AM	8AM - 3AM

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**CORRECTION

Posting Date: October 28, 2016
Petition Date: December 12, 2016
Hearing Date: December 27, 2016
Protest Date: **March 1, 2017

License No.: ABRA-104129
Licensee: Boulangerie Christophe, LLC
Trade Name: Boulangerie Christophe
License Class: Retailer's Class "C" Restaurant
Address: 1422 Wisconsin Avenue, N.W.
Contact: Amy Veloz: (202) 686-7600

WARD 2 ANC 2E SMD 2E03

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

NATURE OF OPERATION
New C Restaurant with a Total Occupancy Load of 104 seats inside and a Summer Garden with 58 seats.

HOURS OF OPERATION FOR PREMISES AND SUMMER GARDEN
Sunday through Saturday 7:30 am – 9:00 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN
Sunday through Saturday 8:00 am – 9:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date:	October 28, 2016
Petition Date:	December 12, 2016
Hearing Date:	December 27, 2016
Protest Date:	**February 22, 2017

License No.:	ABRA-104129
Licensee:	Boulangerie Christophe, LLC
Trade Name:	Boulangerie Christophe
License Class:	Retailer's Class "C" Restaurant
Address:	1422 Wisconsin Avenue, N.W.
Contact:	Amy Veloz: (202) 686-7600

WARD 2 ANC 2E SMD 2E03

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 **February 22, 2017 at 4:30pm.

NATURE OF OPERATION

New C Restaurant with a Total Occupancy Load of 104 seats inside and a Summer Garden with 58 seats.

HOURS OF OPERATION FOR PREMISES AND SUMMER GARDEN

Sunday through Saturday 7:30 am – 9:00 pm

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

Sunday through Saturday 8:00 am – 9:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017

License No.:	ABRA-104976
Licensee:	Dixie Georgetown, Inc.
Trade Name:	Dixie Liquor
License Class:	Retailer's Class "A" Liquor Store
Address:	3429 M Street, N.W.
Contact:	Kevin Lee, Esq.: (703) 941-3144

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **21, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Licensee requests to transfer location of liquor license from 1507 U Street NW, to 3429 M Street NW with a Change of Hours request

CURRENT HOURS OF OPERATION
Sunday from 8 am – 9 pm, and Monday through Saturday from 8 am – 10 pm

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday from 9 am – 9 pm, and Monday through Saturday 9 am – 10 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017

License No.:	ABRA-104976
Licensee:	Dixie Georgetown, Inc.
Trade Name:	Dixie Liquor
License Class:	Retailer's Class "A" Liquor Store
Address:	3429 M Street, N.W.
Contact:	Kevin Lee, Esq.: (703) 941-3144

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Licensee requests to transfer location of liquor license from 1507 U Street NW, to 3429 M Street NW with a Change of Hours request

CURRENT HOURS OF OPERATION
Sunday from 8 am – 9 pm, and Monday through Saturday from 8 am – 10 pm

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday from 9 am – 9 pm, and Monday through Saturday 9 am – 10 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017

License No.:	ABRA-074503
Licensee:	Green Island Heaven and Hell, Inc.
Trade Name:	Green Island Café/Heaven & Hell
License Class:	Retailer's Class "C" Tavern
Address:	2327 18th Street, N.W.
Contact:	Mehari Woldemariam: (202) 492-4888

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **21, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 40.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am - 2 am, Friday & Saturday 11 am – 3 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Saturday 11 am - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017

License No.:	ABRA-074503
Licensee:	Green Island Heaven and Hell, Inc.
Trade Name:	Green Island Café/Heaven & Hell
License Class:	Retailer's Class "C" Tavern
Address:	2327 18th Street, N.W.
Contact:	Mehari Woldemariam: (202) 492-4888

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 40.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am - 2 am, Friday & Saturday 11 am – 3 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Saturday 11 am - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017
Protest Hearing Date:	April **12, 2017
License No.:	ABRA-104923
Licensee:	ISG Restaurant Inc.
Trade Name:	Lemon Cuisine Of India
License Class:	Retailer's Class "C" Restaurant
Address:	2120 P Street, N.W.
Contact:	Gurjeet Singh: 804-475-1538

WARD 2 ANC 2B SMD 2B02

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 **Roll Call Hearing date on February *21, 2017 at 10 a.m., 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 **April **12, 2017 at 1:30 p.m.**

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NATURE OF OPERATION

New fine-dining Indian restaurant. Total Occupancy Load of 115.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017
Protest Hearing Date:	April **19, 2017
License No.:	ABRA-104923
Licensee:	ISG Restaurant Inc.
Trade Name:	Lemon Cuisine Of India
License Class:	Retailer's Class "C" Restaurant
Address:	2120 P Street, N.W.
Contact:	Gurjeet Singh: 804-475-1538

WARD 2 ANC 2B SMD 2B02

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 **Roll Call Hearing date on February 20, 2017 at 10 a.m., 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 **April **19, 2017 at 1:30 p.m.**

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NATURE OF OPERATION

New fine-dining Indian restaurant. Total Occupancy Load of 115.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 30, 2016
Protest Petition Deadline:	February 13, 2017
Roll Call Hearing Date:	February 27, 2017
Protest Hearing Date:	April 26, 2017

License No.:	ABRA-105058
Licensee:	Library Tavern, LLC
Trade Name:	Library Tavern
License Class:	Retailer's Class "C" Tavern
Address:	5420 3rd Street, N.W.
Contact:	Danielle Balmelle: 202-714-2976

WARD 4 ANC 4D SMD 4D02

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 **Roll Call Hearing date on February 27, 2017 at 10 a.m., 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 **April 26, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Class "C" Tavern with 85 seats and a Total Occupancy Load of 85. Requesting an Entertainment Endorsement.

HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION AND ENTERTAINMENT FOR PREMISES

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
12/16/2016

** CORRECTION

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 - 11 pm	11 am - 11 pm
Monday:	10 am - 11 pm	11 am - 11 pm
Tuesday:	10 am - 11 pm	11 am - 11 pm
Wednesday:	10 am - 11 pm	11 am - 11 pm
Thursday:	10 am - 11 pm	11 am - 11 pm
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
12/16/2016

****RESCIND**

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

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017

License No.:	ABRA-076039
Licensee:	Top Shelf, LLC
Trade Name:	Penn Quarter Sports Tavern
License Class:	Retailer's Class "C" Tavern
Address:	639 Indiana Avenue, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 2 ANC 2C SMD 2C03

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **21, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 49.

CURRENT HOURS OF OPERATION FOR PREMISES
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017

License No.:	ABRA-076039
Licensee:	Top Shelf, LLC
Trade Name:	Penn Quarter Sports Tavern
License Class:	Retailer's Class "C" Tavern
Address:	639 Indiana Avenue, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 2 ANC 2C SMD 2C03

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 49.

CURRENT HOURS OF OPERATION FOR PREMISES
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 30, 2016
Protest Petition Deadline:	February 13, 2017
Roll Call Hearing Date:	February 27, 2017
Protest Hearing Date:	April 26, 2017

License No.:	ABRA-104866
Licensee:	Naomi's Ladder II, LLC
Trade Name:	TBD
License Class:	Retailer's Class "C" Tavern
Address:	1123 H Street, N.E.
Contact:	Camelia Mazard: (202) 589-1837

WARD 6 ANC 6A SMD 6A02

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 **Roll Call Hearing date on February 27, 2017 at 10 a.m., 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 **April 26, 2017 at 1:30 p.m.**

NATURE OF OPERATION
New Class "C" Tavern with 366 seats and a Total Occupancy Load of 366. Tavern will serve tapas. Live entertainment will be provided on the first and second levels. Dancing will be allowed as well on the 2nd level. Summer Garden with seating for 50 patrons.

HOURS OF OPERATION ON PREMISE
Sunday through Thursday 10 am – 2 am, Friday & Saturday 10 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE
Sunday through Thursday 10am – 1:45 am, Friday & Saturday 10 am – 2:45 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 10 am – 11 pm, Friday & Saturday 10 am – 12 am

HOURS OF LIVE ENTERTAINMENT ON PREMISE
Sunday through Thursday 6 pm – 2 am, Friday & Saturday 6 pm – 3 am

HOURS OF LIVE ENTERTAINMENT FOR SUMMER GARDEN
Sunday through Saturday 6 pm – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 30, 2016
Protest Petition Deadline:	February 13, 2017
Roll Call Hearing Date:	February 27, 2017
Protest Hearing Date:	April 26, 2017

License No.:	ABRA-104786
Licensee:	The Pretzel Bakery, LLC
Trade Name:	The Pretzel Bakery
License Class:	Retailer's Class "D" Restaurant
Address:	257 15th Street, S.E.
Contact:	Cheryl Webb, Agent: 202-277-7461

WARD 6 ANC 6B SMD 6B08

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 **Roll Call Hearing date on February 27, 2017 at 10 a.m., 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 **April 26, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A restaurant serving soft pretzels and sandwiches. Seating Capacity of 18, Total Occupancy Load of 38, and a Sidewalk Cafe with 18 seats.

HOURS OF OPERATION ON PREMISE AND FOR SIDEWALK CAFE

Sunday through Saturday 7 am – 9 pm

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

Sunday through Saturday 11 am – 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **21, 2017
Protest Hearing Date:	April **12, 2017

License No.:	ABRA-104726
Licensee:	600 H Apollo Tenant, LLC
Trade Name:	WeWork
License Class:	Retailer's Class "C" Tavern
Address:	600 H Street, N.E.
Contact:	Stephen O'Brien: 202 625-7700

WARD 6 ANC 6C SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **21, 2017 at 10 a.m., 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 **April **12, 2017 at 1:30 p.m.**

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NATURE OF OPERATION

New Tavern. It will be a shared professional office space with food, beverages, and wine available for members (tenants) and their guests. Members may stage events for clients and guests, which may include audio visual components and entertainment. Total Occupancy Load is 100. Summer Garden with 60 seats.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN

Monday through and Saturday 11 am to 10 pm

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND SUMMER GARDEN

Monday through and Saturday 6 pm to 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February **20, 2017
Protest Hearing Date:	April **19, 2017

License No.:	ABRA-104726
Licensee:	600 H Apollo Tenant, LLC
Trade Name:	WeWork
License Class:	Retailer's Class "C" Tavern
Address:	600 H Street, N.E.
Contact:	Stephen O'Brien: 202 625-7700

WARD 6 ANC 6C SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February **20, 2017 at 10 a.m., 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 **April **19, 2017 at 1:30 p.m.**

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NATURE OF OPERATION

New Tavern. It will be a shared professional office space with food, beverages, and wine available for members (tenants) and their guests. Members may stage events for clients and guests, which may include audio visual components and entertainment. Total Occupancy Load is 100. Summer Garden with 60 seats.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN

Monday through and Saturday 11 am to 10 pm

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND SUMMER GARDEN

Monday through and Saturday 6 pm to 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 30, 2016
Protest Petition Deadline:	February 13, 2017
Roll Call Hearing Date:	February 27, 2017

License No.:	ABRA-104360
Licensee:	Zachy's Wine International, LLC
Trade Name:	Zachy's Wine International
License Class:	Retailer's Class "A" Liquor Store
Address:	3521-A V Street, N.E.
Contact:	Paul Pascal, Esq.: (202) 544-2200

WARD 5 ANC 5C SMD 5C04

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 27, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Licensee requests to transfer to a new location from 4704 14th Street, N.W. to 3521-A V Street, N.E.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7:00 am – 12:00 am

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 16, 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. 11-15E – Howard University – Interim University Use of 1851 9th Street, N.W. (Square 394, Lot 874)

THIS CASE IS OF INTEREST TO ANC 1B

On December 8, 2016, the Office of Zoning received an application from Howard University (the "Applicant"). The Applicant is requesting special exception review and approval to permit interim university use of property described below, pursuant to Subtitle X, Sections 901.2, 101.1, 101.2, and 101.10 of the Zoning Regulations.

The property which is the subject of this application consists of approximately 6,461 square feet of land area and is located at 1851 9th Street, N.W. (Square 394, Lot 874) ("Property"). The Property is bounded to the east by 8th Street, N.W., to the south by S Street, N.W., to the west by 9th Street, N.W., and to the north by T Street, N.W. The Property is currently improved with a four story building that was previously used as a charter school but is now vacant. It is zoned RF-1, a district which permits development of attached rowhouses on small lots and educational uses by special exception.

The Applicant's proposes to use the Property for administrative office space for Howard University faculty and staff. More specifically, the Applicant seeks to lease the Property to relocate staff from its Howard Center building on Georgia Avenue to the Property. HVAC and roofing problems have created a mold problem in the office portion of the Howard Center building which has rendered it unusable, necessitating the relocation of office occupants in that building. The Applicant is requesting interim use of the Property for a period ending December 31, 2027.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

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 Subtitle Z § 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 the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov 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.

Subtitle Z § 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 Subtitle Z § 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.

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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.

ለመተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚጠቅበነጻ ው።

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 23, 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. 14-18A (Mid-City Financial Corporation – First-Stage PUD Modification and Second-Stage PUD @ Square 3953, Lots 1, 2, and 3 – RIA Block 7)

THIS CASE IS OF INTEREST TO ANCs 5B AND 5C

On September 22, 2016 the Office of Zoning received an application from Mid-City Financial Corporation, Brentwood Associates Limited Partnership, and MCF Brentwood SC, LLC ("Applicant"). The Applicant is requesting review and approval of a second-stage planned unit development and modification of the first-stage order in Z.C. Case No. 14-18 pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 for the construction of a two-building development containing approximately 200 senior housing units and approximately 131 multifamily dwelling units with underground parking.

The property that is the subject of this application consists of approximately 2.62 acres, and is formally designated as Square 3953, Lots 1-3 ("Block 7"). Block 7 is currently occupied by multi-family residential apartment buildings that are part of the Brookland Manor apartment complex and is located at the intersection of Saratoga Avenue, N.E. and 14th Street, N.E. The subject property is generally bound by Saratoga Avenue, N.E. to the north, 14th Street, N.E. to the east, a 16-foot wide public alley to the south, and Brentwood Road, N.E. to the west.

This Application proposes to redevelop Block 7 with: (i) a four-story apartment building containing approximately 131 units with associated ground floor level amenity space and 68 below-grade parking spaces ("Building A"), and (ii) a four-story residential building containing approximately 200 seniors-only independent living units with associated ground floor level amenity space and 50 below-grade parking spaces ("Building B" and together with Building A). Building A will have 169,342 square feet of gross floor area ("GFA"), a maximum height of 49 feet 4 inches, and an FAR of 2.97. Building B will have 172,266 square feet of GFA, a maximum height of 51 feet, and an FAR of 3.0. The overall FAR for Block 7 is 2.98.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, Subtitle Z, Chapter 4.

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.

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED[1] PUBLIC HEARING

TIME AND PLACE: **Thursday, May 4, 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."[2]

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

[1] This case was previously scheduled for February 2, 2017.
[2] 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.

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 ("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 ካስፈለገዎት ወይም የ ቋንቋ እርዳታ አገልግለቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነ ኝህ አገልለቶች የ ሚሰጡ በነ ጻ ነ ው።

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Behavioral Health ("the Department"), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06 and 7-1141.07 (2012 Repl. & 2016 Supp.)), hereby gives notice of the adoption of an amendment to Chapter 36 (Child Choice Providers – Flexible Spending Local Funds Program) of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments is to set forth the services and reimbursement rates for services provided by Child Choice Providers to children and youth who are in the legal care and custody of the Child and Family Services Agency (CFSA). Child Choice Providers are providers certified pursuant to Chapters 34 and 35 of Title 22-A DCMR, which have demonstrated key core competencies with respect to delivering high-quality, culturally-competent, evidence-based mental health services for children and youth. Children and youth with mental health issues who are in the legal care and custody of CFSA because they have been removed from their parents' or guardian's care may need additional services not provided through regular Mental Health Rehabilitation Services (MHRS). This rule defines the locally-funded services and supports that will augment the clinical services and increase the therapeutic benefit to the child and youth consumers in the legal care and custody of CFSA and that will be reimbursed pursuant to a Human Care Agreement (HCA) with the Department.

The emergency and proposed rulemaking was published on May 20, 2016 in the *D.C. Register* at 63 DCR 007720. No comments have been received on the proposed rules, and no substantive changes were made to the proposed rules as originally published. The Director adopted the rule as final on December 1, 2016. This rule will become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 36, CHILD CHOICE PROVIDERS – FLEXIBLE SPENDING LOCAL FUNDS PROGRAM, of Title 22-A DCMR, MENTAL HEALTH, is amended by deleting it in its entirety and replacing it with the following:

CHAPTER 36 CHILD CHOICE PROVIDERS – SPECIALIZED SERVICES AND REIMBURSEMENT RATES

3600 PURPOSE

3600.1 This chapter establishes the specialized services and reimbursement rates for services provided by Child Choice Providers (CCPs) to children and youth in the legal care and custody of the Child and Family Services Agency (CFSA).

3600.2 Nothing in this chapter grants a Child Choice Provider agency the right to reimbursement for costs of providing these services. Eligibility for reimbursement

for these services is determined solely by the Human Care Agreement (HCA) between the Department and the Child Choice Provider and is subject to the availability of appropriated funds.

3600.3 No reimbursement under this rule shall be made for services that qualify for and can be claimed as a Medicaid-reimbursable service pursuant to the HCA.

3601 ELIGIBILITY FOR SERVICES

3601.1 Children and youth in the legal care and custody of Child and Family Services Agency (CFSA) are eligible for these services if they:

(a) Are identified by a Mental Health Rehabilitation Services (MHRS) provider as needing mental health services;

(b) Are eligible to receive services pursuant to Section 3403 of Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards) of this title; and

(c) Have been referred to a Child Choice Provider for receipt of mental health services.

3601.2 These services may be provided to a child or youth, and his or her family, for a maximum of thirty (30) days prior to the child's or youth's enrollment for services, and after enrollment as needed.

3601.3 All specialized services offered by a Child Choice must receive prior approval internally from the designated qualified practitioner within the Child Choice Provider agency before services are rendered, purchased, or provided.

3601.4 Specialized services offered by a Child Choice Provider include Choice Care Coordination, Flexible Spending Child Choice Services and Travel/ Transportation.

3601.5 Child Choice Providers are providers certified pursuant to Chapters 34 (Mental Health Rehabilitation Services Provider Certification Standards) and 35 (Child Choice Provider Certification Standards) of Title 22-A DCMR, which have demonstrated key core competencies with respect to delivering high-quality, culturally-competent, evidence-based mental health services for children and youth.

3602 CHOICE CARE COORDINATION

3602.1 Choice Care Coordination is care coordination provided by a Child Choice Provider to a child or youth in the legal care and custody of CFSA.

