

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council passes Resolution 21-402, Protecting Pregnant Workers Fairness Emergency Declaration Resolution of 2016
- D.C. Council schedules a public hearing on Bill 21-620, Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing for Persons Experiencing Homelessness Act of 2016
- Department of Energy and Environment solicits proposals from a private company to operate the District of Columbia Sustainable Energy Utility
- Board of Ethics and Government Accountability provides interpretive guidance on the phrase “devoted substantially” as it relates to a District government employee’s compensatory activities outside of their government job
- Department of Health Care Finance establishes guidelines for the Medicaid Recovery Audit Contractor Program
- Office of Planning and Economic Development announces funding availability for the C&O Canal National Historic Park Grant
- D.C. Taxicab Commission solicits proposals for the development of a digital meter software application

# DISTRICT OF COLUMBIA REGISTER

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## DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER  
MAYOR

VICTOR L. REID, ESQ.  
ADMINISTRATOR

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**CONTENTS**

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**ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA**

**RESOLUTIONS**

Res 21-306 Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015 .....001833

Res 21-377 Commission on the Fashion Arts and Events Kristopher Johnson-Hoyle Confirmation Resolution of 2016 .....001834

Res 21-378 Commission on the Fashion Arts and Events Jacqueline Rodgers-Hart Confirmation Resolution of 2016 .....001835

Res 21-379 Commission on the Fashion Arts and Events Brandon Andrews Confirmation Resolution of 2016.....001836

Res 21-380 District of Columbia Boxing and Wrestling Commission Adam Weers Confirmation Resolution of 2016.....001837

Res 21-381 District of Columbia Boxing and Wrestling Commission Andrew Huff Confirmation Resolution of 2016.....001838

Res 21-382 District of Columbia Boxing and Wrestling Commission Kim Lockett Confirmation Resolution of 2016.....001839

Res 21-383 Far Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project Approval Resolution of 2016 ..... 001840 - 001848

Res 21-384 Police Complaints Board Jamira Burley Confirmation Resolution of 2016 .....001849

Res 21-390 Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A and Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001850 - 001851

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

**RESOLUTIONS CONT'D**

Res 21-391 Modification Nos. 05, 07, and 08 to Contract No. DCAM-14-NC-0179B Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001852 - 001853

Res 21-392 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001A Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001854 - 001855

Res 21-393 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001E Approval and Payment Authorization Emergency Declaration Resolution of 2016.....001856

Res 21-394 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001G Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001857 - 001858

Res 21-395 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001F Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001859 - 001860

Res 21-396 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001C Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001861 - 001862

Res 21-397 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096E Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001863 - 001864

Res 21-398 Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096D Approval and Payment Authorization Emergency Declaration Resolution of 2016..... 001865 - 001866

Res 21-399 Modification Nos. 10 and 11 to Human Care Agreement No. DCJZ-2011-H-0032 Approval and Payment Authorization Emergency Declaration Resolution of 2016.....001867

Res 21-400 Local Rent Supplement Program Contract No. 2014-LRSP-05A Approval Resolution of 2016..... 001868 - 001869

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

**RESOLUTIONS CONT'D**

Res 21-401 Marion S. Barry Summer Youth  
Employment Expansion Emergency  
Declaration Resolution of 2016..... 001870 - 001871

Res 21-402 Protecting Pregnant Workers Fairness Emergency Declaration  
Resolution of 2016.....001872

Res 21-403 Chancellor of the District of Columbia  
Public Schools Salary and Benefits Approval  
Emergency Declaration Resolution of 2016..... 001873 - 001874

Res 21-404 Contract No. CFOPD-11-C-023 Extension  
Approval and Payment Authorization  
Emergency Declaration Resolution of 2016.....001875

Res 21-405 Modifications 00002 and 00003 to Human  
Care Agreement No. DCJM-2013-H-0007-02  
Approval and Payment Authorization Emergency  
Declaration Resolution of 2016..... 001876 - 001877

**ADOPTED CEREMONIAL RESOLUTIONS**

ACR 21-160 Dr. Frances Cress Welsing Posthumous  
Recognition Resolution of 2016..... 001878 - 001879

ACR 21-161 Ward 8 Senior Service Project Day  
Recognition Resolution of 2016.....001880

ACR 21-162 D.C. Groundhog Day Recognition  
Resolution of 2016 .....001881

ACR 21-163 Chinese Lunar New Year 4714, Year  
of the Monkey Recognition  
Resolution of 2016 ..... 001882 - 001883

ACR 21-164 National Wear Red Day Recognition  
Resolution of 2016 ..... 001884 - 001885

ACR 21-165 World Cancer Day Recognition  
Resolution of 2016 ..... 001886 - 001887

ACR 21-166 Pastors Brian and Ruth Hamilton 20-Year  
Anniversary Recognition Resolution of 2016 ..... 001888 - 001889

ACR 21-167 Steven Kehoe Recognition  
Resolution of 2016 ..... 001890 - 001891

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

ADOPTED CEREMONIAL RESOLUTIONS CONT'D

ACR 21-168 Robert A. Malson Recognition  
Resolution of 2016 ..... 001892 - 001893

ACR 21-169 Emmanuel Burriss Recognition  
Resolution of 2016 ..... 001894 - 001895

ACR 21-170 District of Columbia Seismic Airgun  
Blasting and Offshore Drilling  
Opposition Resolution of 2016..... 001896 - 001897

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

**Notice of Intent to Act on New Legislation -**  
Bills B21-613, B21-614, B21-615, B21-620 and  
Proposed Resolutions PR21-563, PR21-567,  
PR21-568, and PR21-569 ..... 001898 - 001899

COUNCIL HEARINGS

**Notice of Public Hearing -**  
B21-620 Homeward DC Omnibus Approval of Facilities  
Plan for Short-Term Housing for Persons  
Experiencing Homelessness Act of 2016.....001900

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -  
Homewood Suites by Hilton Washington DC/  
New York Avenue and Hampton Inn & Suites  
Washington DC/New York Avenue at 4th St. NE -  
ANC 5D - New .....001901  
Seoul Spice - ANC 6C - New .....001902  
The Ledge - ANC 5E - New .....001903  
The Shaw Bijou - ANC 6E - New .....001904  
Timber Pizza Company - ANC 4C - New .....001905

Public Charter School Board, DC -  
Notice of Enrollment Ceiling Increase - Creative Minds  
International Public Charter School ..... 001906

Zoning Adjustment, Board of - March 29, 2016 Revised Hearings -  
18511B Alleyoop LLC - ANC-1A ..... 001907 - 001909  
19229 FOTP, LLC - ANC-2B ..... 001907 - 001909  
19230 John B. Knotts and Richard H. Hiltner - ANC-4C ..... 001907 - 001909  
19233 824 Varnum LLC - ANC-4C ..... 001907 - 001909

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES**

**PUBLIC HEARINGS**

Zoning Adjustment, Board of - March 29, 2016 Revised Hearings - cont'd

19235	Canberra LLC - ANC-1A .....	001907 - 001909
19236	Hobart LLC - ANC-1A.....	001907 - 001909
Zoning Commission - Case -		
16-03	DB Residential Hill East, LLC .....	001910 - 001911

**FINAL RULEMAKING**

Alcoholic Beverage Regulation Administration – Amend 23 DCMR (Alcoholic Beverages), Ch. 7 (General Operating Requirements), Sec. 718 (Reimbursable Detail Subsidy Program), to increase the number of days covered by the Reimbursable Detail Subsidy Program from two to seven days a week .....	001912 - 001913
Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), Ch. 93 (Medicaid Recovery Audit Contractor Program), Sections 9300, 9301, 9302, and 9399, to establish guidelines for a Recovery Audit Contractor Program.....	001914 - 001917

**PROPOSED RULEMAKING**

Contracting and Procurement, Office of - Amend 27 DCMR (Contracts and Procurement), Ch. 20 (Special Contracting Methods), Sec. 2003 (Purchase Card Procurements), to establish a Purchase Card Program .....	001918
--	--------

**EMERGENCY AND PROPOSED RULEMAKING**

Administrative Hearings, Office of - Amend 1 DCMR (Mayor and Executive Agencies), Ch. 28 (Office of Administrative Hearings Rules of Practice and Procedure) and Ch. 29 (Office of Administrative Hearings: Rules for DCPS, Rental Housing, Public Benefits, and Unemployment Insurance Cases), to update OAH rules of practice and Procedure procedure; Second Emergency and Proposed Rulemaking to incorporate review changes from rulemaking published on November 6, 2015 at 62 DCR 014365.....	001919 - 001982
---	-----------------

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**EMERGENCY AND PROPOSED RULEMAKING CONT'D**

Health Care Finance, Department of - Amend 29 DCMR  
 (Public Welfare), Ch. 9 (Medicaid Program),  
 Sec. 903 (Outpatient and Emergency Room Services), to  
 provide supplemental payments for outpatient hospital  
 services to eligible District of Columbia hospitals;  
 Second Emergency and Proposed Rulemaking to  
 incorporate review changes from rulemaking  
 published on November 13, 2015 at 62 DCR 14908 .....001983 - 001993

Health Care Finance, Department of - Amend 29 DCMR  
 (Public Welfare), Ch. 19 (Home and Community-  
 Based Services Waiver for Individuals with  
 Intellectual and Developmental Disabilities),  
 Sec. 1929 (Residential Habilitation Services), to clarify  
 rules governing provision of residential habilitation services.....001994 - 001995

**NOTICES, OPINIONS, AND ORDERS**

**MAYOR'S ORDERS**

2016-024 Delegation – Authority to the Deputy Mayor for  
 Planning and Economic Development for the  
 Acquisition of Property for the Use of the District of  
 Columbia Water and Sewer Authority .....001996 - 001997

2016-025 Designation of Special Event Area – BET Honors 2016.....001998 - 001999

2016-026 Appointment – Interim Medical Director, District  
 of Columbia Fire and Emergency Medical Services  
 Department (Lisa Fitzpatrick)..... 002000

**NOTICES, OPINIONS, AND ORDERS CONT'D**

**BOARDS, COMMISSIONS, AND AGENCIES**

Alcoholic Beverage Regulation Administration -  
 ABC Board's Calendar - February 24, 2016 .....002001 - 002002  
 ABC Board's Investigative Agenda - February 24, 2016.....002003 - 002004  
 ABC Board's Licensing Agenda - February 24, 2016..... 002005

Bridges Public Charter School and Briya Public Charter School -  
 Request for Proposals - Furniture Consultant  
 and Moving Vendor Services..... 002006

Cedar Tree Academy Public Charter School -  
 Request for Proposals - STEM Summer Program ..... 002007



ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Consumer and Regulatory Affairs, Department of - Meetings -

- Board of Accountancy, DC - March 4, 2016 .....002008
- Board of Architecture and Interior Design - March 4, 2016 .....002009
- Board of Barber and Cosmetology - March 7, 2016 .....002010
- Board of Funeral Directors - March 3, 2016 .....002011
- Board of Real Estate Appraisers - March 16, 2016.....002012
- Boards and Commissions - March 2016 Meeting Schedule .....002013
- Boxing and Wrestling Commission, DC - March 8, 2016 .....002014
- Professional Engineers, DC - March 24, 2016.....002015
- Real Estate Commission - March 8, 2016.....002016

Elections, Board of -

- Monthly Report of Voter Registration Statistics -  
As of January 31, 2016.....002017 - 002026

Energy and Environment, Department of -

- Funding Availability -  
Grants for Schoolyard and Parkland Canopy Plans  
and Tree Planting and Canopy 3,000 – Canopy Plans  
and Tree Planting on Public Spaces and Private Property .....002027 - 002028
- Funding Availability (Second Notice) -  
Grants for Lead Poisoning Prevention  
Outreach Project.....002029
- Issuance of a Request for Proposals -  
District of Columbia Sustainable Energy Utility .....002030 - 002031
- Permits -  
6613-R1 U.S. Senate Sergeant at Arms,  
U.S. Government Publishing Office,  
732 North Capitol Street NW.....002032
- Solicitation of Public Comment -  
District of Columbia Draft 2016 Integrated  
Report Under the Clean Water Act .....002033 - 002034
- Ethics and Government Accountability, Board of - Advisory Opinion -  
1448-001 Outside Activities: The Meaning of the Phrase “Devoted  
Substantially” in DPM § 1807.4 .....002035 - 002046
- Health, Department of -  
Board of Psychology Meeting - February 19, 2016 .....002047

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Judicial Disabilities and Tenure, Commission on -  
 Reappointment Evaluation of Superior Court Judge  
 Lynn Leibovitz .....002048 - 002049

Kingsman Academy Public Charter School -  
 Request for Proposals - Multiple Services ..... 002050

Not-For-Profit Hospital Corporation -  
 General Board Meeting - February 24, 2016 .....002051 - 002052

Perry Street Prep Public Charter School -  
 Request for Multiple Services - Phone Services,  
 IT Services and Internet & Networking Equipment..... 002053

Planning and Economic Development, Office of  
 the Deputy Mayor for - Funding Availability -  
 C&O Canal National Historic Park Grant..... 002054

Secretary, Office of the -  
 Recommendations for Appointments as DC  
 Notaries Public - Effective March 15, 2016.....002055 - 002059

Sentencing and Criminal Code Revision Commission, D.C. -  
 Meeting Agenda - February 16, 2016 ..... 002060

Taxicab Commission, DC -  
 Contractor Opportunity - Digital Meter Software Application ..... 002061

Washington Convention and Sports Authority (t/a Events DC) -  
 Special Meeting - February 19, 2016 ..... 002062

William E. Doar Jr. Public Charter School for the Performing Arts -  
 Request for Proposals - Heat and Air Conditioning  
 Services & Special Education Services..... 002063

Zoning Adjustment, Board of - Cases -  
 18844-A Alexander Pitt - ANC 2B - Order .....002064 - 002066  
 19166 The Department of General Services  
 of DC - ANC 7F - Order.....002067 - 002069  
 19171 Matcap LLC - ANC 2F - Order .....002070 - 002072  
 19181 The Department of General Services  
 of DC - ANC 3G - Order .....002073 - 002075  
 19190 Patricia Harris and Sandor Slager -  
 ANC 3G - Order .....002076 - 002078  
 19226 Christopher Pashby - ANC 3G - Order.....002079 - 002081

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

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

Zoning Commission - Cases -

- 10-03B Parcel Seven Associates, LLC - Order .....002082 - 002087
- 16-04 The Bard - Notice of Filing ..... 002088

Public Employee Relations Board - Opinions -

- 1290 PERB Case No. 12-S-03, Michael Thomas  
Moore, v. Fraternal Order of Police/ Department  
of Youth Rehabilitation Services Labor Committee ..... 002089 - 002092
  
- 1509 PERB Case No. 12-A-04(R), District of Columbia  
Metropolitan Police Department, v. Fraternal Order  
of Police, Metropolitan Police Department  
Labor Committee, (on behalf of Charles Jacobs)..... 002093 - 002101
  
- 1557 PERB Case No. 10-S-10, Christopher Collins,  
v. American Federation of Government Employees,  
National Office, and Local 1975 ..... 002102 - 002108
  
- 1558 PERB Case No. 09-U-55, Fraternal Order of  
Police/Metropolitan Police Department Labor  
Committee, v. District of Columbia Metropolitan  
Police Department ..... 002109 - 002115
  
- 1559 PERB Case No. 15-A-07, District of Columbia  
Public Schools, v. Council of School Officers,  
Local 4, American Federation of School Administrators..... 002116 - 002124

ENROLLED ORIGINAL

## A RESOLUTION

21-306

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 1, 2015

To confirm the reappointment of Mr. Christopher Bell as a member of the Board of Trustees of the University of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015”.

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

Mr. Christopher Bell  
3102 Hawthorne Street, N.W.  
Washington, D.C. 20008  
(Ward 3)

as a member of the Board of Trustees of the University of the District of Columbia, established by section 201 of the District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1424; D.C. Official Code § 38-1202.01), for a term to end May 15, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-377

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Mr. Kristopher Johnson-Hoyle as a member of the Commission on the Fashion Arts and Events.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on the Fashion Arts and Events Kristopher Johnson-Hoyle Confirmation Resolution of 2016”.

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

Mr. Kristopher Johnson-Hoyle  
1221 Massachusetts Avenue, S.E.  
Washington, D.C. 20002  
(Ward 6)

as a member of the Commission on the Fashion Arts and Events, established by section 2 of the Commission on Fashion Arts and Events Establishment Act of 2008, effective April 15, 2008 (D.C. Law 17-148; D.C. Official Code § 3-651), replacing Katherine R. Limon, for a term to end April 15, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-378

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Ms. Jacqueline Rodgers-Hart as a member of the Commission on the Fashion Arts and Events.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on the Fashion Arts and Events Jacqueline Rodgers-Hart Confirmation Resolution of 2016”.

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

Ms. Jacqueline Rodgers-Hart  
1548 8th Street, N.W.  
Washington, D.C. 20001  
(Ward 6)

as a member of the Commission on the Fashion Arts and Events, established by section 2 of the Commission on Fashion Arts and Events Establishment Act of 2008, effective April 15, 2008 (D.C. Law 17-148; D.C. Official Code § 3-651), replacing Michelle Shableski, for a term to end April 15, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-379

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Mr. Brandon Andrews as a member of the Commission on the Fashion Arts and Events.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on the Fashion Arts and Events Brandon Andrews Confirmation Resolution of 2016”.

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

Mr. Brandon Andrews  
2321 Lincoln Road, N.E.  
Washington, D.C. 20002  
(Ward 5)

as a member of the Commission on the Fashion Arts and Events, established by section 2 of the Commission on Fashion Arts and Events Establishment Act of 2008, effective April 15, 2008 (D.C. Law 17-148; D.C. Official Code § 3-651), replacing Janice Rankins, for a term to end April 15, 2019.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-380

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Mr. Adam Weers to the District of Columbia Boxing and Wrestling Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Boxing and Wrestling Commission Adam Weers Confirmation Resolution of 2016".

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

Mr. Adam Weers  
3260 Banneker Drive, N.E.  
Washington, D.C. 20018  
(Ward 5)

as a member and Chairperson of the District of Columbia Boxing and Wrestling Commission, established by section 5 of the District of Columbia Boxing and Wrestling Commission Act, effective October 8, 1975 (D.C. Law 1-20; D.C. Official Code § 3-604), replacing Bryan Scott Irving, for a term to end January 5, 2017.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

21-381

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Mr. Andrew Huff to the District of Columbia Boxing and Wrestling Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Boxing and Wrestling Commission Andrew Huff Confirmation Resolution of 2016”.

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

Mr. Andrew Huff  
1333 Hamilton Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as a member of the District of Columbia Boxing and Wrestling Commission, established by section 5 of the District of Columbia Boxing and Wrestling Commission Act, effective October 8, 1975 (D.C. Law 1-20; D.C. Official Code § 3-604), replacing Sean Ponder, for a term to end January 5, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-382

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Ms. Kim Lockett to the District of Columbia Boxing and Wrestling Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Boxing and Wrestling Commission Kim Lockett Confirmation Resolution of 2016”.

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

Ms. Kim Lockett  
510 Decatur Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as a member of the District of Columbia Boxing and Wrestling Commission, established by section 5 of the District of Columbia Boxing and Wrestling Commission Act, effective October 8, 1975 (D.C. Law 1-20; D.C. Official Code § 3-604), replacing Timothy Thomas, for a term to end January 5, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-383

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$22 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Far Southeast Family Strengthening Collaborative, Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Far Southeast Family Strengthening Collaborative, Inc. Revenue Bonds Project Approval Resolution of 2016”.

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) “Authorized Delegate” means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor’s functions under this resolution pursuant to section 422(6) of the Home Rule Act.

(2) “Bond Counsel” means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(3) “Bonds” means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) “Borrower” means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be Far Southeast Family Strengthening Collaborative, Inc., a nonprofit corporation organized under the laws of the District of Columbia, which is exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3) and organized under the laws of the District and which is liable for the repayment of the Bonds.

(5) “Chairman” means the Chairman of the Council of the District of Columbia.

(6) “Closing Documents” means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the

## ENROLLED ORIGINAL

Bonds and to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(7) "District" means the District of Columbia.

(8) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds and the making of the Loan, including any offering document, and any required supplements to any such documents.

(9) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(10) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), and compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Project" means the financing, refinancing, or reimbursing of all or a portion of the Borrower's costs of:

(A) The acquisition, development, construction, and renovation of an approximately 22,177 square-foot building located on Lot 827 in Square 5773, on the east side of Martin Luther King Jr. Avenue, S.E., between U Street, S.E. and V Street, S.E., in Washington, D.C. ("Existing Facility");

(B) The construction and equipping of a 10,842 square-foot addition ("New Addition") to the Existing Facility (New Addition together with the Existing Facility, "Facility"); which Facility will be used by the Borrower as an office building and certain portions of the building will be leased for retail purposes;

(C) Funding any credit enhancement costs, liquidity costs, or debt service reserve fund; and

(D) Paying costs of issuance and other related costs to the extent permissible.

**ENROLLED ORIGINAL**

## Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse costs, and to assist in the financing, refinancing, or reimbursing of, the costs of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series pursuant to a plan of finance, in an aggregate principal amount not to exceed \$22 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of facilities used to house and equip operation related to the study, development, application or production of innovative commercial or industrial technologies and social services, within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

## Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$22 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction, and assisting in the redemption, repurchase, and remarketing of the Bonds.

## ENROLLED ORIGINAL

## Sec. 5. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this resolution in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

- (1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;
- (2) The principal amount of the Bonds to be issued and denominations of the Bonds;
- (3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;
- (4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the Bonds, and the maturity date or dates of the Bonds;
- (5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;
- (6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;
- (7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;
- (8) The time and place of payment of the Bonds;
- (9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;
- (10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and
- (11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

**ENROLLED ORIGINAL**

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Borrower subject to the approval of the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

**Sec. 6. Sale of the Bonds.**

(a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interest of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters and may authorize the distribution of the documents in connection with the sale of the Bonds.

(c) The Mayor is authorized to deliver the executed and sealed Bonds, on behalf of the District, for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

**Sec. 7. Payment and security.**

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

**ENROLLED ORIGINAL****Sec. 8. Financing and Closing Documents.**

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Financing Documents and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

**Sec. 9. Authorized delegation of authority.**

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

**Sec. 10. Limited liability.**

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.



**ENROLLED ORIGINAL**

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees, or agents to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

**Sec. 11. District officials.**

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale, or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

**Sec. 12. Maintenance of documents.**

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

**Sec. 13. Information reporting.**

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

**Sec. 14. Disclaimer.**

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as

**ENROLLED ORIGINAL**

obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

**Sec. 15. Expiration.**

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

**Sec. 16. Severability.**

If any particular provision of this resolution or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

**Sec. 17. Compliance with public approval requirement.**

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. § 147(f)), and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District.

**Sec. 18. Transmittal.**

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

**ENROLLED ORIGINAL**

Sec. 19. 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. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-384

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To confirm the appointment of Ms. Jamira Burley to the Police Complaints Board.

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

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

Ms. Jamira Burley  
3636 16<sup>th</sup> Street NW, Apt 1240B  
Washington, D.C. 20010  
(Ward 1)

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

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-390

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A with Chiaramonte Construction Company for snow and ice removal and pre-treatment services, and to authorize payment in the aggregate amount of \$1,200,000.00 for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A and Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A for snow and ice removal and pre-treatment services, and to authorize payment in the aggregate amount of \$1,200,000.00 for the goods and services received and to be received under the modifications.

(b) Contract No. DCAM-14-NC-0179A was competitively bid and awarded to Chiaramonte Construction Company, in the amount of \$700,000.00 for the base year. Thereafter, the Department of General Services issued Modification Nos. 01 and 02 at no cost and Modification No. 03, which increased the contract value by \$295,000.00 to \$995,000.00. Modification No. 04 increased the contract value by \$40,932.00 to \$ 1,035,932.00 and therefore necessitated Council approval.

(c) Modification No. 05 exercised a portion of Option Year One in the amount of \$400,000.00. Modification No. 06 exercised the remaining portion of Option Year One in the amount of \$550,000.00. Neither modification required Council approval.

(d) Modification No. 07, which increases the contract amount for Option Year One by \$250,000.00, will cause the aggregate value of Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A to exceed the \$1 million threshold set forth in section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51). Approval of Modification Nos. 05, 06, and 07, and the authorization of payment in the amount of \$1,200,000.00 is necessary to compensate Chiaramonte Construction Company for snow and ice removal and pre-treatment services provided and to be provided during Option Year One.

**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 05, 06, and 07 to Contract No. DCAM-14-NC-0179A Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-391

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 05, 07, and 08 to Contract No. DCAM-14-NC-0179B with Community Bridge, Inc. for snow and ice removal and pre-treatment Services, and to authorize payment in the aggregate amount of \$1,200,000.000 for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification Nos. 05, 07, and 08 to Contract No. DCAM-14-NC-0179B Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2.(a) There exists an immediate need to approve Modification Nos. 05, 07, and 08 to Contract No. DCAM-14-NC-0179B for snow and ice removal and pre-treatment services and to authorize payment in the aggregate amount of \$1,200,000.00 for the goods and services received and to be received under the modifications.

(b) Contract No. DCAM-14-NC-0179B was competitively bid and awarded to Community Bridge, Inc. in the amount of \$700,000.00 for the base year. Thereafter, the Department of General Services issued Modification Nos. 01 and 02 at no cost and Modification No. 03, which increased the contract value by \$295,000.00 to \$995,000.00. Modification No. 04 increased the contract value by \$50,105.00 to \$1,045,105.00 and therefore necessitated Council approval.

(c) Modification No. 05 exercised a portion of Option Year One in the amount of \$400,000. Modification No. 06 was a no-cost administrative action. Modification No. 07 exercised the remaining portion of Option Year One in the amount of \$550,000.00. None of these modifications required Council approval.

(d) Modification No. 08, which increases the contract amount for Option Year One by \$250,000.00, will cause the aggregate value of Modification Nos. 05, 07, and 08 to Contract No. DCAM-14-NC-0179B to exceed the \$1 million threshold set forth in section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51). Approval of Modification Nos. 05, 07, and 08, and the authorization of payment in

**ENROLLED ORIGINAL**

the amount of \$1,200,000.00 is necessary to compensate Community Bridge, Inc., for snow and ice removal and pre-treatment services provided and to be provided during Option Year One.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 05, 07 and 08 to Contract No. DCAM-14-NC-0179B Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

21-392

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001A with Blue Skye Construction, LLC for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001A Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001A with Blue Skye Construction, LLC for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

(b) Contract No. DCAM-14-CS-0001A (the “Contract”) was approved by the Council with an established not-to-exceed value of \$10 million and 2 one-year options to extend the term of the Contract. All work under the Contract was to be awarded and released through individual project task orders, based on a competitive bidding process, as set forth in Section 1.2 of the Contract.

(c) The base year of the Contract ended on September 30, 2014. Option year one of the Contract was exercised in part in mid-October 2014 through a bilateral letter agreement. Subsequently, the Council approved the full exercise of option year one, in the aggregate not-to-exceed amount of \$10 million.

(d) Thereafter, in Fiscal Year 2016, the Department of General Services partially exercised option year 2 of the Contract in the not-to-exceed amount of \$975,000.00. Council approval is now required for the full exercise of option year 2, to extend the term of the Contract through Fiscal Year 2016. The terms and conditions of the Contract have not changed, and the aggregate not-to-exceed value of option year 2 would be increased to \$10 million.

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

**ENROLLED ORIGINAL**

Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001A Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-393

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001E with HRGM Corporation for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001E Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001E with HRGM Corporation for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

(b) Contract No. DCAM-14-CS-0001E (the “Contract”) was approved by the Council with an established not-to-exceed value of \$10 million and 2 one-year options to extend the term of the Contract. All work under the Contract was to be awarded and released through individual project task orders, based on a competitive bidding process, as set forth in Section 1.2 of the Contract.

(c) The base year of the Contract ended on September 30, 2014. Option year one of the Contract was exercised in part in mid-October 2014 through a bilateral letter agreement. Subsequently, the Council approved the full exercise of option year one in the aggregate not-to-exceed amount of \$10 million.

(d) Thereafter, in Fiscal Year 2016, the Department of General Services partially exercised option year 2 of the Contract in the not-to-exceed amount of \$975,000.00. Council approval is now required for the full exercise of option year 2, to extend the term of the Contract through Fiscal Year 2016. The terms and conditions of the Contract have not changed, and the aggregate not-to-exceed value of option year 2 would be increased to \$10 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001E Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-394

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001G with Paige Industrial Services, Inc. for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001G Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001G with Paige Industrial Services, Inc. for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

(b) Contract No. DCAM-14-CS-0001G was approved by the Council with an established not-to-exceed value of \$10 million and 2 one-year options to extend the term of the Contract. All work under the Contract was to be awarded and released through individual project task orders, based on a competitive bidding process, as set forth in Section 1.2 of the Contract.

(c) The base year of the Contract ended on September 30, 2014. Option year one of the Contract was exercised in part in mid-October 2014 through a bilateral letter agreement. Subsequently, the Council approved the full exercise of option year one, in the aggregate not-to-exceed amount of \$10 million.

(d) Thereafter, in Fiscal Year 2016, the Department of General Services partially exercised option year 2 of the contract in the not-to-exceed amount of \$975,000.00. Council approval is now required for the full exercise of option year 2, to extend the term of the Contract through Fiscal Year 2016. The terms and conditions of the Contract have not changed, and the aggregate not-to-exceed value of option year 2 would be increased to \$10 million.

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

**ENROLLED ORIGINAL**

Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001G Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-395

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001F with Keystone Plus Construction Corporation for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001F Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001F with Keystone Plus Construction Corporation for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

(b) Contract No. DCAM-14-CS-0001F (the “Contract”) was approved by the Council with an established not-to-exceed value of \$10 million and 2 one-year options to extend the term of the Contract. All work under the Contract was to be awarded and released through individual project task orders, based on a competitive bidding process, as set forth in Section 1.2 of the Contract.

(c) The base year of the Contract ended on September 30, 2014. Option year one of the Contract was exercised in part in mid-October 2014 through a bilateral letter agreement. Subsequently, the Council approved the full exercise of option year one, in the aggregate not-to-exceed amount of \$10 million.

(d) Thereafter, in Fiscal Year 2016, the Department of General Services partially exercised option year 2 of the Contract in the not-to-exceed amount of \$975,000.00. Council approval is now required for the full exercise of option year 2, to extend the term of the Contract through Fiscal Year 2016. The terms and conditions of the Contract have not changed, and the aggregate not-to-exceed value of option year 2 would be increased to \$10 million.

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

**ENROLLED ORIGINAL**

Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001F Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-396

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001C with Environmental Design and Construction LLC for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001C Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2 of Contract No. DCAM-14-CS-0001C with Environmental Design and Construction LLC for DCPS and DPR small construction projects, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under option year 2 of the contract.

(b) Contract No. DCAM-14-CS-0001C (the “Contract”) was approved by the Council with an established not-to-exceed value of \$10 million and 2 one-year options to extend the term of the Contract. All work under the Contract was to be awarded and released through individual project task orders, based on a competitive bidding process, as set forth in Section 1.2 of the Contract.

(c) The base year of the Contract ended on September 30, 2014. Option year one of the Contract was exercised in part in mid-October 2014 through a bilateral letter agreement. Subsequently, the Council approved the full exercise of option year one, in the aggregate not-to-exceed amount of \$10 million.

(d) Thereafter, in Fiscal Year 2016, the Department of General Services partially exercised option year 2 of the Contract in the not-to-exceed amount of \$975,000.00. Council approval is now required for the full exercise of option year 2, to extend the term of the Contract through Fiscal Year 2016. The terms and conditions of the Contract have not changed, and the aggregate not-to-exceed value of option year 2 would be increased to \$10 million.

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



**ENROLLED ORIGINAL**

Exercise of Option Year 2 of Contract No. DCAM-14-CS-0001C Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-397

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2, via Change Order No. 004, of Contract No. DCAM-14-CS-0096E with HRGM Corporation for on-call construction, maintenance, and repair services, and to authorize payment for the goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096E Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2, via Change Order No. 004, of Contract No. DCAM-14-CS-0096E with HRGM Corporation for on-call construction, maintenance, and repair services, and to authorize payment in the not-to-exceed amount of \$2,495,463.02 for the goods and services received and to be received under option year 2 of the contract.

(b) The Department of General Services (the “Department”) awarded Contract No. DCAM-14-CS-0096E (the “Contract”) to HRGM Corporation to provide on-call construction, maintenance, and repair services at certain District facilities, which was submitted to the Council and approved. Subsequently, the Department exercised the first of the 2 one-year options contemplated by the Contract to extend the term of the Contract through Fiscal Year 2015; that action was also submitted to the Council for review and approval. Thereafter, the Department partially exercised the second option year on a zero-dollar basis and issued Change Order No. 001 in the amount of \$750,000, Change Order No. 002 in the amount of \$145,463.02, and Change Order No. 003 in the amount of \$0, the aggregate value of which was \$895,463.02; thus, Council approval was not required. The Department now desires to exercise option year 2 in full, via Change Order No. 004, and to provide additional funding as the term is extended.

(c) Council approval of Change Order No. 004 is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), because the Change Order will increase the total expenditure under Contract No. DCAM-14-CS-0096E for option year 2 by an amount in excess of \$1 million during a 12-month period.

**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096E Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-398

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of option year 2, via Change Order No. 004, of Contract No. DCAM-14-CS-0096D with Paige Industrial Services, Inc. for on-call construction, maintenance, and repair services, and to authorize payment for the goods and services received and to be received under option year 2 of the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096D Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of option year 2, via Change Order No. 004, to Contract No. DCAM-14-CS-0096D with Paige Industrial Services, Inc. for on-call construction, maintenance, and repair services, and to authorize payment in the not-to-exceed amount of \$2,380,000.00 for the goods and services received and to be received under option year 2 of the contract.