3602.2 Choice Care Coordination is the implementation of the comprehensive care plan through appropriate linkages, referrals, coordination, consultation and follow-up to needed services and support. Care Coordination consists of the following services:

(a) Attending interdisciplinary team meetings for ongoing assessment and diagnostic services;

(b) Providing telephonic consults and outreach;

(c) Following up on service delivery by providers, both internal and external to the treatment program, and ensuring communication and coordination of services;

(d) Contacting consumers who have unexcused absences from program appointments or from other critical off-site service appointments to re-engage them and promote recovery efforts;

(e) Making appointments and providing telephonic reminders of appointments;

(f) Assisting with arrangements such as transportation;

(g) Providing individual and family training to consumers to develop necessary coping skills to achieve and maintain recovery and support stability in placements within the community; and

(h) Engaging in measures that ensure that services are delivered in a manner that is culturally and linguistically competent.

3602.3 Choice Care Coordination may be provided by credentialed staff supervised by a qualified practitioner in accordance with the Department of Behavioral Health policy on supervision, or by a qualified practitioner.

3603 FLEXIBLE SPENDING CHILD CHOICE SERVICES

3603.1 Flexible Spending Child Choice Services (FLEXN Services) are non-Medicaid services and supports that are provided by a Child Choice Provider intended to augment, and thereby increase the therapeutic benefit of, clinical services provided to the consumers. These services and supports are resources and tools identified during therapeutic sessions to promote positive outcomes for the child or youth. These services may also be used with the child or youth and his or her family to support engagement and enhance coping skills. These resources may include but are not limited to:

(a) Incentives and rewards to reinforce positive clinical outcomes achieved by children and youth in treatment;

(b) Engagement efforts for encouraging children, youth, and their families to participate in treatment;

(c) Social network supports such as a non-treatment parent/child activity that is deemed therapeutically appropriate and should lead to a positive outcome; and

(d) Mental health modeling and training including purchasing items or services used to enhance self-esteem or to improve child safety.

3603.2 FLEXN services provided directly by the Child Choice Provider may be provided by a credentialed staff person under the supervision of a qualified practitioner in accordance with the Department's policy on supervision. Should the Child Choice Provider utilize a vendor to purchase FLEXN services in the best interest and therapeutic need of the youth, the vendor must be provided by a business licensed to do business in the District of Columbia or neighboring jurisdiction.

3604 TRAVEL/TRANSPORTATION

3604.1 Child Choice Providers utilize travel/transportation service as mileage reimbursement for travel services used for engagement activities to prevent placement disruption and promote positive outcomes with children or youth and their families placed in the care and custody of CFSA.

3604.2 Travel/transportation reimbursement is available to support services provided pursuant to this Chapter and MHRS provided in accordance with Chapter 34 of Title 22-A DCMR.

3604.3 Actual transportation shall be provided by an authorized staff according to the policies and procedures of the Child Choice Provider.

3605 SERVICE CODES AND RATES

3605.1 Service codes and rates for the Choice Care Coordination, FLEXN Services, and Travel/Transportation are set forth below:

SERVICE	CODE	RATE
Choice Care Coordination	H0006HU	$21.97
FLEXN Services	FLEXN	$0.01
Travel/Transportation	DBH-MILN	GSA Per Diem Schedule

3606 RECORDS AND DOCUMENTATION REQUIREMENTS

3606.1 Each Child Choice Provider shall utilize the Department's data management system for documenting and billing all services provided pursuant to this chapter.

3606.2 Each Child Choice Provider shall maintain all documentation and records in accordance with the Department standards in Chapter 34 of this title, federal and District privacy laws, and the Department's Privacy Manual.

3606.3 Child Choice Providers shall document each service and activity provided pursuant to this Chapter in the consumer's record in the Department's data management system. Any claim for services shall be supported by written documentation which clearly identifies the following:

(a) The specific service type rendered;

(b) The date, duration, and actual time, a.m. or p.m. (beginning and ending), during which the services were rendered;

(c) Name, title, and credentials of the person who provided the services;

(d) The setting in which the services were rendered;

(e) Identification of any further actions required for the consumer's well-being raised as a result of the service provided;

(f) A description of each encounter or service by the Child Choice Provider which clearly documents how the service was provided in accordance with this chapter; and

(g) Dated and authenticated entries, with their authors identified, which are legible and concise, including the printed name and the signature of the person rendering the service, diagnosis, and clinical impression recorded in the terminology of the International Statistical Classification of Diseases and Related Health Problems-10 (ICD-10 CM) or subsequent revisions, and the service provided.

3606.4 No Child Choice Provider shall be reimbursed for a claim for services that does not meet the requirements of this section or is not documented in accordance with this section.

3606.5 Only a Child Choice Provider that has incurred expenses eligible for reimbursement in accordance with its contract with the Department may bill the Department under this regulation.

3607 SUBMISSION OF CLAIM; PAYMENT OF VOUCHER

3607.1 The Child Choice Provider shall submit all claims for services rendered pursuant to this chapter through the Department's data management system.

3607.2 The Child Choice Provider shall submit appropriate documentation to support all claims under the HCA and upon request of the Department shall cooperate in any audit or investigation concerning this program.

3607.3 The Department will reimburse a Child Choice Provider for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of the HCA between the Department and the Child Choice Provider, subject to the availability of appropriated funds.

3699 DEFINITIONS

3699.1 When used in this chapter, the following terms shall have the meaning ascribed:

Child Choice Provider - a Mental Health Rehabilitation Service (MHRS) Core Services Agency (CSA) certified as a Child Choice Provider pursuant to Chapter 35 (Child Choice Provider Certification Standards) of this title with demonstrated ability to provide quality, evidence-based, innovative services and interventions to meet the most complex and changing needs of children, youth, and their families in the District, particularly those who have histories of abuse or neglect.

Core Services Agency or "CSA" - a Department-certified community-based MHRS provider that has entered into a Human Care Agreement with the Department to provide specified MHRS. A CSA shall provide at least one core service directly and may provide up to three core services via contract with a sub-provider or subcontractor.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Human Resources, with the concurrence of the City Administrator, and authorized pursuant to Section 404(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979, (D.C. Law 2-139; D.C. Official Code § 1-604.04(a) (2014 Repl.)), Section 108a of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88a (2014 Repl. & 2016 Supp.)), and Mayor's Order 2008-92, dated June 26, 2008, gives notice of the adoption of the following amendment to Chapter 11 (Classification and Compensation) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR).

The rules amend Section 1126 to reflect the independent personnel authority of the Attorney General; amend Subsections 1152.4 and 1152.5 to provide that the denial of a pay claim is a final decision not subject to further grievance or other administrative review; and add Section 1156 to implement quality step increases.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on September 2, 2016, at 63 DCR 011178. DCHR did not receive any comments from the public concerning the proposed rulemaking during the thirty (30) day comment period. There were no changes made to the text of the proposed rules. These rules were adopted as final on October 28, 2016 and shall become effective upon publication in the *D.C. Register*.

Chapter 11, CLASSIFICATION AND COMPENSATION, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Subsections 1126.20 through 1126.27 of Section 1126, DISTRICT SERVICE SALARY SYSTEM - GENERAL PROVISIONS, are amended to read as follows:

1126.20 A new appointment in the Legal Service may be made at any step on the appropriate LS salary schedule.

1126.21 A new appointment in the Legal Service to a Senior Executive Attorney Service (SEAS) position or non-SEAS management position may be made at an appropriate rate, as specified in Subsections 1126.22 through 1126.26 of this section.

1126.22 The Attorney General may designate the appropriate starting salary for new appointments to supervisory attorney positions in the Office of the Attorney General (OAG) on the LX Schedule or other appropriate salary schedule, based on the criteria established in Subsection 1126.23 of this section.

1126.23 The personnel authority shall designate the appropriate starting salary for agency supervisory attorneys, including general counsels and deputy general counsels, under the LX Schedule (or its equivalent), based upon, but not limited to, the following criteria:

(a) Number of employees supervised;

(b) Complexity of the duties and responsibilities;

(c) Experience and skills; and

(d) Job performance.

1126.24 The salary of an attorney compensated on the LX Schedule who is temporarily assigned to a position at a higher or lower level on the LX Schedule, or its equivalent, may be set at any salary within the salary range of the temporary assignment or at a salary within the salary range of the level of the attorney's regular position. Upon termination of the temporary assignment, the attorney shall return to the position and salary the attorney occupied prior to the temporary assignment.

1126.25 Attorneys paid from an LX salary schedule, or equivalent, shall not receive overtime pay or premium pay.

1126.26 The salary of an attorney compensated outside of the LX Schedule who is temporarily assigned to a position on the LX Schedule may be set at any salary within the salary range of the level to which the attorney is temporarily assigned. Upon termination of the temporary assignment, the attorney shall return to the position and salary the attorney occupied prior to the temporary assignment.

1126.27 Employees holding appointments in positions not on the LX Schedule on the effective date of this section shall continue to be paid their existing salary until a personnel action is effected establishing a salary within the salary range for the designated level of the covered positions on the LX Schedule.

Subsections 1152.4 and 1152.5 of Section 1152, PAY CLAIMS, are amended to read as follows:

1152.4 The pay authority shall either grant or deny the pay claim in writing. The failure of the pay authority to issue a written decision within the time specified in Subsection 1152.3 shall toll the three (3) year limitation established in Subsection 1152.1.

1152.5 A written decision by the pay authority either granting or denying a pay claim shall constitute the final decision on the claim and shall not be grievable or subject to further administrative review.

A new Section 1156, QUALITY SALARY INCREASE, is added to read as follows:

1156 QUALITY SALARY INCREASE

1156.1 The personnel authority may authorize a quality salary increase for exceptional service for an employee in the Career, Educational, or Legal Service who is entitled to a regular within-grade increase, but has not reached the maximum step of his or her grade.

1156.2 A quality salary increase may be authorized only once in any twelve (12) month period and may not be granted if the employee has received a monetary incentive award for performance within the same twelve (12) month period, pursuant to Chapter 19.

1156.3 A quality salary increase awarded under this section may be granted only when the employee's performance rating assigned for the most recent rating period prior to the granting of the quality salary increase is "Highly Effective Performer" or "Role Model," or their equivalent. The quality salary increase shall be awarded as follows:

Performance Evaluation Level	Number of Steps
Highly Effective Performer	1
Role Model or equivalent	2

1156.4 A quality salary increase shall be subject to the availability of funds.

1156.5 A quality salary increase awarded under this section shall not affect the waiting period requirement contained in Sections 1127 or 1129 for within-grade increases.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM-09-2016-01-E, IN THE MATTER OF 15 DCMR CHAPTER 9 — NET ENERGY METERING — COMMUNITY RENEWABLE ENERGY CREDIT RATE CLARIFICATION AMENDMENT ACT OF 2016

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code ("D.C. Code") and in accordance with Section 2-205 of the D.C. Code,[1] of its final action to approve the following amendments to Chapter 9 (Net Energy Metering) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"). The Commission issued a Notice of Proposed Rulemaking, which was published in the *D.C. Register*, on October 28, 2016, giving notice of the Commission's intent to act on the following amendments to 15 DCMR 9.[2] On November 28, 2016, the Potomac Electric Power Company filed comments in support of the amendments as issued.[3]

2. The proposed amendments to Chapter 9 of the Commission's rules to comport with the "Community Renewable Energy Credit Rate Clarification Amendment Act of 2016."[4] The proposed rules amend the following section of Chapter 9 of Title 15 DCMR: Sections 900 and 999.

Chapter 9, NET ENERGY METERING, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 900, GENERAL PROVISIONS, Subsection 900.1, is amended to read as follows:

900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering and community net metering provisions of the "Retail Electric Competition and Consumer Protection Act of 1999,"[5] as amended, the "Clean and Affordable Energy Act of 2008" ("CAEA"),[6] the "Community Renewable Energy Amendment Act of 2013" ("CREA"),[7] and

[1] D.C. Official Code § 34-802 (2012 Repl.); D.C Official Code § 2-205 (2012 Repl.).

[2] 63 DCR 013501-013502 (2016).

[3] *RM-09-2016-01*, Potomac Electric Power Company's letter supporting the amended definition as set forth in the Commission's NOPR, filed November 28, 2016.

[4] D.C. Law 21-0160 (October 8, 2016).

[5] D.C. Law 13-107 (May 9, 2000).

[6] D.C. Law 17-250 (September 25, 2008).

[7] D.C. Law 20-0047 (December 13, 2013).

the Community Renewable Energy Credit Rate Clarification Amendment Act of 2016 ("CRECRCAA").

Section 999, DEFINITIONS, Subsection 999.1, is amended by amending the following term and definition:

"CREF Credit Rate" means a credit rate applied to subscribers of community renewable energy facilities, which shall be equal to: (a) For residential subscribers, the full retail rate, which includes generation, transmission, and distribution charges for the standard offer service General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon Section 118 of the CREA; and (b) For commercial subscribers, the standard offer service rate – including generation and transmission charges for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon Section 118 of the CREA.

3. The Commission at its regularly scheduled open meeting held on December 21, 2016, took final action approving the proposed rule amending Chapter 9 of Title 15 DCMR. The rule will become effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to authority set forth in the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, as amended (D.C. Law 12-261; D.C. Official Code § 47-2851.20 (2015 Repl.)) and Section III.A(4) of Reorganization Plan No. 1 of 1983, hereby gives notice of the intent to adopt the following amendment to Chapter 2 (Housing Basic Business Licenses) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking would amend Section 201 (License Categories) of Chapter 2 to provide that no Basic Business License (license) to operate a one-family rental property shall be issued unless the applicant for a license either certifies that the premises meet the conditions set out in the Housing Code or is able to establish that the property passed an inspection conducted by DCRA.

Chapter 2, HOUSING BASIC BUSINESS LICENSES, of Title 14 DCMR, HOUSING, is amended as follows:

Section 201, LICENSE CATEGORIES, Subsection 201.2, is amended to read as follows:

201.2 Each license category, with the exception of a one-family rental, shall require a Certificate of Occupancy issued by the Department of Consumer and Regulatory Affairs ("Department") at the time of application for licensure. Applicants for the license category of one-family rental for a property that has been occupied for at least six (6) of the previous twelve (12) months shall submit either a certification form provided by the Department that states the premises for lease meets the conditions set out in Title 14 of the District of Columbia Municipal Regulations, or evidence that the Department conducted an inspection within the preceding twelve (12) months and determined that the premises for lease meet the conditions set out in Title 14 DCMR. Applicants for the license category of one-family rental for a property that has not been occupied for at least six (6) of the previous twelve (12) months shall submit evidence that the Department conducted an inspection within the preceding twelve (12) months and determined that the premises for lease meet the conditions set out in Title 14 DCMR.

All persons desiring to comment on these proposed regulations should submit comments in writing to Annie McCarthy, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5100, Washington, D.C. 20024, or via e-mail at annie.mccarthy@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. Free copies of these proposed regulations are available on the DCRA website at http://dcra.dc.gov by going to the "About DCRA" tab, clicking on "News Room", and then clicking on "Rulemaking".

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-200
December 20, 2016

SUBJECT: Appointment — Director, Office of Communications

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), it is hereby **ORDERED** that:

1. **KEVIN HARRIS** is appointed Director, Office of Communications, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2016-198, dated December 13, 2016.

3. **EFFECTIVE DATE**: This Order is effective *nunc pro tunc* to November 14, 2016.

MURIEL BOWSER
MAYOR

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

OFFICE OF THE CHIEF FINANCIAL OFFICER
Office of Revenue Analysis

NOTICE of INCREASES
for the 2017 HOMESTEAD DEDUCTION,
TRASH COLLECTION CREDIT AMOUNT and SENIOR INCOME THRESHOLD

(THE REAL PROPERTY TAX)

I. The Homestead Deduction Amount

Per the D.C. Code § 47-850, et seq., the annual Homestead Deduction amount for tax year 2017 is adjusted in the following manner

The Washington Area Average CPI value for Tax Year 2011:	146.04
The Washington Area Average CPI value for Tax Year 2016:	156.81
The percent change in the index during the above time period:	7.37%

Therefore, effective Tax Year 2017 (beginning October 1, 2016):

- **the Homestead Deduction amount will be[1] $72,450.00**

II. The Condominium and Cooperative Trash Collection Credit Amount

Per the D.C. Code § 47-872, et seq., the annual Trash Collection Credit amount for tax year 2017 is adjusted in the following manner

The Washington Area Average CPI value for Calendar Year 2015:	155.31
The Washington Area Average CPI value for Calendar Year 2016:	157.12
The percent change in the index during the above time period:	1.16%

Therefore, effective Tax Year 2016 (beginning October 1, 2016):

- **the Trash Collection Trash Credit amount will be[2] $108.00**

[1] Annual dollar amount changes are rounded down to the nearest $50.00 increment.

[2] Annual dollar amount changes are rounded to the nearest whole dollar.

III. The Senior Citizen or Disabled Real Property Tax Relief Income Threshold

Per the D.C. Code § 47-863, the maximum household annual gross income for the real property tax senior citizen or disabled tax relief for tax year 2017 is adjusted in the following manner

The Washington Area Average CPI value for Tax Year 2013:	151.96
The Washington Area Average CPI value for Tax Year 2016:	156.81
The percent change in the index during the above time period:	3.19%

Therefore, effective Tax Year 2017 (beginning October 1, 2016):

- **the household federal adjusted gross income for the real property tax senior citizen or disabled tax relief shall be[3] $128,950.00**

A Summary of Homestead Deduction, Trash Credit and Income Threshold Amounts for Tax Year 2017

	Base Amounts	CPI Adjustment Factor*	2017 Amounts
Homestead Deduction	$67,500.00	1.0737	$72,450.00
Trash Collection Credit	$107.00	1.0116	$108.00
Senior Citizen Maximum Income Threshold	$125,000.00	1.0319	$128,950.00

Source: U.S. Bureau of Labor Statistics, data accessed December 15, 2016

[3] Annual dollar amount changes are rounded down to the nearest $50.00 increment.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

DC Board of Accountancy
1100 4th Street SW, Room E380
Washington, DC 20024

MEETING AGENDA

Friday January 06, 2017
10:00 AM

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session - Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 3, 2017 at 9:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Architecture and Interior Design
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 27, 2017
9:30 AM

1. Call to Order – 9:30 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 11, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – March 4, 2016 at 9:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Barber and Cosmetology
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 10, 2017
9:00 AM.

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 5, 2016
7. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 6, 2017 at 10:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 5, 2017
1:00 PM.

1. Call to Order – 1:00 p.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 3, 2016
7. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 2, 2017 at 1:00 p.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Board of Industrial Trades
1100 4th Street, S.W., Room 300
Washington, D.C. 20024

AGENDA
January 17, 2017

1. Call to Order – 1:00 p.m.

2. Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.

3. Start of Public Session – 2:20 p.m.

4. Comments from the Public

5. Minutes – December

6. Recommendations

7. Old Business

8. New Business

9. Adjourn

Next Scheduled Regular Board Meeting, February 21, 2017
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Real Estate Appraisers
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 18, 2017
10:00 AM

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 16, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 17, 2015 at 10:00 a.m.

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

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

January 2017

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME
Grace Yeboah Ofori	Board of Accountancy	6	8:30am-12:00pm
Patrice Richardson	Board of Appraisers	18	8:30am-4:00pm
Patrice Richardson	Board of Architect and Interior Design	27	8:30am-1:00pm
Andrew Jackson	Board of Barber and Cosmetology	10	10:00am-2:00pm
Sheldon Brown	Boxing and Wrestling Commission	19	7:00pm-8:30pm
Pamela Hall	Board of Funeral Directors	5	12:00pm-4:00pm
Avis Pearson	Board of Professional Engineers	26	9:00am-1:30pm
Leon Lewis	Real Estate Commission	10	8:30am-1:00pm
Jennifer Champagne	Board of Industrial Trades Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers	17	1:00pm-3:30pm

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

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING ADMINISTRATION

D.C. BOXING AND WRESTLING COMMISSION
NOTICE OF PUBLIC MEETING
1100 4th Street, SW, Suite 200E, Washington, DC 20024

AGENDA
January 19, 2017
6:30 P.M.

1. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.

2. Call to Order

3. Attendance (Start of Public Session)

4. Comments from the Public

5. Minutes – December 15, 2016

6. Budget

7. Correspondence

8. Old Business

9. New Business

    A. Upcoming Professional Events
    B. Upcoming Amateur Events

10. Adjournment

NEXT MEETING SCHEDULED FOR FEBRUARY 16, 2017

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Professional Engineers
1100 4th Street SW, Room 300
Washington, DC 20024

AGENDA

January 26, 2017 ~ Room 300
10:00 A.M. (Application Review by Board Members)

11:00 A.M.

1) Call to Order – 11:00 a.m.

2) Attendance

3) Executive Session - **Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session – Closed to the Public**
   - Deliberation over applications for licensure
   - Review complaints and investigations

4) Comments from the Public
5) Review of Minutes
6) Recommendations
   - Review applications for licensure
   - Complaints/Investigations
7) Old Business
8) New Business
9) Adjourn

Next Meeting – February 23, 2017

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Real Estate Commission
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 10, 2017
10:00 AM

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 13, 2016
7. Executive Session (Closed to the Public) Pursuant to the authority of D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-775(b)(13) to deliberate upon a decision in an adjudication action or proceeding at 9:35 am.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 14, 2017 at 10:-00 a.m.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR QUALIFICATIONS

General Contractor

Eagle Academy Public Charter School, in accordance with Section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby requests qualifications to provide GENERAL CONTRACTOR for a time sensitive renovation project at a property located at 2403 Naylor Road SE, Washington, DC.

Project Summary
Eagle Academy PCS is requesting qualifications from GENERAL CONTRACTOR firms with extensive experience and expertise in the construction of school buildings, particularly for young children. The facility must meet the needs of the students, teachers, administrators and parents by designing "through the eyes of a child." The project will consist of the timely renovation of an existing buildings and construction of a new small addition at 2403 Naylor Road SE.

Submittal is Due: Monday, January 6, 2017, by 5:00 p.m.

Submittal Terms

1. Submittal Requirements – Please limit your submittal to less than 50 pages, and submit your submittal by the time specified above. No late submittals will be accepted. **Submittals should be directed to the attention of Mayra Martinez-Fernandez, Deputy COO, mmartinez@eagleacademypcs.org.**
2. Award of Contract – If the results of this RFQ warrant the awarding of a contract, Eagle Academy PCS anticipates the decision to be made by Friday, January 13, 2017. Eagle Academy will negotiate terms and fees with the top selected firm(s). Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.

E.L. HAYNES PUBLIC CHARTER SCHOOL

NOTICE OF EXTENSION OF REQUEST FOR PROPOSALS

Roof Replacement

E.L. Haynes Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby extends solicits and expressions of interest from Vendors or Consultants for the following service(s) that was originally posted on September 23, 2016 and extended on October 7, 2016:

- Roof Replacement

E.L. Haynes will offer one opportunity to walk the roof, Tuesday, January 17, 2017 (weather permitting). Interested parties MUST RSVP to kyochum@elhaynes.org by January 16th at 5 pm if they plan to attend.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, January 27, 2017. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Phone: 202.667-4446 ext 3504
Email: kyochum@elhaynes.org

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Facilities Study

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide a long-term facilities maintenance study for our three schools located at 4501 Kansas Ave, NW (elementary and high school) and 3600 Georgia Ave, NW (middle school). The contract will be assigned to a successful bidder who can provide the parts and service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, January 27, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Phone: 202.667-4446 ext 3504
Email: kyochum@elhaynes.org

DEPARTMENT OF ENERGY AND ENVIRONMENT

AMENDED - NOTICE OF FUNDING AVAILABILITY

Solar Works DC, the District's Low Income Solar Photovoltaic (PV) Systems Installation and Job Training Program

The Department of Energy and Environment (the Department) seeks eligible entities to establish a comprehensive year-round Solar Photovoltaic (PV) Systems job training program for District residents, ages 18 and over. DOEE seeks a qualified applicant to:

- Increase the District's solar capacity by installing solar photovoltaic systems on approximately 60-100 District edifices—including low income single family homes, multifamily buildings, and nonprofit owned buildings. To the extent possible, the installations should results in significant energy savings to low income District residents, including homeowners and renters.

- Operate a solar job training program that trains District residents through at least three cohorts annually and includes up to 25 participants per cohort;

- Create pathways to the middle class by preparing District residents to obtain part or full-time jobs in the fields of Solar Photovoltaic (PV) Systems installation, marketing, business operations engineering and sales and community outreach, relevant apprenticeships opportunities, and related fields such as construction and architecture; and

- Provide District residents with comprehensive solar job training.

The amount available for the project is approximately $950,000.

Beginning 12/23/2016, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to the announcement for this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to solarworksdc2017@dc.gov with "Request copy of RFA 2017-1712-" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Ben Stutz at (202) 481-3839 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Ben Stutz RE:2017-1712-" on the outside of the envelope.

The deadline for application submissions is 2/3/2017, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to solarworksdc2017@dc.gov.

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

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
☒-Faith-based organizations;
☒-Government agencies
☒-Universities/educational institutions; and
☒-Private Enterprises.

For additional information regarding this RFA, write to: solarworksdc2017@dc.gov.

DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

Green Building Case Studies and Green Building Historic Preservation Guidelines

The Department of Energy and Environment (the Department) seeks eligible entities to create green building case studies and green building historic preservation guidelines to help meet the ambitious goals related to green buildings set out in the Mayor's Sustainable DC Plan. . The amount available for the project is approximately $140,000.00. This amount is subject to availability of funding and approval by the appropriate agencies.

Beginning 12/30/2016, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to the announcement for this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to greenbuildingrfa.grants@dc.gov with "Request copy of RFA 2017-1708-USA" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Molly Simpson at (202) 671-3041 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Molly Simpson RE:2017-1708-USA" on the outside of the envelope.

An informational conference call and opportunity for question and answers will be held on 1/9/2017 from 1-2 PM ET. The call number is 877-784-3995 and conference code is 3127831.

The deadline for application submissions is 2/3/2017, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to greenbuildingrfa.grants@dc.gov.

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

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
☒-Faith-based organizations;
☒-Government agencies
☒-Universities/educational institutions; and
☒-Private Enterprises.

For additional information regarding this RFA, write to: greenbuildingrfa.grants@dc.gov.

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 (#7124) to Hillwood Estate, Museum and Gardens to operate one existing (1) 600 kWe emergency generator set powered by a 900 hp diesel engine. The generator is located at 4155 Linnean Avenue NW, Washington DC. The contact person for the facility is Don Rogers, Director of Facilities, phone number: 202-243-3921.

Emission Estimates:

Maximum emissions from this unit operating 500 hours per year are expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Particulate Matter (PM) (Total)	0.158
Sulfur Dioxide (SO_2)	0.003
Nitrogen Oxides (NOx)	5.4
Volatile Organic Compounds (VOC)	0.159
Carbon Monoxide (CO)	1.238

The proposed emission limits are as follows:

a. 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].

b. 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 application to operate the emergency generator and the draft permit are available for public inspection at AQD and copies may be made 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 30, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

2017 SCHEDULE OF ETHICS BOARD MEETINGS

In accordance with D.C. Official Code § 1–1162.04, the Office on Government Ethics provides notice of the 2017 Schedule of meetings of the District of Columbia Board of Ethics and Government Accountability. All Meetings are scheduled on Thursdays at 11:00 a.m. and will be held at The Board of Ethics and Government Accountability, 441 4th Street, N.W., Suite 540S, Washington, DC 20001. The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.

- January 5, 2017
- February 9, 2017
- March 9, 2017
- April 6, 2017
- May 4, 2017
- June 1, 2017
- July 6, 2017
- August 3, 2017
- September 7, 2017
- October 5, 2017
- November 2, 2017
- December 7, 2017

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Long Term Care Administration ("Board") hereby gives notice of its regular meetings for the calendar year 2017, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2012 Repl.)).

The Board will hold its regular meeting on the second Wednesday of each quarter beginning in January 2017. The first meeting of the calendar year will be held on Wednesday, January 11, 2017 from 10:00 AM to 12:00 PM and will be open to the public from 10:00 AM to 10:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b)(2012 Repl.)), the meeting will closed from 10:30 AM to 12:00 PM to discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

Subsequent meetings of the calendar year will be held at the same time on the following dates:

Wednesday, April 12, 2017
Wednesday, July 12, 2017
Wednesday, October 11, 2017

The meetings will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health's Events webpage at www.doh.dc.gov/events to view the agenda.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Physical Therapy ("Board") hereby gives notice of its regular meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

The Board regularly meets monthly on the second Wednesday of the month from 3:30 PM to 5:30 PM. The meeting will be open to the public from 3:30 PM until 4:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 4:00 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The Board's meetings for 2017 will be held on the following dates:

January 11, 2017
February 8, 2017
March 8, 2017
April 12, 2017
May 10, 2017
July 12, 2017
August 9, 2017
September 13, 2017
October 11, 2017
November 8, 2017
December 13, 2017

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health's Events webpage at www.doh.dc.gov/events to view the agenda.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Psychology ("Board") hereby gives notice of its regular meetings for the calendar year 2017, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985 (D.C. Official Code § 3-1204.05 (b) (2012 Repl.)).

In 2017, the Board will continue to hold its regular meeting on a quarterly basis on the second Thursday of each quarter. The first meeting of the calendar year will be held on Thursday, January 12, 2017 from 4:00 PM to 6:30 PM and will be open to the public from 4:00 PM until 4:30 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2012 Repl.)), the meeting will be closed from 4:30 PM to 6:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

Subsequent meetings for the calendar year will be held at the same time on the following dates:

April 13, 2017
July 13, 2017
October 12, 2017

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health's Events webpage at www.doh.dc.gov/events to view the agenda.

DEPARTMENT OF HEALTH

NOTICE OF PAYMENT ADJUSTMENT

The Director of the Department of Health, pursuant to the authority set forth in section 9(c) of the District of Columbia Health Professional Recruitment Program Act of 2005 ("Act"), effective March 8, 2006 (D.C. Law 16-71; D.C. Official Code § 7-751.08(c)), hereby gives notice of the adjustment to the rate of repayment to participants in the District of Columbia Health Professional Recruitment Program established by section 3 of the Act. The payment amounts are being increased to reflect the rate of inflation since implementation of the program based on the change in the Consumer Price Index (CPI) since that time. Section 8(c) of the Act authorizes the Director to increase the dollar amount of the total loan repayment annually to adjust for inflation. From September 2015 to September 2016, the CPI has increased by 1.46%, therefore the new repayment amounts shall be as follows:

For physicians and dentists starting in fiscal year 2017:

For the 1st year of service, 18% of total debt, not to exceed $26,142;
For the 2nd year of service, 26% of total debt, not to exceed $37,760;
For the 3rd year of service, 28% of total debt, not to exceed $40,665; and
For the 4th year of service, 28% of total debt, not to exceed $40,665.

For all other health professionals starting in fiscal year 2017:

For the 1st year of service, 18% of total debt, not to exceed $14,378;
For the 2nd year of service, 26% of total debt, not to exceed $20,768;
For the 3rd year of service, 28% of total debt, not to exceed $22,365; and
For the 4th year of service, 28% of total debt, not to exceed $22,365.

The new loan repayment rates stated herein shall be effective upon publication of this notice in the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-87

July 27, 2016

VIA ELECTRONIC MAIL

Mr. Lucas Barnekow

RE: FOIA Appeal 2016-87

Dear Mr. Barnekow:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Department of Behavioral Health ("DBH") improperly responded to a request you submitted on June 14, 2016, for records pertaining to day treatment services.

This Office notified DBH of your appeal on July 20, 2016. On July 26, 2016, DBH responded to the appeal and indicated that it would release all three responsive documents to you. It is our understanding based on correspondence we received on July 27, 2016, that you have received the responsive documents from DBH.

Based on the foregoing, we consider your appeal to be moot and it is dismissed. 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 DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Matthew Caspari, General Counsel, DBH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-88

August 8, 2016

VIA REGULAR MAIL

Mr. Keith Watters

RE: FOIA Appeal 2016-88

Dear Mr. Watters:

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 Motor Vehicles ("DMV") improperly redacted records responsive to your request under the DC FOIA.

Background

On April 29, 2016, you submitted a request to the DMV for insurance information pertaining to a vehicle allegedly involved in an accident ("Vehicle"). The DMV responded on May 9, 2016, providing the insurance information of the Vehicle. The insurance information did not include the insured's name. You exchanged emails with the DMV from May 9th to the 11th, regarding how to obtain the name of the individual who registered the Vehicle. As part of that exchange, on May 10, 2016, you sent the DMV an accident report; however, the personal information and Vehicle information were redacted in the accident report.

On May 19, 2016, you submitted a second request to the DMV for the Vehicle's registration information. The DMV responded to the request on June 1, 2016, providing the registration information with the personal information, name and address, redacted. The DMV explained in its response that the personal information was redacted pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2")[1] and the Driver Privacy Protection Act (DDPA)[2] and the District's statutory equivalent, D.C. Official Code § 50-1401.01b, under D.C. Official Code § 2-534(a)(6) ("Exemption 6").[3] The DMV's response also asserts that the DMV had not received documentation that would override the privacy protections of the relevant statutes under Exemption 6.

[1] Exemption 2 prevents disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy".
[2] 18 U.S.C. § 2721 *et. seq*.
[3] Exemption 6 protects disclosure for information specifically protected by other statutes. Here Exemption 6 incorporates the protections of the DPPA and the District's statutory equivalent into

You appealed the DMV's decision to redact the personal information from the Vehicle's registration information. You claim that you submitted the FOIA request in the District because Prince George's County police would not provide an unredacted incident report without a subpoena. You assert that the DMV's redaction is inappropriate because DPPA provides an exception that allows the disclosure of personal information to an attorney in anticipation of litigation. *See Wemhoff v. Wemhoff v. District of Columbia*, 887 A.2d 1004, 1011-12 (D.C. 2005). You claim that your request meets the DPPA exception because the personal information "would be of 'use' in our investigation into whether the at-fault driver is financially responsible."

The DMV provided this Office with a declaration in response to your appeal.[4] In its declaration, the DMV reasserts that the information it withheld is protected under Exemption 6. Specifically, D.C. Official Code § 50-1401.01b requires "sufficient written proof" to release personal information contained in vehicle records. The DMV asserts that the only written proof it received, the redacted incident report, was insufficient because the redactions make it impossible to determine if the report pertains to the Vehicle at issue.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Under Exemption 6, the DPPA and D.C. Official Code § 50-1401.01b expressly direct the DMV to protect personal information contained in vehicle records. The primary issue in this appeal is whether the litigation exception[5] permits the disclosure of personal information in the Vehicle records here. The application of the litigation exception of the DPPA was addressed by the Supreme Court in *Maracich v. Spears*, 133 S. Ct. 2191 (2013). The Court in *Maracich*

DC FOIA.

[4] A copy of DMV's declaration is attached.

[5] The litigation exception provides that personal information may be disclosed for use in connection with litigation, administrative, or arbitral proceedings. 18 U.S.C. § 2721(b)(4) and D.C. Official Code § 50-1401.01b (c)(4). The statutory language in the District sets a more rigorous standard than the DPPA as District law requires "sufficient written proof" for disclosure, a standard that is absent from the DPPA.

acknowledged that the phrases "in connection with" and "investigation in anticipation of litigation," are susceptible to a broad interpretation that could, without limitation, allow for disclosure of personal information with any remote relation to litigation. *See id*. at 2200. As a result, the Court found that such open-ended phrases should be construed narrowly, in light of their accompanying words, to avoid giving the litigation exception unintended breadth and preserve the statute's purpose of protecting personal information. *See id*. at 2201. Examining the accompanying statutory language, the Court found that the litigation exception applied to ensure the integrity and efficiency of an existing or imminent legal proceeding. *See id*. at 2202.

As noted, the District's litigation exception has an additional limitation of requiring "sufficient written proof" for disclosure of personal information. We agree with the DMV's assessment that no written proof has been submitted to the DMV connecting the Vehicle to the personal information requested. As a result, the DMV's redaction of the personal information is permissible under Exemption 6, pursuant to D.C. Official Code § 50-1401.01b and the DPPA. Having found that the redactions to personal information are proper under Exemption 6, we need not address whether the information is also protected under Exemption 2.

Conclusion

Based on the foregoing, we affirm DMV'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: David M. 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: 2016-89

August 8, 2016

VIA ELECTRONIC MAIL

Mr. Scott Cryder

RE: FOIA Appeal 2016-89

Dear Mr. Cryder:

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 Tax and Revenue ("OTR") improperly withheld records you requested under the DC FOIA.

Background

In March 2016, you submitted seven requests to OTR for numerous records related to OTR's assessment of commercial office buildings for tax year 2017. OTR responded to you on April 20, 2016, by: (1) indicating that information responsive to some of your requests may be found in the Pertinent Data Book for tax year 2017, which is available for purchase through OTR; (2) stating that no responsive documents were located with respect to one of your requests; (3) providing some documents responsive to your requests; and (4) denying the remaining responsive records under D.C. Official Code §§ 2-534(a)(1) ("Exemption 1"), (4) ("Exemption 4"), and (6) ("Exemption 6").

Subsequently you appealed to the Mayor contending that OTR "failed to even attempt to apply [the three exemptions it cited] to the documents withheld" and that you were unable to evaluate the merits of OTR's claimed exemptions because the agency did not provide you with a *Vaughn* index itemizing its withholdings. You further indicate that with respect to OTR's withholdings under Exemption 4, the deliberative process privilege is qualified and does not protect factual matters or those that are incorporated in final decisions or policy.

OTR provided this Office with a response to your appeal on August 3, 2016. Therein, OTR asserted that you are not challenging its withholding of documents under Exemptions 1 and 6; rather, you are challenging only OTR's reliance on Exemption 4, claiming that the deliberative process privilege is inapplicable to the records OTR withheld under this exemption. As a result, OTR's response to this Office addresses only its Exemption 4 withholdings. OTR provided this Office with a *Vaughn* index and documents for our *in camera* review that pertain only to these withholdings. OTR did not provide this Office with any information pertaining to what it withheld under Exemptions 1 and 6.

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 crux of this matter is whether OTR properly withheld records responsive to your requests under Exemptions 1, 4, and 6 of the DC FOIA.