(b) The Department of General Services (the “Department”) awarded Contract No. DCAM-14-CS-0096D (the “Contract”) to Paige Industrial Services, Inc. to provide on-call construction, maintenance, and repair services at certain District facilities, which was submitted to the Council and was approved. Subsequently, the Department exercised the first of the 2 one-year options contemplated by the Contract to extend the term of the Contract through Fiscal Year 2015; that action was also submitted to the Council for review and approval. Thereafter, the Department partially exercised the second option year on a zero-dollar basis and issued Change Order No. 001 in the amount of \$750,000, Change Order No. 002 in the amount of \$30,000.00, and Change Order No. 003 in the amount of \$0, the aggregate value of which was \$780,000.00; thus, Council approval was not required. The Department now desires to exercise option year 2 in full, via Change Order No. 004, and to provide additional funding as the term is extended.

(c) Council approval of Change Order No. 004 is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), because the Change Order will increase the total expenditure under Contract No. DCAM-14-CS-0096D for option year 2 by an amount in excess of \$1 million during a 12-month period.

**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 of Contract No. DCAM-14-CS-0096D Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-399

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 10 and 11 to Human Care Agreement No. DCJZ-2011-H-0032 with Alternative Solutions for Youth to provide family reunification home services to District youth, and to authorize payment for the services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification Nos. 10 and 11 to Human Care Agreement No. DCJZ-2011-H-0032 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists a need to approve Modification Nos. 10 and 11 to Human Care Agreement No. DCJZ-2011-H-0032 with Alternative Solutions for Youth to provide family reunification home services to District youth and to authorize payment for the services received and to be received under the contract modifications.

(b) On June 30, 2015, by Modification No. 10, the Office of Contracting and Procurement ("OCP"), on behalf of the Department of Youth Rehabilitation Services, exercised option year four of Human Care Agreement No. DCJZ-2011-H-0032 to provide family reunification home services to District youth for the period from July 6, 2015 to July 5, 2016 and issue task orders in the amount of \$999,180.00.

(c) By Modification No. 11, OCP now seeks to increase the contract amount for option year four to \$1,609,650.00.

(d) Council approval of Modification Nos. 10 and 11 is necessary because the modifications increase the contract amount by more than \$1million during a 12-month period. Council approval is further necessary to allow the continuation of these vital services. Without this approval, Alternative Solutions for Youth cannot be paid for services provided in excess of \$1 million for the contract period from July 6, 2015 through July 5, 2016.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 10 and 11 to Human Care Agreement No. DCJZ-2011-H-0032 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-400

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To approve an agreement to enter into a long term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2014-LRSP-05A with Plaza West, LLC, for program units located at 1035 4th Street, N.W., and 307 K Street, N.W.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2014-LRSP-05A Approval Resolution of 2016".

Sec. 2. (a) In 2007, the District passed title II of the Fiscal Year 2007 Budget Support Act of 2006 ("BSA") to provide funding for affordable housing for extremely low-income households in the District. The passage of the BSA created the Local Rent Supplement Program ("LRSP"), a program designed to provide affordable housing and supportive services to extremely low-income District residents, including those who are homeless or in need of supportive services, such as elderly individuals or those with disabilities, through project-based, tenant-based, and sponsored-based LRSP affordable housing units. The BSA provided for the District of Columbia Housing Authority ("DCHA") to administer the LRSP on behalf of the District.

(b) In April 2014, DCHA participated in a Request for Proposals ("RFP") issued by the District of Columbia Department of Housing and Community Development ("DHCD"). Of the total proposals received, 12 developers were chosen to work with DCHA and other District agencies to develop affordable housing and permanent supportive housing units throughout the District for extremely low-income families making from 0% to 30% of the area's median income, as well as the chronically homeless and individuals with mental or physical disabilities. Upon approval of the agreement to enter into a long-term contract ("ALTSC") by the Council, DCHA will execute the agreement with the selected housing provider under the LRSP.

(c) There exists an immediate need to approve the ALTSC with Plaza West, LLC, in order to provide long-term affordable housing units for extremely low-income households in the District for units located at 1035 4th Street, N.W., and 307 K Street, N.W. ("Plaza West").

**ENROLLED ORIGINAL**

(d) The Council's approval authorizes the ALTSC between the DCHA and Plaza West, LLC, with respect to the payment of rental subsidy, and allows the owner to lease 11 newly constructed units at Plaza West and house District extremely low-income households with incomes at 30% or less of the area median income. For the eleven units, 6 households will be referred by the Department of Behavioral Health and 5 grandfamilies will be referred by the owner.

Sec. 3. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with Plaza West, LLC for the creation of 11 affordable housing units in an initial amount not to exceed \$166,200 annually.

Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to DCHA and the Mayor.

Sec. 5. The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

21-401

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to amend the Youth Employment Act of 1979 to authorize the Mayor to provide employment or work readiness training for participants 14 through 24 years of age.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Marion S. Barry Summer Youth Employment Expansion Emergency Declaration Resolution of 2016”.

Sec. 2.(a) In 2015, the Council enacted the Youth Employment and Work Readiness Training Emergency Amendment Act of 2015, effective May 26, 2015 (D.C. Act 21-73; 62 DCR 6884) (“emergency legislation”), which provided the Mayor with the authority to allow up to 1,000 youth 22 to 24 years of age to participate in the Marion S. Barry Summer Youth Employment Program (“MBSYEP”). The emergency legislation expired on August 24, 2015.

(b) In 2015, the Department of Employment Services (“DOES”) received 2,526 applications for participation in MBSYEP from youth 22 to 24 years of age. Due to the high interest from this age group, permanent legislation allowing up to 1,000 youths in this group to participate in MBSYEP is currently under Council review.

(c) Forty percent of the District’s unemployed residents have less than a Bachelor’s degree, while 61% of jobs in the District require a Bachelor’s degree or higher. Consequently, it is imperative that older youths who lack the necessary education to obtain the majority of jobs in the District be given the opportunity to gain meaningful work experience to prepare them for long-term careers in the future.

(d) The start date for MBSYEP is January 29, 2016. To provide the 1,000 spots for youth 22 to 24 years of age in 2016, as well as provide those participants with the full experience of MBSYEP, this emergency is necessary to provide the Mayor with the authority to accept applications from this age group at the start of the application process.

(e) To allow the DOES to provide this older age group with the services and experiences they need, it is crucial that youths 22 to 24 years of age be able to participate in MBSYEP as well as gain access to the pre-program assistance available to the other participants in the program by providing the Mayor with the authority to expand the program to include youth 22 to 24 years of age.

## ENROLLED ORIGINAL

(f) Further, this legislation will align the District with the federal programs of the Workforce Innovation and Opportunity Act, approved July 22, 2014 (Pub. L. No 113-128; 128 Stat. 1425), which have expanded youth programming to include youth up to 24 years of age. The expansion of MBSYEP will provide the older youth who participate in MBSYEP an entrée to federal training and employment readiness programs and year-round support.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Marion S. Barry Summer Youth Employment Expansion Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-402

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to amend the Protecting Pregnant Workers Fairness Act of 2014 to require an employer to make a reasonable accommodation for an employee whose ability to perform the functions of the employee's job are affected by a pre-birth complication.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Protecting Pregnant Workers Fairness Emergency Declaration Resolution of 2016".

Sec. 2. (a) The Protecting Pregnant Workers Fairness Act of 2014, effective March 3, 2015 (D.C. Law 20-168; 61 DCR 11368) ("PPWFA"), was enacted to protect pregnant workers from having to choose between their health or the viability of their pregnancy and their jobs.

(b) However, the PPWFA does not adequately address pre-birth complications. The Protecting Pregnant Workers Fairness Amendment Act of 2016, as introduced on January 5, 2016 (Bill 21-563), which will strengthen the PPWA by adding protections for pregnant workers suffering from pre-birth complications, is under Council review.

(c) Emergency legislation is necessary to protect pregnant workers experiencing pre-birth complications by requiring an employer to make reasonable accommodation for such an employee and prohibiting the employer from taking adverse action against the employee for being absent from work as a result of a pre-birth complication.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Protecting Pregnant Workers Fairness Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-403

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to revise the salary limitation for the Chancellor of the District of Columbia Public Schools and to authorize the provision of certain employment benefits to the Chancellor.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Emergency Declaration Resolution of 2016”.

Sec. 2. (a) Kaya Henderson was appointed Interim Chancellor of the District of Columbia Public Schools (“DCPS”) on November 1, 2010. On March 11, 2011, she was nominated to serve as Chancellor of DCPS and was unanimously confirmed by the Council on June 21, 2011. She has served as Chancellor continuously since that time.

(b) Over the past 5 1/2 years under Chancellor Henderson’s leadership, DCPS has realized dramatic improvements toward the goals of increasing District-wide math and reading proficiency, improving the proficiency rates of DCPS’ lowest-performing schools, increasing high school graduation rates, improving student satisfaction, and increasing DCPS’ overall enrollment.

(c) According to the National Assessment of Education Progress’s 2015 Trial Urban District Assessment results, DCPS continues to be the fastest-improving urban school district in the country. DCPS students grew by 8 points in 4th grade reading over the 2013 test, representing the biggest increase of any school district and the largest increase in the history of the 4th grade reading test. DCPS students also saw a 4-point increase in 4th grade math scores.

(d) The percentage of DCPS high school students who graduate in 4 years has increased by 6 percentage points, from 58% to 64%. Last school year, 52% more students took Advanced Placement exams compared to 5 years ago. Student satisfaction at DCPS has also vastly improved, going from 65% when Chancellor Henderson started in the role to 83% at the end of school year 2014-2015.

(e) Under Chancellor Henderson’s leadership, DCPS has increased its audited enrollment with 4 consecutive years of growth, enrolling the highest number of students in over 5 years. DCPS is on track to meet its goal of enrolling more than 50,000 students by 2017.

**ENROLLED ORIGINAL**

(f) Based on the dramatic improvements achieved under the steady leadership of the Chancellor over the last 5 1/2 years and the commitment to continuing the progress of DCPS, the Mayor has signed a new contract that increases the Chancellor's present salary and provides for certain employment benefits.

(g) There is an immediate need to approve the salary and benefits provided under the contract in order to ensure the retention of the Chancellor and to allow for the prompt payment of the negotiated salary. The Chancellor's previous contract has expired, and the new contract was signed effective January 2, 2016.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-404

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to extend Contract No. CFOPD-11-C-023 with Citibank, N.A. for it to continue to provide a wide variety of general banking services to the District of Columbia and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-11-C-023 Extension Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve the extension of Contract No. CFOPD-11-C-023 with Citibank, N.A. for it to continue to provide a wide variety of general banking services to the District of Columbia and to authorize payment for the services received and to be received under the contract.

(b) On December 29, 2015, the Office of the Chief Financial Officer executed Modification No. 13, partially exercising a 5-year option period under Contract No. CFOPD-11-C-023 for the period of January 20, 2016, through February 19, 2016, in the amount of \$226,166.

(c) Proposed Modification No. 14 will exercise the remainder of the 5-year option period of Contract No. CFOPD-11-C-023 from February 20, 2016, through January 19, 2021, in the amount of \$6,473,834.

(d) Council approval is necessary because Modification No. 14 increases the contract to one of more than \$1 million during a 12-month period and the total term of the option is more than one year. Council approval is further necessary to allow the continuation of these vital services and to allow Citibank, N.A. to continue performance under the contract.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CFOPD-11-C-023 Extension Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-405

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. 00002 and proposed Modification No. 00003 to Human Care Agreement No. DCJM-2013-H-0007-02 with St. John's Community Services to continue to provide residential habilitation, supported living and host home services for persons with intellectual and developmental disabilities, and to authorize payment for the services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications 00002 and 00003 to Human Care Agreement No. DCJM-2013-H-0007-02 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modification No. 00002 and proposed Modification No. 00003 to Human Care Agreement ("HCA") No. DCJM-2013-H-0007-02 with St. John's Community Services ("St. John's") to provide residential habilitation, supported living and host home services for persons with intellectual and developmental disabilities, and to authorize payment for the services received and to be received under these modifications.

(b) On December 1, 2013, the District of Columbia ("District") Department on Disability Services ("DDS") entered into HCA No. DCJM-2013-H-0007-02 with St. John's to provide residential habilitation, supported living and host home services for persons with intellectual and developmental disabilities from December 1, 2013, through November 30, 2014, in the total estimated contract amount of \$2,251,661.25.

(c) On November 29, 2014, by Modification No. 00001, DDS exercised Option Year One and extended the term of the HCA for the period from December 1, 2014, through November 30, 2015, in the estimated contract amount of \$2,222,825.29.

(d) On November 17, 2015, by Modification No. 00002, DDS partially exercised Option Year 2 to extend the term of the HCA from December 1, 2015, through April 30, 2016, in the estimated contract amount of \$753,556.84.

(e) By proposed Modification No. 00003, DDS intends to exercise the remainder of Option Year 2 from May 1, 2016, through November 30, 2016, in the estimated contract amount of \$1,507,113.77. The total estimated contract amount for Option Year 2 is \$2,260,670.61.

**ENROLLED ORIGINAL**

(f) Council approval is necessary since the modifications and contract are more than \$1 million during a 12-month period.

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, St. John's cannot be paid for services provided in excess of \$1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications 00002 and 00003 to Human Care Agreement No. DCJM-2013-H-0007-02 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-160

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To posthumously honor the life of Dr. Frances Cress Welsing for her remarkable commitment and service to the residents of District of Columbia and to all African-American residents in the nation, and to declare January 2, 2016, as “Dr. Frances Cress Welsing Day” in the District of Columbia.

WHEREAS, Dr. Frances Cress Welsing of Chicago, Illinois was born to Henry N. Cress, a physician, and Ida Mae Griffen, a teacher, on March 18, 1935, and passed away on January 2, 2016;

WHEREAS, Dr. Frances Cress Welsing attended Antioch College and graduated with her bachelor’s degree in 1957 and earned her doctorate in psychiatry at Howard University in 1962;

WHEREAS, Dr. Frances Cress Welsing worked as the Assistant Professor of Pediatrics at the Howard University College of Medicine;

WHEREAS, Dr. Frances Cress Welsing worked for more than 25 years as a Staff Physician for the Department of Human Services in Washington, D.C.;

WHEREAS, Dr. Frances Cress Welsing served as the Clinical Director for 2 schools that served emotionally troubled children;

WHEREAS, Dr. Frances Cress Welsing became famous for her work, the *Cress Theory of Color-Confrontation* in 1974 and *The Isis Papers: The Keys to the Colors* in 1991;

WHEREAS, Dr. Frances Cress Welsing’s works examined white supremacy and revealed the psychological nuisances of discrimination and racism;

WHEREAS, Dr. Frances Cress Welsing’s brilliant works sparked the need for conversations around racial inequality in America; and

WHEREAS, Dr. Frances Cress Welsing is a member of the National Medical Association, American Medical Association, and American Psychiatric Association.

**ENROLLED ORIGINAL**

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Dr. Frances Cress Welsing Posthumous Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates the life of Dr. Frances Cress Welsing, for her distinguished service and extensive contributions to the field of psychiatry and all District of Columbia, and declares January 2, 2016, as “Dr. Frances Cress Welsing Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-161

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To honor the senior citizens of Ward 8 for their dedication to Ward 8 and to declare January 16, 2016, as the “Ward 8 Senior Service Project Day” in the District of Columbia.

WHEREAS, on January 16, 2016, at 10:00 a.m., Ward 8 Councilmember LaRuby May coordinated with volunteers and community partners to provide minor home repairs to Ward 8 seniors;

WHEREAS, senior citizens often need assistance with their home upkeep needs; and

WHEREAS, Ward 8 has over 8, 000 seniors that would appreciate assistance with their minor repairs and yard work needs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Ward 8 Senior Service Project Day Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates our seniors in Ward 8 for the dedication to Ward 8 and declares January 16, 2016, as “Ward 8 Senior Service Project Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-162

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To celebrate the ceremony of the District of Columbia's famous groundhog weatherman, Potomac Phil, as he delivers his unprecedented forecast on February 2, 2016, and to declare February 2, 2016, as "DC Groundhog Day" in the District of Columbia.

WHEREAS, District of Columbia residents and visitors will be enlightened with the knowledge of Potomac Phil's internal power of weather prediction;

WHEREAS, on February 2, 2016, citizens of the District of Columbia will be educated on the American folklore tradition of Groundhog Day by Dupont Festival; and

WHEREAS, hundreds of individuals in and around Dupont Circle during the morning of February 2, 2016 will be elucidated by Potomac Phil.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "D.C. Groundhog Day Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia hereby declares February 2, 2016 as "D.C. Groundhog Day" in the Nation's Capital.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

A CEREMONIAL RESOLUTION

21-163

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To recognize the Chinese community in the District of Columbia for its generous and valued contributions to the social, cultural, and political life of the city, to honor the Chinese Consolidated Benevolent Association for its sponsorship of the parade to celebrate the Year of the Monkey, and to declare February 21, 2016, as “Chinese Lunar New Year 4714, Year of the Monkey Day” in the District of Columbia.

WHEREAS, Chinese people have lived in the District of Columbia as a community since 1884, when nearly 100 immigrants settled near 3<sup>rd</sup> Street and Pennsylvania Avenue, N.W., and remained until 1935, when the settlement area moved to its current location along H Street, N.W., which is commonly known as “Chinatown”;

WHEREAS, today there are more than 40 Chinese businesses and some 1,000 Chinese residents in Chinatown, which serves as the center of health care, dining, and shopping for the 40,000 Chinese residents in the Washington, D.C. metropolitan area;

WHEREAS, Chinatown is a unique cultural and social center for the District, providing visitors with a taste of Chinese culture;

WHEREAS, the District of Columbia’s commitment to the Chinese community continues as the government strives to improve services for the Chinese community through the establishment of the Office on Asian and Pacific Islander Affairs, the Metropolitan Police Department’s Asian Liaison Unit in Chinatown, and the Chinatown Community Cultural Center, all of which we salute;

WHEREAS, thousands of District of Columbia residents will gather along H and 7<sup>th</sup> Streets, N.W., on February 21, 2016, to enjoy the dragon-led parade and celebrate the Chinese Lunar New Year; and

WHEREAS, the annual anniversary celebration and parade for the Chinese Lunar New Year, sponsored by the Chinese Consolidated Benevolent Association, is nationally known as one of the finest celebrations of color, art and pageantry.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Chinese Lunar New Year 4714, Year of the Monkey Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia salutes the Chinese community of the District of Columbia and the Chinese Consolidated Benevolent Association for its many contributions to the social, economic, cultural, and political life of the city, honors the Chinese Consolidated Benevolent Association and the Parade Committee for sponsoring the parade to celebrate the Chinese New Year, and declares February 21, 2016 as “Chinese Lunar New Year 4714, Year of the Monkey Day” in the District of Columbia. .

Sec. 3. This resolution shall take effect immediately upon the first date of publication in either the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-164

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare February 5, 2016, as “National Wear Red Day” in the District of Columbia, to recognize the ongoing fight against heart disease and stroke amongst women in the District of Columbia, to promote education and lifestyle changes that help to reduce cardiovascular risk, and to improve women’s lives.

WHEREAS, heart disease and stroke kill one in 3 women in the U.S., yet 80% of cardiac events may be prevented;

WHEREAS, cardiovascular diseases and stroke kill one woman every 80 seconds in the U.S.;

WHEREAS, an estimated 44 million women in the U.S. are affected by cardiovascular diseases, and more women than men die from heart disease in the District;

WHEREAS, heart disease is the leading cause of death for women in the U.S. and in the District, and more than 1,300 District residents die from heart disease each year;

WHEREAS, the District ranks 6<sup>th</sup> in the nation for most deaths from heart disease;

WHEREAS, 90% of women have one or more risk factors for developing heart disease, yet only one in 5 American women believe that heart disease is her greatest health threat;

WHEREAS, women comprise only 24% of participants in all heart-related studies;

WHEREAS, women are less likely to call 911 for themselves when experiencing symptoms of a heart attack than they are if someone else were having a heart attack;

WHEREAS, only 36% of African American women and 34% of Hispanic women know that heart disease is their greatest health risk, compared with 65% of Caucasian women;

## ENROLLED ORIGINAL

WHEREAS, women involved with the American Heart Association's Go Red For Women<sup>®</sup> movement live healthier lives, and nearly 90% have made at least one healthy behavior change;

WHEREAS, Go Red For Women encourages women to take charge of their health and schedule a Well-Woman visit to learn about health status and risk for diseases;

WHEREAS, Go Red For Women is asking all Americans to Go Red by wearing red and speaking red:

- *Get Your Numbers*: Ask your doctor to check your blood pressure, cholesterol, and glucose.
- *Own Your Lifestyle*: Stop smoking, lose weight, be physically active, and eat healthy.
- *Raise Your Voice*: Advocate for more women-related research and education.
- *Educate Your Family*: Make healthy food choices for you & your family. Teach your kids the importance of staying active.
- *Donate*: Show your support with a donation of time or money.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "National Wear Red Day Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia declares February 5, 2016, as "National Wear Red Day" in the District of Columbia as confirmation of the District's continued education on cardiovascular risk, and improvement of its residents' health and lives.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.



ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-165

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To declare February 4, 2016, as “World Cancer Day” in the District of Columbia, to raise awareness of cancer, and to promote prevention, detection, and treatment through global efforts that aim to significantly reduce illness and death caused by cancer by 2020.

WHEREAS, World Cancer Day was established at the World Summit Against Cancer for the New Millennium in Paris on February 4, 2000;

WHEREAS, the summit served to promote research for curing and preventing the disease, strengthening services offered to patients, and mobilization of the global community against cancer;

WHEREAS, roughly 14 million people receive a diagnosis and 8 million people die from cancer worldwide every year, out of which, 4 million die prematurely (aged 30 to 69 years);

WHEREAS, cancer is the second-leading cause of death among Americans -- one of every 4 deaths in the United States is due to cancer;

WHEREAS, cancer is also the second-leading cause of death among District residents, with the overall death rate being 177 deaths for every 100,000 people;

WHEREAS, the forms of cancer most prevalent in the District are prostate, lung, breast, and colon, with death rates being the highest in Ward 5;

WHEREAS, the District of Columbia Department of Health recognizes a growing disparity in White and African American residents dying from the disease, with African Americans having a mortality rate of 250 per 100,000, more than double the rate of White residents (112 per 100,000);

WHEREAS, the American Research Institute estimates that about 1/3 of the most common cancers can be prevented simply with proper diet, exercise, and lifestyle choices; and

WHEREAS, World Cancer Day serves as a day for District citizens, government agencies, and public interest groups to reflect on current progress and future action needed for cancer prevention, early detection, and treatment.

**ENROLLED ORIGINAL**

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “World Cancer Day Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia emphasizes its support and commitment to raising awareness and developing practical strategies to drastically reduce cancer rates across the city, nation, and globe, and declares February 4, 2016 as “World Cancer Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-166

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To recognize and congratulate Reverend Brian Hamilton and Reverend Ruth Hamilton on the occasion of their 20th anniversary as pastors of the Westminster Presbyterian Church, located at 401 I Street, S.W.

WHEREAS, Pastor Brian and Pastor Ruth have shared the duties of preaching throughout their 20 years as pastors at Westminster Presbyterian Church (“Westminster”);

WHEREAS, beginning in 1996, the church’s physical structure was altered from a Council System and replaced with a more open and flexible space to serve as ministry areas;

WHEREAS, the pastors’ vision of community ministry was created after much discussion and resulted in a strong commitment to community service by both pastors;

WHEREAS, during their second year at Westminster, a son, Roman, was born to grace their lives;

WHEREAS, in 1998, Pastor Ruth joined the Board of the Southwest Community House and Pastor Brian provided leadership for the opening of the Southwest Renaissance Development Corporation (“SWRDC”);

WHEREAS, on January 22, 1999, the Friday Night Jazz program began and has grown into a Southwest tradition known and supported by performers and audiences from all parts of the District;

WHEREAS, the SW Catering Company was created under the SWRDC, employing community members to fulfill outside contracts as well as an in-house catering service supported by various church events;

WHEREAS, Pastor Ruth served as co-chair of the Presbytery Anti-Racism team and served as an active member of the Congregational Development Committee of the Presbytery;

## ENROLLED ORIGINAL

WHEREAS, in 2004, Pastor Ruth served as Chair on the South Washington Family Strengthening Collaborative, the Board of More Light Open Doors Chapter, the Presbytery's social justice committee and the SW Group Ministry;

WHEREAS, in 2004, Pastor Brian served on the Wiley Branton Community Development Corporation and the Presbytery's Mission Committee, with particular concern for urban churches;

WHEREAS, in 2005, Pastor Ruth became interim chair of the Near Southwest/Southeast Community Benefits Coalition, later named the Near Southeast/Southwest Community Benefits Coordinating Council;

WHEREAS, in September 2007, Monday Blues Night was launched, complementing the Friday Night Jazz program;

WHEREAS, Westminster church supported the START program, a 501C(3) harm reduction program involving needle exchange and condom distribution;

WHEREAS, Pastor Ruth worked for the New Beginnings discernment process;

WHEREAS, Pastor Ruth worked to temporarily house the Domestic Violence clinic and support group in the last few years;

WHEREAS, Pastor Brian led the effort to start the Ward Six Health Initiative and also served as the church's liaison to Black Presbyterian United; and

WHEREAS, Pastor Brian and Pastor Ruth have shared – and continue to share – their commitment to community service, ministry, and social justice with the Westminster Presbyterian Church, the Southwest community, and the District.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Pastors Brian and Ruth Hamilton 20-Year Anniversary Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia recognizes Pastor Brian Hamilton and Pastor Ruth Hamilton for their many contributions to the community welfare and ministerial services in the Southwest community over the past 20 years.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

**ENROLLED ORIGINAL**

A CEREMONIAL RESOLUTION

21-167

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To recognize and honor Steven Kehoe for his dedicated service to the residents of the District of Columbia, upon the occasion of his retirement from the District Department of Transportation.

WHEREAS, Steven Kehoe moved from Iowa and became a resident of Ward 6 in 1998;

WHEREAS, Steven Kehoe joined the District of Columbia government in June, 2001;

WHEREAS, the Council of the District of Columbia passed the District Department of Transportation (DDOT) Establishment Act, creating a cabinet level agency responsible for the management of transportation, and in May 2002, Steven Kehoe was one of the original employees of the new agency;

WHEREAS, during his many years as a resident and as a public servant, Steven Kehoe has been a tireless advocate for his community and for the District at large, working to preserve street trees, sidewalks, and public spaces for the use and enjoyment of all and to protect and enhance the public spaces we share in common;

WHEREAS, through his quiet, thoughtful, and deliberate work on complex regulatory matters, such as work zone safety, public space user fee adjustments, curb cut and driveway policies, and creation of an electronic permit system and database, Steven Kehoe has tirelessly protected the public realm and streamlined DDOT operations, resulting in significant savings and income for the District;

WHEREAS, Steven Kehoe has been an invaluable resource to coworkers on a wide range of issues, from land ownership to right-of-way distribution, and from public space permit conditions to GIS-based data searches;

WHEREAS, Steven Kehoe has been a tireless steward and champion for the preservation of public space maps and records dating to the 1930s;

WHEREAS, Steve Kehoe championed pedestrian and bicycle safety and resident concerns about private uses of public space through regulations for covered walkways for construction projects, traffic control plans, and the temporary use of public space;

**ENROLLED ORIGINAL**

WHEREAS, many of the public realm elements that contribute to the comfort and grandeur of the District of Columbia have been promoted, protected, and strengthened as a result of Steven Kehoe’s public service; and

WHEREAS, the residents of the District of Columbia will long benefit from the work Steven Kehoe has done on their behalf to protect and preserve the special nature of the public spaces in the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Steven Kehoe Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes Steven Kehoe for his dedicated service to the residents of the District of Columbia upon the occasion of his retirement from the District Department of Transportation.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-168

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To recognize and honor Mr. Robert A. Malson, Esq., for his 18 years of service as President of the District of Columbia Hospital Association.

WHEREAS, Mr. Malson is an attorney and business executive with more than 40 years of experience in law, business management, advocacy, public policy, and strategic planning on the federal, regional, and local levels;

WHEREAS, Mr. Malson is a veteran of the United States Navy and was a surface warfare specialist trained as a *Talos* and *Terrier* Guided Missile Radar-Computer Operator-Technician and served aboard the nuclear-powered *USS Long Beach* (CGN-9) during the Vietnam War;

WHEREAS, Mr. Malson is an alumnus of Howard University, having received his Bachelor of Arts degree in political science and economics;

WHEREAS, Mr. Malson received his Juris Doctor from the Harvard Law School;

WHEREAS, Mr. Malson was counsel to the United States Senate Judiciary Committee;

WHEREAS, Mr. Malson was associate director of the White House Domestic Policy Staff for President Jimmy Carter;

WHEREAS, Mr. Malson is a chairman emeritus of the board of directors of the Children's National Health System;

WHEREAS, Mr. Malson was chairman of the Metropolitan Washington Council of Governments' (COG) Bioterrorism Task Force and vice chairman of COG's Emergency Preparedness Council during the responses to the 2001 attack on the Pentagon and the anthrax attack one month later.

**ENROLLED ORIGINAL**

WHEREAS, Mr. Malson has previously served as chairman of the Board of Directors of the United Way of the National Capital Area;

WHEREAS, Mr. Malson has served as a statutory member of the United Medical Center (Not-for-Profit Hospital Corporation) Board of Directors since its creation; and

WHEREAS, Mr. Malson is married to attorney Deborah Royster and is the proud father of 3 adult children, Erik, Alexander, and Hilary.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Robert A. Malson Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes Mr. Robert A. Malson, Esq., for his extensive service, leadership, and advocacy on behalf of District hospitals.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.



**ENROLLED ORIGINAL**

A CEREMONIAL RESOLUTION

21-169

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To recognize and honor the achievements of Emmanuel Burriss, the first baseball player from a District of Columbia public school to be drafted by a Major League Baseball team since 1981.

WHEREAS, Emmanuel Burriss is a native of Washington D.C. and attended Takoma Elementary School, St. Ann’s Academy Middle School, and Woodrow Wilson High School, where he was a model student and excelled in both academics and athletics;

WHEREAS, as a shortstop on the Wilson High School baseball team, Emmanuel Burriss was instrumental in helping the team win the citywide championship for 3 consecutive years;

WHEREAS, while attending Wilson High School, Emmanuel Burriss was the recipient of the 2001 Baseball MVP Award and the 2002-2003 Gatorade DC Player of the Year Award;

WHEREAS, in 2002, because of his excellence in academics, leadership, and service, Emmanuel Burriss received the Andre Wallace Award for Most Outstanding Wilson Athlete Scholar for Baseball and Basketball;

WHEREAS, in 2003, Emmanuel Burriss was the recipient of the Outstanding Male Athlete Award; and was offered a full scholarship to play shortstop and second base at Kent State University, a Division I team in Kent, Ohio;

WHEREAS, while at Kent State University, Emmanuel Burriss helped lead the baseball team to the Division Championship 2 years in a row, receiving the Mid-American Conference (MAC) title;

WHEREAS, in 2005, Emmanuel Burriss was invited to play in the Cape Cod Baseball League as shortstop with the Orleans Cardinals, and was the recipient of the 2005 Cape Cod All Star Award, the Orleans Cardinals Single Season MVP Award, the Single Season Record Award for 37 stolen bases, and the Cape Cod 2005 East Division All Star Award with the Orleans Cardinals;

WHEREAS, in 2006, while in his junior year at Kent State University, Emmanuel Burriss was drafted by the San Francisco Giants and became the first baseball player from a District of

**ENROLLED ORIGINAL**

Columbia public school to be drafted by a Major League Baseball team since Willie Royster in 1981; both preceded by the legendary Maury Wills;

WHEREAS, Emmanuel Burriss made his Major League Baseball debut on April 20, 2008 with the San Francisco Giants and played in 282 games;

WHEREAS, the San Francisco Giants won the World Series in 2010 and 2012, while Emmanuel Burriss played shortstop for the team;

WHEREAS, in 2012, Emmanuel Burriss signed a minor league baseball deal with the Cincinnati Reds;

WHEREAS, in October of 2013, Emmanuel Burriss was inducted into the Kent State University Hall of Fame;

WHEREAS, in 2013, Emmanuel Burriss signed a minor league baseball deal with his hometown team, the Washington Nationals, and started games in the summer of 2015 at Nationals Park on the Major League Baseball roster;

WHEREAS, in 2015, after 2 years with the Washington Nationals, Emmanuel Burriss joined the Philadelphia Phillies; and

WHEREAS, with a .245 career batting average and being a switch-hitter throughout his career, Emmanuel Burriss has remained a role model for young baseball players in Washington, D.C. and elsewhere.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Emmanuel Burriss Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia recognizes and honors the achievements of Emmanuel Burriss, the first baseball player from a District of Columbia public school to be drafted by a Major League Baseball team since 1981.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-170

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 2, 2016

To express the District of Columbia’s opposition to seismic airgun blasting and offshore drilling activities.

WHEREAS, the U.S. Bureau of Ocean Energy Management is currently in the process of trying to open the Mid- and South Atlantic Ocean to exploration and development of offshore oil and gas, including risky methods, such as seismic airgun blasting;

WHEREAS, seismic airguns fire frequent, intense blasts of compressed air, one of the loudest man-made sounds in the ocean, that could prove harmful to or injure and kill marine mammals, fish, and other marine life;

WHEREAS, seismic airgun sounds can be heard up to 2,500 miles from the source under some propagation conditions, farther than the distance from Washington, D.C. to Las Vegas;

WHEREAS, the full impact of seismic airgun blasting and offshore drilling in the Atlantic Ocean are not yet fully understood by scientists, the oil and gas industry, or the federal government;

WHEREAS, exploratory and commercial drilling, extraction, and transportation of offshore oil and gas resources pose a significant risk of oil spills and leakage of other toxic waste;

WHEREAS, offshore drilling may require significant onshore infrastructure, such as pipelines or refineries, which may harm the character of our coast;

WHEREAS, the District of Columbia endeavors to be a good steward of the region’s environment and its resources;

WHEREAS, the District of Columbia recognizes that the Chesapeake Bay is a major historical, cultural, economic, and ecological treasure to our city and surrounding region;

**ENROLLED ORIGINAL**

WHEREAS, residents of the District of Columbia enjoy close proximity to pristine beach areas in Virginia, Maryland, and Delaware that are at direct risk from offshore drilling activities;

WHEREAS, offshore drilling activities pose threats to coastal wetlands in the Chesapeake Bay region, which are of intrinsic ecological value for numerous migratory bird species, serve as essential nursery habitats for recreational and commercially important fisheries, and act as natural buffers from storm surge and hurricanes;

WHEREAS, the exploration and development of oil and gas off the Mid- and South Atlantic coast will not effectively address the long-term energy needs of our country; and

WHEREAS, the District of Columbia has set a goal of increasing the use of renewable energy to make up 50% of the District’s energy supply by 2030, and offshore oil drilling will not assist in achieving that goal.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Seismic Airgun Blasting and Offshore Drilling Opposition Resolution of 2016”.

Sec. 2. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

**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](http://www.dccouncil.us).

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

- |         |   |
|---------|---|
| B21-613 | Administrative Procedure Public Comment Transparency Amendment Act of 2016<br><br>Intro. 2-16-16 by Councilmembers Evans and Silverman and referred to the Committee of the Whole   |
| <hr/>   |   |
| B21-614 | Public Space Naming Amendment Act of 2016<br><br>Intro. 2-16-16 by Chairman Mendelson and referred to the Committee of the Whole  |
| <hr/>   |   |
| B21-615 | Notice in Case of Emergency Amendment Act of 2016<br><br>Intro. 2-16-16 by Councilmember McDuffie and referred to the Committee on Judiciary  |
| <hr/>   |   |
| B21-620 | Homeward DC Omnibus Approval of Facilities Plan for Short-term Housing for Persons Experiencing Homelessness Act of 2016<br><br>Intro. 2-11-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole |
| <hr/>   |   |

**PROPOSED RESOLUTIONS**

- PR21-563      District of Columbia Retirement Board Joseph M. Bress Reappointment  
Resolution of 2016
- Intro. 2-16-16 by Chairman Mendelson and referred to the Committee of the  
Whole
- 
- PR21-567      Computation of ABC Violation History Approval Resolution of 2016
- Intro. 2-5-16 by Chairman Mendelson at the request of the Mayor and referred  
to the Committee on Business, Consumer, and Regulatory Affairs
- 
- PR21-568      District of Columbia Board of Elections Michael Bennett Confirmation  
Resolution of 2016
- Intro. 2-9-16 by Chairman Mendelson at the request of the Mayor and referred  
to the Committee on Judiciary
- 
- PR21-569      Zoning Commission David Franco Confirmation Resolution of 2015
- Intro. 2-10-16 by Chairman Mendelson at the request of the Mayor and referred  
to the Committee of the Whole
-

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING

on

**Bill 21-620, Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing  
for Persons Experiencing Homelessness Act of 2016**

on

**Thursday, March 17, 2016  
10:30 a.m., Council Chamber, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing of the Committee of the Whole on Bill 21-620, the “Homeward DC Omnibus Approval of Facilities Plan for Short-Term Housing for Persons Experiencing Homelessness Act of 2016.” The hearing will be held at 10:30 a.m. on Thursday, March 17, 2016 in the Council Chamber of the John A. Wilson Building.

The stated purpose of Bill 21-620 is to approve the acquisition and construction plan and related transactions for the development of seven emergency shelter facilities for persons experiencing homelessness, to specify the process for Council approval of those contracts, and to express the sense of the Council with respect to approval of these facilities by the Board of Zoning Adjustment.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or to email Alana Intrieri, Special Counsel to the Chairman, at [aintrieri@dccouncil.us](mailto:aintrieri@dccouncil.us), and provide their name, address, telephone number, organizational affiliation, and title (if any) by close of business Tuesday, March 15, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on March 15, 2016, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; **less time will be allowed if there are a large number of witnesses.** A copy of PR 21-620 can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, March 30, 2016.

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: February 19, 2016  
 Petition Date: April 4, 2016  
 Roll Call Hearing Date: April 18, 2016  
 Protest Hearing Date: June 15, 2016

License No.: ABRA-101534  
 Licensee: Noma Hospitality LLC  
 Trade Name: Homewood Suites by Hilton Washington DC/New York  
 Avenue and Hampton Inn & Suites Washington DC/  
 New York Avenue at 4<sup>th</sup> St. NE  
 License Class: Retailer’s Class “C” Tavern  
 Address: 501 New York Avenue N.E.  
 Contact: Stephen J. O’Brien: 202-625-7700

WARD 5

ANC 5D

SMD 5D01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for June 15, 2016 at 4:30pm.

**NATURE OF OPERATION**

New Tavern with live entertainment and rooftop Summer Garden. Total Occupancy Load of 225. Rooftop capacity of 175.

**HOURS OF OPERATION FOR INSIDE PREMISES AND SUMMER GARDEN**

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

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

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



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 19, 2016
Petition Date: April 4, 2016
Hearing Date: April 18, 2016
Protest Hearing: June 15, 2016

License No.: ABRA-101493
Licensee: Seoul Spice L.L.C.
Trade Name: Seoul Spice
License Class: Retailer's Class "C" Restaurant
Address: 145 N Street, N.E., Suite 400
Contact: Eric Shin: 808-386-4508

WARD 6

ANC 6C

SMD 6C06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30pm on June 15, 2016.

NATURE OF OPERATION

New, fast-casual restaurant serving Korean-American cuisine. Total Occupancy Load of 138. Sidewalk Café with 12 seats.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE

SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE

Sunday through Saturday 11 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 19, 2016
Petition Date: April 4, 2016
Hearing Date: April 18, 2016
Protest Date: June 15, 2016

License No.: ABRA-101217
Licensee: The Ledge, LLC
Trade Name: The Ledge
License Class: Retailer's Class "C" Tavern
Address: 251 Florida Avenue, N.W.
Contact: Cheryl Webb: (202) 277-7461

WARD 5

ANC 5E

SMD 5E06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for June 15, 2016 at 1:30 pm.

NATURE OF OPERATION

A new tavern specializing in fine spirits, beers and cocktails with a substantial snack and appetizer menu. Tavern has 99 seats and a Total Occupancy Load of 99 inside. Request has been made for a Summer Garden with 59 seats and a Total Occupancy Load of 59 outside.

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

Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am- 3 am

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

Sunday through Thursday 11 am – 12 am, Friday and Saturday 11 am- 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 19, 2016
Petition Date: April 4, 2016
Hearing Date: April 18, 2016
Protest Date: June 15, 2016

License No.: ABRA-101238
Licensee: The Shaw Bijou, LLC
Trade Name: The Shaw Bijou
License Class: Retailer's Class "C" Tavern
Address: 1544 9th Street, N.W.
Contact: Cheryl Webb: (202) 277-7461

WARD 6 ANC 6E SMD 6E01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for June 15, 2016 at 1:30 pm.

NATURE OF OPERATION

A new class "C" tavern with 99 seats and a Total Occupancy Load of 99.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 19, 2016
Petition Date: April 4, 2016
Hearing Date: April 18, 2016
Protest Date: June 15, 2016

License No.: ABRA-101399
Licensee: Timber Pizza Company, LLC
Trade Name: Timber Pizza Company
License Class: Retailer's Class "C" Restaurant
Address: 809 Upshur Street, N.W.
Contact: Andrew Dana: (202) 258-6832

WARD 4 ANC 4C SMD 4C07

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for June 15, 2016 at 4:30 pm.

NATURE OF OPERATION

A new "C" class restaurant serving wood-fired pizza, salad and side dishes with 37 seats and a Total Occupancy Load of 42.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 7 am - 1 am, Monday through Saturday 7 am - 2 am

**DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD****NOTIFICATION OF ENROLLMENT CEILING INCREASE**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice of Creative Minds Public Charter School’s request to increase its existing enrollment ceiling, beginning in school year 2016-2017, by 77 students each school year, over the next ten years, until it reaches an ultimate enrollment ceiling of 730 students by school year 2026-2027. A public hearing regarding this item will be held on March 21, 2016 at 6:30 p.m.; a vote will be held on April 18, 2016 at 6:30 p.m. To submit public comments, you may do so by one of the actions below. All comments must be submitted on or before March 21, 2016 at 4:00pm. For questions, please contact Laterica (Teri) Quinn, Equity and Fidelity Specialist, at 202-328-2660 or [lquinn@dcpsb.org](mailto:lquinn@dcpsb.org).

**Submitting Public Comment:**

1. Submit a comment by one of the following actions:
  - (a) E-mail: [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org)
  - (b) Postal mail: Attn: Public Comment, DC Public Charter School Board, 3333 14<sup>th</sup> ST. NW., Suite 210, Washington, DC 20010
  - (c) Hand Delivery/Courier\*: Same as postal address above
  - (d) Phone: 202-328-2660
  
2. Sign up to testify in-person at the public hearing on March 21, 2016, by emailing a request to [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org) by no later than 4 p.m. on Thursday, March 17, 2016.

**BOARD OF ZONING ADJUSTMENT  
REVISED PUBLIC HEARING NOTICE**

**TUESDAY, MARCH 29, 2016**

**441 4<sup>TH</sup> STREET, N.W.**

**JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

Revision: Corrected Applicant name for BZA Case 19235
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**TO CONSIDER THE FOLLOWING:** The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

**TIME: 9:30 A.M.**

**WARD ONE**

18511B            **Application of Alleyoop LLC**, pursuant to 11 DCMR § 3103.2, for a variance  
ANC-1A            from the alley width requirements under § 2507.3, to allow an office and  
                         residential use in the R-4 District at premises 1018 Irving Street N.W. (Square  
                         2851, Lot 219).

**WARD TWO**

19229            **Application of FOTP, LLC**, pursuant to 11 DCMR §§ 3104.1 and 411.11, for  
ANC-2B            a special exception from the penthouse setback requirements under §§ 411.18,  
                         771.1, and 774.2, and the minimum rear yard requirements under § 774.1, to  
                         allow an addition to accommodate the establishment of a museum and associated  
                         offices and conference rooms in the C-4 District at premises 1503-1505  
                         Pennsylvania Avenue N.W. (Square 221, Lot 810).

**WARD FOUR**

19230            **Application of John B. Knotts and Richard H. Hiltner**, pursuant to 11  
ANC-4C            DCMR § 3103.2, for variances from the rear yard requirements under § 774.1,  
                         and the parking requirements under § 2101.2, to permit the construction of a  
                         mixed-use project in the C-2-A District at premises 4424 Georgia Avenue N.W.  
                         (Square 2917, Lot 37).

**WARD FOUR**

19233            **Application of 824 Varnum LLC**, pursuant to 11 DCMR § 3104.1, for a  
ANC-4C            special exception from the use requirements under § 336, to convert an existing  
                         two-story dwelling into a three-unit apartment house in the R-4 District at  
                         premises 824 Varnum Street N.W. (Square 3024, Lot 50).

## BZA PUBLIC HEARING NOTICE

MARCH 29, 2016

PAGE NO. 2

WARD ONE

19235            **Application of Canberra LLC**, pursuant to 11 DCMR § 3104.1, for a special  
ANC-1A            exception from the use requirements under § 336, to convert an existing two-  
story dwelling into a three-unit apartment house in the R-4 District at premises  
753 Columbia Road N.W. (Square 2890, Lot 99).

WARD ONE

19236            **Application of Hobart LLC**, pursuant to 11 DCMR § 3104.1, for a special  
ANC-1A            exception from the use requirements under § 336, to convert an existing two-  
story dwelling into a three-unit apartment house in the R-4 District at premises  
755 Columbia Road N.W. (Square 2890, Lot 100).

**PLEASE NOTE:**

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

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

BZA PUBLIC HEARING NOTICE  
MARCH 29, 2016  
PAGE NO. 3

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

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:** **Thursday, April 7, 2016, @ 6:30 P.M.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, NW, Suite 220**  
**Washington, DC 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 16-03 (DB Residential Hill East, LLC – Hill East District Review @ Square 1112E, Lots 802, 803, and 804)**

**THIS CASE IS OF INTEREST TO ANC 7F**

On January 21, 2016, the Office of Zoning received an application from DB Residential Hill East, LLC, an affiliate of Donatelli Development (the “Applicant”). Pursuant to the requirement of § 2801.1 of the Hill East (HE) District (Title 11 DCMR), the Application sought review of two new mixed-use buildings with below grade parking for consistency with the design guidelines set forth at §§ 2812 through 2814 and with the general purposes of the HE District as stated in § 2800.7. In addition, pursuant to § 2815.9, the Applicant requests a special exception from § 2815.6 to permit parking access on a secondary street and requests variances from: (i) maximum building height (§ 2808.1); (ii) parking (§§ 2815.1, 2815.2, 2101.1); (iii) loading (§§ 2815.3, 2815.4, 2201.1); and (iv) lot occupancy. Pursuant to § 2801.3 the Commission, when conducting a review required by § 2801.1, may concurrently hear and decide any additional requests for special exception or variance relief needed for the property, including the special exceptions provided for in HE regulations as set forth in Chapter 28.

The property is comprised of Lots 802, 803, and 804 in Square 1112E in the southeast quadrant of the District of Columbia (the “Property”) and consists of approximately 2.6 acres of land area. The Property is a compilation of two parcels -- Parcel F-1 and Parcel G-1 in the HE District. Parcel F-1 is located in the HE-1 Zone District and is bound on the west by 19<sup>th</sup> Street, on the north by Burke Street, and on the south by C Street. Parcel G-1 is located in the HE-1 and HE-2 Zone Districts and is bound on the west by 19<sup>th</sup> Street, on the north by C Street, on the south by Massachusetts Avenue, and on the east by 20<sup>th</sup> Street.

The Applicant proposes to redevelop the Property with two mixed-use buildings containing retail and residential uses and below grade parking. The building on Parcel F-1 will have a height of 52 feet; approximately 106,460 square feet of gross floor area; a floor area ratio (“FAR”) of 2.92, of which .35 FAR is retail/nonresidential uses; and a lot occupancy of 80%. The building on Parcel G-1 will have a height of 53 feet for the portion of the building located in the HE-1 Zone District and a height of 69 feet for the portion of the building located in the HE-2 Zone District; approximately 282,889 square feet of gross floor area; a blended FAR of 3.56, of which .27 FAR is retail/non-residential use; and a blended lot occupancy of 84.4%.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations 11 DCMR § 3022.

Z.C. NOTICE OF PUBLIC HEARING  
Z.C. CASE NO. 16-03  
PAGE 2

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning’s website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusions in the record.

**If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.**

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 § 3020.3, 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.

Information should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4<sup>th</sup> Street, NW, Washington, DC 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF FINAL RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl. & 2014 Supp.)) and Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of the adoption of final rules amending Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The amendment would increase the number of days covered by the Reimbursable Detail Subsidy Program (Program) from two (2) to seven (7) days a week. The rules would also allow reimbursement under the Program for certain Board-approved outdoor Special Events where alcohol is to be sold or served. The rules also increase the percentage of distribution of subsidies paid by Alcoholic Beverage Regulation Administration (ABRA) to the Metropolitan Police Department (MPD), beginning on March 1, 2015, from fifty percent (50%) to seventy percent (70%) when covering the costs incurred by Alcoholic Beverage Control (ABC) licensees for MPD officers working reimbursable details under the Program.

The Board adopted the Emergency and Proposed Rulemaking amending the Reimbursement Detail Subsidy Program (Program) on February 18, 2015, by a four (4) to zero (0) vote. The Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 3, 2015, at 62 DCR 3976 [EXPIRED]. The Board held two public hearings to afford the public an opportunity to testify in support or opposition to the rules on April 29, 2015, at 10:30 a.m. and 2:30 p.m.

In accordance with D.C. Official Code § 25-211(b), the Notice of Emergency and Proposed Rules were submitted to the Council of the District of Columbia (Council) for a ninety (90) day review period. *See* PR21-304 (Reimbursable Details Subsidy Program Resolution of 2015). The emergency rules expired on June 18, 2015, prior to the expiration of the Council review period. Having determined that an emergency still existed warranting the continuation of the Program during the Council review period, on June 3, 2015, the Board voted five (6) to zero (0) to re-adopt the emergency rules. On December 1, 2015, the Council voted to approve the Reimbursable Detail Subsidy Program rules. *See* R21-312 (Reimbursable Detail Subsidy Program Regulations Approval Resolution of 2015), published at 62 DCR 16034 (December 18, 2015).

On January 6, 2016, the Board voted five (5) to zero (0) to adopt the final rules without any changes since the rules were published as emergency and proposed. The rules shall take effect five (5) days after they are published in the *D.C. Register*.

**Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:**

**Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended by replacing Subsections 718.2 and 718.3 and renumbering the existing Subsections 718.3 through 718.5 to read as follows:**

- 718.2 ABRA will reimburse MPD seventy percent (70%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD seventy percent (70%) of the total costs of invoices submitted by MPD to cover the costs incurred for outdoor Special Events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours eligible for an outdoor Special Event operating under a One Day Substantial Change License or a Temporary License shall be twenty-four (24) hours a day.
- 718.3 MPD shall submit to ABRA on a monthly basis invoices documenting the seventy percent (70%) amount owed by each licensee. Invoices will be paid by ABRA to MPD within thirty (30) days of receipt in the order that they are received until the subsidy program's funds are depleted.
- 718.4 ABRA shall notify MPD when funds in the subsidy program fall below two hundred and fifty thousand dollars (\$250,000).
- 718.5 Any invoices unpaid by ABRA either for good cause or a lack of sufficient funds left in the subsidy program shall remain the responsibility of the licensee.
- 718.6 ABRA shall not be involved in determining the number of MPD officers needed to work a reimbursable detail.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Chapter 93 (Medicaid Recovery Audit Contractor Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

State Medicaid programs are required, under § 6411 of the Patient Protection and Affordable Care Act of 2011 (the Affordable Care Act or ACA), approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), to establish a Recovery Audit Contractor (RAC) program. Through these programs, states can coordinate with contractors or other entities that perform Medicaid claim audits to better identify and reconcile Medicaid provider overpayments and underpayments. Timely identification of Medicaid provider overpayments and underpayments is an important safeguard against future improper Medicaid payments.

Further, challenges to the RAC program initiative could create delayed recovery revenue for the Medicaid program, lost recovery opportunities for claims that expire during the Medicaid RAC review period, and provider confusion. In turn, those losses and provider confusion could negatively impact the delivery of healthcare services to District Medicaid beneficiaries.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 30, 2015 at 62 DCR 014111. The comment period officially closed on November 30, 2015. Comments were received from the District of Columbia Hospital Association. Following discussion with the Hospital Association, DHCF concluded that no substantive changes were required for this final rulemaking.

The Hospital Association specifically suggested the following in its comments: (1) a further extension to the time period for providers to furnish requested medical records to the RAC; (2) an extension to the time period for providers to appeal overpayment determinations to the Office of Administrative Hearings; and (3) a limitation on the number and type of claims that can be reviewed by the RAC within a given amount of time.

DHCF indicated the following in its responses to the commenter: (1) the time period for providers to furnish requested medical records had already been extended in the second proposed rulemaking based on public comments, and that if providers need more time to furnish the requested records they are able to request an extension from the RAC; (2) the time period for providers to appeal overpayment determinations to the Office of Administrative Hearings is set by the provisions of Chapter 13 of Title 29 DCMR; and (3) as the RAC discusses specific audit requirements with each provider, DHCF does not wish to prescribe limitations on the number or

type of claims to be furnished to the RAC. Furthermore, DHCF wishes to allay the commenter's concern in this regard by noting that, as described above, providers may request an extension to furnish requested medical records to the RAC if additional time is needed to provide the number or type of records requested.

The Director adopted these rules as final on February 1, 2016, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 93, MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:**

**CHAPTER 93           MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM**

**9300           GENERAL PROVISIONS**

- 9300.1           In accordance with the requirements set forth in § 1902(a)(42)(B)(i) of the Social Security Act (the Act), (42 U.S.C. § 1396a(a)(42)(B)(i)), and 42 C.F.R. §§ 455.500 *et seq.*, the Department of Health Care Finance (DHCF) shall establish the Medicaid Recovery Audit Contractor (Medicaid RAC) Program.
- 9300.2           The Medicaid RAC Program shall support program integrity efforts by identifying overpayments and underpayments, and fraudulent and abusive claims activity.
- 9300.3           Subject to the requirements set forth in the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01, *et seq.* (2012 Repl.)), DHCF shall contract with one (1) entity that shall be the Medicaid RAC pursuant to 42 C.F.R. §§ 455.500-455.518.
- 9300.4           All audits performed by the Medicaid RAC shall be subject to the billing standards of the District of Columbia (District) Medicaid program.
- 9300.5           The following claims and payments may be excluded from review and audit under the Medicaid RAC Program:
- (a)           Claims associated with managed care, waiver, and demonstration programs;
  - (b)           Payments made for Indirect Medical Education (IME) and Graduate Medical Education (GME);
  - (c)           Claims older than three (3) years from the date of reimbursement;
  - (d)           Claims that require reconciliation due to beneficiary liability; and
  - (e)           Unpaid claims.

9300.6 In accordance with 42 C.F.R. §§ 455.506(c) and 455.508(g), DHCF shall ensure that no claim audited under the Medicaid RAC Program has been or is currently being audited by another entity.

9300.7 DHCF shall reserve the right to limit the Medicaid RAC Program audit period by claim type, provider type, or by any other reason where DHCF believes it is in the best interest of the Medicaid program to limit claim review. Notice to the Medicaid RAC of this action shall be in writing and may be communicated through e-mail.

### **9301 MEDICAL RECORDS REQUESTS**

9301.1 Each provider shall make medical records available to the Medicaid RAC upon request, subject to the provisions in this section. Providers may submit medical records in hardcopy or electronic format.

9301.2 Providers shall have thirty (30) business days from the date of the Medicaid RAC request to provide the requested medical records. Failure to submit the requested records within this timeframe, unless an extension has been granted to the provider by the Medicaid RAC, will result in the Medicaid RAC making a determination of improper payment.

### **9302 GUIDELINES FOR RECOUPING OVERPAYMENTS AND RECONCILING UNDERPAYMENTS**

9302.1 A Medicaid provider may be subject to recoupment or reconciliation of claims based on the Medicaid RAC findings.

9302.2 A determination of overpayment or underpayment shall be based on, but not limited to, one or more of the following:

- (a) Whether the service underlying the claim is covered under the District Medicaid program;
- (b) Whether the claim resulting from the service was priced correctly in accordance with billing standards for the District Medicaid program;
- (c) Whether the provider properly coded the claim in accordance with billing standards for the District Medicaid program;
- (d) Whether the claim duplicates a previously paid claim; and/or
- (e) Whether the Medicaid Management Information System (MMIS) failed to apply relevant payment policies.

9302.3 DHCF or the Medicaid RAC shall notify a provider, in accordance with the requirements set forth in Chapter 13 of Title 29 DCMR, when a claim is subject to recoupment based on the Medicaid RAC's determination.

9302.4 Pursuant to Chapter 13 of Title 29 DCMR, a provider may appeal an overpayment determination by the Medicaid RAC to the Office of Administrative Hearings (OAH) within fifteen (15) calendar days of the date the final notice of recoupment was sent to the provider.

## 9399 DEFINITIONS

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

**Audit** – A systematic process where an entity reviews Medicaid claims, obtains evidence, evaluates findings, and determines compliance with applicable laws, regulations, and policies.

**Beneficiary** – An individual who is eligible for Medical Assistance (Medicaid) under Titles XIX or XXI of the Social Security Act.

**Demonstration** – A project approved by CMS and authorized under Section 1115 of the Social Security Act.

**Managed Care** – The program authorized under Section 1915(b) of the Social Security Act in which Medicaid beneficiaries are enrolled into managed care organizations to receive services.

**Waiver** – A program operated by a state or by the District of Columbia pursuant to a CMS-approved application to waive standard Medicaid provisions to deliver long term care in community-based settings.



## OFFICE OF CONTRACTING AND PROCUREMENT

**NOTICE OF PROPOSED RULEMAKING**

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the “Act”), hereby gives notice of the intent to adopt a new Section 2003, of Chapter 20 (Special Contracting Methods), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

This rulemaking updates Chapter 20 and addresses the provisions in the Act that apply to the District’s Purchase Card Program. *See* D.C. Official Code §§ 2-351.04(51); 2-354.11(d); and 2-361.03(a), (c). The current Chapter 20 lacks a regulation that addresses the provisions of the Act that establishes a Purchase Card Program.

**Chapter 20, SPECIAL CONTRACTING METHODS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:**

**A new Section 2003 is added to read as follows:**

**2003 PURCHASE CARD PROCUREMENTS**

2003.1 The Director may establish and administer a purchase card program to be used by District employees to perform their agency’s programmatic functions.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4<sup>th</sup> Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to [OCPRulemaking@dc.gov](mailto:OCPRulemaking@dc.gov) or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

## OFFICE OF ADMINISTRATIVE HEARINGS

**NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING**

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 2-1831.05(a)(7) and (b)(7) (2012 Repl.)), hereby gives notice of the adoption of the following emergency and proposed rulemaking to amend Chapter 28 (Office of Administrative Hearings: Rules of Practice and Procedure) and Chapter 29 (Office of Administrative Hearings: Rules for DCPS, Rental Housing, Public Benefits, and Unemployment Insurance Cases) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 6, 2015 at 62 DCR 014365. Comments were received and carefully reviewed and considered. Substantive changes were made, to include vocational rehabilitation within the scope of public benefits cases, to clarify where a person may go in person to request a public benefits hearing, to clarify the intended protection for public benefits applicants and recipients regarding representatives, and to amend the time period that decisions shall be issued and served on the parties in vocational rehabilitation cases.

These emergency rules were adopted on February 5, 2016, and became effective on that date. The emergency rules will remain in effect for up to one hundred twenty (120) days after the date of adoption, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Chief Administrative Law Judge of OAH also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

**Chapter 28, OFFICE OF ADMINISTRATIVE HEARINGS: RULES OF PRACTICE AND PROCEDURE, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is repealed in its entirety and replaced with:**

**CHAPTER 28 OFFICE OF ADMINISTRATIVE HEARINGS: RULES OF PRACTICE AND PROCEDURE**

**Sections**

2800	Scope of Chapter
2801	Applicability of District of Columbia Superior Court Rules of Civil Procedure
2802	Beginning a Case at OAH
2803	Beginning a Civil Fine Case
2804	Answers in Civil Fine Cases
2805	Defaults in Civil Fine Cases

2806	Payment Plans in Civil Infractions Act Cases
2807	Abatement Cost Requests
2808	Beginning a Case By Requesting a Hearing
2809	Filing of Papers
2810	Identification of Parties
2811	How to Serve a Paper
2812	Calculating Deadlines
2813	Motions Procedure
2814	Representations to OAH
2815	Mediation
2816	Substitution, Addition, and Intervention of Parties
2817	Voluntary Dismissals of Cases
2818	Involuntary Dismissals and Defaults
2819	Summary Adjudication
2820	Consolidation and Separate Hearings
2821	Hearings and Evidence
2822	Burden of Proof
2823	Language Interpretation
2824	Subpoenas For Witnesses and For Documents at Hearings
2825	Discovery
2826	Sanctions
2827	Transcripts; Citation and Costs
2828	Requesting Reconsideration, A New Hearing, or Relief from a Final Order
2829	Clerical Mistakes
2830	Appeals
2831	Inability of an Administrative Law Judge to Proceed
2832	Recusal; Ethics Compliance
2833	Representation by Attorneys and Law Students
2834	Withdrawal of Appearance by an Attorney
2835	Representation by Non-Attorneys
2836	A Panel of Three Administrative Law Judges
2837	Amicus Curiae or "Friend of the Court" Submissions
2838	Courtroom Procedure
2839	Agency Caseload Projections
2840	Chief Administrative Law Judge Responsibilities
2841	Filing and Service by E-Mail; Other Electronic Submissions
2899	General Definitions

**2800 SCOPE OF CHAPTER**

- 2800.1 This chapter contains general rules of procedure for the Office of Administrative Hearings (OAH). Chapter 29 of these Rules contains rules for rental housing, public benefits, and unemployment insurance cases.
- 2800.2 These Rules do not extend or limit the jurisdiction of OAH.

- 2800.3 These Rules shall be used to secure the fair, speedy, and inexpensive determination of every case.
- 2800.4 No Administrative Law Judge shall maintain standing, chamber, or other individual rules. However, an Administrative Law Judge may issue procedural orders in individual cases.
- 2800.5 These Rules (Chapters 28 and 29) may be cited as “OAH Rule \_\_\_\_\_,” without reference to the District of Columbia Municipal Regulations (DCMR).
- 2800.6 These Rules control all procedures at OAH. No procedural rules adopted by any other District of Columbia government agency apply in cases at OAH.
- 2800.7 These Rules apply to all cases filed on or after January 1, 2011. If it is just and practical, these Rules also apply in any case pending on that date.

**2801 APPLICABILITY OF DISTRICT OF COLUMBIA SUPERIOR COURT RULES OF CIVIL PROCEDURE**

- 2801.1 Where these Rules do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.

**2802 BEGINNING A CASE AT OAH**

- 2802.1 The Government may begin a case at OAH by filing a Notice of Infraction or Notice of Violation as described in Section 2803.
- 2802.2 Any party also may begin a case at OAH by filing a request for a hearing as described in Section 2808.
- 2802.3 Rules for how to begin rental housing, public benefits and unemployment insurance cases are in Chapter 29.

**2803 BEGINNING A CIVIL FINE CASE**

- 2803.1 Sections 2803 through 2807 establish procedures for cases in which the Government seeks payment of a civil fine.
- 2803.2 When the Government is seeking a civil fine, it must file a Notice of Infraction or a Notice of Violation, as authorized by law, at the OAH. The Government may not file a Notice of Infraction, under the Civil Infractions Act, without complying with Subsection 2803.5, and may not file a Notice of Violation, under the Litter Control Administration Act, without complying with Subsection 2803.8.

- 2803.3 The Government must provide a copy of the Notice of Infraction or Notice of Violation to the Respondent (the person or entity that the Government wants to pay the fine) in the manner specified in the Civil Infractions Act, the Litter Control Administration Act, the District of Columbia Taxicab Commission Establishment Act of 1985 (DCTC Act), or other applicable law.
- 2803.4 If a Respondent files an answer before the Government files a Notice of Infraction or a Notice of Violation, OAH will open a case. The Administrative Law Judge may require the Government to file the original Notice of Infraction or Notice of Violation.
- 2803.5 In a Civil Infractions Act case filed on or after October 1, 2010, if the Government sends a Notice of Infraction to the Respondent by first-class mail, the Government may not file the Notice of Infraction until at least fifteen (15) calendar days after the date that it mailed the Notice of Infraction. When it files the Notice of Infraction, the Government also must file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the United States Postal Service (USPS) did not return the Notice of Infraction to the Government.
- 2803.6 If the USPS returns a Notice of Infraction to the Government after it has filed the affidavit required by Subsections 2803.5 or 2803.11(b), the Government must notify OAH by filing a new affidavit, on a form approved by the Chief Administrative Law Judge.
- 2803.7 If the USPS returns the Notice of Infraction to the Government, the Government may file proof of any alternative service of the Notice of Infraction.
- 2803.8 In a Litter Control Administration Act case, if the Government sends a Notice of Violation to a Respondent by certified mail, the Government must file a copy of a signed certified mail receipt or other proof that the USPS delivered the Notice of Violation to the Respondent's address. If the USPS returns the certified mail to the Government, the Government may file proof of any alternative service of the Notice of Violation.
- 2803.9 When it files a Notice of Infraction or a Notice of Violation, the Government must file a copy of all exhibits it expects to offer at any hearing in the case and must provide a copy of each exhibit to the Respondent. An Administrative Law Judge may allow the Government to use exhibits that it did not file or provide in accordance with this subsection if there is no prejudice to the Respondent.
- 2803.10 OAH may dismiss or may refuse to accept for filing any Notice of Infraction or Notice of Violation that does not comply with the applicable law or these Rules.
- 2803.11 When the District of Columbia Taxicab Commission (DCTC) is seeking civil fines or sanctions under the "District of Columbia Taxicab Commission Establishment Act of 1985," effective March 25, 1986, as amended (D.C. Law 6-97; D.C. Official Code §§ 50-301 *et seq.*) ("DCTC Act"),

- (a) DCTC may file a Notice of Infraction by entering it in the automatic ticket database presently maintained by the Department of Motor Vehicles (DMV). The day the Notice of Infraction data is entered into the DMV database shall be deemed the date of filing of the Notice of Infraction with OAH;
- (b) If DCTC serves a Notice of Infraction by first-class mail, DCTC may not file the Notice of Infraction with OAH until at least fifteen (15) calendar days after the date it mailed the Notice of Infraction. When it files the Notice of Infraction with OAH, DCTC must also file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the USPS did not return the Notice of Infraction to DCTC;
- (c) If DCTC issues a Notice of summary or proposed denial, revocation, suspension or modification of a license, a Notice to cease and desist, or a Notice to take action, DCTC shall file the Notice with OAH promptly and serve it in the manner provided under the DCTC Act and implementing regulations. OAH will schedule a hearing as required by law or on the request of the Respondent;
- (d) If DCTC takes other actions under the DCTC Act or implementing regulations appealable to OAH, DCTC shall file the relevant Notice, Order, or Action with OAH and serve it in the manner provided under the DCTC Act and implementing regulations. If the DCTC Act and implementing regulations do not specify a manner of service, DCTC shall follow Subsection (b) above.