Exemption 4 (D.C. Official Code § 2-534(a)(4))

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Privileges in the civil discovery context include the deliberative process privilege. *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

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 withheld records at issue here relate to OTR's assessment of commercial real property. OTR explained in its response to this appeal that commercial real property is valued based on the capitalized value of the expected net income produced by the property, which is computed by dividing estimated net operating income ("NOI") for a property by an appropriate capitalization rate for the class and type of property being valued. The NOI is computed by using vacancy rates, expense rates, and rental income. These factors are developed from actual income and expense information that building owners provide to OTR. Such information is protected from disclosure under D.C. Official Code § 47-821.[1]

[1] D.C. Official Code § 47-821 provides that valuation records are not open for public inspection.

According to the *Vaughn* index OTR provided this Office,[2] the documents withheld under Exemption 4 show "indicated capitalization rates for specific properties, as well as income, expense and vacancy rates determined for office properties used to establish the methodology for developing tax year 2017 assessments." OTR posits that the withheld documents: (1) are predecisional because they were prepared before the determination of the appropriate capitalization rates to be used to value real property for purposes of assessment and taxation; and (2) are deliberative because they were prepared for use by decision makers as part of the process of developing the capitalization rates and other factors used to assess the value of commercial buildings.

We reviewed *in camera* the withheld records that OTR provided us. The records consist of spreadsheets created by staff in OTR's Real Property Tax Administration that list, among other things, the addresses of commercial properties, their sale dates, sale prices, NOI, net rentable area, vacancy rate, and OTR's 2017 tax year income value. It is evident from the spreadsheets that some of the information reflects OTR staff analysis, such as the NOI, OTR's estimated income value, and preliminary capitalization rates. These draft values are predecisional in that they were prepared to inform OTR's decision making process and generated before OTR's determination of appropriate capitalization rates. As a result, releasing this information might "inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position." *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

In addition to being predecisional, the draft values OTR staff devised are also considered deliberative under Exemption 4. As the *Coastal States* court explained, the deliberative process privilege protects:

> . . . 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 some of the information used to arrive at a capitalization rate may be factual, and no longer in draft form, it is nonetheless protected by the deliberative process privilege because the factual information is merely a part of a larger formula that encapsulates OTR's decision making process. *Goodrich Corp. v. United States EPA*, 593 F. Supp. 2d 184, 189 (D.D.C. 2009) ("even if the data plugged into the model is itself purely factual, the selection and calibration of data is part of the deliberative process"). As a result, the records were properly withheld under Exemption 4.

[2] A copy of OTR's response and *Vaughn* index is attached for your reference.

Exemptions 1 and 6 (D.C. Official Code §§ 2-534(a)(1),(6))

As previously discussed, OTR indicated in its response to your requests that certain records were being withheld under Exemptions 1, 4, and 6. Your appeal references these three exemptions and your inability to evaluate the merits of "any of OTR's claimed exemptions" because OTR did not provide you with a *Vaughn* index and "… has failed to even attempt to apply these exemptions to the documents withheld." In response to your appeal, OTR claims that you are not challenging the withholding of documents under Exemptions 1 and 6 and accordingly limits its response to Exemption 4. Although your appeal contains a legal argument specifically about Exemption 4, we find no indication that you are not challenging OTR's withholdings under Exemptions 1 and 6. A short phone conversation with you confirmed that you did not intend to limit your appeal to documents held by Exemption 4.

OTR has not briefed this Office as to Exemption 1, and it is unclear whether OTR withheld a different set of documents under this exemption or the same records it withheld under Exemption 4. As a result, OTR has not met its burden of proof as to the denial of any records under Exemption 1.

With respect to Exemption 6, OTR explained in its response to this Office that it uses valuation records including private appraisals, rental data, and income forms, to establish a capitalization rate. OTR further asserted that this information is protected under D.C. Official Code § 47-4406. We recognize the validity of this exemption and its application to records in OTR's possession; however, OTR has not provided us with a *Vaughn* index, a sample of withheld records, or anything else to substantiate its position vis a vis Exemption 6. Moreover, OTR has not established that it attempted to reasonably segregate the withheld records as required under DC FOIA.[3]

Reasonable Segregability

Under DC FOIA, even when an agency establishes that it has properly withheld a document, the agency 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)).

The spreadsheets OTR withheld under Exemption 4 contain values OTR staff devised, valuation data protected under D.C. Official Code § 47-821, and other information that is not protected under FOIA or any other statute (i.e., the address, sale date and sale price of commercial properties sold in 2015). Generally, we would analyze whether it is possible for an agency to

[3] For instance, it is possible that valuation data was provided to OTR in a form or report that contains non-privileged, responsive information.

reasonably redact privileged information in a record and produce the non-privileged information. This analysis is not necessary here. Non-privileged information about the properties on which OTR based its assessments is contained in the Pertinent Data Book. This book is published by OTR annually and is available to the public. Further, as discussed above, the non-privileged information contained in the withheld spreadsheets is not reasonably segregable because the selection and calibration of the data amounts to deliberation and is therefore is protected in its entirety by Exemption 4.

Vaughn Index

In denying a FOIA request, an agency is required to include certain information, such as an explanation of the reasons for the denial, the name of each person responsible for the denial, and the right to appeal. D.C. Official Code § 2–533. There is, however, no requirement that an agency's response to a FOIA request contain the same documentation necessary in litigation; courts have found that a *Vaughn* index is not necessary during the administrative phase of a FOIA request. S*ee, e.g., Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 11 (D.D.C. 1995) (finding that agencies need not provide a *Vaughn* index until ordered by court after plaintiff has exhausted administrative process); *see also, Sakamoto v. EPA*, 443 F. Supp. 2d 1182, 1189 (N.D. Cal. 2006) (granting summary judgment because agency responses to FOIA requests are not required to contain a *Vaughn* index); *Schaake v. IRS*, No. 91-958, 1991 U.S. Dist. LEXIS 9418, at *9-10 (S.D. Ill. June 3, 1991).

OTR is correct that it was not required to create and provide you with a *Vaughn* index in its initial denial of your FOIA requests. Regardless, OTR was required to provide "[t]he specific reasons for the denial, including citations to the particular exemption under § 2-534 relied on as authority for the denial." *See* D.C. Official Code § 2-533. In specific, OTR was required to provide

> A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation how each exemption applies to the record withheld. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record or portion of a record withheld . . .

1 DCMR § 407.2 (b)

OTR did not provide you with specific reasons, nor did it articulate what was being withheld. Instead, OTR provided you with a blanket denial to an unknown number of records through use of multiple statutory citations. While OTR was not required to produce a *Vaughn* index, OTR's letter of denial was required to meet the standard set by 1 DCMR § 407.2 (b), and we find that OTR's initial denial letter did not meet this standard.

Conclusion

Based on the foregoing, we affirm in part and remand in part this matter to OTR. With respect to Exemption 4, we affirm OTR's decision to withhold the responsive spreadsheets in their entirety.

With respect to Exemptions 1 and 6, to the extent that they apply to different records than the ones reviewed in this decision, we direct OTR to, within 7 business days of this decision: (1) disclose to you records withheld under these exemptions; or (2) provide this Office with a *Vaughn* index, the withheld records,[4] and a substantive response explaining OTR's invocation of these exemptions.

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,

Mayor's Office of Legal Counsel

cc: Bazil Facchina, Assistant General Counsel, OTR (via email)

[4] With respect to valuation records that consist of standard forms or reports, OTR may provide us with a representative sample.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-90

August 1, 2016

VIA ELECTRONIC MAIL

Ms. Erica M. Allen Winslow

RE: FOIA Appeal 2016-90

Dear Ms. Winslow:

This letter is in response to the appeal you sent to the Mayor under the District of Columbia Freedom of Information Act. It appears that you sent your appeal to the Mayor in error, as your appeal concerns an unanswered FOIA request that you submitted to the United States Department of Health and Human Services' Administration for Children and Families ("ACF").

The Mayor has jurisdiction to review FOIA decisions issued by District agencies; however, ACF is a division of a federal agency. As a result, the Mayor has no authority to adjudicate your appeal. In order to appeal ACF's lack of response to your FOIA request, you must pursue the appellate process established under federal FOIA.

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,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-91

August 24, 2016

VIA ELECTRONIC MAIL

Mr. Dalvaro Weaver

RE: FOIA Appeal 2016-91

Dear Mr. Weaver:

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 Housing and Community Development ("DHCD") failed to respond to a request for records you made under the DC FOIA.

Background

On February 27, 2016, you submitted a request under the DC FOIA to DHCD asking questions and seeking records relating to various District of Columbia Housing Authority ("DCHA") programs. DHCD did not respond to this request or ask you to clarify the records you were seeking.

On July 25, 2016, you filed this appeal, challenging "any parts of the initial request that were never answered/responded to by the Department of Housing and Community Development." That same day, this Office asked you to clarify whether DHCD had responded to any aspect of your request. On August 3, 2016, you affirmed that DHCD had not responded, and this Office notified DHCD of the appeal.

On August 24, 2016, DHCD responded to your appeal. DHCD's response did not state whether it had responded to your request or otherwise communicated with you. DHCD's response contains a description of the search it conducted, which states, "[a]fter a thorough search through records contained in our Development Finance Division, DHCD had made a determination of **no responsive documents.** This is because DHCD does not have any filings on records regarding [your requested documents]."

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that

policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *See e.g.* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n,* 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is DHCD's lack of response to your request and the adequacy of the search it conducted on appeal.

DHCD's Lack of Response

You filed a request on February 27, 2016, pursuant to 1 DCMR § 402.3. Under DC FOIA, DHCD was obligated to either request that you clarify the terms of your search or explain to you in a response letter why it could or could not provide you with a record(s). *See* 1 DCMR §§ 402.5, 407. DHCD's failure to comply with both of these regulations in the five months before you filed your appeal was improper and constituted a constructive denial of your request. D.C. Official Code § 2-532(e).

Adequacy of DHCD's Search

In response to your appeal, and in the interest of efficiency, this Office requested that DHCD: (1) ask you to clarify which records you were seeking; or (2) conduct a search for the records using your initial request. DHCD chose to conduct a search and notified this Office of the search it conducted.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983). . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

Accordingly, in order to make a reasonable and adequate search, an agency must make reasonable determinations as to: (1) the location of records requested; and (2) the search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *Id.*

An agency can demonstrate that these determinations have been made by a "reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched . . . ." *Id.*. Conducting a search in the record system most likely to be responsive is not by itself sufficient; "at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents." *Id.* (internal quotations omitted).

In this matter, DHCD has indicated that its search was "thorough" and that DHCD searched the "Development Finance Division." DHCD has not described why DHCA (a separate District agency) records would be located in the Development Finance Division of DHCD, or why the Development Finance Division would be the only location where such records would be located. DHCD has failed to indicate that the Development Finance Division is the only record system likely to produce a responsive document or that all files likely to contain a responsive document were searched. Moreover, DHCD did not indicate the search terms used to conduct the search or when the search was conducted. The only information DHCD has provided this Office is a statement that the agency conducted a search and found no results.

Accordingly, we find that DHCD's search was not reasonable or adequate. Moreover, it is unclear whether DHCD has, to date, communicated to you in any way the results of its search or its intent to deny your DC FOIA request.

Conclusion

Based on the foregoing, we hereby remand your appeal and order DHCD to issue you a response within ten (10) business days. In its response, DHCD shall, at a minimum, identify all record systems in its possession likely to produce responsive documents and identify the search terms used to search those record systems. If record systems other than the Development Finance Division are identified, DHCD shall conduct a search of them for responsive records and provide such records, subject to any applicable exemption. If DHCD believes that the reason it does not have responsive records is because it does not generally maintain the records of another agency, DHCA, it should explain this to you in accordance with 1 DCMR § 407.

This constitutes the final decision of this Office. However, following DHCD's response, you may file a separate appeal to challenge any substantive issues it raises.

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,

Mayor's Office of Legal Counsel

cc: Timothy Wilson, FOIA Officer, DHCD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-92

August 19, 2016

VIA E-MAIL

Ms. Lesia Tolson

RE: FOIA Appeal 2016-92

Dear Ms. Tolson:

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 pertaining to your application to become an officer with the MPD.

On July 11, 2016, you submitted a FOIA request to the MPD for documents related to your application for the position of a police officer. On July 21, 2016, the MPD denied your request stating that the Authorization for Release of Information and Statement of Consent ("Consent Waiver") that you signed "waived your rights to obtain information and documentation resulting in denial of an appointment."

On appeal, you challenge the MPD's response that the Consent Waiver prohibits the disclosure of all of your application materials under FOIA. You acknowledge, however, that the Consent Waiver prohibits the release of the sources of confidential information.

The MPD sent this Office a response to your appeal on August 15, 2016.[1] In its response the MPD revises its original position and agrees to process your request in accordance with FOIA Appeal 2016-67 decided earlier this year.

In summary, in FOIA Appeal 2016-67 this Office found that the Consent Waiver does not prevent disclosure of all application records. However, this Office also found that portions of application records may be withheld pursuant to valid exemptions under DC FOIA. For example, certain inter- or intra-agency records in the application file may be protected from disclosure under the deliberative process privilege which is incorporated into the litigation privileges of D.C. Official Code § 2-534(2)(4). To qualify for protection under the deliberative process privilege the information must be 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*. Records that the MPD created to assess the application or assist the hiring decision process are intra-agency records, predecisional, and deliberative.

[1] A copy of the MPD's response is attached to this determination.

Disclosure of such records would chill the open and frank discussions regarding hiring decisions. As a result, those records are protected from disclosure under the deliberative process privilege.

Conclusion

Based on the MPD's decision to release portions of your application records we consider this 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 MPD's substantive response.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s 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: 2016-93

August 11, 2016

VIA ELECTRONIC MAIL

Ms. Claudia Barber

RE: FOIA Appeal 2016-93

Dear Ms. Barber:

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 Administrative Hearings ("OAH") failed to adequately respond to a June 10, 2016, communication from your attorney requesting the production of various emails in OAH's possession.

This Office notified OAH of your appeal on August 9, 2016. On August 10, 2016, OAH responded, indicating that it had not construed your attorney's June 10 communication as a request under DC FOIA: (1) because of the individual to whom it was addressed; and (2) because it was initiated in the context of a demand for discovery in connection with a then ongoing proceeding before the Commission on Selection and Tenure ("COST"). OAH further indicated to this Office that having been advised that your request was submitted under DC FOIA, it is prepared to respond to the request as such.

Due to the circumstances of a then ongoing proceeding before COST and the imprecise drafting of both the June 10 request submitted by your attorney and the appeal submitted to this Office, we accept OAH's representation that it did not construe the June 10 request as a request for government records under DC FOIA. We believe the appropriate resolution of your appeal seeking response to the request for records is to direct OAH to respond to your request through its FOIA Officer and in accordance with the requirements of DC FOIA.

Conclusion

Based on the foregoing, we hereby remand this matter to OAH to respond to your request within fifteen (15) business days from the date of this decision.

This constitutes the final decision of this Office. This dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OAH'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 DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Marya Torrez, FOIA Officer and Assistant General Counsel, OAH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-94

August 25, 2015

VIA ELECTRONIC MAIL

RE: FOIA Appeal 2016-94

Dear Mr. Prohaska:

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 from MPD under DC FOIA.

Background

On August 3, 2016, you submitted a request to MPD for "the written statements of all the assisting officers, including final opinions, concurring and dissenting opinions, as well as orders, made in the adjudication of [a homicide investigation]." You asserted that the records you were seeking consisted of information that must be made public pursuant to D.C. Official Code § 2-536. [1]

MPD responded to you on August 4, 2016, denying your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD also advised you that D.C. Official Code § 2-536 is not applicable to its investigatory records because MPD does not adjudicate cases within the meaning of the statute.

On appeal, you challenge MPD's denial of your FOIA request and assert several reasons why you believe there should be more transparency regarding the homicide investigation. The MPD responded to your appeal in a letter to this Office[2] in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i). MPD further asserted that the records are protected from disclosure under the "law enforcement privilege" pursuant to D.C. Official Code § 2-534(a)(4), which protects inter-agency or intra-agency records that would not be available by law to a party other than a public body in litigation.

[1] D.C. Official Code §2-536(a)(3) provides that final opinions and orders made in the adjudication of cases are public information.
[2] MPD's response, privilege log, and declaration are attached for your reference.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings.[3] The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

Here, the records you seek were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has clearly met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings. MPD asserts that disclosure of the records could reveal the direction of the investigation and allow suspects to avoid detection, arrest, and prosecution. Further, disclosure could allow a suspect or witness to take actions or tailor statements in order to hamper or defeat enforcement efforts. While your appeal raises several concerns regarding circumstances related to the homicide, these concerns do not overcome the purpose of Exemption 3(A)(i), which is to prevent interference of enforcement proceedings. As discussed, any investigatory details revealed would potentially interfere with enforcement efforts; therefore, the investigatory records have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

[3] It is unclear why MPD chose to assert on appeal a "law enforcement privilege" pursuant to D.C. Official Code § 2-534(a)(4) when the protections claimed for that privilege are nearly identical to those expressly stated in D.C. Official Code § 2-534(a)(3). This determination will address the application of D.C. Official Code § 2-534(a)(3)(A)(i), which was the original basis of denial and reasserted in response to the appeal.

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

Staff Attorney
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-95

August 26, 2016

VIA ELECTRONIC MAIL

Ms. Elizabeth Loeb

RE: FOIA Appeal 2016-95

Dear Ms. Loeb:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of General Services ("DGS") failed to conduct an adequate search in response to your June 10, 2016, request under DC FOIA for documents concerning a potential swimming pool at Hearst Park.

This Office notified DGS of your appeal on August 11, 2016. On August 25, 2016, DGS responded.[1] DGS notes that pursuant to 1 DCMR § 402.1, "[a] request for a record of an agency . . . shall be directed to the particular agency." Accordingly, DGS's responsibility in responding to your request was to search for records maintained by DGS and to direct you to the agencies and individuals who maintain the additional records you seek. DGS was neither responsible for nor capable of responding to a request for records maintained by the Department of Parks and Recreation, the Council of the District of Columbia, or Advisory Neighborhood Commissions.

In its response, DGS advises that it construed your first request as very broad and asked you to clarify your search terms pursuant to 1 DCMR § 402.4. Your initial refusal to provide search terms or other information resulted in DGS conducting a search of DGS employee emails that yielded no responsive records. According to DGS, it informed you that its search produced no responsive records, at which point you amended your request by refining the terms of your search.

DGS conducted a second search using your refined search terms, and this search produced a voluminous amount of records. Due to the number of records retrieved, DGS notified you on August 22, 2016, that it was extending its deadline to respond to your request. DGS further indicated to this Office that it intends to provide you with all non-exempt responsive documents by September 12, 2016.

We accept DGS' representation that after you provided additional search terms pursuant to 1 DCMR § 402.4, DGS was able to conduct a second, adequate search, the results of which are

[1] A copy of DGS' response is attached.

being reviewed for disclosure. We believe the appropriate resolution of your appeal is to allow DGS to continue its stated effort to produce non-exempt responsive records by September 12, 2016.

Conclusion

Based on the foregoing, we hereby deem this matter moot based on DGS' assertion that it will complete its review of records retrieved from the second search it conducted and provide you with responsive, non-privileged documents by September 12, 2016.