2803.12 When a Notice of Infraction is issued from a hand-held electronic device, no signature of an issuing officer shall be required; provided, that the officer's printed name, department, and badge number appear legibly on the face of the Notice of Infraction.

#### **2804 ANSWERS IN CIVIL FINE CASES**

2804.1 To answer a Notice of Infraction or a Notice of Violation (both "Notice"), a Respondent should file the Respondent's copy of the Notice at OAH, or in DCTC cases filed in the DMV automatic ticket database, the Respondent shall answer according to the instructions on the back of the Notice of Infraction. The Respondent shall indicate on the Notice whether the Respondent's answer is Admit, Admit with Explanation, or Deny.

2804.2 If a Respondent does not file the Respondent's copy of the Notice, a written answer will be sufficient if it contains both the number of the Notice and a statement whether the Respondent's answer is Admit, Deny, or Admit with Explanation.

- 2804.3 A Respondent is not required to send a copy of the answer to the Government. OAH will send the Government a copy of every answer of Deny or Admit with Explanation. In DCTC cases filed in the DMV automatic ticket database, the Government has access to answers of Deny or Admit with Explanation in that database.
- 2804.4 A Respondent whose answer is Admit shall pay the fine specified on the Notice when filing the answer.
- 2804.5 If a Respondent's answer is Deny, OAH ordinarily will schedule a hearing and will notify the Respondent and Government, in writing, of the hearing date and time. The hearing order will contain additional information about procedures for the hearing. In DCTC cases filed in the DMV automatic ticket database, OAH will notify DCTC in writing of the hearing date and time selected by Respondent or by calendaring the hearing in the DMV database. In DCTC cases filed in the DMV database, if Respondent did not select the date and time of the hearing, OAH shall notify the Respondent in writing of the date and time of the hearing.
- 2804.6 If a Respondent's answer is Deny, after notice and opportunity to respond, an Administrative Law Judge may decide a case based on the papers submitted, without an in-person hearing, if a hearing is unnecessary.
- 2804.7 At least five calendar days before any hearing date, the Respondent shall file at OAH copies of all exhibits that the Respondent intends to ask the Administrative Law Judge to consider at the hearing. At the same time, the Respondent shall send copies of those exhibits to the Government. In DCTC cases filed in the DMV automatic ticket database, the Respondent may file copies of all such exhibits in the DMV database without sending copies to DCTC. An Administrative Law Judge may allow a Respondent to use exhibits at a hearing that the Respondent did not file or provide to the Government before the hearing if there is no prejudice to the Government.
- 2804.8 If a Respondent's answer is Admit with Explanation, a Respondent shall submit a written explanation stating why the Respondent believes the Administrative Law Judge should reduce or suspend the fine or any penalty. The Respondent also shall submit any papers, photographs, or other materials supporting the Respondent's explanation. In DCTC cases filed in the DMV automatic ticket database, Respondent may file any materials supporting the answer of Admit with Explanation through the DMV database.
- 2804.9 OAH will send a copy of an answer of Admit with Explanation and supporting materials to the Government, and will allow the Government twenty-one (21) calendar days to reply. The Government must send the Respondent a copy of everything the Government files in reply. In DCTC cases filed in the DMV automatic ticket database, the Government has access to the answer of Admit with Explanation and Respondent's supporting materials through the DMV database.

Any reply by DCTC must be filed in the DMV database and also provided to the Respondent.

- 2804.10 The Administrative Law Judge shall decide Admit with Explanation cases by considering all the materials filed by the parties, including the exhibits filed with the Notice, Respondent's explanation and supporting materials, and the Government's reply and supporting materials. The Administrative Law Judge will not hold a hearing, unless the parties' materials are not sufficient to allow him or her to decide the case.
- 2804.11 In an Admit with Explanation case, the Administrative Law Judge shall dismiss the Notice if he or she determines that the Respondent did not commit or is not responsible for the violation charged.
- 2804.12 In all civil fine cases, an Administrative Law Judge shall not impose a fine that exceeds the fine amount the Government requests.
- 2804.13 In a case involving (a) a denial, revocation, suspension, or modification of a license issued under the DCTC statute; or (b) any other order or action authorized under the DCTC Act, other than a Notice of Infraction, OAH will schedule a hearing as required by law or on the request of the Respondent. If the Respondent requests a hearing, OAH shall schedule the hearing as required by law or as soon as practicable. If the Respondent does not appear for a hearing, the Administrative Law Judge may suspend the hearing and close the case.

## **2805 DEFAULTS IN CIVIL FINE CASES**

- 2805.1 This section contains rules for deciding civil fine cases in which the Respondent does not file an answer. There are separate procedures for Civil Infractions Act cases, Litter Control Administration Act cases, and other cases, because the law establishes different requirements for each of those cases.
- 2805.2 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a Notice of Infraction within the time allowed by law, the Government must issue a second Notice of Infraction, as required by the Civil Infractions Act. OAH also may issue a notice of default. The notice of default shall inform the Respondent of any penalty provided by law, and shall direct the Government to issue a second Notice of Infraction.
- 2805.3 In a Civil Infractions Act case filed on or before September 30, 2010, if the Government fails to file a second Notice of Infraction within thirty (30) calendar days after a notice of default is served, an Administrative Law Judge may dismiss the charge against the Respondent.



2805.4 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a second Notice of Infraction within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) Each Notice of Infraction meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss both Notices of Infraction without prejudice.

2805.5 In a Civil Infractions Act case filed on or after October 1, 2010, and in a Litter Control Administration Act case, if a Respondent fails to answer within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) The Notice of Infraction or Notice of Violation meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss the Notice of Infraction or Notice of Violation without prejudice.

2805.6 In a Civil Infractions Act case filed on or after October 1, 2010, or in DCTC cases filed under Subsection 2803.11(b), if the USPS returns an order finding the Respondent in default to the Clerk's Office, for reasons that call into question the accuracy of any affidavit filed under Subsection 2803.5 or Subsection 2803.11(b), (for example, "no such address," "addressee unknown"), an Administrative Law Judge shall issue an order requiring the Government to show why the default order should not be vacated. If the Government does not respond with sufficient evidence showing that it mailed the Notice of Infraction to a valid address for the Respondent, the default order shall be vacated and the Notice of Infraction shall be dismissed.

2805.7 In default cases brought under the DCTC Act or acts other than the Civil Infractions Act or the Litter Control Administration Act, the procedure shall be consistent with the applicable law and shall ensure that:

- (a) There is sufficient evidence of proper service on the Respondent; and
- (b) The charging document meets all legal requirements on its face.

A Respondent who fails to answer shall be held in default and must pay the legally authorized fine and penalty. If the Administrative Law Judge does not find the Respondent in default, the Administrative Law Judge shall dismiss the Notice without prejudice.

## **2806 PAYMENT PLANS IN CIVIL INFRACTIONS ACT CASES**

- 2806.1 If an Administrative Law Judge has imposed monetary sanctions under the Civil Infractions Act, a Respondent may request to pay the monetary sanctions in installments. An Administrative Law Judge may permit installment payments for no more than six months beyond the date of the final order and may charge a fee of 1 percent per month of the outstanding amount.
- 2806.2 In requesting a payment plan under this section, a Respondent shall state, in writing, the reasons for seeking a payment plan, the length of time requested, and why Respondent cannot afford to pay the entire monetary sanction in a lump sum.
- 2806.3 A Respondent must file with OAH and serve on the Government a request for a payment plan within thirty (30) calendar days of the service of the final order.
- 2806.4 The Government may file with OAH a response to a request for a payment plan within five (5) calendar days of the service of the request.

## **2807 ABATEMENT COST REQUESTS**

- 2807.1 Before or after an Administrative Law Judge has issued a final order finding a Respondent liable for a violation of the Litter Control Administration Act, the Government may file a motion to require the Respondent to pay abatement costs. The Government must file the motion, with an itemization, not later than one hundred twenty (120) calendar days after service of a final order.
- 2807.2 A Respondent may request a hearing on the Government's motion. The request must be in writing and must be filed within thirty (30) calendar days after the Government serves its motion.
- 2807.3 If a Respondent timely requests a hearing on the Government's motion, the presiding Administrative Law Judge shall hold a hearing on the issue of abatement costs, which may be consolidated with any hearing on the violation. If an Administrative Law Judge has held a separate hearing on the violation and found the Respondent liable for the violation, or if the Respondent has admitted liability, or if an Administrative Law Judge has found the Respondent in default, the Respondent may not have another hearing on liability for the violation.
- 2807.4 If a Respondent does not file a timely request for a hearing on the Government's motion, the Administrative Law Judge may:

- (a) Decide, based on the papers filed, whether the Government is entitled to recover abatement costs and their amount; or
- (b) Before deciding the issue, order the Government and the Respondent to appear for a hearing on the issue.

**2808 BEGINNING A CASE BY REQUESTING A HEARING**

- 2808.1 Unless a statute or these Rules describe a different way to begin a case, a party seeking a hearing at OAH must file a request for hearing in writing.
- 2808.2 The request for hearing need not follow any specific format, although blank forms are available from the Clerk's office. A request for hearing should contain the following information:
- (a) A short description of your dispute;
  - (b) A description of what you want the judge to do;
  - (c) Any key dates that are involved;
  - (d) A copy of any ruling or decision that you are disputing or appealing;
  - (e) Your full name, address, and telephone and fax numbers; and
  - (f) If known, the full name, address, and telephone and fax numbers of every other party involved in the dispute.
- 2808.3 Parties must pay close attention to any deadlines for filing hearing requests. The deadlines are set by statute, regulations, or agency rules other than these Rules, and not by OAH.
- 2808.4 A party requesting a hearing in a Child Support Services Division (CSSD) enforcement action must file a copy of the Order of Condemnation or other proof that CSSD has issued an Order of Condemnation.
- 2808.5 Any hearing request to appeal a proposed tax assessment, other than a proposed real property tax assessment, must be filed with OAH and sent to the District of Columbia Office of Tax and Revenue. The hearing request should state the type of tax (for example, personal, business, or franchise), tax year(s), and amount of tax appealed. The hearing request should include a copy of the proposed tax assessment.
- 2808.6 Any hearing request to appeal a decision concerning a Certificate of Need must be filed with OAH and sent to the Director of the State Health Planning and Development Agency (SHPDA) in the Department of Health. SHPDA must

transfer the agency record of the proceedings to OAH within thirty (30) calendar days of service of the request for hearing.

## **2809 FILING OF PAPERS**

2809.1 A “paper” means any pleading, motion, exhibit or witness list, or any other written submission filed with OAH.

2809.2 Any paper filed at OAH must be legible and signed by a party or a party’s representative. A conformed signature, as defined in Section 2899, will only be accepted on a paper filed by email as authorized by Section 2841.

2809.3 To file any paper at OAH, a person must bring, mail, fax, email, or have the paper delivered to the Clerk’s office during regular business hours from 9:00 a.m. to 5:00 p.m. on a business day. A paper is filed on the day the Clerk’s office receives it during business hours, except as provided in Subsection 2809.5 below. Any paper filed by email must comply with Section 2841.

2809.4 The filing date of a fax transmission will be determined as follows:

- (a) The filing date is the date on which the fax is received in the Clerk’s office between the hours of 9:00 a.m. and 5:00 p.m. If a paper is received on a date or at a time when the Clerk’s office is not open, the paper shall be deemed to have been filed when the Clerk’s office is next open.
- (b) A party filing a paper by fax is responsible for delay, disruption, interruption of electronic signals, and legibility of the paper, and accepts the risk that the paper may not be filed.
- (c) Any incomplete or illegible fax will not be considered received unless a hard copy of the fax is filed or a complete and legible fax is received within three (3) calendar days of the first transmission. In a response to a motion, the Administrative Law Judge may extend this time.

## **2810 IDENTIFICATION OF PARTIES**

2810.1 Any paper filed at OAH should contain the name, address, telephone number, and fax number, if any, of the person who files it.

2810.2 Any paper filed at OAH by an attorney or other representative must identify the represented party and must contain the District of Columbia Bar number, if any, of the attorney.

2810.3 A party, attorney, or representative must notify the Clerk and all other parties in writing of any change in address, telephone number, or fax number within three (3) calendar days of the change.

2810.4 The most recent contact information provided by a party, attorney, or other representative under this Section shall be considered correct. A party or representative who does not keep an address current may fail to receive orders and may lose the case as a result.

2810.5 The Clerk may reject, or an Administrative Law Judge may strike, any paper that does not comply with this section.

## **2811 HOW TO SERVE A PAPER**

2811.1 “Service” of a paper or to “serve” a paper means to send or deliver it as set forth in this section.

2811.2 Every paper filed at OAH shall be served on the other parties or their attorneys or representatives no later than the day it is filed with OAH. Exceptions may be identified in these Rules, by statute, or by OAH order.

2811.3 Unless otherwise ordered by an Administrative Law Judge or agreed by the parties, service shall be by delivering a copy, mailing a copy, faxing a copy, or sending a copy by commercial carrier.

2811.4 Service by delivery means:

- (a) Handing a copy to the party or a representative;
- (b) Leaving it at the party’s or representative’s place of business with an employee; or
- (c) Leaving it at the party’s residence with an adult who lives there.

2811.5 Service by mail means mailing a properly addressed copy with first-class postage by depositing it with the United States Postal Service.

2811.6 Service by fax means faxing a legible copy to the correct fax number and receiving confirmation of transmission.

2811.7 Service by commercial carrier means giving a copy properly addressed to the commercial carrier with the cost of delivery pre-paid for delivery within three (3) calendar days.

2811.8 Parties may agree, in writing, to other means of service and may withdraw their agreement in writing.

2811.9 Any paper filed must include a signed statement that the paper was served on the parties. Such a statement is known as a “certificate of service.” The certificate of

service shall identify the individual serving the paper, the parties served and their addresses, the way it was served, and the date served.

2811.10 The Clerk may reject, or an Administrative Law Judge may strike, a paper if a party fails to file a certificate of service with the paper.

2811.11 Actual receipt of a paper shall bar any claim of defective service except for a claim of late service.

## **2812 CALCULATING DEADLINES**

2812.1 This section applies to all time periods established by these Rules, by an order, or by any applicable law.

2812.2 In computing any time period measured in days, the day of the act, event, or default from which the period begins to run shall not be included.

2812.3 For any time period measured in days, the last day of the period shall be included unless OAH is closed on that day. In that case, the period runs until the end of the next day on which OAH is open.

2812.4 In computing any time period measured in hours, no hours shall be excluded from the computation, except as provided in this Subsection:

- (a) If any period expires before 10:00 a.m. on any day OAH is open, the period shall be extended to 10:00 a.m. on that day.
- (b) If any period expires after 4:00 p.m. on any day, the period shall be extended to 10:00 a.m. on the next day OAH is open.
- (c) If any period expires on a day OAH is closed, the period shall be extended to 10:00 a.m. on the next day OAH is open.

2812.5 When a party may or must act within a specified time period after service, and service is made by United States mail, commercial carrier, or District of Columbia Government inter-agency mail, five (5) calendar days are added after the period would otherwise expire, unless a statute or regulation provides otherwise.

2812.6 When a party may or must act within a specified time period, an Administrative Law Judge for good cause shown may reduce the time or extend it, even after the period has expired, except for any period prescribed by law, or any period provided under Sections 2806 and 2828.

2812.7 Any reference to “days” in an OAH order means calendar days unless specifically designated as business days in the order.

**2813 MOTIONS PROCEDURE**

- 2813.1 A “motion” is a request for an Administrative Law Judge to take some action.
- 2813.2 Unless made during a hearing, all motions shall be in writing. Without permission from an Administrative Law Judge, no motion or brief shall exceed twenty (20) double-spaced typed pages in length, excluding exhibits. The font size shall be a minimum of twelve (12) points, with no less than one-inch (1”) margins. The first page of every motion should contain: the parties’ names, the case number, and the name of the presiding Administrative Law Judge, if known. Every motion shall state the legal and factual reasons for the motion and shall say what the party wants the Administrative Law Judge to do.
- 2813.3 When a motion is based on information not on the record, a party may support or oppose the motion with affidavits, declarations, or other papers. An Administrative Law Judge may order a party to file supporting affidavits, declarations, or other papers.
- 2813.4 Except as otherwise ordered by an Administrative Law Judge, a separate memorandum of points and authorities need not be filed with a motion.
- 2813.5 Before filing any motion (except a motion for summary adjudication, to dismiss, for reconsideration, relief from final order, or for sanctions), a party must make a good faith effort to ask all other parties if they agree to the motion.
- (a) A “good faith effort” means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by fax, by email, or by other means.
  - (b) Contact by mail is a good faith effort only if no other means is reasonably available (for example, not having another party’s telephone number or email address).
  - (c) By itself, serving a party with the motion is not a good faith effort.
  - (d) When this subsection requires a good faith effort, the motion must describe that effort and say whether all other parties agreed to the motion.
  - (e) If a party fails to comply with this Subsection, an Administrative Law Judge may deny the motion without prejudice.
- 2813.6 Unless otherwise provided by these rules or ordered by an Administrative Law Judge, all parties opposing a motion shall have eleven (11) calendar days from the service of the motion to file and serve a response. No further filings related to the motion are permitted unless ordered by an Administrative Law Judge.

- 2813.7 The Administrative Law Judge may decide any motion without holding a hearing.
- 2813.8 Parties and counsel should not assume that a motion to extend time, to continue a hearing, or to seek other relief will be granted. If a party does not receive notice from OAH, it is the party's obligation to contact OAH to determine whether an Administrative Law Judge has acted on the motion.

## **2814 REPRESENTATIONS TO OAH**

- 2814.1 A party or representative who files a paper with OAH certifies in good faith that:
- (a) The party or representative has read the paper;
  - (b) The party or representative is not presenting it for any improper purpose, such as to harass, to cause unnecessary delay, or to increase the cost of litigation needlessly;
  - (c) Any legal claims are consistent with existing law or a good faith argument to change existing law; and
  - (d) Any factual claims have or are likely to have evidentiary support.
- 2814.2 If, after notice and an opportunity to respond, an Administrative Law Judge determines that an attorney or representative has violated this section, the Administrative Law Judge may impose sanctions, including those authorized by Subsections 2833.7 and 2835.12.

## **2815 MEDIATION**

- 2815.1 Mediation is a process of assisted, informal negotiation which uses a neutral third party, the mediator, to aid the parties in exploring the possibility of settlement. No party may be compelled to accept a settlement or other resolution of the dispute in mediation.
- 2815.2 At any time during case proceedings, an Administrative Law Judge may refer a case for mediation to a qualified mediator with or without the consent of the parties. Any party may request an Administrative Law Judge to refer a case for mediation.
- 2815.3 Mediations are confidential and closed to the public. Mediations may not be recorded electronically or in any other manner, with or without the consent of the parties. Evidence of anything that occurs during mediation sessions and documents prepared exclusively for or during mediation, may not be introduced into evidence or otherwise disclosed to the presiding Administrative Law Judge. Nothing in this subsection prohibits the introduction or disclosure of information or evidence that any party obtained outside of mediation.



- 2815.4 The mediator may speak privately with any party or any representative during the mediation process.
- 2815.5 The mediator shall not disclose anything that occurs at mediation to the presiding Administrative Law Judge except to report without elaboration:
- (a) Whether the parties reached an agreement; and, if not
  - (b) Whether he or she believes further mediation would be productive.
- 2815.6 The mediator may not be called to testify, participate in discovery, or otherwise provide information in any subsequent proceeding related to the mediation.
- 2815.7 An Administrative Law Judge who conducts mediation may not be the Administrative Law Judge in any subsequent proceedings for the case, but, with the consent of the parties, may issue an order on procedural matters concerning the mediation or reflecting any agreement reached during the mediation.
- 2815.8 All parties or their representatives must appear for any mediation session. Any representative who appears must have authority to resolve the case.
- 2815.9 If a party or representative fails to appear at a scheduled mediation session without good cause, the mediator shall notify the presiding Administrative Law Judge who may impose sanctions.

**2816 SUBSTITUTION, ADDITION, AND INTERVENTION OF PARTIES**

- 2816.1 After proper notice and an opportunity to be heard, an Administrative Law Judge may substitute a person or entity for a named party, or may add parties to a case.
- 2816.2 Anyone who has an interest in the subject matter of a pending case and contends that the representation of his or her interest is inadequate may file a motion to intervene. After proper notice and an opportunity to be heard, an Administrative Law Judge may allow an interested person or entity to intervene.
- 2816.3 If an Administrative Law Judge grants a motion for leave to intervene, the intervenor may participate to the extent allowed by the Administrative Law Judge.
- 2816.4 No person or entity may intervene as a co-Petitioner with the Government in any enforcement action where the Government seeks a fine unless a statute allows it.
- 2816.5 A person or entity to which the Government has properly delegated a governmental function may request to intervene, but may not be substituted for the Government.

**2817 VOLUNTARY DISMISSALS OF CASES**

- 2817.1 The party initiating the case may move to dismiss the case at any time, and the Administrative Law Judge may grant the motion without waiting for a response from the opposing side.
- 2817.2 An opposing party who objects to the voluntary dismissal of a case may file a motion for reconsideration as provided in Subsection 2828.
- 2817.3 The parties may file a joint motion for dismissal of a case with or without prejudice.
- 2817.4 Dismissal under this Section shall be without prejudice, unless an Administrative Law Judge orders otherwise. A dismissal with prejudice may occur:
- (a) If the party requesting dismissal has previously dismissed the claim;
  - (b) If the motion for dismissal is made pursuant to a settlement that does not specifically require dismissal without prejudice; or
  - (c) In order to prevent harm to the other side.

**2818 INVOLUNTARY DISMISSALS AND DEFAULTS**

- 2818.1 Except as provided in Subsection 2818.2, if the party initiating a case fails to comply with an Administrative Law Judge's order or these Rules or otherwise fails to prosecute the case, the Administrative Law Judge may, on his or her own motion or on the motion of the opposing party, dismiss all or part of the case. Dismissal will ordinarily be with prejudice unless the Administrative Law Judge finds good cause to dismiss without prejudice.
- 2818.2 Dismissals for defective service will ordinarily be without prejudice, unless the Administrative Law Judge decides otherwise.
- 2818.3 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a hearing, the Administrative Law Judge may dismiss the case, enter an order of default, decide the case on the merits, or impose other sanctions.
- 2818.4 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a pretrial, settlement, or status conference, the Administrative Law Judge may determine the appropriate sanction, which may include dismissal or entry of default.

**2819 SUMMARY ADJUDICATION**

2819.1 A party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing. Such a motion must include sufficient evidence of undisputed facts and citation of controlling legal authority.

## **2820 CONSOLIDATION AND SEPARATE HEARINGS**

2820.1 When cases involve a common question of law or fact, or when multiple Notices of Violation or Notices of Infraction have been issued to the same Respondent, an Administrative Law Judge may, in his or her discretion:

- (a) Consolidate the cases for all or any purposes; or
- (b) Order a joint hearing on all or any issues.

An Administrative Law Judge may do so on motion of a party or on his or her own motion.

2820.2 An Administrative Law Judge may order a separate hearing on any issue in a case where appropriate.

## **2821 HEARINGS AND EVIDENCE**

2821.1 The presiding Administrative Law Judge shall determine whether a hearing is required by law in any case.

2821.2 At least five (5) calendar days before any evidentiary hearing (except in unemployment compensation cases governed by Subsection 2983.1), a party shall serve on all other parties and file with the Clerk the following:

- (a) A list of the witnesses, other than a party or a charging inspector, whom the party intends to call to testify; and
- (b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits that were served with the Notice of Violation, Notice of Infraction, or Answer or are to be used solely for impeachment or rebuttal.

2821.3 The Administrative Law Judge may exclude any witnesses or exhibits not disclosed under Subsection 2821.2 if he or she finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

2821.4 Hearings ordinarily will be held only in an OAH courtroom. Hearings may be held in any other location only as required by law or in exceptional circumstances with approval of the Chief Administrative Law Judge. For good cause shown, and subject to appropriate safeguards, an Administrative Law Judge may permit a

party to appear at a hearing from a remote location by telephone, videoconferencing, or similar means.

- 2821.5 Parties shall have the following rights at a hearing:
- (a) To testify and to have other witnesses testify for them;
  - (b) To cross-examine witnesses called by another party;
  - (c) To request that any prospective witness be excluded from the courtroom;
  - (d) To examine all exhibits offered into evidence by another party;
  - (e) To object to the admission of any testimony or other evidence;
  - (f) To subpoena witnesses, as provided in Section 2824; and
  - (g) To appear with a representative, as provided in Sections 2833 and 2835.
- 2821.6 At a hearing, all parties may present evidence. "Evidence" includes testimony by the parties and by any witnesses that a party may present. Evidence also includes papers, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence shall become part of the record.
- 2821.7 Testimony in any hearing ordinarily will be given in open court. An Administrative Law Judge may exclude testimony given by any other means, unless otherwise permitted by statute or these Rules.
- 2821.8 For good cause shown, and subject to appropriate safeguards, an Administrative Law Judge may permit witness testimony from a remote location by telephone, videoconferencing, or similar means. Requests for such testimony will ordinarily be granted where the witness does not reside or work in the greater District of Columbia Metropolitan area.
- 2821.9 For good cause shown, an Administrative Law Judge may permit a witness to submit written testimony in advance of the hearing, subject to cross-examination and redirect examination at the hearing.
- 2821.10 For good cause shown, an Administrative Law Judge may allow parties to submit pre-recorded testimony subject to appropriate safeguards including cross-examination.
- 2821.11 All witnesses must testify under oath or under penalty of perjury. Nothing in this Subsection forbids the admission of an affidavit or other sworn written statement.

- 2821.12 Hearsay evidence (generally, a statement by a person not present in the courtroom) is admissible. When hearsay evidence is admitted, the Administrative Law Judge shall assess the reliability of the evidence to determine the weight it should be assigned. An Administrative Law Judge shall consider the speaker's absence in evaluating the evidence.
- 2821.13 In determining the admissibility and weight of evidence, an Administrative Law Judge may use the Federal Rules of Evidence for guidance, but they shall not be binding.
- 2821.14 An Administrative Law Judge may limit or exclude testimonial or documentary evidence to avoid surprise or prejudice to other parties, repetition, or delay.
- 2821.15 Whenever any applicable law or order requires or permits the filing of an affidavit or other writing signed under oath, the signer may submit a written declaration in substantially the following form:
- “I declare under penalty of perjury, that the foregoing is true and correct. Signed on (date).”
- “Signature”
- 2821.16 All Administrative Law Judges and the Clerk are authorized to administer oaths.

## **2822 BURDEN OF PROOF**

- 2822.1 Unless otherwise established by law, the proponent of an order shall have the burden of proof, that is, the requirement to persuade the Administrative Law Judge on every contested factual issue.
- 2822.2 Unless otherwise established by law, the burden of production, that is, the requirement to introduce evidence first, shall be as follows:
- (a) Whenever a party challenges the Government's denial of an application for a license, permit, or public benefit, the Government shall have the burden of producing sufficient evidence to establish the reasons for the denial;
  - (b) Whenever the Government suspends, revokes, or terminates a license, permit, or public benefit, or proposes to do so, the Government shall have the burden of producing sufficient evidence to establish the reasons for its action;
  - (c) The party asserting an affirmative defense identified in District of Columbia Superior Court Civil Rule 8(c) shall have the burden of producing sufficient evidence to establish that defense; and

(d) The party asserting an exception to the requirements or prohibitions of any statute or rule shall have the burden of producing sufficient evidence to establish that exception.

2822.3 Otherwise, an Administrative Law Judge shall allocate the burden of producing evidence to promote fairness, equity, substantial justice, and sound judicial administration.

2822.4 If the party with the burden of production fails to appear, the party with the burden of proof still must meet its burden, unless otherwise provided by law.

2822.5 If a party has presented all of its evidence on an issue on which it has the burden of proof, and the presiding Administrative Law Judge concludes that the party has failed to meet its burden, the Administrative Law Judge may find against that party on that issue without awaiting the close of all the evidence in that case.

### **2823 LANGUAGE INTERPRETATION**

2823.1 OAH will provide oral or sign language interpretation services upon request for persons seeking information or participating in a hearing. An Administrative Law Judge may order the use of such services at a hearing.

2823.2 A person who needs those services for a hearing shall request them as early as possible to avoid delay.

2823.3 Upon request by a party with impaired vision, OAH will provide official documents in Braille or large print within seven business days.

2823.4 An interpreter at a hearing shall swear or affirm under penalty of perjury to interpret accurately, completely, and impartially.

### **2824 SUBPOENAS FOR WITNESSES AND FOR DOCUMENTS AT HEARINGS**

2824.1 Except as provided in Subsection 2824.5 below (unemployment compensation and rental housing cases), a subpoena for the appearance of witnesses and production of documents at a hearing shall only be issued by an Administrative Law Judge.

2824.2 A party may request a subpoena in writing or an Administrative Law Judge may issue a subpoena without a party's request.

2824.3 Any request that an Administrative Law Judge issue a subpoena should include a copy of the proposed subpoena and shall state the relevance of the requested testimony or documents. Subpoenas and forms to request a subpoena are available from the Clerk.

- 2824.4 Unless otherwise provided by law or order of an Administrative Law Judge, any request for a subpoena shall be filed no later than five calendar days prior to the hearing.
- 2824.5 In unemployment compensation and rental housing cases, the Clerk shall, without an order of the Administrative Law Judge, issue certain subpoenas at the request of a party as follows:
- (a) For subpoenas in unemployment compensation cases, refer to Section 2984.
  - (b) For subpoenas in rental housing cases, refer to Section 2934.
  - (c) When the Clerk issues a subpoena authorized by this Subsection, the Clerk shall sign it, but otherwise leave it blank. The party requesting the subpoena shall fill in the remaining information on the subpoena form.
  - (e) If a party in an unemployment insurance or rental housing case wants to obtain any subpoena not authorized by this Subsection, the party shall request an Administrative Law Judge to issue that subpoena in accordance with Subsections 2824.1 through 2824.4.
- 2824.6 It is the responsibility of the requesting party to serve a subpoena in a timely fashion. Any person, including a party, who is at least eighteen (18) years of age, may serve a subpoena.
- 2824.7 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least four (calendar days before the hearing.
- 2824.8 A subpoena for the production of documents at a hearing shall be directed to either an individual, a corporation, the Government, or another entity.
- 2824.9 A subpoena for the production of documents at a hearing shall be served by any of the following means:
- (a) Handing it to the person or to a representative of the person or entity;
  - (b) Leaving it at a person's office with a responsible adult, or if no one is available, leaving it in a conspicuous place in the office;
  - (c) Leaving it with a responsible adult at an entity's office that is connected to the case;

- (d) Mailing it to the last known address of the person;
- (e) Mailing it to the last known address of an entity's office connected to the case; or
- (f) Delivering it by any other means, including electronic means, if consented to in writing by the person or entity served, or as ordered by an Administrative Law Judge.

2824.10 A person or entity ordered to produce documents at a hearing:

- (a) Need not appear in person at the hearing unless ordered by an Administrative Law Judge to do so;
- (b) Shall produce the documents as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena; and
- (c) Shall expressly make any claims of privilege or protection with a description of the documents not produced that is sufficient to enable the requesting party to contest the claim.

2824.11 A subpoena may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within twenty-five (25) miles of the place of the hearing.

2824.12 To prove service of a subpoena, a party shall file a written statement or shall provide in-court testimony describing the date and manner of service, and names of the persons served.

2824.13 An Administrative Law Judge may quash or modify a subpoena if it:

- (a) Was issued under Subsections 2824.5, 2934.1 or 2984.1, but does not meet the requirements of those subsections;
- (b) Was improperly served;
- (c) Fails to allow reasonable time for compliance;
- (d) Requires a person who is not a party or an officer of a party to travel to a hearing more than twenty-five (25) miles from where that person resides, is employed, or regularly transacts business, except that such a person may be ordered to appear by telephone;
- (e) Requires disclosure of a privileged or other protected information; or



(f) Subjects a person or entity to undue burden or expense.

2824.14 If a person or entity disobeys a subpoena, an Administrative Law Judge may order compliance with the subpoena. If a person subject to the order fails to comply, the Administrative Law Judge may impose monetary sanctions. In addition, a party may apply to the Superior Court of the District of Columbia for an order to show cause why that person should not be held in civil contempt.

## **2825 DISCOVERY**

2825.1 Discovery is generally not permitted. An Administrative Law Judge may authorize discovery for good cause shown, but interrogatories and depositions are disfavored.

2825.2 A party may move for an Administrative Law Judge to issue a subpoena to require any non-party to provide documents prior to the hearing.

2825.3 Any motion for discovery shall explain the relevance of the information that is sought and shall describe all attempts to obtain consent from the opposing party, including a description of all discovery to which the opposing party has agreed.

2825.4 Unless otherwise ordered by an Administrative Law Judge, any motion for discovery must be filed at least twenty (20) calendar days before the date of any scheduled evidentiary hearing.

2825.5 An Administrative Law Judge may impose appropriate sanctions if a party fails to comply with a discovery request, including prohibiting the party from offering evidence and ordering that specific facts are established.