This constitutes the final decision of this Office; however, you may assert any challenge, by separate appeal, to DGS'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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Black Johnson, Program Support Specialist, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-96

September 8, 2016

Mr. Bobby Hazel

RE: FOIA Appeal 2016-96

Dear Mr. Hazel:

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 Chief Medical Examiner ("OCME") improperly withheld records you requested under the DC FOIA.

On July 15, 2016, you submitted a request to OCME for records related to the board certification of certain chief and deputy medical examiners employed by the District in the 1990s. OCME received your request on July 25, 2016.

OCME responded to your request on August 2, 2016, stating that it does not maintain personnel records for the former medical examiners you specified. OCME advised you to contact the District's Department of Human Resources ("DCHR") to inquire whether it maintains responsive records.

By letter dated August 20, 2016, you filed the instant appeal, arguing that OCME failed to include a *Vaughn* index in its response to you or explain the scope of OCME's search of DCHR's records.

OCME responded to your appeal in a letter to this office dated August 25, 2016.[1] In its response, OCME described the search it conducted and reiterated that no documents were retrieved. Further, as a courtesy, OCME contacted DCHR and requested that DCHR conduct a search of the personnel records it maintains; however, DCHR's search yielded no results with the information you provided.

This Office accepts OCME's representation that it does not maintain responsive personnel records for the medical examiners you specified, as they were employed by the District before the establishment in 2000 of the current OCME. As a result, we agree with OCME that the agency most likely to maintain responsive records, if they exist, would be DCHR. Further, OCME was under no obligation to search the records of DCHR. DC FOIA requests are agency-specific. *See* 1 DCMR 402.1 ("A request for a record of an agency . . . shall be directed to the particular agency"). OCME was obligated only to search records maintained by OCME. If you

[1] A copy of OCME's response is enclosed with this letter.

would like DCHR to search for certain records, you must submit a separate FOIA request to DCHR. Lastly, OCME was not required to provide you with a *Vaughn* index in its denial letter. A *Vaughn* index is appropriate when an agency has withheld a record. Here, OCME has not withheld any records from you; rather, it conducted a search and did not locate any. Moreover, as OCME indicates in its response to this Office, *Vaughn* indices are not required during the administrative FOIA process.

Conclusion

Based on the foregoing, we affirm the OCME's response to 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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Mikelle L. DeVillier, General Counsel, OCME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-97

August 30, 2016

VIA ELECTRONIC MAIL

Ms. Cathryn Rabinowitz

RE: FOIA Appeal 2016-97

Dear Ms. Rabinowitz:

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 Fire and Emergency Medical Services Department ("FEMS") failed to respond to a request you submitted for records pertaining to response times for emergency calls dispatched to FEMS.

This Office notified FEMS of your appeal on August 24, 2016. On August 25, 2016, FEMS advised us that pursuant to D.C. Official Code § 2-532(d), it had invoked an extension on August 8, 2016, of up to 10 business days to respond to your request. FEMS documented this extension in FOIAxpress, the electronic system in which you submitted your request. It is our understanding that on August 25, 2016, FEMS also informed you that the documents you requested would be disclosed in full and there would be a fee for the services rendered.

Based on the foregoing, we consider your appeal to be moot and it is dismissed. 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Angela Washington, Information & Privacy Officer, FEMS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-98

September 20, 2016

VIA ELECTRONIC MAIL

Mr. Robert McKeon

RE: FOIA Appeal 2016-98

Dear Mr. McKeon:

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 State Superintendent of Education ("OSSE") has failed to respond to a request you submitted to OSSE.

Background

On August 10, 2016, you submitted a request to the OSSE seeking:

> All correspondence, emails, budgetary items, notes, statements, memoranda, directives and orders concerning special education for private school children within the context of equitable services being provided within the child's private school.
>
> All correspondence, emails, notes, statements, memoranda, directives and orders by, between or concerning the Roman Catholic Archdiocese of Washington or any parochial school therein concerning special education for private school children within the context of equitable services being provided within the child's parochial or private school.
>
> All correspondence, emails, notes, statements, memoranda, directives and orders concerning or related to the change in policy from providing equitable services directly to special needs students in a DCPS school to providing (under a new model) consultative services at the child's private school.

As this request was broad in scope, OSSE's FOIA Officer reached out to you on August 26, 2016, pursuant to 1 DCMR § 402.5, to clarify the terms of your request. You responded on August 27, 2016, and declined to clarify or narrow the terms of your request.

On September 6, 2016 you filed this appeal, asserting that you had "received nothing from OSSE related to this FOIA." That same day, this Office notified OSSE of your appeal.

On September 16, 2016, OSSE responded to this appeal by letter to this Office. In that letter, OSSE explained that it had submitted an email search to the Office of the Chief Technology Officer on September 14, 2016. OSSE will have to wait for the results of that search, and will then need time to review the documents. Because of the likely voluminous number of responsive records, OSSE has represented that review will take time but that OSSE will release responsive records to you on a rolling basis. Further, OSSE has stated that it has provided to you, through FOIAXPress, the responsive documents that it has reviewed to date. This Office accepts OSSE's representations.

Conclusion

In light of the foregoing, we direct OSSE to immediately begin releasing documents in its possession that are responsive to your request, and to continue releasing documents to you on a rolling basis as they are reviewed.

Your appeal was based on a lack of a response from OSSE; OSSE has begun its production, through FOIAXPress, and has therefore responded to your appeal. As a result, this Office finds your appeal to be moot, and it is dismissed, without prejudice for you to file a separate appeal to challenge OSSE's substantive response.

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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Mona 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: 2016-99

September 15, 2016

VIA US MAIL

Mr. Raoul Hughes

RE: FOIA Appeal 2016-99

Dear Mr. Hughes:

This letter responds to the above-captioned 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 this appeal, you assert that the Metropolitan Police Department ("MPD") failed to adequately respond to your FOIA request for documents related to search warrant inventories and receipts.

The MPD initially responded to your FOIA request by providing you with some responsive documents, but its response did not include receipts regarding disposition of property. You informed the MPD of its omission, and the MPD replied that it needed additional information to search for the omitted records. You assert on appeal that you provided additional information to MPD in a letter dated May 24, 2016, but the MPD never responded further.

The MPD sent this Office a response to your appeal on September 15, 2016. In its response, the MPD claims that it cannot confirm that it received your May 24th letter. The MPD affirms that is will now search for the responsive documents based on the additional information that you submitted with your appeal.

Based on the MPD's representation to this Office that it will continue its search now that it has additional information, we consider this 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 MPD's substantive response. This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-100

September 21, 2016

VIA E-MAIL

Mr. Ronald H. Jarashow

RE: FOIA Appeal 2016-100

Dear Mr. Jarashow:

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 Department of Human Resources ("DCHR") denied your FOIA request for the final decision ("Order") and administrative record created by the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings ("COST") concerning a former administrative law judge.

Initially, DCHR denied your request for COST's Order on the basis of personal privacy. Following your appeal, DCHR changed its position and disclosed COST's Order to you on September 14, 2016. Regarding the administrative record, DCHR has consistently asserted that such records are generally made a part of an employee's Official Personnel File ("OPF"); however, the Office of Administrative Hearings ("OAH"), which compiles the administrative record, has not yet completed or provided DCHR with this record.[1]

Since DCHR has provided you with the COST Order you requested, we render this aspect of your appeal moot. With respect to the administrative record you are seeking, we accept DCHR's representation that it does not yet possess this document.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Leah N. Brown, FOIA Officer, DCHR (via email)

[1] A copy of DCHR's memorandum dated September 19, 2016, is attached for your reference.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-101

September 22, 2016

Ms. Michelle Smith

RE: FOIA Appeal 2016-101

Dear Ms. Smith:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

On August 11, 2016, you submitted a request to DCRA for "the annual number of housing business licenses that [DCRA] received from 1998 to the present. How much money is received and how that money is used and distributed."

DCRA responded to your request on September 6, 2016, stating that it does not maintain records of a list described in your request. DCRA's further asserted that it is not obligated under DC FOIA to create new records or to answer questions.

By email dated September 7, 2016, you filed the instant appeal. DCRA responded to your appeal in a letter to this office dated September 21, 2016.[1] In its response, DCRA described the search it conducted and reiterated that no documents were retrieved. DCRA explained that within the agency, the Basic Business License ("BBL") Division has the most knowledge about the types of records you are seeking. DCRA's FOIA Officer requested a search for responsive documents from the BLL. The BBL conducted a search of its records and found no responsive documents. Further, DCRA's response indicates that DCRA's FOIA Officer consulted with the agency's Information Technology department, which conducted an email search for records responsive to your request; however, this search also yielded no responsive documents.

This Office accepts DCRA's representations that: (1) DCRA conducted a reasonable search for responsive records; and (2) the searches DCRA conducted yielded no records responsive to your request. As a result, DCRA conducted an adequate search and has not withheld any records from you; rather, it conducted searches and did not locate any.
Further, DCRA correctly asserted that it does not have to create documents to respond to your request, nor is it obligated under DC FOIA to answer interrogatories. Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States EPA*, 767 F.2d 569, 574 (9th Cir. 1985). The law requires the

[1] A copy of DCRA's response is enclosed with this letter.

disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-30 (D.D.C. 2009). The request you submitted to DCRA consists largely of questions (i.e., "How much money is received and how that money is used and distributed[?]"), and agencies are not required to respond to interrogatories under the DC FOIA.

Conclusion

Based on the foregoing, we affirm DCRA's response to 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.

Respectfully,

Mayor's Office of Legal Counsel

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: 2016-102

September 16, 2016

VIA ELECTRONIC MAIL

Mr. Thabbit Bey

RE: FOIA Appeal 2016-102

Dear Mr. Bey:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Human Services ("DHS") failed to respond to a request you submitted for certain program records.

This Office notified DHS of your appeal on September 13, 2016. On September 13, 2016, DHS attempted to deliver to you responsive documents by email and carbon copied this Office on its messages. Shortly thereafter, DHS was notified by its email system that the messages it sent you did not go through and were undeliverable to the email address you had originally supplied. On September 16, 2016, after conferring with you, DHS successfully sent the requested documents to a new email address that you provided. It is our understanding that the documents you requested have been successfully produced by DHS.

Since your appeal was based on a lack of a response from DHS, and DHS has now responded to your request, we consider your appeal to be moot and it is dismissed. 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert Warren, Assistant General Counsel, DHS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-103

September 28, 2016

VIA ELECTRONIC MAIL

Mr. Craig Richardson

RE: FOIA Appeal 2016-103

Dear Mr. Richardson:

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") improperly withheld records you requested under the DC FOIA.

Background

On August 1, 2016, you requested from the OAG:

> copies of all email or text correspondence, attachments, and any other document recording, reflecting, discussing or mentioning:
> a) any request by any Party to the Agreement seeking consent to share records pursuant to this Agreement;
> b) any Party to the Agreement consenting to share records pursuant to this Agreement; and,
> c) any record, as described above, reflecting any Party to the Agreement objecting to sharing records pursuant to this Agreement.

You sent a second, substantively identical request on August 9, 2016.

On September 6, 2016, the OAG responded to your first request, and on September 9, 2016, it responded to your second request. Both responses were substantively identical, and for the purposes of the remainder of this decision both will be treated as the same matter. The OAG's response consisted of producing a single document that had portions redacted because, according to the OAG, these portions were "unresponsive to your request." The OAG also indicated that it was withholding a number of documents pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4").[1]

[1] Exemption 4 exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body."

Subsequently, you appealed the OAG's denial of your request to the Mayor, contending that non-responsiveness is not proper grounds for redaction and citing to the recent case, *American Immigration Lawyers Association v. Executive Office for Immigration Review* (D.C. Cir. July 29, 2016), in support of your position. Further, you argued that the records you seek could not be protected under D.C. Official Code § 2-534(a)(4) because "sharing records outside of OAG would necessarily waive any other privileges as well."

Subsequently, the OAG changed its position with respect to the document it had produced to you in redacted form and provided you with an unredacted copy of the document on September 22, 2016. OAG contends that this portion of your appeal is now moot. This Office agrees.

On September 22, 2016, the OAG provided this office with a response to your appeal.[2] The OAG identified 4 emails, with attachments,[3] that are responsive to your request but which the OAG has withheld in their entirety. The four withheld emails are authored by attorneys general (or staff) from other jurisdictions and contain summary legal opinions related to various public records requests made pursuant to various state laws. The OAG has stated that the responsive documents are exempt from disclosure under Exemption 4 through the attorney-work product privilege. The OAG maintains that the withheld records (authored by lawyers not employed by the District) are covered by Exemption 4 as "[i]nter-agency or intra-agency" records, because the OAG has a common interest in prosecution with the group of Attorneys General, which has been memorialized in a Common Interest Agreement ("Agreement"). The Agreement enumerates that the common interest of the attorneys general is:

> (i) potentially taking legal actions to compel or defend federal measure to limit greenhouse gas emissions, (ii) potentially conducting investigations of representations made by companies to investors, consumers and the public regarding fossil fuels, renewable energy and climate change, (iii) potentially conducting investigations of possible illegal conduct to limit or delay the implementation and deployment of renewable energy technology, (iv) potentially taking legal action to obtain compliance with federal and state laws governing the construction and operation of fossil fuel and renewable energy infrastructure, or (v) contemplating undertaking one or more of these legal actions, including litigation ("Matters of Common Interest").

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[2] The OAG's response included copies of the memoranda at issue for *in camera* review, as well as a declaration from Tony Towns, the OAG's FOIA Officer, describing the search he conducted to identify responsive documents. You were inadvertently copied on the OAG's response, and as a result received the documents which are the subject of this appeal. This Office understands that you have discussed the inadvertent disclosure with the OAG and have taken appropriate steps consistent with the ethics rules of the DC Bar. The inadvertent disclosure made by the OAG will not affect our analysis in this decision.

[3] Only three of the emails provided by OAG for *in camera* review contained attachments. The fourth email (bates stamped DC PRIVILEGED 000103), which explicitly references an attachment in the body, did not include an attachment for this Office to review.

The OAG maintains that the 4 withheld emails are a part of the common interest because they were "shared and sought to further a common interest: sharing documents appropriately pursuant to the Common Interest Agreement so that the attorneys and their offices can effectively prepare for potential investigations and anticipated litigation related to climate change." Lastly, the Agreement states that "The Parties agree and acknowledge that each Party is subject to applicable freedom of information or public records laws, and nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws."

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id*. at § 2-532(a). The right to inspect a public record, however, is subject to statutory exemptions. *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), and decisions construing the federal statute 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 challenge of the remainder of OAG's decision at issue here is that the withheld records cannot be protected under Exemption 4 because by their very nature they have been shared outside of the District government and are therefore not inter or intra agency documents.

Exemption 4 exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." Further, D.C. Official Code § 2-534(e) provides that the attorney-work product privilege is among the privileges incorporated under the inter-agency memoranda exemption of the DC FOIA.

First, "[t]he common interest privilege protects disclosures between a lawyer and two or more clients regarding a matter of common interest or common interests." *United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am.*, 2004 U.S. Dist. LEXIS 18747 * (D.D.C. May 17, 2004). As a result, the common interest doctrine asserted by the OAG can satisfy the "inter-agency or intra-agency requirement" of Exemption 4; however, satisfying that requirement does not mean the record is privileged. *Am. Mgmt. Servs., LLC v. Dep't of the Army*, 842 F. Supp. 2d 859, 878 (E.D. Va. 2012) ("The common interest doctrine satisfies only the inter-agency or intra-agency requirement of Exemption 5; it does not satisfy the second requirement, namely that the withheld documents be privileged. *See Hunton & Williams*, 590 F.3d at 280.")

In order to determine if a document is embraced by the common interest privilege, courts use a three-part test and evaluate if the communication:

> 1) is prompted by actual or anticipated litigation; 2**) for the purpose of furthering a common interest**; and 3) in a manner that is consistent with

> maintaining confidentiality against adverse parties. . . The purpose of the joint prosecution and common interest privileges is to ensure that attorneys feel free to fully and completely prepare for trial by assuring that their legal preparations will not be accessible to an adversary.

Pogue, 2004 U.S. Dist. LEXIS 18747 (emphasis added).

Here, there exists an Agreement which, as quoted above, enumerates the common interest being pursued as being related to an anticipated, coordinate lawsuit over the issue of climate change. In response to this appeal, the OAG has further stated that the common interest that prevents the disclosure of the 4 withheld emails is "sharing documents appropriately pursuant to the Common Interest Agreement so that the attorneys and their offices can effectively prepare for potential investigations and anticipated litigation related to climate change."

"Importantly, common interest assertions by government agencies must be carefully scrutinized." *Am. Mgmt. Servs., LLC* , 842 F. Supp. 2d at 878 (quotations omitted). The 4 emails being withheld in this matter are all related to other attorneys general stating decisions on disclose of information under their states' respective public records laws. It is unclear to this Office how these withheld emails therefore relate to the stated common interest of preparing for "potential investigations and anticipated litigation related to climate change." The legal opinions being withheld do not meet the second part of the common interest test because they do not further the purpose of the common interest here - anticipated climate change litigation.

The fact that the withheld emails may have been made as a result of the Agreement do not mean that they are in furtherance of a common interest. *United States v. Duke Energy Corp*., No. 00-1262, 2012 WL 1565228, at *13 (M.D.N.C. April 30, 2012) (finding that common interest doctrine is "not a privilege in and of itself"); *Zander v. DOJ*, 885 F. Supp. 2d 1, 11 (D.D.C. 2012) (finding "two e-mails do not fall under the attorney work product doctrine because the e-mails are communications to and from clients regarding litigation, rather than actual preparation by attorneys for litigation (or anticipated litigation).").

Each of the attorneys general is individually responsible for complying with his or her state's public records/FOIA laws. In fact, the Agreement even contemplates that "each Party is subject to applicable freedom of information or public records laws, and nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws." There is no common interest amongst the attorneys general to comply with each other's state laws because there is no "common and unitary litigation interests" in FOIA compliance; each attorney general's office faces separate risk of FOIA litigation under separate standards. *See Am. Mgmt. Servs., LLC* , 842 F. Supp. 2d at 874 (quotations omitted). "Thus, for the common interest doctrine to apply, an agency must demonstrate that, at the time of the communication in question, it had decided to support an outside party in a legal matter, and that doing so was in the public interest." *Id* at 875. Here, the OAG has entered into an agreement in anticipation of litigation related to climate change. The OAG has not proffered that it has offered to assist attorneys general in the states of Washington or Oregon in complying with their respective public records laws. As a result, communications related to Oregon and Washington records laws are not embraced by the common interest doctrine because they do not further the enumerated common interest of climate

change litigation. Because the withheld emails do not further a common interest, and because the emails were authored by non-District employees, the withheld emails cannot be considered inter-agency documents. Accordingly, the documents are not inter-agency documents and are not protected from disclosure under Exemption 4.

Conclusion

Based on the foregoing, we disagree with the OAG's decision and remand your appeal to the OAG to disclose the withheld documents within 7 business days of the date of this 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.

Respectfully,

Mayor's Office of Legal Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-104

September 21, 2016

VIA ELECTRONIC MAIL

Ms. Claudia Barber

RE: FOIA Appeal 2016-104

Dear Ms. Barber:

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 Administrative Hearings ("OAH") failed to adequately respond to an August 8, 2016, communication from your attorney requesting the production of various emails in OAH's possession.

This Office notified OAH of your appeal on September 19, 2016. That same day, you clarified to this Office that you are appealing OAH's lack of response to your request. On September 20, 2016, OAH advised us that it responded to your attorney's August 8, 2016, communication on August 30, 2016.

In its response to this Office, OAH included a copy of the transmittal cover letter sent with the production of documents sent to your attorney on August 30, 2016. The transmittal letter was addressed to 1828 L Street NW, Suite 820 Washington, DC 20036. This address corresponds to the address of the attorney who initiated the original request on your behalf. Further, OAH provided a tracking number for the package, 9505511408416244019944. The USPS tracking website indicates that package number 9505511408416244019944 was delivered on September 1, 2016. We therefore accept OAH's representation that it mailed responsive documents to the attorney who submitted the FOIA request on your behalf.

Conclusion

As discussed above, you submitted your appeal on the grounds that OAH failed to respond to your request and that the request had therefore been constructively denied under D.C. Official Code § 2-532(e). In light of our finding that OAH did respond to your request, we hereby dismiss this matter as moot.

This constitutes the final decision of this Office. This dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OAH's substantive response to your August 8, 2016 request.

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 DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Marya Torrez, FOIA Officer and Assistant General Counsel, OAH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-105

November 7, 2016

VIA ELECTRONIC MAIL

Mr. William M. Scott

RE: FOIA Appeal 2016-105

Dear Mr. Scott:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) ("DC FOIA"), in which you assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA.

Background

On July 29, 2016, you submitted a request to the OCFO for "[a]ll communications sent to and received from the U.S. Internal Revenue Service ("IRS") from February 24, 2016 to present, and all agreements entered into with the IRS, regarding an IRS examination of the tax-exempt status of the $11,000,000 District of Columbia James F. Oyster Elementary School Pilot Revenue Bonds, Series 1999." The OCFO denied your request on September 2, 2016, on the grounds that the five responsive documents were exempt from disclosure under D.C. Official Code §§ 2-534(a)(2), (3)(A) and (B), and a(4) ("Exemption 2", "Exemption 3", and "Exemption 4").

You appealed the OCFO's denial, contesting all three exemptions asserted by the OCFO. Regarding the use of Exemption 2, you argue that its protection of personal privacy does not apply to the District as a governmental entity. For the OCFO's application of Exemption 3, you assert that the records do not meet the threshold requirement of being compiled for law enforcement purposes and that disclosure would not interfere with the investigation or deprive the District of a fair trial or impartial investigation. With regards to the use of Exemption 4 you contend that the records are not inter-agency documents because the District is not a Federal government agency and does not have a common interest with the IRS. Further, you assert that the District has previously disclosed legal work-product; therefore, the District cannot assert a privilege for other writings produced by counsel.

The OCFO responded to your appeal reasserting its application of all three exemptions.[1] The OCFO also provided this Office with a copy of the withheld documents for our *in camera* review

[1] A copy of the OCFO's response, declaration, and Vaughn index are attached.

consisting of: two cover letters from the IRS, an IRS Form 5701-TEB, an IRS Form 886-A, and the District's legal response prepared by outside counsel.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). That right is subject to various exemptions, however, which may form the basis for the denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute 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 main issue this determination will address is the applicability of Exemption 4, which exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." D.C. Official Code § 2-534(e) identifies the deliberative process, attorney-client, and attorney-work product privileges among the privileges incorporated under Exemptions 4.

On appeal you assert that because the records were shared between the Federal and District government the records are not inter-agency documents. There is disagreement, however, on the issue of whether records exchanged between the Federal and local governments qualify as inter-agency documents. *See People for the Am. Way Found. v. United States Dep't of Educ.*, 516 F. Supp. 2d 28, 39 (D.D.C. 2007) (holding that documents submitted the District to a federal agency could not be protected because District and agency "share[d] ultimate decision-making authority with respect to a co-regulatory project"); *but see Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002) (finding that documents exchanged between a state and federal agency could satisfy the inter-agency requirement threshold). Here, the IRS inability to disclose the records at issue pursuant to 26 U.S.C. § 6103 leads us to find that the records qualify as inter-agency documents. Due to the IRS's duty to maintain confidentiality, there no reason that the exchange of documents between the IRS and OCFO would invalidate applicable privileges.

Meeting the inter-agency requirement of Exemption 4; the analysis turns to the second requirement, that the withheld documents be privileged. *See Hunton & Williams v. DOJ*, 590 F.3d 272, 280 (4th Cir. 2010). We accept the OCFO's representation that the IRS Form 886-A is protected by the deliberative process privilege of Exemption 4.[2] In summary, the Form 886-A is pre-decisional because it precedes the final order that the IRS will issue and deliberative because it represents current opinions of the IRS that subject to change based on additional review and the District's response.

[2] See the OCFO's response at 10-13.

Additionally, we accept the OCFO's assertion that the District's legal response, prepared by outside counsel, is protected by the attorney-client and attorney work-product privileges.[3] On appeal, you assert that because the District has previously disclosed legal work-product in a related FOIA request it cannot assert a privilege for any other documents created by its outside counsel. While the prior disclosure would bar the OCFO from claiming the previously disclosed documents as privileged, we do not agree that the OCFO has waived the right to assert privilege for all subsequent documents produced by its counsel. As stated by the OCFO, the District's legal response clearly reflects extensive discussions between a District agency and its counsel; further, the response is the work-product of its counsel prepared for an administrative adjudication. As a result, the District's legal response is appropriately withheld under the attorney-client and attorney-work product privileges of Exemption 4.

Having found that Form 886-A and the District's legal response are properly withheld under Exemption 4, we need not analyze whether or not those records are also subject to Exemption 3.[4]

Lastly, we address the issue of segregability. D.C. Official Code § 2-534(b) states that an agency must dislcose any reasonably segregable portion of a record after deletion of those portions which may be withheld from disclosure. We find that the two IRS cover letters and the Form 5701-TEB are segregable from the Form 886-A. Further, based on our *in camera* review neither the cover letters nor Form 5701-TEB are protected from disclosure under Exemption 3 or 4. The OCFO's response states that if disclosure is ordered for the cover letters or Form 5701-TEB then it will redact the District's taxpayer identification number from the records pursuant to Exemption 2.[5]

In a unanimous decision, the Supreme Court determined that under federal FOIA the protection of "personal privacy" applies to individuals and not corporations. *See FCC v. AT&T Inc.*, 562 U.S. 397, 409-410 (2011). The Court reached this conclusion despite the fact that the definition of "person" in the federal FOIA includes a corporation. *Id.*[6] Similarly, we find that Exemption 2 is not applicable here because the District is not an individual and no individual's privacy is at issue in these records. The OCFO may, however, redact the District's tax identification number provided the OCFO is prohibited from releasing tax identification information under another statute.[7]

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[3] See the OCFO's response at 14-17.
[4] Here, Exemption 3 was asserted to prevent the disclosure of investigatory records compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings or deprive a person of a right to a fair trial or adjudication.
[5] Exemption 2 provides protection from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."
[6] For the purposes of D.C. FOIA the definition of a "person" also includes a corporation. See D.C. Official Code §§ 2-539, 2-502.
[7] D.C. Official Code § 2-534(a)(6) protects information from disclosure pursuant to a FOIA request that is exempt from disclosure by another statue.

Conclusion

Based on the foregoing, we affirm in part and remand in part the OCFO's decision. Within seven business days of the date of this decision, OCFO shall disclose the two IRS cover letters and the Form 5701-TEB subject to redaction in accordance with the guidance of this 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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stephen B. Lyons, Deputy General Counsel, 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: 2016-106

October 11, 2016

VIA ELECTRONIC MAIL

Ms. Claudia Barber

RE: FOIA Appeal 2016-106

Dear Ms. Barber:

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 Administrative Hearings ("OAH") failed to adequately respond to a June 10, 2016, communication from your attorney requesting the production of various emails in OAH's possession.

This Office notified OAH of your appeal on September 19, 2016. On September 22, 2016, OAH responded to the appeal.

In its response to this Office, OAH explained its withholding of 78 responsive emails. For 75 of the withheld emails, to justify withholding, OAH's asserted D.C. Official Code §2-534(a)(4)[1] ("Exemption 4"), which includes the attorney-client, attorney work-product, and deliberative process privileges. For three of the responsive emails, OAH asserted privacy interests to justify its withholding pursuant to D.C. Official Code § 2-534(a)(2)[2] ("Exemption 2"). On September 30, 2016, this Office received a copy of the withheld emails for an *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.

[1] 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."
[2] Exemption 2 protects "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

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).

Exemption 4

The crux of this appeal is whether OAH properly withheld emails by asserting three privileges encompassed by Exemption 4: the deliberative process privilege, the attorney-client privilege, and the attorney-work product privilege. Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Privileges in the civil discovery context include the deliberative process privilege, the attorney-client privilege, and the attorney-work product privilege.

This Office has completed an *in camera* review of the 75 documents withheld under Exemption 4 and finds OAH's assertions of privilege under Exemption 4 to be proper for all 75 emails. The majority of withheld messages are communications between agency attorneys and OAH staff. The withheld documents involve either agency staff seeking legal counsel, counsel appraising agency staff of new information, or are otherwise documents created by attorneys in anticipation of litigation. Similarly, those emails withheld under the deliberative process privilege are amongst members of the Committee on Selection and Tenure, and are predecisional discussions about administrative procedure. Further, based on our review, we conclude that none of the communications being withheld under Exemption 4 were sent to a third party. As a result, the documents withheld under Exemption 4 were done so properly.

Exemption 2

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)).

Having reviewed the three emails withheld pursuant to Exemption 2 by OAH, we disagree with OAH's assertion that this exemption applies. The emails are responsive to your request, and this Office cannot identify a privacy interest that justifies the withholding of the three mails in their entirety. Where a document is not entirely exempt, the agency must make reasonable redactions and release the document. D.C. Official Code § 2-534(b). As a result, OAH must review the three withheld emails, redact only privileged information, and provide the remaining non-privileged portions to you.

Conclusion

Based on the foregoing, we affirm in part and remand in part OAH's decision. OAH's decision to withhold 75 emails based on Exemption 4 is affirmed. With respect to the 3 emails withheld under Exemption 2, we direct OAH to provide you with appropriately redacted copies of these messages within 7 business days of the date of this 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 DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Marya Torrez, FOIA Officer and Assistant General Counsel, OAH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-107

September 28, 2016

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeal 2016-107

Dear Mr. Mulhauser:

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") failed to respond to a request you submitted on August 12, 2016, for records pertaining to a report that the MPD is required to create in accordance with District law.

Prior to submitting your appeal, you communicated with the MPD on September 6, 2016, seeking an update as to MPD's response to your request. MPD responded that it had begun its search but had not yet found a responsive record. By email dated September 14, 2016, you appealed the MPD's constructive denial of your request. This Office notified the MPD of your FOIA appeal on September 19, 2016. On September 23, 2016, the MPD responded to your appeal in an email to this Office stating that it has not created the report you requested. MPD's response further stated that when the report is created, it will be provided to you. This Office accepts MPD's representation that it does not possess the record you seek because the record has not yet been created.

MPD is not obliged by DC FOIA to disclose documents it does not possess at the time of the request. *United States DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989) ("the agency must be in control of the requested materials at the time the FOIA request is made.").

Based on the foregoing, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the MPD'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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-108

October 3, 2016

VIA ELECTRONIC MAIL

Mr. David Benowitz

RE: FOIA Appeal 2016-108

Dear Mr. Benowitz:

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, on behalf of your client, under the DC FOIA.

Background

On October 12, 2015, you submitted a request to MPD seeking documents related to an interview by MPD detectives in 1997. In your request, you assert that you are seeking these documents, on behalf of your client, in order to help prove your client's innocence.

On October 20, 2015, MPD denied your request. In its denial, citing D.C. Official Code § 2-534(a)(3)(C), MPD asserted that because you had not included an authorization from the interviewee in your request, MPD could not give you responsive records without violating the privacy interest of the interviewee.

By letter dated September 12, 2016, you appealed MPD's denial, contending that you need the records to help prepare for an appeal. Further, you summarily argue that there is no privacy interest at issue in this matter, because the interviewee testified in court in 1997. Additionally, you assert that "a significant public interest exists where the possibility exists of having likely convicted the wrong person in a homicide case."

On September 29, 2016, MPD sent its response to your appeal to this Office.[1] Therein, MPD reasserted D.C. Official Code §§ 2-534(a)(3)(C) arguing that the release of police records relating to a the interview would amount to an invasion of privacy. MPD argues that the mere fact that a person testifies in open court does not destroy the privacy interest they hold in records about them maintained by the government. Further, MPD argues that in this matter there is no public interest in releasing the records, only a private need.

[1] MPD's response is attached to this decision.

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 . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this appeal whether the police records relating to a 1997 interviewee are exempt from disclosure under DC FOIA because releasing them would constitute an unwarranted invasion of privacy.

D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)") protects from public disclosure information contained in an investigatory file that would constitute an "unwarranted invasion of privacy."

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). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a "'strong interest' of individuals, whether they be suspects, witnesses, or investigators, 'in not being associated unwarrantedly with alleged criminal activity.'"). "[A]s a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 780 (1989). As a result, this Office finds that there is a substantial privacy interest in the police records relating to the 1997 interviewee.

In your brief you make the argument, without citation, that "no privacy issue exists where the requested information under the Freedom of Information Act has been previously testified to in open court and is part of the court's public record." This is an incorrect statement of law. *See*, e.g., *Neely v. FBI*, 208 F.3d 461 (4th Cir. 2000) ("courts have upheld the assertion of Exemption 7(C) to protect the identities even of individuals who have testified in open court."); *Burge v. Eastbern*, 934 F.2d 577 (5th Cir. 1991) ("argues that the persons who purportedly gave statements to the FBI have waived their privacy right by testifying about the murder in open court. This argument is without merit."). Despite the existence of public testimony, the 1997 interviewee still maintains a privacy interest.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. 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.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

Here, you have argued without citation, that "a significant public interest exists where the possibility exists of having likely convicted the wrong person in a homicide case." This is an incorrect statement of law regarding FOIA. As the 4th circuit articulated:

> That [requester] seeks this information to establish indirectly his own innocence does not alter the fact that there would appear to be no FOIA-cognizable public interest in such information. The innocence of a particular defendant in a particular case "tells us nothing about matters of substantive law enforcement policy that are properly the subject of public concern." And, as the Supreme Court has made clear in no uncertain terms, "the identity of the requesting party" and "the purposes for which the request for information is made" by that party "have no bearing on the merits of his or her FOIA request." *Reporters Committee*, 489 U.S. at 771.

Neely, 208 F.3d at 464.

You have not articulated a public interest as contemplated by the FOIA statute – the requested records relating to a 1997 police interview would appear to reveal little or nothing about MPD's conduct as an agency. This Office finds that there is no public interest in the requested documents.

In this matter, there is a cognizable privacy interest and no countervailing public interest. Further, you have not provided to MPD an authorization from the interviewee to grant you permission to access to these records. As a result, MPD properly withheld the records pursuant to Exemption 3(C).

Conclusion

Based on the foregoing, we affirm MPD's decision and 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-109

October 3, 2016

VIA ELECTRONIC MAIL

Mr. Raoul Hughes

RE: FOIA Appeal 2016-109

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 responded to two requests you submitted on June 21, 2016, for records pertaining to the email communications of two officers with other law enforcements officials.

MPD denied both requests, one request on July 12, 2016, and the other on September 7, 2016. Both letters of denial advised you that "you would need to obtain the case file through the 'Discovery Process' with the US Attorney's Office not through FOIA." This was not a proper agency response to a FOIA request, as there is no exemption of records relating to a matter "pending a post-conviction appeal." *See* 1 DCMR 407.

You appealed these responses to this Office by letter dated September 15, 2016, copying MPD. MPD sent you new responses to both requests, by letters dated September 20, 2016. In those letters, MPD stated that it had conducted two email searches through the Office of the Chief Technology Officer ("OCTO") and that no responsive records were located. On September 21, 2016, this Office notified MPD of the appeal.

On September 30, 2016, the MPD responded to your appeal in an email to this Office stating that it conducted two email searches and that neither search yielded responsive documents. This Office accepts MPD's representation that it conducted two OCTO email searches of the persons named in your request, and that it does not possess the records you seek. MPD is not obliged by DC FOIA to disclose documents it does not possess at the time of the request. *United States DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989) ("the agency must be in control of the requested materials at the time the FOIA request is made.").

Based on the foregoing, we affirm MPD's September 20, 2016, decision letters. 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-110

October 3, 2016

Mr. Gregory Williams

RE: FOIA Appeal 2016-110

Dear Mr. Williams:

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 February 2, 2015, you submitted a request under the DC FOIA to MPD seeking court documents relating to a 1982 incarceration. MPD responded that it had conducted a search of its records and the search yielded no results.

On appeal you 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 September 30, 2016.[1] In its response, MPD states that it has searched for responsive records but has not found any. MPD provided us a description of the searches the agency conducted to locate records responsive to your request. MPD further proffered that it was unlikely responsive records from 1982 would exist given the 5 year retention cycle of court case documents. MPD asserts that its searches were thorough.

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).

[1] A copy of MPD's response is attached for your reference.

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). 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, MPD identified the relevant locations for records responsive to your request: the Criminal Investigations Division and the Records Branch. MPD further indicated that it conducted searches of these locations; however no responsive records were located. Additionally, MPD indicates that court case documents are only retained for 5 years and that as a result your record would have left the retention period in 1987. 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 the letter MPD 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 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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-111

October 21, 2016

VIA ELECTRONIC MAIL

Mr. Mark Eckenwiler

RE: FOIA Appeal 2016-111

Dear Mr. Eckenwiler:

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 is based on the failure of the Department of Consumer and Regulatory Affairs ("DCRA") to respond to a request you submitted for records relating to the zoning of a specified address.

On October 12, 2016, DCRA advised us that it had made responsive records available to you through FOIAXpress. Since your appeal was based on DCRA's failure to respond to your request and DCRA subsequently responded to your request, we consider this 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 DCRA'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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Charles Thomas, General Counsel, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY2017 Benjamin Banneker Park Pedestrian Connectivity Grant

Grant Identification No.:	**DMPED -**
Background Information:	The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the Benjamin Banneker Park Pedestrian Connectivity Grant authorized pursuant to Economic Development Special Account Revival Amendment Act of 2012 (D.C. Law 19-168; D.C. Official Code §2-1225.01 *et seq.*).
Purpose of Grant Program:	The purpose of the Benjamin Banneker Park Pedestrian Connectivity Grant is to support the improvement of pedestrian and bicycle access between the National Mall (and surrounding areas, including L'Enfant Plaza) and the Southwest Waterfront. DMPED will award one grant at a maximum award of $2,000,000.00. Grant funds will support projects and programs that support improved pedestrian and bicycle access between the National Mall (and surrounding areas, including L'Enfant Plaza) and the Southwest Waterfront via Benjamin Banneker Park, which is a connectivity point identified in the National Mall Plan
Length of Award:	**Date of grant execution through September 30, 2017.**
Anticipated Number of Awards:	DMPED will award individual grants of up to a maximum of $2,000,000 each per qualified business. Grant funds will be utilized to assist grantees the improvement of pedestrian and bicycle access between the National Mall (and surrounding areas, including L'Enfant Plaza) and the Southwest Waterfront. Total funding availability for this grant program is $2,000,000.