## **2826 SANCTIONS**

2826.1 Before issuing an order imposing any sanctions under the Act, the presiding Administrative Law Judge shall allow the party subject to the sanction an opportunity to be heard. Any order imposing a sanction shall be in writing.

## **2827 TRANSCRIPTS; CITATION AND COSTS**

2827.1 All proceedings, except for mediations, shall be recorded. The recording is the official record of what occurred at the proceeding.

2827.2 Any party may obtain a copy of the recording of a hearing at the party's expense.

2827.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify that he or she is not a party or counsel to a party or otherwise related to or employed by a party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded.

- 2827.4 In filings, a party may only rely upon a transcript prepared according to this Section.
- 2827.5 Unless otherwise stipulated by the parties or ordered by an Administrative Law Judge, if a party cites to a portion of a transcript, the entire transcript of the case must be filed at OAH, and a copy must be served on all parties.
- 2827.6 OAH only provides transcripts to appellate tribunals. In any case in which a party files a petition for review in the District of Columbia Court of Appeals, OAH will arrange for the preparation and filing of a transcript without charge only if the Court of Appeals has permitted the Petitioner to proceed *in forma pauperis*. In all other cases, OAH will arrange for preparation and filing of a transcript only after OAH receives payment for the cost of preparing the transcript.

**2828 REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER**

- 2828.1 This section contains Rules about how to ask an Administrative Law Judge to change a final order after it has been issued or to request a new hearing whether or not a final order has been issued. Errors or omissions are not a sufficient basis for a new hearing or to change an order if the errors are harmless.
- 2828.2 No motion filed under this section stays the final order or otherwise affects a party's obligations to comply with the final order, unless an Administrative Law Judge orders otherwise.
- 2828.3 Within ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change the final order. Such a motion is a "motion for reconsideration or for a new hearing." The movant shall state whether an appeal has been filed. If an appeal has been filed, OAH has no jurisdiction to decide the motion absent a remand for that purpose.
- 2828.4 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, the time for seeking judicial review of a final order does not start to run until the Administrative Law Judge rules on the motion, or the motion is denied as a matter of law under Subsection 2828.15.
- 2828.5 If any party files a motion for reconsideration or for a new hearing before a final order is issued or within the ten (10) calendar day deadline of Subsection 2828.3, and where substantial justice requires, the Administrative Law Judge may change the final order or schedule a new hearing for any reason including, but not limited to, the following:
- (a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;

- (b) The party filing the motion did not file a required answer to a Notice of Infraction or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense;
- (c) The final order contains an error of law;
- (d) The final order's findings of fact are not supported by the evidence; or
- (e) New evidence has been discovered that previously was not reasonably available to the party filing the motion.

2828.6 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for reconsideration or for a new hearing if it is filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.

2828.7 After the ten (10) calendar day deadline, a party may file a motion asking the Administrative Law Judge to change the final order. A motion filed under this Subsection is a "motion for relief from the final order." The movant shall state whether an appeal has been filed. If an appeal has been filed, OAH has no jurisdiction to decide the motion absent a remand for that purpose.

2828.8 Any motion for relief from the final order has no effect on the deadline for seeking judicial review of the final order.

2828.9 Any motion for relief from the final order must be filed within one hundred twenty (120) calendar days after service of the final order.

2828.10 On a motion for relief from the final order, an Administrative Law Judge may change the final order only if no appeal has been filed, and only for one or more of the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence that by due diligence could not have been discovered in time to file a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline;
- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The final order is void;

- (e) A prior judgment on which the final order is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (f) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
- (g) The party filing the motion did not file a required answer to a Notice of Infraction, or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense; or
- (h) For good cause shown, the Government may ask that a final order issued in its favor be set aside.

2828.11 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for relief from the final order, if the motion is not filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.

2828.12 Any party filing any motion under this section must include a short and plain statement of all the reasons why the Administrative Law Judge should change the final order.

2828.13 An opposing party is not required to file a response to any motion under this section, unless an Administrative Law Judge orders a response. Before granting any motion under the section, an Administrative Law Judge must issue an order allowing the opposing party an opportunity to respond to the motion.

2828.14 If an Administrative Law Judge grants a motion filed under this section, he or she may:

- (a) Order further submissions from the parties;
- (b) Order the parties to appear for a hearing; or
- (c) Issue a new final order that may or may not change the result in the case.

2828.15 An Administrative Law Judge should rule on any motion filed under this Section within forty-five (45) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. An Administrative Law Judge may extend the period once for an additional thirty (30) calendar days by issuing an order before the first 45 day period expires. After expiration of any applicable deadline, the Administrative Law Judge, in his or her discretion, may

issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

2828.16 If the motion has been denied as a matter of law under Subsection 2828.15, OAH shall send written notice to the parties.

## **2829 CLERICAL MISTAKES**

2829.1 At any time, an Administrative Law Judge or the Clerk, in consultation with an Administrative Law Judge, may correct clerical, typographical, numerical, or technical mistakes in the record and errors from oversight or omission.

2829.2 An Administrative Law Judge may order that notice of such corrections be given to the parties.

2829.3 If a party has filed a request for appellate review, such mistakes may be corrected before the record is transmitted to the reviewing court, and thereafter may be corrected with leave of the reviewing court.

## **2830 APPEALS**

2830.1 Every appealable order shall include a statement of appeal rights and shall be served on the parties and their representatives.

2830.2 The filing of an appeal or a petition for review does not stay (or delay) the date a final order goes into effect.

2830.3 Any party may file a motion to stay a final order pending appeal. A motion for a stay must include the reasons for granting the stay. Any party may file a motion to stay the effective date of a final order.

2830.4 In determining whether to grant a stay, the Administrative Law Judge may consider the following factors: whether the party filing the motion is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

## **2831 INABILITY OF AN ADMINISTRATIVE LAW JUDGE TO PROCEED**

2831.1 If a hearing has commenced or is completed and the assigned Administrative Law Judge is unable to proceed, another Administrative Law Judge may proceed in the case. The successor Administrative Law Judge must certify that he or she is familiar with the record.

2831.2 If a recording of the hearing is unavailable, the successor Administrative Law Judge shall, if requested by any party, recall a witness whose testimony is material and disputed.

2831.3 The successor Administrative Law Judge shall serve the parties with a proposed final order and allow the parties to file exceptions and present argument before issuing a final order.

## **2832 RECUSAL; ETHICS COMPLIANCE**

2832.1 An Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia.

2832.2 Administrative Law Judges shall at all times be in compliance with the OAH Code of Judicial Ethics, which shall be available to the public.

## **2833 REPRESENTATION BY ATTORNEYS AND LAW STUDENTS**

2833.1 An attorney may represent any party before OAH. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar, or who are authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH as a representative of a party.

2833.2 An attorney who is not a member of the District of Columbia Bar, and who is not authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH after the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury that:

- (a) I have not applied for admission *pro hac vice* in more than five (5) cases in OAH or in the courts of the District of Columbia during this calendar year. I have applied for admission *pro hac vice* in OAH and in the courts of the District of Columbia \_\_\_\_\_ (list number) times previously in this calendar year;
- (b) I am a member in good standing of the bar of the highest court(s) of the State(s) of \_\_\_\_\_ (list all states);
- (c) There are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) I am not currently suspended or disbarred from practice in any court;
- (e) I do not practice or hold out to practice law in the District of Columbia;

- (f) I am familiar with OAH's Rules found at 1 DCMR 28 and 29;
- (g) I am applying for admission *pro hac vice* for the following reason(s):  
\_\_\_\_\_ (list all reasons);
- (h) I acknowledge the jurisdiction of OAH and the courts of the District of Columbia over my professional conduct, and agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*; and
- (i) I have informed my client that I am not a member of the District of Columbia Bar, and my client has consented to my representation in this case.

2833.3 For good cause shown, the presiding Administrative Law Judge may revoke the *pro hac vice* admission of any attorney.

2833.4 Current law students who have successfully completed forty-two (42) credit hours of law school may appear before OAH, except that a law student who has been denied admission to practice before the District of Columbia Court of Appeals pursuant to its Rule 48 may not appear before OAH. An Administrative Law Judge may terminate a law student's representation under this Subsection at any time, for any reason, without notice or hearing. A law student practicing under this Subsection shall:

- (a) Be enrolled in a law school approved by the American Bar Association;
- (b) Have the consent and oversight of a supervising attorney assigned to the law student;
- (c) Sign and file a Notice of Appearance in the case with the supervising attorney;
- (d) Have the written permission of the client, which must be filed in the record;
- (e) Not file any paper unless the law student and supervising attorney sign it;
- (f) Not appear at any proceeding without the supervising attorney;
- (g) Neither ask for nor receive a fee of any kind for any services provided under this rule, except for the payment of any regular salary made to the law student; and

- (h) Comply with any limitations ordered by the presiding Administrative Law Judge.

2833.5 An attorney supervising a law student who appears pursuant to Subsection 2833.4 shall:

- (a) Be an active member in good standing of the District of Columbia Bar;
- (b) Assume full responsibility for supervising the law student;
- (c) Sign and file a Notice of Appearance in the case with the law student;
- (d) Assist the law student in preparation of the case, to the extent necessary in the supervising lawyer's professional judgment to insure that the law student's participation is effective on behalf of the person represented;
- (e) Appear at all proceedings with the law student; and
- (f) Review and sign any paper filed by the law student.

2833.6 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys and law students appearing before OAH.

2833.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any attorney appearing before OAH for good cause. Such restrictions may include, without limitation:

- (a) Disqualification from a particular case;
- (b) Suspension or disqualification from practice before OAH;
- (c) A requirement that an attorney obtain ethics or other professional training or counseling; or
- (d) A requirement that an attorney appear only when accompanied by another attorney with particular skills or a particular level of experience.

2833.8 The attorney shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.

2833.9 An Administrative Law Judge's authority under Subsection 2833.7 is limited to restricting the practice of an attorney in a pending case based on the conduct of the attorney in that case. Nothing in this section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's practice before OAH.



- 2833.10 Any attorney appearing before OAH in a representative capacity under this Section shall provide under his or her signature, the attorney's District of Columbia bar number, office address, and telephone and fax numbers. Conformed signatures shall not be accepted under this subsection. Persons appearing (or applying to appear) under Subsections 2833.2 or 2833.4 shall state, immediately under their signature, the subsection under which they are appearing (or applying to appear), their office address, and telephone and fax numbers. Persons appearing under Subsection 2833.2 shall state the jurisdiction of their admission and shall provide the bar number, if any, from that jurisdiction, and their office address, and telephone and fax numbers.
- 2833.11 A member of any bar may not qualify as a non-attorney representative under Section 2835. An attorney representing a party may testify only as permitted by Rule 3.7 of the District of Columbia Rules of Professional Conduct.
- 2833.12 Notwithstanding anything to the contrary in these Rules, no person who has been punished for unauthorized practice of law or who is subject to an injunction pursuant to Rule 49(e)(2) of the Rules of the District of Columbia Court of Appeals may represent a party.

#### **2834 WITHDRAWAL OF APPEARANCE BY AN ATTORNEY**

- 2834.1 An attorney may withdraw an appearance before a hearing date has been set if:
- (a) Another attorney simultaneously enters or has already entered an appearance on behalf of the client; and
  - (b) The attorney files a consent to the withdrawal that the client has signed.
- 2834.2 If a hearing date has been set, or if the client's written consent is not obtained, or if the client is not represented by another attorney, an attorney must move to withdraw an appearance and receive permission from the presiding Administrative Law Judge to withdraw from the case. Unless the client is represented by another attorney or the motion is made orally in front of the client and the Administrative Law Judge, the attorney shall certify that:
- (a) The attorney has served the client a notice advising the client to obtain other counsel, or if the client intends to represent himself or herself, or intends to object to the withdrawal, to notify the Administrative Law Judge in writing within fifteen (15) days of service of the notice or before the next hearing date, whichever is earlier; and
  - (b) The attorney has served the client with a copy of the motion with a certificate of service listing the client's last known address.

2834.3 Except when an Administrative Law Judge has granted an oral motion to withdraw in the presence of the client, the order granting permission for the attorney to withdraw shall be served on the client. If no new counsel has entered an appearance or the client has not notified the Administrative Law Judge of an intention to represent himself or herself, the order shall instruct the client to arrange promptly for new counsel or be prepared to represent himself or herself.

2834.4 The presiding Administrative Law Judge may deny an attorney's motion to withdraw if the withdrawal would unduly delay the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

### **2835 REPRESENTATION BY NON-ATTORNEYS**

2835.1 An individual may represent himself or herself in proceedings before OAH.

2835.2 Any person representing a party as permitted by this section shall obtain the consent of the party.

2835.3 A family member or domestic partner may represent a party provided that person does not accept compensation in any form.

2835.4 In addition to an attorney authorized by Section 2833, an authorized agency employee may represent an agency before OAH.

2835.5 If required by law, an Administrative Law Judge shall permit a party to be represented by another person who is not an attorney.

2835.6 An authorized officer, director, partner, or employee may represent a corporation, partnership, limited partnership, or other private legal entity before OAH.

2835.7 An individual or any representative of any entity listed in Subsection 2835.6 may represent a party if the party has or had a contractual relationship with that individual or entity that is substantially related to the subject matter of the case (such as a landlord/tenant relationship in a civil fine case or owner/property manager relationship) and that relationship existed before the case arose.

2835.8 In unemployment compensation cases, additional Rules for representation can be found in Section 2982.

2835.9 In public benefits cases, additional Rules for representation can be found in Section 2972.

2835.10 In rental housing cases, additional Rules for representation can be found in Section 2935.

- 2835.11 Any person authorized by the United States Tax Court to represent a party before that court may represent a party before OAH in any case arising under D.C. Official Code § 2-1831.03(b)(4), and on the same basis as would be permitted by the United States Tax Court.
- 2835.12 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any non-attorney representative appearing at OAH.
- 2835.13 The non-attorney representative shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.
- 2835.14 An Administrative Law Judge's authority under Subsection 2835.12 is limited to restricting the practice of a non-attorney representative in a pending case based on the conduct of the non-attorney representative in that case. Nothing in this section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting a non-attorney representative's practice before OAH.

### **2837 AMICUS CURIAE OR "FRIEND OF THE COURT" SUBMISSIONS**

- 2837.1 Any non-party having an interest in the issues in a case pending before OAH may move for leave to file an *amicus curiae* submission, or an Administrative Law Judge may invite such a submission. The motion shall explain why the *amicus curiae* submission would be helpful to OAH.

### **2838 COURTROOM PROCEDURE**

- 2838.1 Unless otherwise prohibited by law or duly ordered by an Administrative Law Judge, proceedings at OAH shall be open to the public.
- 2838.2 Administrative Law Judges and OAH non-judicial staff may observe any proceedings at OAH. They must preserve any confidential information that may arise in those proceedings.
- 2838.3 Electronic devices that make noise, including cell phones, are prohibited unless set for silent operation.
- 2838.4 Audio and video recording, broadcasting, and photography are prohibited anywhere at OAH unless authorized by the Chief Administrative Law Judge. The presiding Administrative Law Judge may allow anyone to draw during proceedings in a hearing room so long as it does not disrupt those proceedings.
- 2838.5 Weapons, dangerous implements, and illegal drugs are prohibited at OAH and are subject to confiscation. The prohibition against weapons does not apply to authorized service weapons carried by law enforcement officers unless they are parties to a case.

2838.6 Dangerous or toxic items, including but not limited to chemicals and sharp objects, that pose a threat to health or safety are prohibited at OAH. Any party who wants to use such an item as evidence must file a motion and obtain the approval of the presiding Administrative Law Judge prior to the hearing before bringing the item to OAH.

2838.7 Except for those animals assisting persons with disabilities, animals are prohibited at OAH.

2838.8 Any person who presents a threat to safety or who is disrupting OAH operations or proceedings may be removed.

### **2839 AGENCY CASELOAD PROJECTIONS**

2839.1 To measure changes in an agency's caseload as required by Section 16(e) of the Act, the agency shall compare the number of cases reported in the Chief Administrative Law Judge's annual summary to the number of cases it anticipates filing at OAH in the current or following fiscal year.

### **2840 CHIEF ADMINISTRATIVE LAW JUDGE RESPONSIBILITIES**

2840.1 The Chief Administrative Law Judge or his or her designee may administer an oath of office to an Administrative Law Judge or other OAH employee.

2840.2 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

### **2841 FILING AND SERVICE BY E-MAIL; OTHER ELECTRONIC SUBMISSIONS**

2841.1 This section permits any party to file papers by e-mail with OAH and the Government to file data electronically. It also permits OAH to serve orders and notices by e-mail.

2841.2 The filing of any paper by e-mail following the procedures set forth in this section constitutes filing for all purposes under these Rules.

2841.3 All papers to be filed by e-mail should be in portable document format (PDF). The papers should be attached to an e-mail, and not contained in the body of the e-mail itself.

2841.4 No party may file by email a motion, brief, or memorandum exceeding forty (40) pages, including attachments. No party may file exhibits exceeding forty (40) pages by one or more emails. OAH may reject any email filings that do not conform to this subsection.

- 2841.5 A party filing any paper by e-mail is responsible for any delay, disruption, interruption of electronic signals, legibility and completeness of the paper, and accepts the risk that the paper may not be filed.
- 2841.6 Pursuant to Section 2810, every paper filed by e-mail must contain:
- (a) The name, mailing address, telephone number, and e-mail address of the person filing it;
  - (b) The case number assigned by OAH, or a statement that a case number has not yet been assigned;
  - (c) A brief description of the paper (for example, “request for hearing in a Medicaid matter,” “motion for new hearing date for an unemployment hearing,” “exhibits/documents for hearing in rental housing case”); and
  - (d) A filing that does not contain this information is subject to rejection. A cover page that can be used to satisfy this requirement is available from the Clerk’s Office. The brief description of the paper also should be placed in the “subject” line of the e-mail.
- 2841.7 Every filing made by email must contain a signature, which can be either a signature image or a conformed signature. No party or party’s representative may file any paper with a conformed signature unless that party or representative has previously filed a paper with an original signature or signature image in the same case. A paper filed by email by an unrepresented party, that does not contain a signature as required by this subsection, shall not be rejected on that basis alone.
- 2841.8 Once an original signature or signature image is on file in a case, any subsequently filed paper in that case with a conformed signature shall be treated as having an original signature for all purposes.
- 2841.9 Filings must be e-mailed to [oah.filing@dc.gov](mailto:oah.filing@dc.gov).
- 2841.10 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk’s Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.
- 2841.11 The certification requirement of Section 2814 applies to all papers filed by e-mail.
- 2841.12 A party must send a copy of anything filed by e-mail (except a request for a hearing that begins a case) to all other parties, and must include a certificate of

service as required by Subsection 2811.9. A party may not send the copy by e-mail unless the other party consents, pursuant to Section 2811.

- 2841.13 The five (5) additional days added to the response times by Subsection 2812.5 does not apply to orders, notices, or papers served by e-mail, even if they are also served by other means.
- 2841.14 Unless otherwise ordered, a party who files or serves any paper by e-mail shall keep the original until after the case is concluded and the time for any appeals has expired. The party shall make the originals available for inspection upon request of another party after prior reasonable notice filed with OAH. This section does not limit the authority of an Administrative Law Judge to order production of the original.
- 2841.15 Parties agreeing to service by e-mail are responsible for monitoring their e-mail accounts and for opening the e-mails.
- 2841.16 The Clerk may serve orders and notices by e-mail to any party who provides an email address and consents, in writing or on the record, to receiving papers by e-mail. The party is responsible for ensuring that the Clerk has an accurate, up-to-date e-mail address. In an emergency, without a party's advance consent, the Clerk may serve orders and notices by e-mail in addition to any other authorized method of service.
- 2841.17 If the Government seeks to begin a case at OAH by filing a Notice of Infraction or a Notice of Violation pursuant to Section 2803, the Government may transfer to OAH data from the Notice of Infraction or the Notice of Violation by electronic means, pursuant to prior technical arrangements with OAH. Such electronic transfer by itself neither begins a case nor satisfies the Government's obligations under Section 2803. The Government shall file the Notice of Infraction or Notice of Violation and its attachments, substantially in the form provided to the Respondent, as well as the proof of service.

## 2899 GENERAL DEFINITIONS

For the purposes of this chapter the term:

**Act** means the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code §§ 2-1831.01, *et seq.*

**Agency** shall have the meaning provided that term in D.C. Official Code § 2-502(3).

**Civil Infractions Act** means the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01, *et seq.*

**Clerk** means the OAH Clerk of Court or authorized designee.

**Commercial carrier** means a business that accepts and delivers parcels, such as Federal Express or the United Parcel Service.

**Conformed Signature** means that a typed substitution for a signature is being used with the understanding that the original version of the document contains one or more authentic, original signatures. A conformed signature appears as:

/S/ (name of person who signed the document)

Example 1:           /S/ John Doe

- or -

Example 2:           /S/  
                              John Doe

**Electronic Signature** means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Government** means the District of Columbia, or any government agency authorized by law to prosecute cases before OAH and whose administrative litigation falls under the jurisdiction of OAH, but does not include OAH.

**Litter Control Administration Act** means the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801, *et seq.*

**Paper** means pleadings, motions, exhibit and witness lists, or any other written submission filed with OAH.

**Party** means persons or entities who begin a case at OAH or the persons or entities on the other side.

**Presiding Administrative Law Judge** means an Administrative Law Judge assigned to a particular case.

**Signature Image** means that a scanned version of an original signature has been copied and pasted into a PDF document.

**Chapter 29, OFFICE OF ADMINISTRATIVE HEARINGS: RULES FOR DCPS, RENTAL HOUSING, PUBLIC BENEFITS, AND UNEMPLOYMENT, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is repealed in its entirety and replaced with:**

**CHAPTER 29 OFFICE OF ADMINISTRATIVE HEARINGS: RULES FOR  
DCPS, RENTAL HOUSING, PUBLIC BENEFITS, AND  
UNEMPLOYMENT INSURANCE CASES**

**Sections**

2900	DCPS Hearings – Scope
2901	DCPS Student Discipline Cases – Referrals
2902	DCPS Student Discipline Cases – Hearings
2903	DCPS Student Discipline Cases – Decisions
2904	DCPS Student Discipline Cases – Reconsideration
2905	DCPS Contested Residency Cases – Referrals
2906	DCPS Contested Residency Cases – Beginning a Case
2907	DCPS Contested Residency Cases – Hearings
2908	DCPS Contested Residency Cases – Final Orders
2909	DCPS Cases – Confidentiality of the Record
2920	Rental Housing Cases – Scope
2921	Rental Housing Cases – Beginning a Case
2922	Rental Housing Cases – Parties
2923	Rental Housing Cases – Sending Notice
2924	Rental Housing Cases – Service
2925	Rental Housing Cases – Calculating Deadlines
2926	Rental Housing Cases – Conciliation, Arbitration, and Mediation
2927	Rental Housing Cases – Substitution or Addition of Parties
2928	Rental Housing Cases – Intervenors
2929	Rental Housing Cases – Consolidation of Petitions and Expanding the Scope of a Proceeding
2930	Rental Housing Cases – Hearings
2931	Rental Housing Cases – Rent Administrator’s Show Cause Orders
2932	Rental Housing Cases – Burden of Proof
2933	Rental Housing Cases – Papers Filed with the RAD or Other Agencies
2934	Rental Housing Cases – Subpoenas
2935	Rental Housing Cases – Representation
2936	Rental Housing Cases – Appeals Before A Final Order
2937	Rental Housing Cases – Final Orders
2938	Rental Housing Cases – Requesting Reconsideration, A New Hearing, or Relief From A Final Order
2939	Rental Housing Cases – Official Record of a Proceeding
2940	Rental Housing Cases – Attorney’s Fees
2941	Rental Housing Cases – Interest on Security Deposits
2970	Public Benefits Cases – Scope
2971	Public Benefits Cases – Beginning a Case
2972	Public Benefits Cases – Representatives
2973	Public Benefits Cases – Administrative Reviews
2974	Public Benefits Cases – Subpoenas
2975	Public Benefits Cases – Hearing Dates



- 2976 Public Benefits Cases – Hearings and Evidence
- 2977 Public Benefits Cases – Deadlines
- 2978 Public Benefits Cases – Requesting Reconsideration, A New Hearing, or Relief from A Final Order
- 2980 Unemployment Insurance Cases – Scope
- 2981 Unemployment Insurance Cases – Beginning a Case
- 2982 Unemployment Insurance Cases – Representatives
- 2983 Unemployment Insurance Cases – Filing of Papers
- 2984 Unemployment Insurance Cases – Subpoenas
- 2985 Unemployment Insurance Cases – Hearings and Evidence
- 2986 Unemployment Insurance Cases – Requesting Reconsideration, A New Hearing, or Relief from a Final Order
- 2999 Definitions

**2900 DCPS HEARINGS – SCOPE**

- 2900.1 Sections 2900 through 2909 govern procedures in cases referred to OAH by the District of Columbia Public Schools (DCPS).
- 2900.2 For procedural issues not covered in Sections 2900 through 2909, the rules in Chapter 28 apply.
- 2900.3 OAH is not required to follow any other procedural rules adopted by DCPS in cases referred to OAH by DCPS.

**2901 DCPS STUDENT DISCIPLINE CASES – REFERRALS**

- 2901.1 DCPS may refer a student discipline case to OAH, for an Administrative Law Judge to hold a hearing and to decide:
  - (a) The material facts;
  - (b) Whether required due process procedures, including notice and the opportunity to respond to the charges, have been followed or have been waived, including whether there was prejudicial failure to follow procedures identified in 5-B DCMR § 2505; and
  - (c) Whether the facts show that the student committed any of the violations upon which a proposed disciplinary action is based and the proper Tier for any violation, as specified in 5-B DCMR § 2502.
- 2901.2 DCPS shall refer a student discipline case by filing with OAH a copy of the notice of recommended action provided to the adult student, or a minor student’s parent or guardian. DCPS shall provide the adult student or minor student’s parent or guardian with a hearing notice that states the date, time and location for the hearing and shall include the parent’s rights at the hearing. The notice shall

include the parent's rights at the hearing and state the consequences of failing to attend the hearing.

## **2902 DCPS STUDENT DISCIPLINE CASES – HEARINGS**

2902.1 An adult student, or a minor student's parent or guardian, may request DCPS or OAH to postpone the hearing for not more than five school days if necessary to prepare for the hearing or provide for the attendance of necessary parties or witnesses.

2902.2 The parties may, but are not required, to file exhibits and witness lists in advance of the hearing.

2902.3 DCPS shall allow an adult student, or a minor student's parent or guardian, or a student's attorney, to inspect and copy the student's disciplinary file before the hearing upon request and consistent with any applicable laws or regulations.

2902.4 DCPS shall make the student's disciplinary file electronically available to OAH. OAH shall make copies of the disciplinary file available at the hearing to DCPS and the adult student or the minor student's parent or guardian. Either party may move to introduce all or part of the disciplinary file into evidence at the hearing.

2902.5 The parties shall have all rights set forth in Subsection 2821.5 at a hearing.

2902.6 In addition to the representatives listed in Sections 2833 and 2835, an adult student or a minor student's parent or guardian may select another person to represent a student at a hearing. Such a representative is subject to Subsections 2835.12 through 2835.14.

2902.7 The hearing shall be closed to the public unless the adult student or the minor student's parent or guardian requests the hearing be open to the public.

2902.8 A party who fails to appear for a scheduled hearing may ask OAH, in writing, for a new hearing date. The request must be filed within one (1) school day after the scheduled hearing date. The Administrative Law Judge may grant a new hearing date for good cause shown.

## **2903 DCPS STUDENT DISCIPLINE CASES – DECISIONS**

2903.1 After the close of the record in a student discipline case, the Administrative Law Judge shall issue Findings of Fact and Conclusions of Law on the issues identified in Subsection 2901.1.

2903.2 The Administrative Law Judge shall issue the findings of fact and conclusions of law within one school day after the close of the record. OAH shall provide a copy

to DCPS, and to the adult student or minor student's parent, and any authorized representative.

- 2903.3 In all student discipline cases, DCPS shall be bound by the Administrative Law Judge's Findings of Fact and Conclusions of Law and shall have no authority to reverse or modify the findings of fact and conclusions of law.
- 2903.4 If the Administrative Law Judge concludes that the student committed any of the violations upon which the disciplinary action is based, the Administrative Law Judge shall make a recommendation for the appropriate discipline within the Tier found to be proper considering the factors in 14 DCMR § 2500.9. OAH will return the case to DCPS for it to decide the appropriate discipline.
- 2903.5 If the Administrative Law Judge concludes that due process was denied or that the student did not commit any of the violations upon which the disciplinary action is based, OAH will return the case to DCPS for appropriate action.
- 2903.6 Because OAH must return these cases to DCPS for further action, the Administrative Law Judge's decision is not a final disposition of the matter, and a statement of appeal rights is not required by Subsection 2830.1.

#### **2904 DCPS STUDENT DISCIPLINE CASES – RECONSIDERATION**

- 2904.1 Section 2828 of these rules shall not apply to DCPS cases. Any party may file a written motion to reconsider the findings of fact and conclusions of law no later than one school day of the date the decision is issued if DCPS has not issued a final notice of disciplinary action. A copy of any such motion must be served on the opposing party. The presiding ALJ shall decide the motion within one school day.
- 2904.2 If any party files a motion for reconsideration or for a new hearing the Administrative Law Judge may change the findings of fact and conclusions of law or grant a new hearing where substantial justice requires, or for any reason including, but not limited to, the following:
- (a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
  - (b) The findings of fact and conclusions of law contain an error of law;
  - (c) The findings of fact and conclusions are not supported by the evidence; or
  - (d) New evidence has been discovered that previously was not reasonably available to the party filing the motion.

2904.3 If the adult student or minor student's parent or guardian did not receive actual notice of the hearing and DCPS has issued a final notice of disciplinary action, the adult student or minor student's parent or guardian may file a request for reconsideration with DCPS and request that DCPS vacate the final notice and refer the case back to OAH for a hearing and to vacate the Findings of Fact and Conclusions of Law. When it decides such a request, DCPS may order a new hearing or DCPS may ask for OAH to decide whether to grant a new hearing.

**2905 DCPS CONTESTED RESIDENCY CASES – REFERRALS**

2905.1 DCPS may refer a contested residency case to OAH for a final decision.

**2906 DCPS CONTESTED RESIDENCY CASES – BEGINNING A CASE**

2906.1 DCPS shall refer a contested residency case to OAH by filing a copy of the exclusion letter given to the parent or guardian and the request for review that it received, along with a statement that DCPS requests OAH to hear and to decide the case.

**2907 DCPS CONTESTED RESIDENCY CASES – HEARINGS**

2907.1 In all contested residency cases, OAH shall set the hearing date and issue the hearing notice.

2907.2 The rules in Chapter 28 apply to all hearings in contested residency cases, except that parties should file and serve the witness lists and exhibit lists required by Subsection 2821.2 no later than five (5) days before the hearing date. All exhibits filed by DCPS shall be marked with numbers for identification beginning with 200.

2907.3 In contested residency cases, the parent, custodian, or guardian who is claiming District of Columbia residency has the burden of proving their residency status for the purpose of deciding whether the student may enroll in a District of Columbia public school tuition free.

**2908 DCPS CONTESTED RESIDENCY CASES – FINAL ORDERS**

2908.1 The presiding Administrative Law Judge shall issue a final order in all contested residency cases, which shall include the statement of appeal rights required by Subsection 2830.1.

**2909 DCPS CASES – CONFIDENTIALITY OF THE RECORD**

2909.1 The OAH record in any case referred by DCPS is confidential. Only the following persons may have access to that record:

- (a) The adult student;
- (b) The minor student's parent, guardian, or representative;
- (c) Any person who has the written consent of the adult student or the minor student's parent or guardian; and
- (d) School officials with a legitimate interest.

**2920 RENTAL HOUSING CASES – SCOPE**

- 2920.1 Sections 2920 through 2941 govern procedures in rental housing cases at OAH.
- 2920.2 For procedural issues not covered in Sections 2920 through 2941, the Rules in Chapter 28 apply.

**2921 RENTAL HOUSING CASES – BEGINNING A CASE**

- 2921.1 A party may begin a rental housing case by filing a petition with the Rent Administrator in accordance with 14 DCMR § 3901.
- 2921.2 The timeliness of the filing of any petition shall be measured from the date the Rent Administrator accepts it for filing.
- 2921.3 The Rent Administrator may refuse to accept a petition for filing as provided in 14 DCMR § 3901.
- 2921.4 After filing, the Rent Administrator shall forward the petition and all accompanying papers to OAH, together with a copy of the registration statement for the housing accommodation.
- 2921.5 When OAH receives a petition from the Rent Administrator, OAH shall open the case. The parties then shall file all papers and attachments at OAH in accordance with Section 2809.

**2922 RENTAL HOUSING CASES – PARTIES**

- 2922.1 Any petition that is filed on behalf of more than one person or entity shall individually name each person or entity.
- 2922.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of any one or more of its members who have provided the association with written authorization to represent them in the action, or to seek on behalf of all members any injunctive relief available under the Rental Housing Act. No further inquiry into the membership of the association shall be permitted.

2922.3 Any tenant association that is a party to the action pursuant to Subsection 2922.2 shall be listed in the caption.

2922.4 The housing provider as listed on the registration statement, if any, shall be a party, and shall be named in the caption. If a managing agent represents the housing provider in the proceeding, the managing agent also shall be a party, and shall be identified as the managing agent and named in the caption.

### **2923 RENTAL HOUSING CASES – SENDING NOTICE**

2923.1 OAH shall notify the parties by first-class mail of proceedings.

2923.2 OAH shall mail a copy of any tenant petition, by first-class mail, to any adverse party named in the tenant petition and to the housing provider listed on the registration statement for the housing accommodation.