Eligibility Criteria

Qualified businesses and firms that meet the following requirements:

- Have appropriate approval and/or authority from the National Park Service (NPS) and/or the District of Columbia, as applicable, to permit/support improvements in and along Benjamin Banneker Park.
- Be a registered District-based business or organization in Good Standing with the DC Department of Consumer and Regulatory Affairs (DCRA), the DC Office of Tax and Revenue (OTR), the DC Department of Employment Services (DOES), and the federal Internal Revenue Service (IRS).

- Provide proof of property and liability insurance (an insurance quote is permitted for new businesses) compliant with the requirements set forth in the grant application.

Availability of RFA:	The grant application will be released on January 12, 2017 The RFA will be posted on DMPED's website (www.dmped.dc.gov),
Contact Name:	LaToyia Hampton, Grants Manager dmpedgrants@dc.gov 202.724.7648
Deadline for Electronic Submission:	Applicants must submit a completed online application to DMPED via the Gifts Online system by **February 10, 2017 at 4:00 PM**

DMPED reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

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

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code,[1] of its final tariff action to approve the Potomac Electric Power Company's ("Pepco" or "Company") tariff amendment that updates the Company's Rate Schedules for Electric Service in the District of Columbia.[2] The Commission issued a Notice of Proposed Tariff ("NOPT"), which was published in the *D.C. Register* on November 11, 2016, giving notice of the Commission's intent to act on Pepco's proposed tariff amendments.[3] No comments were received on the NOPT.

2. Pepco's proposed tariff amendment updates the retail transmission rates included in the Rider Standard Offer Service "to reflect the current Federal Energy Regulatory Commission ('FERC') approved wholesale transmission rates, which went into effect [on] June 1, 2016."[4] Pepco states that the "updated Network Integrated Transmission Service rate is based on the data in the 2015 FERC Form 1 for Pepco, which was filed with the FERC on April 15, 2016."[5] According to Pepco, "[t]he filed wholesale transmission rate for the Pepco Zone effective June 1, 2016 is $23,232 per megawatt-year for Network Integrated Transmission Service, which is currently reflected in Attachment H-9 of the PJM Open Access Transmission Tariff."[6] This $23,232 per megawatt-year rate must be adjusted in order to derive the $26,745 per megawatt-year rate overall wholesale transmission rate for load in the Pepco Zone. Those adjustments are detailed in Attachment D in Pepco's filing.[7]

3. The Network Integrated Transmission Service rate reflects a rate of $21,611 per megawatt-year, which is net of the Schedule 12 Transmission Enhancement Charges due to projects within the Pepco Zone.[8] In addition, the load in the Pepco Zone is responsible for

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

2 *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Letter from Dennis P. Jamouneau, Assistant General Counsel, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia re: Formal Case No. 1017 Retail Transmission Rate Update, filed August 30, 2016 ("Pepco Letter").

3 63 DCR 14012-14014 (November 11, 2016).

4 Pepco Letter.

5 Pepco Letter.

6 Pepco Letter.

7 Pepco Letter, Attachment D.

8 Pepco Letter, Attachment E.

Schedule 12 Transmission Enhancement Charges due to transmission projects outside of the Pepco Zone and the rate for these projects is $5,134 per megawatt-year.[9] Combining these two rates results in an overall wholesale transmission rate for load in the Pepco Zone of $26,745 per megawatt-year. After calculating the retail transmission revenue requirement, Pepco has reflected the revised retail rates for the Transmission Service Charge for each rate class on its revised tariff pages.[10]

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

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Eighty-Third Revised Page No. R-1
Superseding Eighty-Second Revised Page No. R-1

P.S.C.-D.C. No. 1
Eighty-Third Revised Page No. R-2
Superseding Eighty-Second Revised Page No. R-2

P.S.C.-D.C. No. 1
Seventy-Sixth Revised Page No. R-2.1
Superseding Seventy-Fifth Revised Page No. R-2.1

P.S.C.-D.C. No. 1
Fifty-Second Revised Page No. R-2.2
Superseding Fifty-First Revised Page No. R-2.2

P.S.C.-D.C. No. 1
Twenty-Fifth Revised Page No. R-41
Superseding Twenty-Fourth Revised Page No. R-41

P.S.C.-D.C. No. 1
Twenty-Forth Revised Page No. R-41.1
Superseding Twenty-Third Revised Page No. R-41.1

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.2
Superseding Twenty-Third Revised Page No. R-41.2

[9] Pepco Letter, Attachment D.

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

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.3
Superseding Twenty-Third Revised Page No. R-41.3

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.4
Superseding Twenty-Third Revised Page No. R-41.4

P.S.C.-D.C. No. 1
Twenty- Forth Revised Page No. R-41.5
Superseding Twenty-Third Revised Page No. R-41.5

P.S.C.-D.C. No. 1
Twenty-Fifth Revised Page No. R-41.6
Superseding Twenty- Forth Revised Page No. R-41.6

P.S.C.-D.C. No. 1
Twenty-Fourth Revised Page No. R-41.7
Superseding Twenty-Third Revised Page No. R-41.7

P.S.C.-D.C. No. 1
Twenty-Fourth Revised Page No. R-41.8
Superseding Twenty-Third Revised Page No. R-41.8

5. The Commission, at its regularly scheduled open meeting held on December 21, 2016, took action approving Pepco's proposed tariff amendment that updates the Company's Rate Schedules for Electric Service in the District of Columbia by revising the Company's retail transmission rates, for Rider Standard Offer Service, consistent with the current FERC approved wholesale transmission rates. This amendment will become effective upon publication of this Notice of Final Rulemaking in the *D.C. Register* and shall be reflected in the billing cycle beginning February 1, 2017.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

RM-09-2015-01, IN THE MATTER OF 15 DCMR CHAPTER 9 — NET ENERGY METERING — COMMUNITY RENEWABLE ENERGY CREDIT RATE CLARIFICATION AMENDMENT ACT OF 2016

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code ("D.C. Code") and in accordance with Section 2-205 of the D.C. Code,[1] of its intent to act upon the proposed Community Net Metering Rider ("Rider CNM") of the Potomac Electric Power Company ("Pepco")[2] in not less than 30 days after the date of publication of this Notice of Proposed Tariff ("NOPT") in the *D.C. Register*. Additionally, the Commission will consider the Community Renewable Energy Facility ("CREF") Contract and Pepco's Procedural Manual (jointly "CREF Documents") that were filed with Rider CNM.

2. The Community Renewable Energy Credit Rate Clarification Act of 2016 ("Act") became effective on October 8, 2016.[3] On October 12, 2016, Pepco filed initial versions of Rider CNM and CREF Documents.[4] On October 28, 2016, the Commission issued a Notice of Proposed Rulemaking ("NOPR") updating the CREF Credit Rate pursuant to the Act.[5] On November 28, 2016, Pepco filed comments in support of NOPR.[6] Subsequently on December 5, 2016, Pepco filed revised versions of Rider CNM and CREF Documents that incorporate the CREF Credit Rate definition proposed by the Commission in its NOPR.[7]

3. In the Rider CNM, Pepco sets forth how it will implement Community Net Metering for residential and commercial customers and what components of the bill will be used to calculate the CREF Credit Rate in accordance with the following tariff pages:

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1 D.C. Code § 34-802 (2001); D.C Code § 2-205 (2001).

2 *RM-09-2015-01*, Potomac Electric Power Company's revised Community Net Metering Rider, CREF Contract, and Procedural Manual, filed December 5, 2016.

3 *D.C. Law* 21-0160 (October 8, 2016).

4 *RM-09-2015-01*, Potomac Electric Power Company's Community Net Metering Rider, CREF Contract, and Procedural Manual, filed December 5, 2016.

5 63 *D.C. Reg.* 013501-013502 (2016).

6 *RM-09-2016-01*, Potomac Electric Power Company's letter supporting the amended definition as set forth in the Commission's NOPR consistent with the NOPR, filed November 29, 2016.

7 *RM-09-2015-01*, Potomac Electric Power Company's Community Net Metering Rider, CREF Contract, and Procedural Manual, filed December 5, 2016.

RATE SCHEDULES FO ELECTRIC SERVICE IN THE DISTRICT OF COLUMBIA,
P.S.C. of D.C. No. 1
Eighty-Third Revised Page No. R-1
Superseding Eighty-Second Revised Page No. R-1

P.S.C. of D.C. No. 1
Eighty-Third Revised Page No. R-2
Superseding Eighty-Second Revised Page No. R-2

P.S.C. of D.C. No. 1
Seventy-Sixth Revised Page No. R-2.1
Superseding Seventy-Fifth Revised Page No. R-2.1

P.S.C. of D.C. No. 1
Fifty-Second Revised Page No. R-2.2
Superseding Fifty-First Revised Page No. R-2.2

P.S.C. of D.C. No. 1
First Revised Page No. R-52
Superseding Original Page No. R-52

P.S.C. of D.C. No. 1
First Revised Page No. R-52.1
Superseding Original Page No. R-52.1

4. Specifically, Pepco provides that the components of the CREF Credit Rate for residential and commercial customers are:

	Applicable to Residential Customers	Applicable to Commercial Customers
Generation		
All kWh	Yes	Yes
Administrative Charge	Yes	Yes
Transmission		
All kWh	Yes	Yes
Distribution		
All kWh Charge	Yes	No
Residential Aid Discount Surcharge	Yes	No
Energy Assistance Trust Fund	Yes	No
Sustainable Energy Trust Fund	Yes	No
Public Space Occupancy Surcharge	Yes	No
Delivery Tax	Yes	No

5. The proposed Rider CNM and CREF Documents may be reviewed at the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1325 G

Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's web site at www.dcpsc.org. Once at the website, open the "EDOCKET SYSTEM" tab, click on the "Search Current Dockets" and input "RM9-2015-01" as the case number and "36" as the item number. Copies of the tariff are available upon request, at a per-page reproduction cost, by contacting the Commission Secretary at (202) 626-5150 or psc-commissionsecretary@dc.gov.

6. All persons interested in commenting on the proposed Rider CNM and CREF Documents are invited to submit written comments and reply comments no later than 30 and 45 days, respectively, after the publication of this NOPT in the D.C. Register. Written comments should be filed with: Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission's website at http://edocket.dcpsc.org/comments/submitpubliccomments.asp.

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF PUBLIC INTEREST

CERTIFICATION OF WINNER OF THE ELECTION TO SERVE AS THE ACTIVE FIREFIGHTER MEMBER OF THE BOARD

The District of Columbia Retirement Board (the "Board") is required to conduct elections for its member representatives to the Board. *See* D.C. Official Code § 1-711(b)(2) (2001). In accordance with the Board's Rules for the Election of Members to the Board ("Election Rules"), the Board, through the American Arbitration Association ("AAA"), conducted an election for the representative of the District of Columbia Active Firefighters.

AAA received a valid statement of candidacy from only one qualified voter. Therefore, pursuant to section 101.2(b) of the Election Rules, the Active Firefighter Trustee election was uncontested and a vote by secret ballot was not required.

The Active Firefighter Trustee candidate was submitted to the Board for certification on December 15, 2016. Pursuant to section 408.1 of the Election Rules, the Board hereby certifies the results of the uncontested election and declares the winner to be Edward C. Smith, an active District of Columbia firefighter.

Pursuant to section 408.4 of the Election Rules, any eligible candidate for this election may petition the Board in writing for a recount of votes within seven (7) calendar days of the date of publication of the certification of the winner. The petition must be filed at the Board's executive office located at 900 7th Street, N.W., 2nd Floor, Washington, D.C. 20001. In the absence of a request for a recount, the election results will become final and cannot be appealed thirty (30) days after this publication of the Board's certification.

The Election Rules and the Certification of Results can be accessed on the Board's website:

http://www.dcrb.dc.gov

Please address any questions regarding this notice to:

Eric O. Stanchfield, Executive Director
D.C. Retirement Board
900 7th Street, N.W., 2nd Floor
Washington, D.C. 20001

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF PUBLIC INTEREST

CERTIFICATION OF WINNER OF THE ELECTION TO SERVE AS THE ACTIVE TEACHER MEMBER OF THE BOARD

The District of Columbia Retirement Board (the "Board") is required to conduct elections for its retired member representatives to the Board. *See* D.C. Official Code § 1-711(b)(2) (2001). In accordance with the Board's Rules for the Election of Members to the Board ("Election Rules"), the Board, through the American Arbitration Association ("AAA"), conducted an election for the representative of District of Columbia Active Teachers.

The ballots were counted on Tuesday, November 29, 2016, at 900 7th Street, N.W., 2nd Floor, Washington, D.C., in the presence of Board representatives, and under the supervision of AAA.

AAA submitted the Certification of Results to the Board on December 15, 2016. Pursuant to section 408.1 of the Election Rules, the Board hereby certifies the results of the election and declares the winner to be Nathan A. Sanders, an active District of Columbia teacher.

Pursuant to section 408.4 of the Election Rules, any eligible candidate for this election may petition the Board in writing for a recount of votes within seven (7) calendar days of the date of publication of the certification of the winner. The petition must be filed at the Board's executive office located at 900 7th Street, N.W., 2nd Floor, Washington, D.C. 20001. In the absence of a request for a recount, the election results will become final and cannot be appealed thirty (30) days after this publication of the Board's certification.

The Election Rules and the Certification of Results can be accessed on the Board's website:

http://www.dcrb.dc.gov

Please address any questions regarding this notice to:

Eric O. Stanchfield, Executive Director
D.C. Retirement Board
900 7th Street, N.W., 2nd Floor
Washington, D.C. 20001

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF PUBLIC INTEREST

CERTIFICATION OF WINNER OF THE ELECTION TO SERVE AS THE RETIRED POLICE OFFICER MEMBER OF THE BOARD

The District of Columbia Retirement Board (the "Board") is required to conduct elections for its retired member representatives to the Board. *See* D.C. Official Code § 1-711(b)(2) (2001). In accordance with the Board's Rules for the Election of Members to the Board ("Election Rules"), the Board, through the American Arbitration Association ("AAA"), conducted an election for the representative of District of Columbia Retired Police Officers.

The ballots were counted on Tuesday, November 29, 2016, at 900 7th Street, N.W., 2nd Floor, Washington, D.C., in the presence of Board representatives, and under the supervision of AAA.

AAA submitted the Certification of Results to the Board on December 15, 2016. Pursuant to section 408.1 of the Election Rules, the Board hereby certifies the results of the election and declares the winner to be Gary W. Hankins, a retired District of Columbia police officer.

Pursuant to section 408.4 of the Election Rules, any eligible candidate for this election may petition the Board in writing for a recount of votes within seven (7) calendar days of the date of publication of the certification of the winner. The petition must be filed at the Board's executive office located at 900 7th Street, N.W., 2nd Floor, Washington, D.C. 20001. In the absence of a request for a recount, the election results will become final and cannot be appealed thirty (30) days after this publication of the Board's certification.

The Election Rules and the Certification of Results can be accessed on the Board's website:

http://www.dcrb.dc.gov

Please address any questions regarding this notice to:

Eric O. Stanchfield, Executive Director
D.C. Retirement Board
900 7th Street, N.W., 2nd Floor
Washington, D.C. 20001

TWO RIVERS PUBLIC CHARTER SCHOOL

INTENT TO AWARD A SOLE SOURCE CONTRACT

Springboard Collaborative

Two Rivers Public Charter School intends to enter into a sole source contract with Springboard Collaborative for summer literacy programming. The cost of this contract will be approximately $60,000. The Springboard Collaborative will provide the infrastructure, methodology, curriculum, and management to support literacy programming for students. In addition to proprietary literacy curriculum, Springboard will provide proprietary training to Two Rivers' existing teaching staff. Questions can be addressed to Maggie Bello via email at procurement@tworiverspcs.org.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2017 MEETING SCHEDULE

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) are held in open session on the first Thursday of each month at 9:30 a.m. The following are dates and times for the regular monthly meetings to be held in 2017. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW, will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 5, 2017	9:30 a.m.
Thursday, February 2, 2017	9:30 a.m.
Thursday, March 2, 2017	9:30 a.m.
Thursday, April 6, 2017	9:30 a.m.
Thursday, May 4, 2017	9:30 a.m.
Thursday, June 1, 2017	9:30 a.m.
Wednesday, July 6, 2017	9:30 a.m.
(Board recess in August)	
Thursday, September 7, 2017	9:30 a.m.
Thursday, October 5, 2017	9:30 a.m.
Thursday, November 2, 2017	9:30 a.m.
Thursday, December 7, 2017	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, January 5, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

1.	**Call to Order**	Board Chairman
2.	**Roll Call**	Board Secretary
3.	**Approval of December 1, 2016 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

BOARD OF ZONING ADJUSTMENT

NOTICE OF FILING

BZA Application No. 19134A

The Board of Zoning Adjustment of the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of filing of the following case:

> **Application of the Embassy of Zambia**, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street N.W. (Square 2512, Lot 808).

A public hearing date has not yet been set for the case. Notice of the public hearing date will be mailed to property owners within 200 feet of the subject property and the affected **Advisory Neighborhood Commission (ANC) 2D**. Additionally, it will be published in the *DC Register*, the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm, and on public hearing notices available at the OZ office. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

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

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

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record or participating as a witness. Visit the Interactive Zoning Information System (IZIS) on our website at http://app.dcoz.dc.gov and click on “Participating in an Existing (ZC or BZA) Case” for an explanation of these options. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

BOARD OF ZONING ADJUSTMENT

*****NOTICE OF PROPOSED RULEMAKING*****

BZA Application No. 19134A

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

Application of the Embassy of Zambia, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the temporary location of a chancery in the D/R-3 District at premises 2200 R Street N.W. (Square 2512, Lot 808).

A public hearing date has not yet been set for the case. Notice of the public hearing date will be mailed to property owners within 200 feet of the subject property and the affected **Advisory Neighborhood Commission (ANC) 2D**. Additionally, it will be published in the *DC Register*, the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm, and on public hearing notices available at the OZ office. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

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

- Visit the Office of Zoning (OZ) website at www.dcoz.dc.gov
- Under "Online Services", click on "Interactive Zoning Information System".
- Click on "Go to Case Records".
- Enter the BZA application number indicated above and click the search button.
- The search results should produce the case on the right. Click "View Details".
- Click "View Full Log".
- This list comprises the full record in the case. Simply click "View" on any document you wish to see, and it will open a PDF document in a separate window.

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record or participating as a witness. Visit the Interactive Zoning Information System (IZIS) on our website at https://app.dcoz.dc.gov/Login.aspx to make a submission. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19180 of 1525 Ninth Street, LLC, pursuant to 11 DCMR § 3104.1 for a special exception from the nonconforming use requirements pursuant to § 2003 to permit a change in use in the R-4 District at premises 1525 9th Street, N.W. (Square 397, Lot 811).[1]

HEARING DATE: February 23, 2016
DECISION DATE: February 23, 2016

DECISION AND ORDER

This self-certified application was submitted on November 3, 2015 by 1525 Ninth Street, LLC (the "Applicant"), the owner of the property that is the subject of the application. The application requested a special exception to permit a change in use from one nonconforming use (office use) to another (certain retail or service uses, with the option to continue office use) on the ground floor of a two-story building in the R-4 zone at 1525 9th Street, N.W. (Square 397, Lot 811). Following a public hearing, the Board of Zoning Adjustment ("Board" or "BZA") voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 17, 2015, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6E, the ANC in which the subject property is located; and Single Member District/ANC 6E01. Pursuant to 11 DCMR § 3112.14, on November 20, 2015 the Office of Zoning mailed letters providing notice of the public hearing on the application to the Applicant, ANC 6E, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on November 27, 2015 (62 DCR 15308).

Party Status. The Applicant and ANC 6E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Jacqueline Weiss and Jason Brown, the owner-occupants of a row dwelling abutting the subject property.

Applicant's Case. The Applicant provided evidence and testimony in support of its request for approval of the zoning relief needed to expand the range of nonconforming uses permitted on the first floor of its two-story mixed-use building, so that the ground floor could be devoted either to

[1] Except for the all-capitalized paragraphs at its end, this order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text has no effect on the validity of the Board's decision in this case or of this order.

a neighborhood facility or to office use, rather than being restricted solely to office use, and the second floor would continue in residential use. According to the Applicant, the ground floor had been vacant for more than a year and a half since the departure of the most recent office tenant, and had again been offered for lease as office space but the Applicant had been unable to locate another office tenant. The Applicant sought permission to expand the nonconforming uses permitted on the ground floor to include "a range of neighborhood serving C-1 uses" so that a prospective retail or service tenant would be willing to commit to a lease for the subject property if the first floor could not be leased to a new office tenant.

The Applicant proposed certain conditions of approval of the requested zoning relief that were negotiated with ANC 6E. The proposed mitigation measures would require future tenants of the ground floor to comply with specific restrictions and obligations on their operations so as to avoid creation of any adverse impacts on the use of neighboring property.

OP Report. By memorandum dated February 16, 2016, the Office of Planning recommended approval of the requested zoning relief so long as the ground floor at the subject property would be devoted to any use permitted by § 701.1 except a bar/cocktail lounge or gas station, any use permitted by § 701.4 except a restaurant, or office use in keeping with the previous ground-floor office use of the subject property. OP also recommended that the Board adopt the conditions proposed by the Applicant.

DDOT. By memorandum dated February 16, 2016, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 31.)

ANC Report. At a public meeting on February 2, 2016, with a quorum present, ANC 6E voted 5-2 (with no abstentions) to support the requested zoning relief "with the stipulations agreed to in the letter from the owner of the property." According to ANC 6E, the "only objections to granting the relief" brought to the ANC's attention were "potential concerns raised by a residential neighbor"[2] that were, in the opinion of ANC 6E, "satisfactorily addressed by the mitigation measures agreed to by the applicant." (Exhibit 33.)

Party in opposition. The party in opposition contended that commercial use of the subject property would adversely affect the use of their residential property due to an increase in noise, vermin, and odor via the common wall and light well of the two properties, as well as an increase in foot traffic, loitering, noise, and garbage in front of the property. The party in opposition objected to the grant of a special exception "based on generic projections" rather than on a specific use and tenant for the space, and questioned whether the conditions proposed by the Applicant would be sufficient protection against potential adverse impacts associated with uses permitted in the C-1 zone, particularly with respect to hours of operation late in the evening.

Person in support. The Board received a letter in support of the application from Guggan Datta, the owner of the property abutting the subject property to the north. The letter stated that the

[2] That is, the party in opposition in this proceeding.

Applicant's proposal to convert the first floor of the building to a commercial retail or service use, or to continue the commercial office use of the first floor, would "provide a major benefit to the community" and "add further vibrancy" to the neighborhood, as well as enhancing the block where the building is located. (Exhibit 29D2.)

FINDINGS OF FACT

1. The subject property is an interior lot located on the east side of 9th Street, N.W. approximately midway between P and Q Streets (Square 397, Lot 811).

2. The subject property is a rectangular parcel approximately 15.25 feet wide, fronting on 9th Street, and 94.33 feet deep, with a lot area of 1,439 square feet. A public alley 10 feet wide abuts the subject property along the rear lot line.

3. The subject property is improved with a two-story building. The ground floor, containing 1,252 square feet, is currently vacant and was most recently used as an insurance office. Available records indicate that the ground floor has been devoted to office use since before the 1958 Zoning Regulations went into effect. The second floor is devoted to residential use.

4. The properties attached to the subject property are also improved with two-story buildings. The abutting property to the north is devoted to nonresidential use as an art gallery and studio, while the abutting property to the south is used as a one-family dwelling. Two other properties immediately to the south are also devoted to residential use.

5. The surrounding neighborhood is characterized as mixed use, with residential, institutional, and commercial uses all located within 300 feet of the subject property. Nearby residential uses include both one-family dwellings and an apartment house with ground-floor retail; nearby institutional uses include a church and a community center; and nearby commercial uses include restaurants as well as the art gallery and studio in the neighboring building.

6. The subject property is zoned R-4. The R-4 district was designed to include those areas now developed primarily with row dwellings, and its primary purpose was the stabilization of remaining one-family dwellings. (11 DCMR §§ 330.1, 330.2.)

7. The C-1 zone is the most restrictive district where office use is permitted as a matter of right. The Neighborhood Shopping (C-1) district was designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. (11 DCMR § 700.1.) The C-1 district allows only low-bulk development and permits some community

facilities, housing, and mixed uses, as well as the usual neighborhood shopping and service establishments. (11 DCMR §§ 700.2, 700.3.)

8. The Applicant proposed to lease the first floor of the building to a retail or service establishment permitted as a matter of right in the C-1 zone, or to continue the office use. The second floor will continue in residential use.

9. By letter dated February 2, 2016, the Applicant agreed to certain restrictions and obligations intended to minimize any potential negative impacts of the ground-floor space for commercial uses other than offices, and to make the restrictions and obligations applicable to any retail tenant of the ground floor of the subject property. (Exhibit 29D1.) The restrictions and obligations prohibited use of the space for entertainment, live music, or DJ and prohibited the tenant from applying for an entertainment endorsement to an Alcoholic Beverage Control license; required the tenant to construct an indoor trash room and to contract for daily trash collection; restricted hours of commercial operation and times for deliveries; required the installation of soundproofing materials along an interior wall adjoining the abutting residence; and required other measures pertaining to repairs of the concrete flooring, noise mitigation measures for all retail entrance doors, and exterior alterations to the building, including signage. At the public hearing, the Applicant also indicated its agreement with the conditions proposed by the Office of Planning, so that the ground floor space would not be used as a bar/cocktail lounge, gas station, or restaurant.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 2003 of the Zoning Regulations (Title 11 DCMR) to allow a change in nonconforming uses on the ground floor of a two-story building in the R-4 zone at 1525 9th Street, N.W. (Square 397, Lot 811). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 2003, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to certain conditions. The conditions include that, in a Residence district, the proposed use must be either a dwelling, flat, apartment house, or a neighborhood facility. (11 DCMR § 2003.5.) The proposed use must not adversely affect the present character or future development of the surrounding area in accordance with the Zoning Regulations, where the "surrounding area" encompasses the existing uses and structures within at least 300 feet in all directions from the nonconforming use. (11 DCMR § 2003.2.) In addition, the proposed use

must not create any deleterious external effects such as noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects. (11 DCMR § 2003.3.)

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 2003 and 3104.1. In this case, the property is located in a Residence zone (R-4) and the existing nonconforming use, office use, is first permitted as a matter of right in a Neighborhood Shopping (C-1) district. The Applicant seeks permission for a change in use from one nonconforming use, office use, to another nonconforming use, a retail or service use permitted in C-1, as an alternative to continuing the office use.

For purposes of the restriction set forth in § 2003.5, the Board has previously concluded that a nonconforming use may be considered a "neighborhood facility" when "the majority of the patrons will be community residents." Application No. 15208 (February 25, 1992) (order granting a special exception to allow a change in nonconforming use to "grocery, deli and carryout" on the first floor of a building in R-4). *See also* Application No. 15326 (April 30, 1992) (beauty salon was deemed a "neighborhood facility" because it would "serve neighborhood residents by providing jobs, hair salon services, [and] beauty and barber supply product"); Application No. 17021 (February 23, 2004) (Board reaffirmed previous holdings that a nonconforming "retail grocery/deli" was a "neighborhood facility"); Application No. 17100-A (order on reconsideration issued November 5, 2004) (restaurant qualified as a "neighborhood facility" for purposes of a change in nonconforming use due to its small size within an existing structure); and Application No. 18557 (July 2, 2013) (order approving special exception to allow an existing nonconforming use, a beauty salon, to be replaced with another nonconforming use, an art gallery and studio, in R-4).[3]

In this proceeding, the Board concludes that the retail and service uses proposed by the Applicant, which would be permitted as a matter of right in the Neighborhood Shopping (C-1) zone, are appropriately considered a "neighborhood facility" for purposes of § 2003.5 because the C-1 district encompasses those commercial uses that "provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development." The relatively small size of the ground-floor space, and the restrictions on the permitted uses imposed in this order, also ensure that any new nonconforming use of the property will constitute a neighborhood facility whose patrons will be primarily residents of the nearby community.

The Board finds that the proposed commercial use of the ground floor will not adversely affect the present character or future development of the surrounding area in accordance with the Zoning Regulations. A variety of land uses, including commercial uses, already exists in the area surrounding the subject property. The nonconforming use of the subject property will be limited to the ground floor, which historically has not been used for residential purposes. Continued nonconforming use of the ground floor space, subject to the conditions adopted in this

[3] Application No. 18557 concerned the property that adjoins the property that is the subject of this application, at 1527 9th Street, N.W. (Square 397, Lot 812).

order, will not adversely affect the present character of the surrounding area because the conditions will ensure that any permitted use of the space would not create adverse impacts on nearby properties, including the adjoining residences. Similarly, the requested expansion of nonconforming uses permissible on the ground floor – a relatively small space in an existing building that will continue to devote its second floor to residential use – will not affect future development of the surrounding area.

The Board also concludes that the proposed nonconforming use of the ground floor, subject to the conditions adopted in this order, will not create any deleterious external effects such as noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects. The conditions of approval imposed by the Board in this order were proposed by the Applicant with the agreement of ANC 6E, and by the Office of Planning, as measures whose implementation would avoid the creation of any deleterious external effects. The Board concurs with the Applicant and ANC 6E that the conditions are responsive to the concerns raised by the party in opposition pertaining to trash, noise, vermin, and hours of operation, especially in light of the restrictions on use recommended by the Office of Planning, so that the ground floor space may not be used as a bar/cocktail lounge or restaurant, and with the reduction in weekday hours of operation adopted by the Board, so that commercial operations must end by 10:00 p.m. on weekdays. The Board does not find that approval of the requested zoning relief will affect parking, loading, or traffic considerations, including foot traffic in the vicinity, given the already mixed-use character of the neighborhood and the proximity of commercial and institutional uses to the site.

The Board is required to give "great weight" to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved subject to conditions intended to mitigate the potential for adverse impacts on the use of neighboring properties.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)). In this case, ANC 6E voted to recommend approval of the application subject to the mitigation measures set forth in the Applicant's proposed conditions. For the reasons discussed above, the Board concurs with the ANC's recommendation.

The Board concludes that the proposed change in nonconforming use of the ground floor will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property, as required by § 3104.1. The ground floor of the building, unlike the second floor, has not previously been devoted to residential use, and the building is located in an area characterized by a variety of land uses.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 2003 to

permit a change in use from one nonconforming use (office use) to another (certain retail or service uses, with the option to continue office use) on the ground floor of a two-story building in the R-4 zone at 1525 9th Street, N.W. (Square 397, Lot 811). Accordingly, it is **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29B – ARCHITECTURAL PLANS, AND WITH THE FOLLOWING CONDITIONS:**

1. The ground floor of the subject property may be devoted to any use permitted by § 701.1 except a bar/cocktail lounge or gas station or to any use permitted by § 701.4 except a restaurant, as an alternative to continuation of the nonconforming office use.

2. The Applicant shall include a provision in all future retail leases of the ground floor of the subject property prohibiting any tenant from having any entertainment, live music, or DJ, and precluding the tenant from applying for an entertainment endorsement to an Alcoholic Beverage Control license from the District of Columbia Alcoholic Beverage Regulatory Administration.

3. The Applicant shall include a provision in all future retail leases obligating any tenant to construct an indoor trash room, so that no dumpsters or other trash receptacles for commercial refuse, recyclables, or waste oil will be placed outdoors; to construct the trash room before the tenant files an application for the issuance of its certificate of occupancy and commencement of operations; and to contract for daily trash collection.

4. The Applicant shall include a provision in all future retail leases prohibiting any tenant from conducting commercial operations at the subject property other than from 7:30 AM to 10:00 PM, Sunday through Thursday, and 7:30 AM to 11:00 PM, Friday and Saturday.

5. The Applicant shall include a provision in all future retail leases prohibiting any tenant from receiving deliveries or having trash, recyclables, or waste oil collected except between 9:00 AM and 9:00 PM, daily.

6. The Applicant shall include a provision in all future retail leases requiring any tenant to install soundproofing materials along the interior wall of the Applicant's building where it adjoins the building at 1523 9th Street, N.W., including within the Applicant's interior light well walls, before the tenant applies for the issuance of a certificate of occupancy and begins operations.

7. The Applicant shall include a provision in all future retail leases requiring any tenant to repair or replace the concrete flooring in the interior light well and on the alley side of the building before the tenant applies for the issuance of a certificate of occupancy and begins operations.

8. The Applicant shall include a provision in all future retail leases requiring any tenant to install "soft close" hardware on all retail entrance doors, with the aim of mitigating slamming sounds when the doors close, before the tenant applies for the issuance of a certificate of occupancy and begins operations.

9. The Applicant shall include a provision in all future retail leases specifying that any alterations to the exterior of the building at 1525 9th Street, N.W., including any signage, must be approved by the D.C. Office of Planning's Historic Preservation Office, as the property is located within the boundaries of the Shaw Historic District.

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Marcie I. Cohen to APPROVE; Jeffrey L. Hinkle not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 16, 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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. 19383 of 2027 Rhode Island Ave NE LLC, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for special exceptions under the zone boundary line extension requirements of Subtitle A § 207.2, and the closed court area requirements of Subtitle G § 1200.4, and variances from the zone boundary line extension requirements of Subtitle A § 207.2, and the drive-aisle requirements of Subtitle C § 711.6, to construct a mixed-use building with ground floor retail in the MU-4 and R-1-B Zones at premises 2027 Rhode Island Avenue N.E. (Square 4217N, Lot 3).

HEARING DATE: December 7, 2016
DECISION DATE: December 7, 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") 5C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The Applicant testified that it met with the ANC, which voted to support the application, with conditions; however, the ANC did not provide further information to the Applicant regarding its conditions or concerns and did not file a written report to the Board.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application, subject to conditions. (Exhibit 35.) The Board adopted the conditions proposed, as modified during the public hearing. Specifically, the Board allowed the Applicant flexibility to continue to coordinate with DDOT on the following originally proposed conditions:

1. All terraces, gardens, steps, and grade changes shall be removed from public space.
2. The Applicant shall continue conversations with DDOT regarding the alignment of the building's entrance at-grade with the existing sidewalk.
3. The sidewalk shall be at least 8-feet wide, exclusive of the tree box.
4. The short term bicycle parking shall be moved from the edge of the road where it is shown partially blocking the sidewalk and installed as U-shaped racks closer to the building entrance.

One nearby resident, Walter Bryant, appeared to testify in opposition to the application, raising concerns about off-street parking impacts. In addition, an owner of the adjacent property, George Papageorge, provided testimony regarding the easement for use of the private alley.

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 zone boundary line extension requirements of Subtitle A § 207.2, and the drive-aisle requirements of Subtitle C § 711.6, to construct a mixed-use building with ground floor retail in the MU-4 and R-1-B Zones. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from Subtitle A § 207.2 and Subtitle C § 711.6, 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.

Special Exception Relief

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 special exceptions under the zone boundary line extension requirements of Subtitle A § 207.2 and the closed court area requirements of Subtitle G § 1200.4 to construct a mixed-use building with ground floor retail in the MU-4 and R-1-B Zones. 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle

X § 901.2, Subtitle A § 207.2 and Subtitle G § 1200.4, 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 38A1 – 38A2, AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall continue conversations with DDOT regarding all improvements to public space. The Applicant shall have minor flexibility for refinements to the approved plans based on coordination with DDOT and the Public Space Committee, provided that the approved zoning relief is not increased or affected.
2. Trash pickup shall occur from the private alley.
3. Loading and unloading may occur from Rhode Island Avenue, with any required permits from DDOT; otherwise, all loading and unloading shall occur from the private alley or internal to the subject property.
4. Trucks serving the site shall be limited to 30-feet in length.
5. Trucks serving the site shall drive head-in/head-out down the alley connecting with Mills Avenue, N.E.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Anita Butani D'Souza, and Robert E. Miller, 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 16, 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.

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 16-29
(Poplar Point RBBR, LLC – First-Stage PUD and Related Map Amendment @ Squares 5860 and 5861)
December 21, 2016

THIS CASE IS OF INTEREST TO ANC 8A and 8C

On December 13, 2016, the Office of Zoning received an application from Poplar Point RBBR, LLC (the "Applicant") for approval of a first-stage 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 97, 1025-1031, 1036, and 1037 and a portion of the alley to be closed in Square 5860, and Lot 91 in Square 5861 in southeast Washington, D.C. (Ward 8), on property located on either side of Howard Road, S.E. and in between Interstate 295 and South Capitol Street, S.E. The property is currently zoned MU-14. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to MU-9.

The Applicant proposes to construct a mixed-use development with office, residential, and retail uses. The mix of uses will include approximately 45,300 square feet of retail space, 1, 617,000 square feet of office space, and 677,480 square feet (680-700 units) of residential space. The maximum density of the project will be 8.99 floor area ratio ("FAR"), the lot occupancy will be 75%, and the maximum height will be 130 feet.

The project will include up to 930 below-grade parking spaces for cars, as well as 541 long-term parking spaces and 90 short-term parking spaces for bicycles. It will achieve LEED-Gold certification and have 10% of the residential square footage set aside for affordable housing – half of it for households at the 50% area median income ("AMI") level and half of it for households at the 80% AMI level.

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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETING

TIME AND PLACE: **Monday, January 23, 2017, @ 6:00 p.m.**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-14 (Vision McMillan Partners, LLC and Office of the Deputy Mayor for Planning and Economic Development - Remand from the Court of Appeals)

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act ("Act") (D.C. Official Code § 2-576), hereby provides notice it will hold a closed meeting, either in person or by telephone conference call, at the day and time noted above regarding the case noted above in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate on, without voting on, the case noted above, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

ANTHONY J. HOOD, ROBERT E. MILLER, ROBERT 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.

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