2923.3 A housing provider who files a petition shall provide for each tenant in the housing accommodation one copy of the petition and one envelope addressed to each tenant by name, address, and rental unit, with first class mail postage prepaid. The envelope shall bear OAH's return address unless the housing provider files a hardship petition or voluntary agreement. The envelopes for those petitions shall bear the return address of the Rent Administrator.

2923.4 If a housing provider files a petition for a building with ten (10) or more rental units, the housing provider shall provide a hard copy and computer file of a service list containing the name, address, and rental unit for each tenant. The computer file shall be in Microsoft Word format, arranged so that the list may be printed onto labels measuring one inch (1") by two and five-eighths inches (2<sup>5/8</sup>”).

### **2924 RENTAL HOUSING CASES – SERVICE**

2924.1 Every paper filed at OAH in a rental housing case must be served in accordance with § 904 of the Rental Housing Act, D.C. Official Code § 42-3509.04, which allows papers to be served by one of the following methods:

- (a) By handing the paper to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;
- (b) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;

- (c) By mail or deposit with the United States Postal Service properly stamped and addressed; or
- (d) By any other means that is in conformity with an order of the Rental Housing Commission or OAH in any proceeding.

**2925 RENTAL HOUSING CASES – CALCULATING DEADLINES**

- 2925.1 The Rules governing calculating deadlines are found in Section 2812. The timeliness of any appeal to the Commission shall be governed by the Rental Housing Commission Rules in 14 DCMR § 3802.

**2926 RENTAL HOUSING CASES – CONCILIATION, ARBITRATION, AND MEDIATION**

- 2926.1 The parties may request conciliation or arbitration of any dispute by the RAD in accordance with its regulations.
- 2926.2 The parties may request, or an Administrative Law Judge may order, mediation of any dispute pursuant to Section 2815.

**2927 RENTAL HOUSING CASES – SUBSTITUTION OR ADDITION OF PARTIES**

- 2927.1 An Administrative Law Judge may substitute or add a party under Subsection 2816.1 if: a party dies; a party entity is dissolved or reorganized; a party entity's ownership or interest changes; or an amended registration statement for the housing accommodation is filed under 14 DCMR § 4103.
- 2927.2 If a party has been incorrectly named, the Administrative Law Judge may substitute or add the correct party under Subsection 2816.1.

**2928 RENTAL HOUSING CASES – INTERVENORS**

- 2928.1 Motions for intervention are governed by Subsections 2816.2 and 2816.3.

**2929 RENTAL HOUSING CASES – AMENDMENT OF PETITIONS, CONSOLIDATION OF PETITIONS AND EXPANDING THE SCOPE OF A PROCEEDING**

- 2929.1 An Administrative Law Judge may consolidate (join) two (2) or more petitions if they present identical or similar issues, involve the same rental unit or housing accommodation, or involve other circumstances in which consolidation would be expedient and would not prejudice the parties. A party may file a motion to consolidate or an Administrative Law Judge may consolidate cases on his or her own motion.

- 2929.2 If the Administrative Law Judge determines that the issues raised in a tenant petition may affect other tenants or all tenants in the housing accommodation, the Administrative Law Judge may expand the scope of the proceeding to include all affected tenants.
- 2929.3 Before expanding the scope of the proceeding, the Administrative Law Judge shall provide notice to the affected tenants and the housing provider.
- 2929.4 That notice shall state the issues to be decided and shall advise the tenants that they have a right to participate in the proceedings and that any decision shall be binding on them.
- 2929.5 Tenants and the housing provider may present any arguments in support of or opposition to expanding the scope of the proceeding.
- 2929.6 A party may amend a petition to add additional allegations after the petition has been transferred to OAH, but before the hearing concludes, by moving to amend the petition with the presiding administrative law judge. The movant shall set forth the allegations to be added and the factual basis for those allegations. No written motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected, and that such consent was granted or denied, including the identity of the party or parties who declined to consent. If the movant does not obtain a response from the opposing party, the movant must demonstrate that the movant made a good faith effort in accordance with Rule 2813.5.
- 2929.7 In determining whether a motion to amend a petition should be granted, the Administrative Law Judge will consider: (1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amendment; (5) any prejudice to the non-moving party; and (6) the orderly administration of justice.

## **2930 RENTAL HOUSING CASES – HEARINGS**

- 2930.1 A petition received by OAH will be treated as a request for a hearing. OAH will schedule a status conference, a hearing, or mediation. OAH shall notify the parties of the hearing date and of their right to obtain a lawyer at least fifteen (15) calendar days before a hearing.
- 2930.2 An Administrative Law Judge may dismiss any petition or any claim in a petition without holding a hearing if the Rental Housing Act does not provide relief for the claim(s). The Administrative Law Judge shall first give the parties notice and an opportunity to respond.



**2931 RENTAL HOUSING CASES – RENT ADMINISTRATOR’S SHOW CAUSE ORDERS**

2931.1 If the Rent Administrator concludes after investigation that a housing provider has violated the Rental Housing Act, the Rent Administrator may file an order to show cause with OAH and shall serve the housing provider with a copy of the order to show cause.

2931.2 The order to show cause shall specify the Sections of the Rental Housing Act or rules that the housing provider has allegedly violated, and shall describe the evidence that supports the Rent Administrator’s assertions and the proposed corrective action or sanction.

2931.3 Once the Rent Administrator files the order to show cause, the case shall proceed under this chapter.

**2932 RENTAL HOUSING CASES – BURDEN OF PROOF**

2932.1 The proponent of an order shall have the burden of proof. The tenant has the burden to prove the claims alleged in the tenant petition except that the housing provider has the burden to prove entitlement to any exemption under the Rental Housing Act. When the housing provider files a petition, the housing provider has the burden to prove the claims.

2932.2 Unless otherwise provided by law, a party must prove each fact essential to his or her claim by a preponderance of the evidence so that the Administrative Law Judge finds that it is more likely than not that each fact is proven.

2932.3 In show cause hearings, the burden of proof shall rest on the Rent Administrator.

2932.4 In retaliation cases, the tenant has the burden of proving that retaliation occurred or that a presumption applies. If a presumption applies, then the housing provider has the burden to rebut the presumption by clear and convincing evidence.

2932.5 In security deposit cases, if the tenant seeks an order to have the security deposit returned, the tenant shall prove the amount of the security deposit paid and that the security deposit was not returned. If the housing provider seeks an order to withhold all or a portion of the security deposit, the housing provider shall prove the reasons for the withholding.

**2933 RENTAL HOUSING CASES – PAPERS FILED WITH THE RAD OR OTHER AGENCIES**

2933.1 Any party who wishes the Administrative Law Judge to consider a document that is on file with the RAD or any other District of Columbia agency must introduce a copy of that document into evidence. The Administrative Law Judge shall admit

the document into evidence if he or she finds that it is relevant and is an accurate copy of a document on file with the RAD or other agency.

2933.2 A party can establish that a document is an accurate copy of a document on file with RAD or other agency by one of the following methods:

- (a) Providing a copy with a legible original file stamp;
- (b) Providing a copy with a legible copy of the original file stamp;
- (c) Providing a copy certified by the Rent Administrator or an authorized employee of RAD;
- (d) Providing testimony or other evidence that the Administrative Law Judge finds satisfactory; or
- (e) If all parties consent to the admission of the document into evidence.

#### **2934 RENTAL HOUSING CASES – SUBPOENAS**

2934.1 In rental housing cases, the Clerk shall issue no more than three subpoenas to the tenant side and no more than three subpoenas to the housing provider side under Subsection 2824.5 to compel:

- (a) The appearance at a hearing of any witnesses, including housing inspectors, with knowledge of conditions, repairs, or maintenance in a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator;
- (b) The production at or before a hearing of all records not created by a government agency, relating to conditions, repairs, or maintenance to a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator;
- (c) The production at or before a hearing of housing violation notices in the possession of the Department of Consumer and Regulatory Affairs relating to a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator.
- (d) The production at or before a hearing of all records in a housing provider's possession relating to any rent increases demanded or implemented for a party's rental unit for the three year period immediately before the filing of the petition with the Rent Administrator.

2934.2 Section 2824 applies to all other subpoenas for witnesses and documents at hearings in rental housing cases. Section 2825 applies to discovery.

**2935 RENTAL HOUSING CASES – REPRESENTATION**

2935.1 Persons authorized to appear before OAH by Sections 2833 and 2835 may represent parties in rental housing cases.

2935.2 A tenant association may represent one or more tenants in any proceeding as follows:

- (a) A statement must be filed with OAH stating that the tenant consents to representation by the tenant association and the tenant association consents to represent the tenant;
- (b) A tenant or a tenant association may revoke the consent by filing a statement to that effect;
- (c) A tenant association shall designate one or more members or attorneys to represent the association and any of the tenants it represents;
- (d) A tenant association may elect to proceed only in a representative capacity without being listed as a party or listed in the caption.

2935.3 The provisions of Sections 2833 and 2835 concerning discipline of persons appearing before OAH apply to all representatives in rental housing cases.

2935.4 If an Administrative Law Judge decides that a proceeding is so complex, or the potential liability so great that a party should be represented by a lawyer, the Administrative Law Judge shall explain to the party the advantages of obtaining a lawyer and offer to continue the case to give the party an opportunity to obtain a lawyer.

**2936 RENTAL HOUSING CASES – APPEALS BEFORE A FINAL ORDER**

2936.1 An Administrative Law Judge’s rulings in a proceeding ordinarily may not be appealed to the Commission until a final order is issued. Before a final order is issued, a party may appeal an order of the Administrative Law Judge only if the Administrative Law Judge certifies the ruling for appeal to the Commission.

2936.2 A party may move the Administrative Law Judge to certify to the Commission an appeal of any ruling other than a final order. Such an appeal is an “interlocutory appeal.”

2936.3 The Administrative Law Judge shall certify a ruling for interlocutory appeal only if he or she determines that the issue presented is of such importance to the

proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

- (a) The ruling involves an important question of law or policy requiring interpretation of the Rental Housing Act, and about which there is substantial basis for difference of opinion; and
- (b) Either of the following applies:
  - (1) An immediate ruling will materially advance the completion of the proceeding; or
  - (2) Denial of an immediate ruling will cause undue harm to the parties or the public.

2936.4 A party seeking review by interlocutory appeal shall file a motion for certification within five (5) calendar days of service of a ruling by the Administrative Law Judge. The opposing party shall have five (5) calendar days in which to respond. Unless extended by a written order, the Administrative Law Judge shall rule on the motion within ten (10) calendar days following the filing of any response.

2936.5 If the Administrative Law Judge declines to certify a ruling, the Commission may review that ruling on appeal from a final order.

2936.6 The Administrative Law Judge may stay the proceeding while an interlocutory appeal is pending.

**2937 RENTAL HOUSING CASES – FINAL ORDERS**

2937.1 OAH shall serve all final orders on the parties by first-class mail. OAH also shall serve all final orders on the Rent Administrator and the Commission.

**2938 RENTAL HOUSING CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER**

2938.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828, except OAH Rule 2828.15 shall not apply in rental housing cases. In a rental housing case, an Administrative Law Judge should rule on any motion filed under this section within ninety (90) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. After a motion is deemed denied, the Administrative Law Judge, in his or her discretion, may issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

2938.2 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline specified in Subsection 2828.3, an Order will not be final for purposes of appeal to the Rental Housing Commission until the Administrative Law Judge rules on the motion or the motion is denied as a matter of law under Subsection 2938.1.

2938.3 Any motion for relief from final order has no effect on the deadline for appealing to the Rental Housing Commission. If an appeal has been filed, OAH has no jurisdiction to decide a motion for relief from final order absent a remand from the Commission for that purpose.

2938.4 If the motion has been denied as a matter of law under Subsection 2938.1, OAH shall send written notice to the parties.

**2939 RENTAL HOUSING CASES – OFFICIAL RECORD OF A PROCEEDING**

2939.1 The official record of a proceeding shall consist of the following:

- (a) The final order and any other orders or notices of the Administrative Law Judge;
- (b) The recordings or any transcripts of the proceedings before the Administrative Law Judge;
- (c) All papers and exhibits offered into evidence at the hearing; and
- (d) All papers filed by the parties or the Rent Administrator at OAH.

2939.2 Documents attached to a petition or other filings must be offered and received in evidence at a hearing before the Administrative Law Judge can use them to establish facts.

**2940 RENTAL HOUSING CASES – ATTORNEY’S FEES**

2940.1 All motions for an award of attorney’s fees shall be filed within thirty (30) calendar days of service of the final order. But if a timely motion for reconsideration is filed, a motion for an award of attorney’s fees shall be filed within thirty (30) days of the service date of the order deciding the motion or within thirty (30) days of the deemed denial date.

2940.2 Standards for the award of attorney fees are found in Title 14 of the Rental Housing Commission Rules.

**2941 RENTAL HOUSING CASES – INTEREST ON SECURITY DEPOSITS**

- 2941.1 In any case in which a tenant claims entitlement to interest on a security deposit under D.C. Official Code § 42-3502.17(b), the tenant must produce evidence of the amount of the security deposit that was given to the housing provider, the date on which it was given, and amount of interest, if any, paid to the tenant.
- 2941.2 If the tenant does so, then the housing provider must produce evidence of the amount of interest that was earned on the security deposit.
- 2941.3 If the housing provider fails to produce evidence of the amount of interest that was earned, or the security deposit was not held in an interest bearing account, the Administrative Law Judge shall compute interest by applying the Superior Court of the District of Columbia judgment rate prevailing on January 1st and on July 1st for each six (6)-month period (or part thereof) of the tenancy.

**2970 PUBLIC BENEFITS CASES – SCOPE**

- 2970.1 Sections 2970 through 2978 contain the Rules for OAH hearings requested by individuals, other than service providers, concerning the following kinds of benefits:
- (a) Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
  - (b) Temporary Assistance for Needy Families (TANF);
  - (c) Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps);
  - (d) Interim Disability Assistance;
  - (e) Shelter and services for homeless persons;
  - (f) Rental Assistance programs;
  - (g) General Assistance for Children;
  - (h) Child Care Subsidy;
  - (i) Program on Work, Employment, and Responsibility (POWER);
  - (j) Burial Assistance;
  - (k) Any other benefits provided by the Department of Human Services;
  - (l) Low Income Home Energy Assistance Program benefits provided by the District of Columbia Energy Office; and

(m) Vocational Rehabilitation Services.

- 2970.2 Sections 2970 through 2978 also apply to hearings requested by the Department of Human Services when it seeks to disqualify someone from receiving SNAP (formerly Food Stamps) benefits due to an intentional program violation.
- 2970.3 If Sections 2970 through 2978 do not address a procedural issue, the Rules in Chapter 28 apply.
- 2970.4 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.
- 2970.5 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.
- 2970.6 If there is a conflict between any other agency's procedural rules or regulations and these Rules, these Rules shall control.

## **2971 PUBLIC BENEFITS CASES – BEGINNING A CASE**

- 2971.1 A person can request a hearing in writing, in person, or by telephone.
- 2971.2 Hearing request forms shall be available at OAH, at all service centers of the Department of Human Services, at the Department of Health Care Finance, at the District Department of the Environment, and at the Division of Early Childhood Education at the Office of the State Superintendent of Education, and at the Department on Disability Services, Rehabilitation Services Administration.
- 2971.3 A hearing request must describe the type of benefits and the action or inaction to which the person objects. The request also must contain the name, address, and telephone number of the person requesting a hearing; provided, however, a person who requests a hearing under the Homeless Services Reform Act may provide an e-mail address at which they can receive any papers in the case, including notices and orders, if they do not have a street address where they can receive mail.
- 2971.4 A person may bring, mail, or fax a written hearing request to:
- (a) The Department of Human Services;
  - (b) The Department of Health Care Finance for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
  - (c) The District Department of the Environment for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);

- (d) A shelter or other service provider for a hearing under the Homeless Services Reform Act;
- (e) The Division of Early Childhood Education at the Office of the State Superintendent of Education for a hearing concerning child care benefits; or
- (e) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or
- (g) OAH.

2971.5 To request a hearing in person, a person may come to:

- (a) A Department of Human Services service center;
- (b) The Department of Health Care Finance, or the Office of the Health Care Ombudsman and Bill of Rights, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia, or the Aging and Disability Resource Center for a hearing concerning the Elderly and Persons with Physical Disabilities (EPD) waiver program;
- (c) The District Department of the Environment, for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);
- (d) The Division of Early Childhood Education at the Office of the State Superintendent of Education, for a hearing concerning child care benefits;
- (e) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or
- (f) OAH.

2971.6 To request a hearing by telephone, a person may call:

- (a) The Department of Human Services;
- (b) The Department of Health Care Finance, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;



- (c) The Division of Early Childhood Education at the Office of the State Superintendent of Education; or
- (d) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or
- (e) OAH.

- 2971.7 If the Government receives a written hearing request, it must file the request with OAH within three (3) calendar days of receiving it.
- 2971.8 If the Government receives an oral or telephone hearing request, it must prepare and file a hearing request form with OAH within three (3) calendar days of receiving the request.
- 2971.9 If OAH receives a written hearing request from an individual, it will send the request to any agency or service provider whose decision is being challenged.
- 2971.10 If OAH receives an oral or telephone hearing request from an individual, it will complete a written summary of the request and send it to any agency or service provider whose decision is being challenged.
- 2971.11 The Department of Human Services can request a hearing concerning a claim that a SNAP (formerly Food Stamps) recipient should be disqualified from receiving benefits due to an intentional program violation by filing a hearing request form approved by the Chief Administrative Law Judge.

## **2972 PUBLIC BENEFITS CASES – REPRESENTATIVES**

- 2972.1 An applicant for, or recipient of, public benefits may be represented by an attorney, a relative, a friend, or any other representative who is not employed by the District of Columbia government.
- 2972.2 Any person who is not a lawyer who requests a hearing on behalf of someone else must file a statement, signed by the person, authorizing that non-lawyer to be a representative. A hearing request is subject to dismissal unless that statement is filed. Before dismissing a case under this subsection, an Administrative Law Judge shall notify the representative of this requirement.
- 2972.3 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.10, if the public benefits applicant or recipient who requested the hearing is not represented by a lawyer, a Government agency or service provider may not be represented by a lawyer at any hearing involving the following public benefit programs:

- (a) Medicaid, Healthcare Alliance or other healthcare programs administered by the District of Columbia;
- (b) Temporary Assistance for Needy Families (TANF);
- (c) SNAP (formerly Food Stamps);
- (d) Interim Disability Assistance;
- (e) General Assistance for Children; and
- (f) Program on Work Employment and Responsibility (POWER).

2972.4 A Government agency or service provider may be represented by a lawyer at a hearing involving any other public benefit program regardless of whether the person who requested a hearing is represented by a lawyer.

2972.5 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

### **2973 PUBLIC BENEFITS CASES – ADMINISTRATIVE REVIEWS**

2973.1 An administrative review is an informal meeting between the person who has requested a hearing at OAH and a representative of the agency or service provider whose action or inaction is being challenged by that person. The purpose of an administrative review is to determine whether the agency's or service provider's position is valid and, if possible, to achieve an informal solution.

2973.2 An agency or service provider shall offer each person who requests a hearing at OAH an opportunity for an administrative review, if required by law. At least five calendar days before the hearing date, the agency or service provider shall file and send to all parties and their representatives a status report, which says whether an administrative review was held, and the results of any review.

2973.3 In cases involving shelter or other services for homeless persons, as required by the Homeless Services Reform Act of 2005, D.C. Official Code §§ 4-1601.01, *et seq.*, the Department of Human Services shall conduct the administrative review.

2973.4 As required by law, the agency or service provider shall make the case file available to the person who requested the hearing.

### **2974 PUBLIC BENEFITS CASES – SUBPOENAS**

2974.1 Any party may file a request in writing for an Administrative Law Judge to issue a subpoena to require a witness to attend a hearing.

- 2974.2 The Administrative Law Judge shall issue a subpoena under this section if it is likely that the witness will be able to provide testimony that will be helpful in deciding the case, and if requiring the witness to appear will not be unduly burdensome, or otherwise contrary to law.
- 2974.3 Any party also may request a subpoena to require a witness to bring documents, photographs, or other things to the hearing. The Administrative Law Judge will issue a subpoena if it is likely that the requested items will be helpful in deciding the case, and if requiring those items to be produced will not be unduly burdensome, or otherwise contrary to law.
- 2974.4 A form to be used to request a subpoena is available from OAH.
- 2974.5 If an Administrative Law Judge issues a subpoena, the party requesting the subpoena must deliver it pursuant to Subsections 2824.6 through 2824.9 and 2824.11. Unless otherwise ordered by an Administrative Law Judge, delivery shall be made at least two days before the hearing.

**2975 PUBLIC BENEFITS CASES – HEARING DATES**

- 2975.1 After a hearing request is filed, an Administrative Law Judge ordinarily will schedule a hearing. If any applicable law requires that an administrative review be completed before a hearing takes place, a hearing will not be scheduled until the administrative review has been completed.
- 2975.2 An Administrative Law Judge may schedule a status conference or other preliminary hearing in order to simplify the issues in the case, identify the parties' legal and factual positions, rule on any preliminary legal issues, or for any other purpose.
- 2975.3 Any party may ask an Administrative Law Judge for a different hearing date. Copies of a request form will be sent with every hearing notice and are available from OAH.
- 2975.4 Only an Administrative Law Judge can change a hearing date.

**2976 PUBLIC BENEFITS CASES – HEARINGS AND EVIDENCE**

- 2976.1 At each hearing, the Administrative Law Judge shall decide the order in which the parties will present their cases.
- 2976.2 If a party who requests a hearing fails to attend the hearing without good cause, the Administrative Law Judge may dismiss the case without prejudice. "Good cause" includes, but is not limited to: serious illness, an accident, a childcare problem, severe weather conditions, or other emergency.

- 2976.3 If the agency or service provider whose action or inaction is being challenged fails to attend the hearing, the Administrative Law Judge may rule in favor of the person who requested the hearing.
- 2976.4 In a SNAP (formerly Food Stamps) Intentional Program Violation case, the Government must prove its case even if the other party fails to attend the hearing.
- 2976.5 Parties shall have the following rights at a hearing:
- (a) To testify and to have other witnesses testify for them;
  - (b) To cross-examine witnesses called by another party;
  - (c) To request that any prospective witness be excluded from the courtroom;
  - (d) To examine all exhibits offered into evidence by another party;
  - (e) To object to the admission of any testimony or other evidence;
  - (f) To subpoena witnesses, as provided in Section 2974; and
  - (g) To appear with a representative, as provided in Section 2972.
- 2976.6 At a hearing, all parties may present evidence. "Evidence" includes testimony by the parties and any witnesses that a party may present. Evidence also includes documents, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence becomes part of the record.
- 2976.7 At least five calendar days before the hearing date, each party shall file with OAH a list of witnesses and copies of any documents, photographs, or other items that the party wants the Administrative Law Judge to consider at the hearing. Copies must be sent to the other party in the following manner:
- (a) Any agency or service provider must send copies to all other parties;
  - (b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;
  - (c) If a shelter makes free copying services available to a shelter resident, the shelter resident must make and deliver a copy to the shelter director;
  - (d) For all other individuals, OAH will deliver copies by interagency mail to the appropriate agency.

2976.8 If anything is not filed according to the requirements of Subsection 2976.7, and the other party shows that it has been prejudiced, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare.

2976.9 If any party demonstrates that it has been prejudiced by the unexpected appearance of a witness, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare for the witness testimony. If a witness was named on the witness list in the manner provided in Subsection 2976.7, the Administrative Law Judge shall find that there has been no prejudice.

### **2977 PUBLIC BENEFITS CASES – DEADLINES**

2977.1 As required by Federal law, 7 C.F.R. § 273.15(c), decisions in cases involving SNAP (formerly Food Stamps) benefits shall be issued and served on the parties within 60 calendar days of receipt of the hearing request, except that in Intentional Program Violation cases, as required by 7 C.F.R. § 273.16(e)(2)(iv), the decisions shall be issued and served within ninety (90) calendar days after a hearing notice has been issued.

2977.2 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.12(a), decisions shall be issued and served on the parties within sixty (60) calendar days of receipt of the hearing request in cases involving the following public benefit programs: Temporary Assistance for Needy Families (TANF); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility (POWER); and Medicaid.

2977.3 As required by the Homeless Services Reform Act of 2005, decisions in cases involving shelter or other services provided for homeless persons shall be issued and served on the parties within fifteen (15) calendar days of the completion of the hearing.

2977.4 As required by Federal law, 34 C.F.R. § 361.57(e)(1), to the extent a hearing concerning vocational rehabilitation services is required in a case involving the District of Columbia Department on Disability Services, Rehabilitation Services Administration, the Administrative Law Judge shall hold the hearing within sixty (60) calendar days of the hearing request, unless the case is informally resolved, a mediation agreement is reached, or the parties agree to a specific extension of time.

2977.5 As required by Federal law, 34 C.F.R. § 361.57(e)(3), decisions shall be issued and served on the parties within thirty (30) calendar days of the conclusion of the hearing in cases concerning vocational rehabilitation services involving the District of Columbia Department on Disability Services, Rehabilitation Services

Administration, unless the case is informally resolved, a mediation agreement is reached, or the parties agree to a specific extension of time.

2977.6 If a postponement of the hearing date is granted to the party requesting a hearing, the deadline for the issuance and service of the decision shall be extended for as many days as the hearing is postponed. In Intentional Program Violation cases, the deadline shall be extended only if the Respondent requested the postponement.

**2978 PUBLIC BENEFITS CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER**

2978.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

**2980 UNEMPLOYMENT INSURANCE CASES – SCOPE**

2980.1 Sections 2980 through 2986 contain the Rules for OAH hearings of appeals of decisions of the District of Columbia Department of Employment Services (DOES) concerning unemployment compensation insurance.

2980.2 If Sections 2980 through 2986 do not address a procedural issue, the Rules in Chapter 28 apply.

2980.3 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.

2980.4 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.

2980.5 If there is a conflict between any other agency's procedural rules or regulations and these Rules, these Rules shall control.

**2981 UNEMPLOYMENT INSURANCE CASES – BEGINNING A CASE**

2981.1 A party requesting a hearing to appeal a DOES Claims Examiner's Determination in an unemployment compensation case shall file a copy of the determination that the party is appealing with the hearing request. If the party does not file a copy of the determination, OAH will issue an order directing the party to file a copy of the determination in order to establish OAH's jurisdiction. If the copy is not provided, OAH may dismiss the case.

2981.2 In unemployment compensation cases, OAH may extend the deadline for filing a hearing request upon a showing of excusable neglect or good cause.

2981.3 All other procedures for requesting a hearing are governed by Section 2808.

**2982 UNEMPLOYMENT INSURANCE CASES – REPRESENTATIVES**

- 2982.1 An authorized agent employed by a firm whose usual business includes providing representation in unemployment compensation cases may represent any party.
- 2982.2 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

**2983 UNEMPLOYMENT INSURANCE CASES – FILING OF PAPERS**

- 2983.1 In cases concerning unemployment compensation:
- (a) When a request for hearing is mailed to OAH, if the envelope containing the request bears a legible United States Postal Service postmark or if there is other proof of the mailing date, the request shall be considered filed on the mailing date. The filing date cannot be established by a private postage meter postmark alone.
  - (b) When a request for hearing is delivered to OAH by commercial carrier, the filing date is the date the commercial carrier received the request for delivery to the Clerk's office, so long as the cost of delivery is prepaid and delivery is to occur within three (3) calendar days of the commercial carrier's receipt. The date of commercial carrier's receipt shall be established by a document or other record prepared by the commercial carrier in the normal course of business.
- 2983.2 All other procedures for filing papers are governed by Section 2809.

**2984 UNEMPLOYMENT INSURANCE CASES – SUBPOENAS**

- 2984.1 In unemployment compensation cases, the Clerk shall issue no more than three subpoenas to each party under Subsection 2824.5 to compel:
- (a) The appearance at a hearing of persons who have direct knowledge of Claimant's separation from employment; or
  - (b) The production at a hearing of documents, dated no earlier than six (6) months before the date of separation, in the other party's possession that directly relate to Claimant's separation from employment.
- 2984.2 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least two calendar days before the hearing.

2984.3 All other procedures for subpoenas are governed by Section 2824.

**2985 UNEMPLOYMENT INSURANCE CASES – HEARINGS AND EVIDENCE**

2985.1 At least three (3) business days before a hearing in an unemployment compensation case, a party shall serve on all other parties and file with the Clerk the following:

- (a) A list of the witnesses, other than a party, whom the party intends to call to testify; and
- (b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits to be used solely for impeachment or rebuttal.

2985.2 All other procedures for hearings are governed by Section 2821.

**2986 UNEMPLOYMENT INSURANCE CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER**

2986.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

**2999 DEFINITIONS**

2999.1 Unless otherwise provided, the definitions in Chapter 28 apply to this chapter.

2999.2 For purposes of this chapter, the term:

**Commission** means the Rental Housing Commission.

**Contested residency case** means a case in which an adult student or a minor student’s parent or guardian has filed, pursuant to 5-E DCMR § 2009.3, a request for review of a decision by DCPS that a student is not entitled to tuition-free education because the student is not a resident of the District of Columbia.

**DCPS** means District of Columbia Public Schools.

**Disciplinary file** means any and all tangible evidence, in DCPS’s possession, which forms the basis for the school’s decision to propose the specific disciplinary action, including, but not limited to, student, staff and other witness statements, incident reports, photographs, police reports, and security camera footage. Nothing in these rules prohibits DCPS from redacting any information it deems confidential or protected.



**RAD** means the Rental Accommodations Division of the Department of Housing and Community Development.

**Rent Administrator** means the Rent Administrator of the RAD.

**Rental Housing Act** means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01, *et seq.*).

**Rental housing cases** means cases initiated pursuant to the Rental Housing Act, but does not include petitions for declaratory orders pursuant to the Rental Housing Conversion and Sale Act of 1980.

**School day** means a day that school is open, whether or not students are attending, but does not include any day that OAH is closed.

**Service Provider** means a person or entity that furnishes assistance to members of the public through a contract with or grant from the Government.

**Student discipline case** means a case in which DCPS seeks to expel a student or to suspend a student for at least eleven (11) days.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* via e-mail to [danielle.gurkin@dc.gov](mailto:danielle.gurkin@dc.gov), or to the Office of Administrative Hearings, 441 Fourth Street NW, Suite 450N, Washington, DC 20001, Attn: Danielle Gurkin, Assistant Chief Counsel. Copies of this proposed rulemaking may be obtained from [www.oah.dc.gov](http://www.oah.dc.gov) or from the address listed above.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on emergency basis, of amendments to Section 1929, entitled “Residential Habilitation Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

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

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Residential habilitation services provide essential supports whereby groups of individuals share a home managed by a provider agency. The current Notice of Final Rulemaking for 29 DCMR § 1929 (Residential Habilitation Services) was published in the *D.C. Register* on April 4, 2014, at 61 DCR 003553. These rules amend the previously published final rules by: (1) clarifying words and phrases to reflect more person-centered language and to simplify interpretation of the rule; (2) requiring the use of Department on Disability Services approved person-centered thinking and discovery tools; (3) clarifying requirements for daily progress notes; (4) modifying the rate methodology to account for time spent by staff during transportation, reducing the number of hours for direct support staff time during the day shift Monday through Friday, increasing the occupancy rate, and correcting an error in the rate model formula; (5) requiring that supports be aimed at skill building and include opportunities for community integration and competitive integrated employment; (6) adding wellness to the list of professional services; (7) clarifying requirements of minimum daily ratios; and (8) explaining when companion services may be used with residential habilitation services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of residential habilitation services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the residents’ health,

safety, and welfare are not threatened by lack of access to residential habilitation services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on February 11, 2016, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days from the adoption date or until June 10, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

**Section 1929, RESIDENTIAL HABILITATION SERVICES, is deleted in its entirety and a new Section 1929 is added to read as follows:**

**1929 RESIDENTIAL HABILITATION SERVICES**

- 1929.1 The purpose of this section is to establish standards governing Medicaid eligibility for residential habilitation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of residential habilitation services.
- 1929.2 Residential habilitation services are supports, provided in a home shared by at least four (4), but no more than six (6) persons. The service assists each person in: acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community, based upon what is important to and for the person, as documented in his or her Individualized Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.
- 1929.3 In order to be eligible for Medicaid reimbursement, residential habilitation services shall be:
- (a) Provided to a person with a demonstrated need for continuous training, assistance, and supervision; and
  - (b) Authorized in accordance with each person's ISP and Plan of Care.
- 1929.4 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:
- (a) Use the Department on Disabilities Services (DDS) approved person-centered thinking tools and the person's Positive Personal Profile and Job

Search and Community Participation Plan to develop a functional assessment that includes identifying what is important to and for the person, within the first month of the person residing in the home. This assessment shall be reviewed and revised annually or more frequently as needed;

- (b) Participate as a member of the person's support team, at his or her request, including making recommendations for the development of the ISP and Plan of Care;
- (c) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are included in the current program and health support plans of the residential provider;
- (d) Develop program and health support plans with measurable outcomes using the functional assessment, DDS approved person-centered thinking tools, Positive Person Profiles and Job Search and Community Participation Plan, the ISP, Plan of Care, and other information as appropriate, to enable the person to safely reside in, and be integrated as a member of, his or her community and maintain his or her health;
- (e) Propose modifications to the ISP and Plan of Care, as appropriate; and
- (f) Review the person's ISP and Plan of Care goals, DDS-approved person centered thinking tools, Positive Person Profiles and Job Search and Community Participation Plan, objectives, and activities at least quarterly and more often, as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1929.5

In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, skill development, habilitation, and other supports, aimed at teaching the person to increase his or her skills and self-reliance. This shall include, but not be limited to, the following categories of support, unless the person has demonstrated independence and capacity in any of the following areas.

- (a) Eating and food preparation, including learning about healthy eating choices;
- (b) Personal hygiene;
- (c) Dressing;

- (d) Monitoring health and physical conditions;
- (e) Assistance with the administration of medication;
- (f) Communications;
- (g) Interpersonal and social skills including building and maintaining relationships;
- (h) Household chores;
- (i) Mobility;
- (j) Financial management;
- (k) Motor and perceptual skills;
- (l) Problem-solving and decision-making;
- (m) Human sexuality;
- (n) Providing opportunities to engage in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (o) Ensuring that the person has appropriate and functioning adaptive equipment;
- (p) Providing opportunities for the person to seek employment and vocational supports to work in the community in a competitive and integrated setting, and
- (q) Other supports that are identified as important to or for the person in supports as identified in the person's ISP.

1929.6

In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but shall not be limited to, the following disciplines:

- (a) Medicine;
- (b) Dentistry;

- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology;
- (i) Social work;
- (j) Speech, Hearing and Language therapy;
- (k) Recreation; and
- (l) Wellness.

1929.7 In order to be eligible for Medicaid reimbursement, each Waiver provider shall ensure that transportation services are provided in accordance with Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1929.8 In order to be eligible for Medicaid reimbursement, each new Waiver provider of residential habilitation services shall:

- (a) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;
- (b) Provide verification of passing the DDS Provider Certification Review (PCR) for in-home support, supported living or respite services for the last three (3) years.
- (c) For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia, if applicable;
- (d) Ensure that each residence is accessible to public transportation and emergency vehicles;

- (e) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS; and
  - (f) Be licensed as a Group Home for a Person with an Intellectual Disability (GHPID) in the District of Columbia or a similarly licensed group home in other states.
- 1929.9 In order to be eligible for Medicaid reimbursement, current Waiver providers shall demonstrate that a satisfactory rating was received pursuant to the DDS Provider Certification Review policy and procedure available at <http://dds.dc.gov> and remain compliant with those requirements described under § 1929.8.
- 1929.10 In order to be eligible for Medicaid reimbursement, each GHPID located in the District of Columbia shall provide services to at least four (4), but no more than six (6), persons and shall meet the following requirements:
- (a) Be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), no later than sixty (60) days after approval as a Medicaid provider; and
  - (b) Comply with the requirements set forth in Chapter 35 of Title 22-B of the District of Columbia Municipal Regulations (DCMR).
- 1929.11 In order to be eligible for Medicaid reimbursement, each out-of-state group home shall serve at least four (4), but no more than six (6), persons.
- 1929.12 Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations, consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 1929.13 Each out-of-state provider shall comply with the following additional requirements:
- (a) Submit to DDS a certificate of registration to transact business within the District of Columbia issued pursuant to D.C. Official Code §§ 29-105.3 *et seq.*;
  - (b) Remain in good standing in the jurisdiction where the program is located;
  - (c) Submit to DDS a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable; and
  - (d) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state, full access to all sites and records for audits and other reviews.

- 1929.14 In order to be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing residential habilitation services as an agent or employee of a provider shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1929.15 An acuity evaluation to set support levels shall be recommended by the Support Team and approved by the DDS Waiver Unit. DDS shall review current staffing levels, available health and behavioral records, and the results of the Level of Need Assessment and Screening Tool, or its successor, to determine if a person has a health, behavioral or functional acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level, if other acuity indicators are not in place.
- 1929.16 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHPID must meet the minimum staffing ratio requirements set forth in Chapter 35 of Title 22-B DCMR and described in §§ 1929.24 and 1929.25 (reimbursement rates), unless it is determined by DDS to require a higher acuity level.
- 1929.17 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall maintain the following documents for monitoring and audit reviews:
- (a) A current written staffing plan;
  - (b) A written explanation of staffing responsibilities when back-up staff is unavailable and the lack of immediate care poses a serious threat to the person's health and welfare;
  - (c) Daily attendance rosters;
  - (d) The financial documents required pursuant to the DDS Personal Funds policy available at <http://dds.dc.gov>;
  - (e) The records of any nursing care provided pursuant to physician ordered protocols and procedures, charting, and other supports indicated in the physician's orders relating to development and management of the Health Management Care Plan; and
  - (f) Any documents required to be maintained pursuant to the DDS Health and Wellness Standards and Policy available at <http://dds.dc.gov>.
- 1929.18 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements), Section 1909 (Records and Confidentiality of Information), Section 1911 (Individual Rights), and Section 1938 (Home and



Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; except that the progress notes as described in Section 1909.2(m) shall be maintained on a daily basis.

1929.19 Residential habilitation services shall not be billed concurrently with the following Waiver services:

- (a) Environmental Accessibility Adaptation;
- (b) Vehicle Modifications;
- (c) Supported Living;
- (d) Respite;
- (e) Host Home;
- (f) Companion, except that Companion services can be used with Residential Habilitation services during regular daytime hours on Mondays through Fridays, not to exceed more than forty (40) hours per week, or in combination with any other waiver day or vocational support service, including Day Habilitation, Employment Readiness, Supported Employment and Individualized Day Supports not to exceed forty (40) hours per week;
- (g) In-Home Supports;
- (h) Personal Emergency Response System; and
- (i) Skilled Nursing.

1929.20 Residential habilitation services shall not be reimbursed by Medicaid when provided by a member of the person's family.

1929.21 Medicaid reimbursement for residential habilitation services shall not include:

- (a) Cost of room and board;
- (b) Cost of facility maintenance, upkeep, and improvement;
- (c) Activities for which payment is made by a source other than Medicaid;
- (d) Time when the person is in school or employed;

- (e) Payment for the same day that a person is receiving Medicaid reimbursable services such as acute care hospitalization, short and long-term rehabilitation or nursing home care; and
- (f) Payment for a day when the person has not been supported by the residential habilitation services provider for any part of a twenty-four (24) hour period.

1929.22 The reimbursement rate for residential habilitation services shall only include time when staff is awake and on duty and shall include:

- (a) All supervision provided by the direct support staff;
- (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of and training on the person's Health Management Care Plan;
- (c) Transportation;
- (d) Programmatic supplies and fees;
- (e) Quality assurance costs, such as Incident Management Systems and staff development; and
- (f) General administrative fees for Waiver services.

1929.23 The reimbursement rate for residential habilitation services shall be a daily rate.

1929.24 The reimbursement rate for residential habilitation services for a GHPID with four (4) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred and sixty-six dollars and seventy-eight cents (\$266.78) for a direct care staff support ratio of 1:4 for all awake and overnight hours;
- (b) The Moderate Support Level 2 daily rate shall be three hundred seventy four dollars and eighty-seven cents (\$374.87) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred and twenty dollars and three cents (\$420.03) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

- (d) The Intensive Support daily rate shall be five hundred and ten dollars and eighty-two cents (\$510.82) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be six hundred and six dollars and thirty-one cents (\$606.31) for twenty-four (24) hour licensed practical nursing services.

1929.25 The reimbursement rate for residential habilitation services for a GHPID with five (5) to six (6) persons shall be as follows:

- (a) The Basic Support Level 1 daily rate shall be two hundred and eighty-nine dollars and fourteen cents (\$289.14) for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;
- (b) The Moderate Support Level 2 daily rate shall be three hundred fifty-seven dollars and twenty-nine cents (\$357.29) for a direct care staff support ratio of 2:5 or 2:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate shall be three hundred and ninety-seven dollars and ninety-two cents (\$397.92) for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate shall be four hundred and ninety-five dollars and ninety-eight cents (\$495.98) for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate shall be five hundred and seven dollars and seventeen cents (\$507.17) for twenty-four (24) hour licensed practical nursing services.

1929.26 The reimbursement rates assume a ninety-five percent (95%) annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays.

1929.27 Daily activities may include but are not limited to Day Habilitation, Employment Readiness, Individualized Day Supports, Companion, Supported Employment or employment.

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900S, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 903 entitled “Outpatient and Emergency Room Services” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The effect of these rules is to provide supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services.

Continued emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries who are in need of outpatient hospital services. By taking emergency action, this proposed rule will ensure appropriate and needed payments to District hospitals and allow Medicaid beneficiaries access to needed outpatient medical services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance (“State Plan”) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The Council has approved the State Plan through the Fiscal Year 2016 Budget Support Act of 2015, signed August 11, 2015 (D.C. Act 21-148; 62 DCR 10905 (August 14, 2015)). DHCF is awaiting approval from CMS.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 13, 2015 at 62 DCR 14908. No comments were received and no substantive changes were made to this second emergency and proposed rulemaking.

The emergency rulemaking was adopted on February 11, 2016, and shall become effective on that date subject to approval by CMS of the corresponding State Plan amendment. The emergency rules will remain in effect for one hundred and twenty days (120) after adoption, or until June 10, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

**Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended by adding the following new Subsection 903.31:**

- 903.31 Beginning FY 2016, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:
- (a) Except as provided in Subsection (c) and (d), for visits and services beginning October 1, 2015, and ending on September 30, 2016, quarterly access payments shall be made to each eligible private hospital. Each payment shall be an amount equal to each hospital's Fiscal Year (FY) 2013 outpatient Medicaid payments divided by the total in District private hospital FY 2013 hospital outpatient Medicaid payments, and multiplied by one quarter (1/4) of the total outpatient private hospital access payment pool. The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for FY 2016 as determined by the State Medicaid agency;
  - (b) Applicable private hospital FY 2013 outpatient Medicaid payments shall include all outpatient Medicaid payments to Medicaid participating hospitals located within the District of Columbia except for the United Medical Center;
  - (c) In no instance shall a Disproportionate Share Hospital (DSH) hospital receive more in quarterly access payments than the hospital-specific DSH limit, as adjusted by the District in accordance with the District's State Plan for Medical Assistance (State Plan). Any private hospital quarterly access payments that would otherwise exceed the adjusted hospital-specific DSH limit, shall be distributed to the remaining qualifying private hospitals based on each hospital's FY 2013 outpatient Medicaid payments relative to the total qualifying private hospital FY 2013 outpatient Medicaid payments;
  - (d) For visits and services beginning October 1, 2015, quarterly access payments shall be made to the United Medical Center. Each payment shall be equal to one quarter (1/4) of the public hospital access payment pool. The total public hospital access payment pool shall be equal to the lessor of the available spending room under the District-operated hospital outpatient Medicaid upper payment limit for FY 2016, and the United Medical Center DSH limit as adjusted by the District in accordance with the State Plan;
  - (e) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and
  - (f) For purposes of this section, the term Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-024  
February 9, 2016

**SUBJECT:** Delegation — Authority to the Deputy Mayor for Planning and Economic Development for the Acquisition of Property for the Use of the District of Columbia Water and Sewer Authority

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422, 422(6) and 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22, § 1-204.22(6) and § 1-204.22(11) (2014 Repl.); An Act Authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia, 45 Stat. 1160, D.C. Official Code § 2-402; D.C. Official Code § 16-1311 *et seq.*, Lots 36, 41 and 802 in Square 3942 and Parcels 0143/107 and 0143/110 Eminent Domain Authorization Emergency Act of 2015, effective December 20, 2015, Act No. 21-243, 63 D.C.R. 17 (and any temporary or permanent act subsequently enacted on significantly the same terms), and pursuant to a petition from the District of Columbia Water and Sewer Authority under section 203(24) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.03(24) (2012 Repl.)), it is hereby **ORDERED** that:


1. The Deputy Mayor for Planning and Economic Development (“**Deputy Mayor**”) is hereby delegated the authority to:
  - a. acquire, through purchase or the exercise of eminent domain, real property necessary for the use of the District of Columbia Water and Sewer Authority (“**WASA**”), for the purpose of the construction and operation of a field operations and equipment storage facility; and
  - b. settle pre-litigation claims raised by WASA for costs associated with WASA’s relocation.
2. The authority delegated herein to the Deputy Mayor may be further delegated to subordinates under the jurisdiction of the Deputy Mayor.
3. This Order supersedes all previous Mayor’s Orders to the extent of any inconsistency therein including Mayor’s Order 2008-119 dated August 22, 2008.

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



MURIEL BOWSER  
MAYOR

ATTEST:



LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA



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

Mayor's Order 2016-025  
February 12, 2016

**SUBJECT:** Designation of Special Event Area — BET Honors 2016

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(11) (2014 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:


1. The following public space areas as identified below shall be designated as a Special Event Area to accommodate activities associated with the 2016 BET Honors:
  - a. Commencing Wednesday, March 2, 2016 at 12:00 a.m. until Saturday, March 5, 2016, at 11:59 a.m., the east and west curb lanes of 12<sup>th</sup> Street NW between E and F Streets, the east curb lane of 13<sup>th</sup> Street NW between E and F Streets.
  - b. Commencing Wednesday, March 2, 2016 at 12:00 a.m. until Friday, March 4, 2016 at 6:59 p.m., the north curb lane of E Street NW between 12<sup>th</sup> and 13<sup>th</sup> Street NW (excluding zoned City Council parking spaces).
  - c. Commencing Friday, March 4, 2016 at 7:00 p.m. until Sunday, March 6, 2016, at 6:00 a.m., the north and south curb lanes, both sidewalks, and all travel lanes of E Street NW between 12<sup>th</sup> and 13<sup>th</sup> Streets. This will include the zoned City Council parking spaces.
  - d. Commencing Saturday, March 5, 2016 at 12:00 p.m. until Sunday March 6, 2016, at 6:00 a.m., the east and west curb lanes, both sidewalks, and all travel lanes of 12<sup>th</sup> Street NW between Constitution Avenue and F Street.
  - e. Commencing Saturday, March 5, 2016 at 12:00 p.m. until Sunday March 6, 2016, at 6:00 a.m., the east sidewalk, east and west curb lanes, and all travel lanes of 13<sup>th</sup> Street NW between Pennsylvania Avenue and F Street.
  - f. Commencing Saturday, March 5, 2016 at 12:00 p.m. until Sunday March 6, 2016, at 6:00 a.m., all westbound lanes of Pennsylvania Avenue NW between 12<sup>th</sup> and 13<sup>th</sup> Streets.

- g. Commencing Saturday, March 5, 2016 at 12:00 p.m. until Sunday March 6, 2016, at 6:00 a.m., the north and south curb lanes of Pennsylvania Avenue (upper)/E Street NW between 13<sup>th</sup> and 14<sup>th</sup> Streets. However, limited vehicular access (taxis, limos, etc. for the JW Marriott and the National Theatre) will be maintained via the west curb lane of 13<sup>th</sup> Street NW between Pennsylvania Avenue and F Street.
  - h. Commencing Saturday, March 5, 2016 at 12:00 p.m. until Sunday March 6, 2016, at 6:00 a.m., the south curb lane of F Street NW between 12<sup>th</sup> and 13<sup>th</sup> Streets. (To be used only in the event of a snow emergency.)
2. The designated areas shall be operated and overseen by Black Entertainment Television dba BET Networks, LLC, and the District of Columbia Office of Cable Television, Film, Music and Entertainment.
  3. This Order is authorization for the use of the designated areas only, and the named operator shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event. All building, health, life, safety, ADA, and use of public space requirements shall remain applicable to the Special Event Area designated by this Order.
  4. **EFFECTIVE DATE:** This Order shall become effective immediately.


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 MURIEL BOWSER  
 MAYOR

ATTEST:   


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 LAUREN C. VAUGHAN  
 SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-026  
February 12, 2016

**SUBJECT:** Appointment — Interim Medical Director, District of Columbia Fire and  
Emergency Medical Services Department

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and section 3a of An Act To classify the officers and members of the Fire Department of the District of Columbia, and for other purposes, effective April 15, 2008, D.C. Law 17-147, D.C. Official Code § 5-404.01 (2012 Repl.), it is hereby **ORDERED** that:

1. **LISA FITZPATRICK** is appointed Interim Medical Director, District of Columbia Fire and Emergency Medical Services Department, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-268, dated December 31, 2015.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF PUBLIC HEARINGS  
CALENDAR**

**WEDNESDAY, FEBRUARY 24, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009**

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

- |  |                |
|--|----------------|
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-AUD-00089;</b> 3566 14th Street, LLC, t/a La Dulce Noche, 3566 14th Street NW, License #92426, Retailer CR , ANC 1A<br><b>Failed to Provide Invoices for Purchased Alcoholic Beverages</b>                      | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-CMP-00700;</b> Debebe Addis, t/a Mesobe Restaurant and Deli Market 1853 7th Street NW, License #81030, Retailer CR, ANC 1B<br><b>Failed to Post License Conspicuously in the Establishment</b>                  | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-CMP-00792;</b> Tapper, LLC, t/a Floriana, 1602 17th Street NW License #84579, Retailer CR, ANC 2B<br><b>No ABC Manager on Duty</b>  | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-CMP-00544;</b> Luby's Fuddruckers, LLC, t/a Fuddruckers, 734 7th Street NW, License #86154, Retailer CR, ANC 2C<br><b>No ABC Manager on Duty</b>  | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-CC-00068;</b> Stop & Go, LLC, t/a Stop and Go Market, 3001 Sherman Ave NW, License #71763, Retailer B, ANC 1A<br><b>Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age</b> | <b>9:30 AM</b> |
| <b>Show Cause Hearing (Status)</b><br><b>Case # 15-CMP-00605;</b> HSR, Inc., t/a New Dodge Market, 3620 14th Street NW, License #99565, Retailer B, ANC 1A<br><b>No ABC Manager on Duty, Failed to Post License Conspicuously in the Establishment</b>             | <b>9:30 AM</b> |

Board's Calendar  
February 24, 2016

**Public Hearing\*** **10:00 AM**  
Georgetown Moratorium Rulemaking

**Show Cause Hearing\*** **11:00 AM**  
**Case # 15-CMP-00399;** Atsede Corporation, t/a Nile Market and Kitchen, 7815  
Georgia Ave NW, License #60432, Retailer CR , ANC 4B  
**No ABC Manager on Duty**

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

**Show Cause Hearing\*** **1:30 PM**  
**Case # 15-CMP-00058;** 1606 K, LLC, t/a Fuel Pizza & Wings, 1606 K Street  
NW, License #88452, Retailer CR, ANC 2B  
**Failed to Take Steps Necessary to Ensure Property is Free of Litter, No  
ABC Manager on Duty**

**Show Cause Hearing\*** **2:00 PM**  
**Case # 15-CMP-00359;** 1606 K, LLC, t/a Fuel Pizza & Wings, 1606 K Street  
NW, License #88452, Retailer CR, ANC 2B  
**No ABC Manager on Duty**

**Show Cause Hearing\*** **2:30 PM**  
**Case # 15-AUD-00054;** 600 F D.C., LLC, t/a Fuel Pizza & Wings, 600 F Street  
NW, License #88727, Retailer CR, ANC 2C  
**Failed to File Quarterly Statements (4th Quarter 2014)**

**Show Cause Hearing\*** **3:00 PM**  
**Case # 15-CMP-00341;** 600 F D.C., LLC, t/a Fuel Pizza & Wings, 600 F Street  
NW, License #88727, Retailer CR, ANC 2C  
**No ABC Manager on Duty**

**Protest Hearing Hearing\*** **3:30 PM**  
**Case # 15-PRO-00117;** S & B Market, LLC, t/a MLK Mini Market, 3333  
Martin Luther King, Jr, Ave SE, License #95905, Retailer B, ANC 8C  
**Substantial Change (Class Change from Class "B" Grocery to Class "A"  
Liquor Store)**

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
INVESTIGATIVE AGENDA

WEDNESDAY, FEBRUARY 24, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On February 24, 2016 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case#16-CMP-00091 The Ugly Mug Dining Saloon, 723 8TH ST SE Retailer C Restaurant, License#: ABRA-071793

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2. Case#16-251-00008 Midtown, 1219 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-072087

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3. Case#16-CMP-00003 Panache, 1725 DE SALES ST NW Retailer C Restaurant, License#: ABRA-060754

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4. Case#16-CMP-00004 The Cheesecake Factory, 5345 WISCONSIN AVE NW Retailer C Restaurant, License#:ABRA-014760

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5. Case#16-CMP-00014 Cleveland Park Liquors, 3423 CONNECTICUT AVE NW Retailer A Retail - Liquor Store, License#: ABRA-016969

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6. Case#15-251-00200(a) Player's Lounge, 2737 M.L. KING JR., AVE SE Retailer C Nightclub, License#: ABRA-001271

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7. Case#16-CMP-00010 Log Cabin Liquor, 1748 7TH ST NW Retailer A Retail - Liquor Store, License#: ABRA-082040

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8. Case#16-CMP-00088 Atlas Performing Arts Center, 1333 H ST NE Retailer C Multipurpose,  
License#: ABRA-085207

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9. Case#16-CMP-00026 Touchdown, 1334 U ST NW B Retailer C Tavern, License#: ABRA-  
086233

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10. Case#16-CMP-00011 One-Eight Distilling, 1135 OKIE ST NE Retailer A Manufacturer,  
License#: ABRA-092751

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11. Case#16-251-00017 Stadium Club, 2127 QUEENS CHAPEL RD NE Retailer C Nightclub,  
License#: ABRA-094244

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12. Case#15-251-00156(b) Dan's Cafe, 2315 18TH ST NW Retailer C Tavern, License#: ABRA-  
000785

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13. Domaine Wine Storage, 4221 Connecticut Avenue, NW, Unlicensed

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, FEBRUARY 24, 2016 AT 1:00 PM  
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Class Change from Retailer B 25% to Retailer A Liquor Store. ANC 6B. SMD 6B10. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. Conflict with Settlement Agreement. *Southeast Market*, 1500 Independence Avenue SE, Retailer B 25%, License No. 089011.

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2. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales*: Sunday-Saturday 10am to 9pm. *Proposed Hours of Operation and Alcoholic Beverage Sales*: Sunday-Saturday 7am to 12am. ANC 2F. SMD 2F06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *9 & P Street Liquor*, 1428 9<sup>th</sup> Street NW, Retailer A Liquor Store, License No. 101095.

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3. Review Request for Change of Hours. *Approved Hours of Operation*: Sunday-Saturday 12am to 12am (24-hour operations). *Approved Hours of Alcoholic Beverage Sales*: Sunday-Saturday 9am to 10pm. *Proposed Hours of Alcoholic Beverage Sales*: Sunday-Saturday 8am to 12am. ANC 4C. SMD 4C08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Davis Market*, 3819 Georgia Avenue NW, Retailer B Grocery, License No. 060094.

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4. Review Application for Tasting Permit. ANC 1C. SMD 1C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *The Bottle Shop*, 2216 18<sup>th</sup> Street NW, Retailer B, License No. 100543.

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5. Review Application for Manager's License. *Denesia L. Wheeler*-ABRA 101747.

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



**BRIDGES PUBLIC CHARTER SCHOOL  
BRIYA PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Furniture Consultant and Moving Vendor Services**

Bridges Public Charter School and Briya Public Charter School, through the Mamie D. Lee, LLC partnership, are seeking competitive proposals for **Furniture Consultant and Moving vendors** for a public charter school facility project. For a copy of the RFP, please contact Ms. Jasmine Jones of Building Hope at [jjones@bhope.org](mailto:jjones@bhope.org). All proposals must be submitted by 12:00 pm on Friday, March 4, 2016.

**CEDAR TREE ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****STEM Summer Program**

Cedar Tree Academy Public Charter School invites proposals for a summer STEM program serving 100 pre-school and kindergarten students. Bid specifications may be obtained on our website at [www.Cedartree-dc.org](http://www.Cedartree-dc.org). Any questions regarding this bid must be submitted in writing to [Lhenderson@Cedartree-dc.org](mailto:Lhenderson@Cedartree-dc.org) before the RFP deadline. Bids must be submitted to Dr. LaTonya Henderson, Executive Director, Cedar Tree Academy PCS 701 Howard Road SE Washington DC 20020.

Cedar Tree Academy will receive bids until Friday, March 4, 2016, no later than 2:00PM.

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

**NOTICE OF PUBLIC MEETING**

**DC Board of Accountancy  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**Friday, March 4, 2016  
9:00 AM**

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

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

**NOTICE OF PUBLIC MEETING**

**Board of Architecture and Interior Design  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 4, 2016  
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 – April 15, 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 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**Meeting Agenda  
Monday, March 7, 2016  
10:00 a.m.**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Applications for Licensure
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn

Next Scheduled Board Meeting – Monday, April 4, 2016

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

**NOTICE OF PUBLIC MEETING**

**Board of Funeral Directors  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 3, 2016  
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, February 4, 2016
7. Executive Session (Closed to the Public)
  - a. Applications
  - b. Complaints
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 7, 2016 at 1:00 p.m.

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

**NOTICE OF PUBLIC MEETING**

**Board of Real Estate Appraisers  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 16, 2016  
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**

**March 2016**

<b>CONTACT PERSON</b>	<b>BOARDS AND COMMISSIONS</b>	<b>DATE</b>	<b>TIME/ LOCATION</b>
Cynthia Briggs	Board of Accountancy	4	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	16	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	4	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	7	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	8	7:00-pm-8:30 pm
Sheldon Brown	Board of Funeral Directors	3	1:00am-4:00 pm
Avis Pearson	Board of Professional Engineering	24	9:00 am-1:30 pm
Leon Lewis	Real Estate Commission	8	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	No Meeting	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4<sup>th</sup> 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

## D.C. BOXING AND WRESTLING COMMISSION

1100 4<sup>th</sup> Street SW-Suite E500

Washington, D.C. 20024

MARCH 8, 2016

7:00 P.M.

Website: [http://www.pearsonvue.com/dc/boxing\\_wrestling/](http://www.pearsonvue.com/dc/boxing_wrestling/)

## AGENDA

CALL TO ORDER & ROLL CALLCOMMENTS FROM THE PUBLIC & GUEST INTRODUCTIONS

1. Josef Pearson Amateur Muay Thai Event on **Saturday, February 13, 2016** at the Thurgood Marshall Center.
2. Marshall Kauffman-Kings Boxing Promotions Professional Boxing Event on **Saturday, February 27, 2016** at the Walter E. Washington Convention Center.
3. Golden Boy Promotions Professional Boxing Event on **Saturday, March 5, 2016** at the D.C. Armory.

REVIEW OF MINUTES

- Approval of Minutes

UPCOMING EVENT

1. Josef Pearson Amateur Muay Thai Event on **Saturday, March 19, 2016** at the Thurgood Marshall Center.
2. Bill Alexander Professional MMA Event on **Saturday, March 26, 2016** at the University of the District of Columbia.
3. World Wrestling Entertainment (WWE) Live TV Event on **Sunday, March 27, 2016** at the Verizon Center.

OLD BUSINESS

1. 6<sup>th</sup> Annual Dr. McKnight Preliminary Discussion
2. Officials Pay Raise Discussion

NEW BUSINESS

1. Upcoming Amateur Events
2. Officials Training Dates

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS APRIL 12, 2016

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

**NOTICE OF PUBLIC MEETING**

**District of Columbia Professional Engineers  
1100 4<sup>th</sup> Street SW, Room 380  
Washington, DC 20024**

**AGENDA**

**March 24, 2016 ~ Room 300  
9:00 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
- 7) Old Business
- 8) New Business
- 9) Adjourn

Next Scheduled Meeting – April 28, 2016  
Location: 1100 4<sup>th</sup> Street SW, Conference Room E300

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

**NOTICE OF PUBLIC MEETING**

**Real Estate Commission  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 8, 2016  
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, January 12, 2016
7. Executive Session (Closed to the Public)
8. Old Business  
  
Commissioner use of MOTA assigned E-mail Addresses
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 12, 2016 at 10:00 a.m.

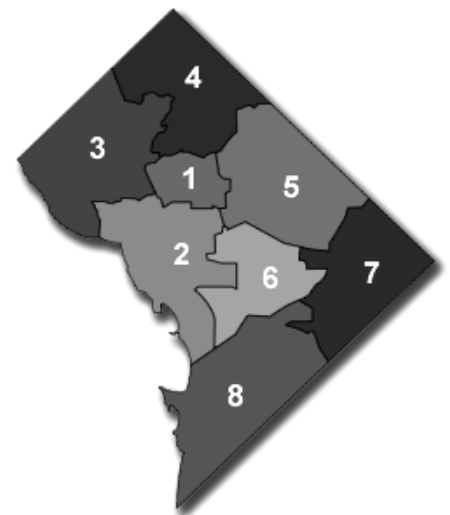
**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
CITYWIDE REGISTRATION SUMMARY  
As Of JANUARY 31, 2016**

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
<b>1</b>	41,122	2,692	678	147	113	10,747	<b>55,499</b>
<b>2</b>	26,852	5,306	205	178	94	9,581	<b>42,216</b>
<b>3</b>	34,580	6,414	348	136	87	10,278	<b>51,843</b>
<b>4</b>	45,155	2,146	506	78	118	8,369	<b>56,372</b>
<b>5</b>	48,212	2,126	542	93	149	8,413	<b>59,535</b>
<b>6</b>	49,838	6,407	491	199	154	12,368	<b>69,457</b>
<b>7</b>	45,320	1,209	398	38	109	6,409	<b>53,483</b>
<b>8</b>	41,482	1,172	372	28	130	6,784	<b>49,968</b>
<b>Totals</b>	332,561	27,472	3,540	897	954	72,949	<b>438,373</b>
<b>Percentage By Party</b>	<b>75.86%</b>	<b>6.27%</b>	<b>.81%</b>	<b>.20%</b>	<b>.22%</b>	<b>16.64%</b>	<b>100.00%</b>

**DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF  
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS  
AS OF THE END OF JANUARY 31, 2016**

COVERING CITY WIDE TOTALS BY:  
**WARD, PRECINCT AND PARTY**

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



**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 1 REGISTRATION SUMMARY**  
**As Of JANUARY 31, 2016**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>20</b>	1,324	30	9	3	5	220	<b>1,591</b>
<b>22</b>	3,560	343	27	17	10	941	<b>4,898</b>
<b>23</b>	2,522	184	43	15	5	686	<b>3,455</b>
<b>24</b>	2,297	247	32	14	5	722	<b>3,317</b>
<b>25</b>	3,349	387	51	10	6	988	<b>4,791</b>
<b>35</b>	3,063	193	49	16	1	777	<b>4,099</b>
<b>36</b>	3,971	255	66	8	10	1,019	<b>5,329</b>
<b>37</b>	3,086	136	53	9	9	724	<b>4,017</b>
<b>38</b>	2,674	122	55	14	10	680	<b>3,555</b>
<b>39</b>	3,949	211	78	6	11	944	<b>5,199</b>
<b>40</b>	3,792	200	96	12	13	1,042	<b>5,155</b>
<b>41</b>	3,263	182	62	14	15	994	<b>4,530</b>
<b>42</b>	1,676	71	32	2	7	442	<b>2,230</b>
<b>43</b>	1,648	54	19	4	4	356	<b>2,085</b>
<b>137</b>	948	77	6	3	2	212	<b>1,248</b>
<b>TOTALS</b>	<b>41,122</b>	<b>2,692</b>	<b>678</b>	<b>147</b>	<b>113</b>	<b>10,747</b>	<b>55,499</b>

D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 2 REGISTRATION SUMMARY  
As Of JANUARY 31, 2016

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	735	169	10	10	9	477	1,410
3	1,451	370	17	10	9	633	2,490
4	1,579	470	5	13	4	703	2,774
5	1,899	577	10	13	8	679	3,186
6	2,080	836	20	9	14	1,156	4,115
13	1,149	224	5	3	1	366	1,748
14	2,549	432	21	16	7	828	3,853
15	2,683	337	23	20	8	797	3,868
16	3,266	400	24	16	10	838	4,554
17	4,022	560	34	25	9	1,233	5,883
129	2,093	339	14	14	4	795	3,259
141	2,026	263	12	15	8	581	2,905
143	1,320	329	10	14	3	495	2,171
<b>TOTALS</b>	<b>26,852</b>	<b>5,306</b>	<b>205</b>	<b>178</b>	<b>94</b>	<b>9,581</b>	<b>42,216</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 3 REGISTRATION SUMMARY**  
**As Of JANUARY 31, 2016**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,212	388	16	3	2	550	<b>2,171</b>
8	2,304	622	27	4	7	724	<b>3,688</b>
9	1,070	499	6	11	6	450	<b>2,042</b>
10	1,669	396	15	6	6	623	<b>2,715</b>
11	3,113	891	38	19	9	1,212	<b>5,282</b>
12	429	180	2	1	2	183	<b>797</b>
26	2,576	319	24	40	4	784	<b>3,717</b>
27	2,336	262	21	11	1	569	<b>3,200</b>
28	2,169	491	33	9	5	704	<b>3,411</b>
29	1,272	247	12	6	7	380	<b>1,924</b>
30	1,257	210	13	4	4	279	<b>1,767</b>
31	2,248	311	20	4	8	537	<b>3,128</b>
32	2,530	295	21	3	5	567	<b>3,421</b>
33	2,656	302	27	7	5	632	<b>3,629</b>
34	3,091	388	31	19	4	918	<b>4,451</b>
50	1,966	254	14	5	5	449	<b>2,693</b>
136	715	97	8	3	1	253	<b>1,077</b>
138	1,967	262	20	11	6	464	<b>2,730</b>
<b>TOTALS</b>	<b>34,580</b>	<b>6,414</b>	<b>348</b>	<b>136</b>	<b>87</b>	<b>10,278</b>	<b>51,843</b>

**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 4 REGISTRATION SUMMARY  
As Of JANUARY 31, 2016**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,024	69	29	7	4	360	2,493
46	2,647	84	36	5	10	503	3,285
47	2,865	149	37	5	11	690	3,757
48	2,614	131	29	6	5	522	3,307
49	788	44	17	0	5	179	1,033
51	3,138	510	26	7	5	602	4,288
52	1,207	167	5	0	2	211	1,592
53	1,154	69	20	1	4	234	1,482
54	2,251	76	26	1	5	449	2,808
55	2,321	73	17	2	9	410	2,832
56	2,844	89	34	7	7	606	3,587
57	2,302	68	37	6	13	429	2,855
58	2,115	53	16	4	3	347	2,538
59	2,461	84	28	7	6	398	2,984
60	1,962	66	20	3	4	567	2,622
61	1,478	50	11	1	2	249	1,791
62	3,051	118	26	2	3	359	3,559
63	3,331	120	53	3	11	620	4,138
64	2,172	61	17	9	4	316	2,579
65	2,430	65	22	2	5	318	2,842
<b>Totals</b>	<b>45,155</b>	<b>2,146</b>	<b>506</b>	<b>78</b>	<b>118</b>	<b>8,369</b>	<b>56,372</b>



**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 5 REGISTRATION SUMMARY  
As Of JANUARY 31, 2016**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,041	187	67	11	5	926	5,237
44	2,628	220	27	8	14	644	3,541
66	4,292	102	40	4	7	523	4,968
67	2,841	97	20	2	8	386	3,354
68	1,768	154	26	7	8	353	2,316
69	1,989	68	14	2	11	254	2,338
70	1,403	76	20	1	3	202	1,705
71	2,303	66	25	1	9	305	2,712
72	4,046	112	30	7	13	676	4,884
73	1,829	83	28	6	5	324	2,275
74	4,140	213	57	9	11	825	5,255
75	3,308	183	55	14	7	738	4,305
76	1,334	64	13	1	4	259	1,675
77	2,573	104	20	4	10	439	3,150
78	2,774	88	31	5	10	460	3,368
79	1,919	75	17	3	11	334	2,359
135	2,888	186	42	6	9	525	3,656
139	2,136	48	10	2	4	237	2,437
<b>TOTALS</b>	<b>48,212</b>	<b>2,126</b>	<b>542</b>	<b>93</b>	<b>149</b>	<b>8,413</b>	<b>59,535</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 6 REGISTRATION SUMMARY**  
**As Of JANUARY 31, 2016**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	3,975	491	43	16	9	1,077	5,611
18	4,422	333	41	18	12	985	5,811
21	1,123	59	13	3	1	262	1,461
81	4,379	365	39	10	17	896	5,706
82	2,430	245	29	11	10	555	3,280
83	4,249	553	36	21	10	1,112	5,981
84	1,907	405	22	6	7	521	2,868
85	2,624	516	23	14	9	711	3,897
86	2,085	259	28	7	6	448	2,833
87	2,663	245	21	3	11	548	3,491
88	2,064	276	14	5	8	496	2,863
89	2,446	637	22	12	5	729	3,851
90	1,552	254	14	6	10	478	2,314
91	3,573	375	36	17	13	932	5,246
127	3,773	276	46	17	7	778	4,897
128	2,282	210	32	9	7	609	3,149
130	729	283	7	2	2	260	1,283
131	1,877	458	12	17	7	588	2,959
142	1,385	167	13	5	3	383	1,956
<b>TOTALS</b>	<b>49,838</b>	<b>6,407</b>	<b>491</b>	<b>199</b>	<b>154</b>	<b>12,368</b>	<b>69,457</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 7 REGISTRATION SUMMARY**  
**As Of JANUARY 31, 2016**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>80</b>	1,423	86	13	2	2	252	<b>1,778</b>
<b>92</b>	1,556	37	11	1	6	236	<b>1,847</b>
<b>93</b>	1,456	43	19	2	4	206	<b>1,730</b>
<b>94</b>	1,951	51	17	0	3	294	<b>2,316</b>
<b>95</b>	1,499	43	15	0	2	257	<b>1,816</b>
<b>96</b>	2,247	66	20	1	7	349	<b>2,690</b>
<b>97</b>	1,414	38	16	1	4	193	<b>1,666</b>
<b>98</b>	1,774	45	23	1	4	244	<b>2,091</b>
<b>99</b>	1,308	42	14	3	4	212	<b>1,583</b>
<b>100</b>	2,101	40	15	2	5	246	<b>2,409</b>
<b>101</b>	1,531	24	15	1	5	166	<b>1,742</b>
<b>102</b>	2,306	56	20	0	6	309	<b>2,697</b>
<b>103</b>	3,348	77	37	4	12	520	<b>3,998</b>
<b>104</b>	2,733	72	23	5	11	387	<b>3,231</b>
<b>105</b>	2,309	61	20	3	4	366	<b>2,763</b>
<b>106</b>	2,734	53	17	1	9	388	<b>3,202</b>
<b>107</b>	1,563	48	14	1	4	223	<b>1,853</b>
<b>108</b>	1,084	28	7	1	0	118	<b>1,238</b>
<b>109</b>	900	34	4	1	1	90	<b>1,030</b>
<b>110</b>	3,631	92	22	5	6	407	<b>4,163</b>
<b>111</b>	2,518	64	23	1	6	396	<b>3,008</b>
<b>113</b>	1,978	56	20	1	3	243	<b>2,301</b>
<b>132</b>	1,956	53	13	1	1	307	<b>2,331</b>
<b>TOTALS</b>	<b>45,320</b>	<b>1,209</b>	<b>398</b>	<b>38</b>	<b>109</b>	<b>6,409</b>	<b>53,483</b>

**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 8 REGISTRATION SUMMARY  
As Of JANUARY 31, 2016**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	1,960	58	10	0	6	280	2,314
114	3,044	103	27	1	19	522	3,716
115	2,673	70	19	6	6	620	3,394
116	3,757	92	35	5	10	590	4,489
117	1,887	41	18	1	7	306	2,260
118	2,499	64	26	1	5	401	2,996
119	2,688	104	35	0	11	516	3,354
120	1,796	34	18	2	3	290	2,143
121	2,995	69	26	1	9	434	3,534
122	1,550	38	14	0	8	215	1,825
123	1,998	109	26	5	10	305	2,453
124	2,388	54	15	1	3	327	2,788
125	4,146	99	33	1	9	673	4,961
126	3,299	105	31	2	11	616	4,064
133	1,186	36	11	0	2	162	1,397
134	1,936	39	22	1	4	272	2,274
140	1,680	57	6	1	7	255	2,006
<b>TOTALS</b>	<b>41,482</b>	<b>1,172</b>	<b>372</b>	<b>28</b>	<b>130</b>	<b>6,784</b>	<b>49,968</b>

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

*For voter registration activity between 12/31/2015 and 1/31/2016*

<b>NEW REGISTRATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
<b>Beginning Totals</b>	<b>330,861</b>	<b>27,188</b>	<b>3,530</b>	<b>883</b>	<b>942</b>	<b>72,499</b>	<b>435,903</b>
Board of Elections Over the Counter	12	1	1	0	0	2	16
Board of Elections by Mail	72	17	0	1	2	17	109
Board of Elections Online Registration	158	35	2	2	2	53	252
Department of Motor Vehicle	1,616	235	20	13	15	520	2,419
Department of Disability Services	0	0	0	0	0	0	0
Office of Aging	0	0	0	0	0	0	0
Federal Postcard Application	1	0	0	0	0	0	1
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	1	0	0	0	0	0	1
Department of Corrections	4	0	0	0	0	1	5
Department of Human Services	4	0	0	0	0	1	5
Special / Provisional	0	0	0	0	0	0	0
All Other Sources	23	2	0	0	0	6	31
<b>+Total New Registrations</b>	<b>1,892</b>	<b>290</b>	<b>23</b>	<b>16</b>	<b>19</b>	<b>600</b>	<b>2,839</b>

<b>ACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Reinstated from Inactive Status	266	32	1	0	0	51	350
Administrative Corrections	4	0	1	1	19	177	202
<b>+TOTAL ACTIVATIONS</b>	<b>270</b>	<b>32</b>	<b>2</b>	<b>1</b>	<b>19</b>	<b>228</b>	<b>552</b>

<b>DEACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Changed to Inactive Status	91	7	2	1	0	26	127
Moved Out of District (Deleted)	11	1	0	0	0	9	21
Felon (Deleted)	0	0	0	0	0	0	0
Deceased (Deleted)	4	2	0	0	0	1	7
Administrative Corrections	610	66	2	17	1	62	758
<b>-TOTAL DEACTIVATIONS</b>	<b>716</b>	<b>76</b>	<b>4</b>	<b>18</b>	<b>1</b>	<b>98</b>	<b>913</b>

<b>AFFILIATION CHANGES</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	
+ Changed To Party	436	92	12	21	7	161	
- Changed From Party	-182	-54	-23	-6	-32	-441	
<b>ENDING TOTALS</b>	<b>332,561</b>	<b>27,472</b>	<b>3,540</b>	<b>897</b>	<b>954</b>	<b>72,949</b>	<b>438,373</b>

## DEPARTMENT OF ENERGY AND ENVIRONMENT

**NOTICE OF FUNDING AVAILABILITY****Grants for Schoolyard and Parkland Canopy Plans and Tree Planting  
and  
Canopy 3,000 – Canopy Plans and Tree Planting on Public Spaces and Private Property**

The Department of Energy and Environment (the Department) is seeking eligible entities, as defined below, to select grantee(s) to work with the Department to develop and implement tree planting plans on schools grounds, District parklands, and on other public spaces and private properties in the District. Successful grant applications will include working with the landholders and with the community as appropriate to develop planting plans for each parcel. Grantees will then work with the landholders to plant all or a subset of the finalized planting plans. Successful grant applications will describe plans to engage the landholder in planting design, tree planting, and tree care. The amount available for the project in this RFA is approximately \$742,500.00. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 2/19/2016, the full text of the Request for Applications (“RFA”) will be available online at the Department’s website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

**Download** from the Department’s website, [www.doe.dc.gov](http://www.doe.dc.gov). Select “Resources” tab. Cursor over the pull-down list; select “Grants and Funding;” then, on the new page, cursor down to the announcement for this RFA. Click on “Read More,” then download and related information from the “attachments” section.

**Email** a request to [2016treecanopyRFA@dc.gov](mailto:2016treecanopyRFA@dc.gov) with “Request copy of RFA 2016-1602-WPD” in the subject line;

**Pick up a copy in person** from the Department reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Steve Saari at (202) 535-2961 to make an appointment and mention this RFA by name; or

**Write** the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, “Attn: Steve Saari RE:2016-1602-WPD” on the outside of the letter.

**The deadline for application submissions is 3/21/2016, at 5:00 P.M.** Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to [2016treecanopyRFA@dc.gov](mailto:2016treecanopyRFA@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;
- Private Enterprises;
- Schools; and
- Individuals.

For additional information regarding this RFA, please contact the Department as instructed in the RFA document, at [2016treecanopyRFA@dc.gov](mailto:2016treecanopyRFA@dc.gov).

## DEPARTMENT OF ENERGY AND ENVIRONMENT

SECOND NOTICE OF FUNDING AVAILABILITY**Lead Poisoning Prevention Outreach Project**

The Department of Energy and Environment (the Department) seeks eligible entities to reach 400 families at high risk of lead exposure, educate them on lead poisoning prevention basics, ensure that lead screening is provided to children under the age of six, and refer families that may benefit from further follow-up services to the Department. Two awards will be granted for this project. The funding available is approximately \$52,400: with the first award up to \$32,400 and the second award no less than \$20,000.

Beginning 2/19/2016, the full text of the Request for Applications (RFA) will be available online at 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.doe.dc.gov](http://www.doe.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 [2016LeadOutreachRFA.grants@dc.gov](mailto:2016LeadOutreachRFA.grants@dc.gov) with "Request copy of RFA 2016-1601-LHHD" 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 Brittaney Simon at (202) 481-3842 and mention this RFA by name.

**Write** the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Brittaney Simon RE: 2016-1601-LHHD" on the outside of the envelope.

**The deadline for application submissions is 3/4/2016 at 5:00 P.M.** Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to [2016LeadOutreachRFA.grants@dc.gov](mailto:2016LeadOutreachRFA.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

For additional information regarding this RFA, write to: [2016LeadOutreachRFA.grants@dc.gov](mailto:2016LeadOutreachRFA.grants@dc.gov).



## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF ISSUANCE OF A REQUEST FOR PROPOSALS**District of Columbia Sustainable Energy Utility**

Notice is hereby given that the Mayor, by and through the Department of Energy and Environment (the Department) is issuing a Request for Proposals (RFP) for the District of Columbia Sustainable Energy Utility (DCSEU) in accordance with section 201 of the Clean and Affordable Energy Act of 2008, (D.C. Law 17-250; D.C. Official Code, § 8-1774.01) (CAEA).

In 2008, the Council of the District of Columbia enacted the CAEA, which established a Sustainable Energy Trust Fund and the creation of a DCSEU, operated by a private company under contract to the Department. The DCSEU is statutorily responsible for administering sustainable energy programs in the District to, at a minimum:

- Reduce per-capita energy consumption in the District of Columbia;
- Increase renewable energy generating capacity in the District of Columbia;
- Improve the energy efficiency and renewable energy generating capacity of low-income housing, shelters, clinics, or other buildings serving low-income residents in the District; and
- Increase the number of green-collar jobs in the District of Columbia.

The RFP will be available for public review. A person may obtain a copy of the document by any of the following methods:

**Download** from the Department's website, at [www.doe.dc.gov](http://www.doe.dc.gov). Look for the title/section, "EnergySmartDC", click on it, choose "Sustainable Energy Utility" and click on it. Page down to the section titled "DCSEU Links" to find the document's listing. Click on it. Follow the link to the page, and to the document in PDF format, which can be downloaded;

**Email** a request to [DCSEU.DOE@dc.gov](mailto:DCSEU.DOE@dc.gov) with "Request copy of DCSEU 2016 RFP" in the subject line;

**Pick up a copy in person** from the Department reception desk, located at located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call the Department's reception at 202-535-2600 and mention the RFP by name;

**Write** the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Request copy of DCSEU RFP" on the outside of the letter.

**For additional information or questions** regarding the DCSEU RFP please send an email to [DCSEURFP.DOE@dc.gov](mailto:DCSEURFP.DOE@dc.gov). All questions, and Department responses to those questions, will be placed on the Department website as they are received.

The Department appreciates the time, insight, and expertise that goes into submitting responses

and is committed to carefully considering all of the proposals it receives. Interested persons should submit responses to the RFP consistent with the directions in Section L.2.2 of the RFP. **All responses must be submitted by 5:00 PM, Eastern Standard Time, on Monday, April 4, 2016.**

**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, 5<sup>th</sup> Floor, Washington, DC, intends to issue air quality permit #6613-R1 to the U.S. Senate Sergeant at Arms, to operate an existing side down draft model SDD-SD Global Finishing Solutions similar paint booth at the U.S. Government Publishing Office at 732 North Capitol Street NW, Washington, DC. The contact person for the facility is Christian Knuth, SAA Cabinet Shop Supervisor, at (202) 224-5060.

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public 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, 5<sup>th</sup> Floor  
Washington, DC 20002  
[stephen.ours@dc.gov](mailto:stephen.ours@dc.gov)

**No written comments or hearing requests postmarked after March 21, 2016 will be accepted.**

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

## DEPARTMENT OF ENERGY AND ENVIRONMENT

SOLICITATION OF PUBLIC COMMENT**District of Columbia Draft 2016 Integrated Report  
Under the Clean Water Act**

Notice is hereby given that the Department of Energy and Environment (the Department) is soliciting comments from the public on the District of Columbia Draft 2016 Integrated Report (required biennially by Sections 305(b) and 303(d) of the federal Clean Water Act). The Integrated Report reports on the status of all waterbodies in the District. Waterbodies listed as impaired may require the development of total maximum daily loads.

The District of Columbia Draft 2016 Integrated Report is available for public review. A person may obtain a copy of the Report by any of the following means:

**Download** from the Department's website, at [www.doe.dc.gov](http://www.doe.dc.gov), under the "Laws & Regulations" and "Public Notices & Hearings" tab;

**Email** a request to [2016draftir.doe@dc.gov](mailto:2016draftir.doe@dc.gov) with "Request copy of District of Columbia Draft 2016 Integrated Report" in the subject line;

**Pick up a copy in person** from the Department reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Lucretia Brown at (202) 535-1807 to make an appointment and mention this Plan by name;

**Visit** the Martin Luther King, Jr. Library, 901 G St., NW, Washington, DC 20001, during normal business hours; or

**Write** the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: District of Columbia Draft 2016 Integrated Report" on the outside of the letter.

The Department is committed to considering the public's comments while finalizing this Integrated Report. Interested persons may submit written comments on the draft Report, which must include the person's name; telephone number; affiliation, if any; mailing address; a statement outlining their concerns; and any facts underscoring those concerns. **All comments must be submitted by Monday, March 21, 2016.**

Comments should be clearly marked "District of Columbia Draft 2016 Integrated Report" and either:

- 1) E-mailed to [2016draftir.doe@dc.gov](mailto:2016draftir.doe@dc.gov); or
- 2) Mailed or hand-delivered to the Department of Energy and Environment, Water Quality Division, 1200 First Street, NE, 5th Floor, Washington, DC 20002, Attention: District of Columbia Draft 2016 Integrated Report.

The Department will consider all timely received comments before finalizing the Report. All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification and may not be able to consider the comment.

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

Office of Government Ethics

**BEGA – Advisory Opinion – 1448-001**

February 4, 2016

**ADVISORY OPINION**

*Outside Activities: The Meaning of the Phrase “Devoted Substantially” in DPM § 1807.4*

**Purpose of this Advisory Opinion**<sup>1</sup>

With some restrictions, District government employees may pursue employment and other activities outside their jobs and be paid for doing so. This opinion is intended to provide interpretive guidance on the phrase “devoted substantially” as it is used in section 1807.4 of the District Personnel Manual (“DPM”).<sup>2</sup> The phrase is central to the restrictions that apply when, in particular, employees engage in outside teaching, writing for publication, consulting, or speaking engagements for compensation or anything of monetary value. Because many of the same considerations apply when employees testify as expert witnesses in litigation in which the District is neither a party nor has a substantial interest, this opinion is intended to encompass that activity as well.

**Background**

Several restrictions apply when a District government employee receives compensation for outside teaching, writing for publication, consulting, or speaking engagements. One such restriction is that the subject matter of the activities cannot be “devoted substantially to the

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<sup>1</sup> Pursuant to section 219(a-1)(2) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19(a-1)(2)), a proposed draft of this advisory opinion was published at 63 DCR 135 (January 1, 2016).

<sup>2</sup> The DPM comprises Title 6B of the District of Columbia Municipal Regulations. However, section 3(e) of the Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015, as introduced on June 12, 2015 (D.C. Bill 21-250), would repeal chapter 18 (employee conduct) of Title 6B. Therefore, readers should note that, if Bill 21-250 becomes law, many of the provisions of chapter 18 would be incorporated into the new Comprehensive Code of Conduct. Consequently, while the citations to the DPM in this opinion would change, the substance of the advice would not.

responsibilities, programs, or operations of [the employee's] agency, to his or her official duties or responsibilities, or to information obtained from his or her government employment.”<sup>3</sup> The “devoted substantially” restriction was first reflected in 1986, in regulations intended, as a whole, to revise “nearly every section” of the DPM.<sup>4</sup> However, neither the preamble to the proposed rulemaking, nor the preamble to the Notice of Final Rulemaking,<sup>5</sup> contained any discussion of the source or meaning of the restriction. Furthermore, the DPM itself, which was substantially revised again in 2014,<sup>6</sup> has remained equally silent.

What is clear is that the restriction in DPM § 1807.4 applies only when District employees are compensated for outside teaching, writing for publication, consulting, or speaking engagements. While other restrictions may apply, depending on the circumstances, when employees undertake those activities *without* compensation – for example, the prohibitions on using government time or resources for other than official business (DPM § 1807.1(b)) or divulging any official government information to any unauthorized person (DPM § 1807.1(f))<sup>7</sup> – the “devoted substantially” restriction in DPM § 1807.4 does not. Moreover, there is nothing in the DPM that addresses providing expert testimony in litigation in which the District is neither a party nor has a substantial interest, whether for compensation or not.

All this said, it becomes all the more important to understand the meaning of the phrase “devoted substantially” in the context of compensated outside teaching, writing for publication, consulting, speaking engagements, and testifying as an expert.

## **Discussion**

### **I. Early Federal Ethics Regulations**

Because certain federal ethics laws have applied to District government employees over the years,<sup>8</sup> the search for the source of the 1986 predecessor to DPM § 1807.4 began with the federal regulations implementing those laws at the time. Focusing on the Civil Service Commission regulations, the most direct reference to the outside activities relevant for purposes of this

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<sup>3</sup> DPM § 1807.4. For other restrictions on these outside activities, *see* DPM § 1807.2 (activities cannot be prohibited by law, regulation, or agency standards and must be undertaken outside regular working hours, or while employees are on annual leave, compensatory leave, exempt time off, or leave without pay) and DPM § 1807.3 (information used in activities cannot “draw on official data or ideas which have not become part of the body of public information, except nonpublic information that has been made available on request for use in such capacity, or unless the agency head gives written authorization for use on the basis that its use is in the public interest”).

<sup>4</sup> *See* Notice of Proposed Rulemaking, 33 DCR 3874 (June 27, 1986).

<sup>5</sup> *See* 33 DCR 6794 (Oct. 31, 1986).

<sup>6</sup> *See* Notice of Final Rulemaking, 61 DCR 3799 (Apr. 11, 2014).

<sup>7</sup> *See also* federal Office of Government Ethics (“OGE”) Informal Advice Letter 10 x 1 (Mar. 19, 2010) (discussing uncompensated teaching, writing, and speaking).

<sup>8</sup> *See, e.g.*, 18 U.S.C. § 208 (financial conflicts of interest); 18 U.S.C. § 209 (compensation for performance of official duties).

opinion was found in 5 C.F.R. § 735.203(c), which applied only to a narrow class of Presidential appointees, such as agency heads and full-time members of boards and commissions, but prohibited them from “receiv[ing] compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which [was] devoted substantially to the responsibilities, programs, or operations of [their] agency, or which [drew] substantially on official data or ideas which [had] not become part of the body of public information.” However, as noted in 2 Op. Off. Legal Counsel 361, 362 (1977), “several [federal] departments, in their own regulations, [had] extended this prohibition to cover all agency employees.”

It is reasonable to conclude that this federal regulatory experience was not lost on District rulemakers in 1986 and that, today, DPM § 1807.4 can be traced back, directly or indirectly, to 5 C.F.R. § 735.203(c). In any event, the more important question is the meaning of the phrase “devoted substantially.” Fortunately, guidance is clear in that regard.

## II. Federal OGE Guidance

The federal OGE had several opportunities to discuss 5 C.F.R. § 735.203(c) and, in Advice Memorandum 85 x 18 (Oct. 28, 1985) (“Memorandum”),<sup>9</sup> directly addressed the phrase “devoted substantially.”<sup>10</sup> The Memorandum was issued to provide guidance on participation in privately sponsored seminars or conferences for compensation and was divided so as to address two groups of individuals – the high-level Presidential appointees to whom 5 C.F.R. § 735.203(c) applied and other lower-level employees.

As for the first group, the Memorandum relied on an opinion in which the Department of Justice (“DOJ”) Office of Legal Counsel interpreted the phrase “devoted substantially to the responsibilities, programs, or operations of his agency” contained in a DOJ supplemental regulation and noted that the phrase had been given a broad meaning as it applied to a top-level employee, encompassing “the general subject matter or sector of the economy or society with which the individual’s agency is concerned, even though the writing does not specifically relate to the functions of the agency.”<sup>11</sup> Accordingly, the Memorandum concluded this part of the guidance by stating that a high-level employee “may not receive compensation or anything of monetary value for teaching or lecturing at seminars, conferences, or private briefings *where the subject matter relates to the area in which [his or her agency works.]*”<sup>12</sup>

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<sup>9</sup> The federal OGE was established in 1978 to oversee the ethics program in the executive branch of the federal government. See 5 U.S.C. app. § 401 *et seq.* The responsibilities of its Director include “interpreting rules and regulations ... governing conflict of interest and ethical problems and the filing of financial statements.” 5 U.S.C. § 402(6).

<sup>10</sup> See also OGE Informal Advice Letter 89 x 17 at 1-2 (Sept. 26, 1989) (discussing provisions prohibiting presidential appointee from writing book in personal capacity).

<sup>11</sup> Memorandum at 4 (citing 2 Op. Off. Legal Counsel at 363). The Memorandum also pointed out that the Office of Legal Counsel had “rejected a narrower of the phrase with respect to these [high-level] employees, which would have barred the receipt of compensation only where the article or book related to existing statutory responsibilities and programs of the agency.” *Id.*

<sup>12</sup> *Id.* at 4 (emphasis added).



On the other hand, the Memorandum drew a distinction with respect to a lower-level employee, concluding as follows:

[He or she] may lecture on a subject within the employee's inherent expertise based on his or her educational background or experience, *even though the subject matter is related to the activities of the employing agency*. The employee will be prohibited from receiving compensation only when the activity focuses specifically on the agency's responsibilities, policies, and programs, when the employee may be perceived as conveying the agency's policies, or when the activity interferes with his or her official duties.<sup>13</sup>

The Memorandum drew the distinction "to permit [lower-level] employees who wish to engage in [outside seminars, conferences, or briefings] to do so in those instances in which the likelihood that official information or position will be used is minimal."<sup>14</sup> The reasoning underlying the distinction was again borrowed from DOJ:

[A] more liberal policy for lower-level personnel is warranted because they are not usually sought in order to ascertain [DOJ's] official position on key policy issues. Furthermore, they are not authorized to state that position, so they are not likely to be attractive to an audience because of their affiliation with the Department.<sup>15</sup>

### III. New Federal Ethics Regulations

Several years after the Memorandum, in 1989, the federal OGE was given authority to issue uniform regulations applicable to all agencies within the executive branch, as part of a comprehensive review of the ethics laws then applicable to the three branches of the federal government.<sup>16</sup> In the preamble to the proposed regulations, it was stated that because the "devoted substantially" standard of 5 C.F.R. § 735.203(c) was "appropriate to ensure that public office [was] not used by any employee for private gain, proposed [5 C.F.R.] § 2635.807 would apply to all employees a *similar standard* that prohibit[ed] the receipt of compensation for

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<sup>13</sup> *Id.* at 6 (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (citing 2 Op. Off. Legal Counsel at 363 n.3). *See also* 2 Op. Off. Legal Counsel 231 (1978) (finding course taught for compensation by general counsel of Law Enforcement Assistance Administration permissible) ("[B]ecause your course will not concentrate on LEAA-related matters, we do not think it should be deemed to be 'devoted substantially to the responsibilities, programs, or operations of the Department' in the specific sense that the regulation was intended to impart.").

<sup>16</sup> *See* Standards of Ethical Conduct for Employees of the Executive Branch, 56 Fed. Reg. 33,778 (proposed July 23, 1991) (to be codified at 5 C.F.R. pt. 2635).

teaching, speaking or writing where the subject matter *focus[ed] specifically* on the employee's official duties or on the responsibilities, programs, or operations of the employee's agency."<sup>17</sup>

Accordingly, proposed § 2635.807(a)(1)(i)(E) limited in varying degrees the ability of three groups of employees – noncareer employees, special Government employees, and all other employees – to accept compensation for teaching, speaking, and writing based on the subject matter involved. In pertinent part, the proposed regulation provided as follows:

A subject matter focuses specifically on agency responsibilities, programs, or operations if:

(1) In the case of a noncareer employee ..., it deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency;

(2) In the case of a special Government employee, it deals in significant part with particular matters to which he is or has been assigned as a special Government employee; or

(3) In the case of any other employee, it deals in significant part with particular matters to which he is or has been assigned as an employee of the agency, or with any planned or announced policy of the agency, or with any program or operation of the agency.

The preamble stated that the regulation, as proposed, was “consistent in concept” with the standards that had been applied to outside speaking and writing in informal federal OGE advisory opinions, including the Memorandum.<sup>18</sup>

Numerous agencies, organizations, and individuals commented on proposed § 2635.807, and all of them expressed dissatisfaction with the limitations on receiving compensation for outside teaching, speaking, or writing, as those activities related to an employee's official duties.<sup>19</sup> In response, the federal OGE stated that it was “sensitive to the concerns expressed” and that, in the final regulation, it had “crafted the restrictions on receipt of compensation bearing in mind the

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<sup>17</sup> *Id.* at 33,790 (emphasis added).

<sup>18</sup> *Id.* The federal OGE reinforced this point in the preamble to the final rulemaking, stating that because “most agencies” had been applying the guidance in the Memorandum, OGE's purpose “[i]n translating that guidance in § 2635.807,” was to ensure that “application [be] consistent throughout the executive branch.” *See* 57 Fed. Reg. 35,006, 35,036 (Aug. 7, 1992).

<sup>19</sup> *See* preamble to final rulemaking, 57 Fed. Reg. at 35,035.

competing considerations of, on the one hand, prohibiting the use of public office for private gain and outside activities that conflict with official duties and, on the other hand, avoiding unnecessary restrictions that would impair the recruitment and retention of valued employees.”<sup>20</sup> This approach was reflected in the final version of § 2635.807(a)(2)(i)(E).<sup>21</sup> In particular, the federal OGE added a Note and a number of examples following § 2635.807(a)(2)(i)(E) to clarify that an employee, other than a noncareer employee, may accept compensation for teaching, speaking, or writing about a matter within his or her general expertise and which relates generally to an agency’s activities, as long as it does not deal in significant part with the specific matters to which the employee is or, within the past year, has been assigned, or to any ongoing or announced policy, program, or operation of the agency.<sup>22</sup>

#### IV. The Meaning of “Devoted Substantially” in DPM § 1807.4

Although, as noted above, a number of federal ethics laws apply to District government employees, the regulations implementing those laws do not.<sup>23</sup> Nevertheless, this Office has looked for guidance to the federal regulations and to the federal OGE’s interpretation of them when questions about the DPM have arisen. There appears no reason to depart from that practice for purposes of this opinion, especially given the rulemaking history outlined above.

Therefore, in cases involving DPM § 1807.4, the phrase “devoted substantially” means that the subject of the outside teaching, writing for publication, consulting, or speaking *deals in significant part* with (1) any ongoing or announced responsibility, program, or operation of an employee’s agency, (2) any of his or her official duties or responsibilities, including any matter to which he or she had been assigned during the previous one-year period, or (3) any information obtained from his or her government employment. Furthermore, this interpretation is intended to apply (and, in the future, will be applied)<sup>24</sup> in a manner consistent with the clarifying Note following 5 C.F.R. § 2635.807(a)(2)(i)(E). In other words, because DPM §§ 1807.2, 1807.3, and

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<sup>20</sup> *Id.*; see also *id.* at 35,036 (“OGE believes [§ 2635.807] will withstand scrutiny on [First Amendment free speech] grounds. It does not prohibit any form of expression and, to the extent it may incidentally burden an employee’s ability to teach, speak or write, it serves a legitimate governmental purpose in ensuring that public office is not used for private gain.”). The Tenth Circuit later proved the federal OGE to be prescient, upholding § 2635.807(a) against a First Amendment challenge by an administrative law judge. See *Wolfe v. Barnhart*, 446 F.3d 1096, 1103-09 (10<sup>th</sup> Cir. 2006).

<sup>21</sup> See 57 Fed. Reg. at 35,063. The final regulations became effective on February 3, 1993, and § 2635.807 has been amended several times since.

<sup>22</sup> See *Wolfe v. Barnhart*, 446 F.3d at 1102 (“[T]he explanatory Note does not set forth an exception to the regulatory language in § 2635.807(a)(2)(i)(E). Rather, the Note clarifies that a career agency employee may receive compensation where the content of his work falls within his agency’s general area of responsibility if neither of the specific prohibitions in § 2635.807(a)(2)(i)(E)(1) or (2) apply.”).

<sup>23</sup> See, e.g., 5 C.F.R. § 2635.102(a) (defining “agency” to exclude “the Government of the District of Columbia” for purposes of regulations applicable to standards of ethical conduct for employees of federal executive branch).

<sup>24</sup> While several of my prior Advisory Opinions have discussed DPM § 1807.4 or its predecessor provision (former DPM § 1804.5), none of them defined the phrase “devoted substantially.” Furthermore, going forward, any substantive inconsistency between those Opinions and this opinion should be resolved in favor of this opinion.

1807.4 do not, when read together, distinguish between groups of employees, the interpretation announced here is intended to apply to all District government employees for purposes of DPM § 1807.4.

## V. Related Considerations

A number of related considerations should be noted. First, while the DPM contains no such requirement, some agencies may require approval of any compensated outside teaching, writing for publication, consulting, speaking engagements, or expert testimony. For example, the Metropolitan Police Department regulation that “[t]he Chief of Police, or his or her duly authorized designees, shall grant written approval for each outside employment situation”<sup>25</sup> has the force of law, having been implemented as part of regulations adopted by section 2 of the Police Officers Outside Employment Act of 1982.<sup>26</sup> Also, by Office Order, “[a]n attorney employed by [the Office of the Attorney General] shall obtain written approval from the Attorney General ... before engaging in any outside employment, whether or not compensated.”<sup>27</sup>

Second, outside teaching, writing for publication, consulting, or speaking activities that involve the use of public office for private gain or that otherwise violate the DPM are improper, even though they may not be prohibited by DPM § 1807.4.<sup>28</sup>

Third, while teaching, writing for publication, and speaking engagements are activities that are fairly readily understood, consulting can mean different things to different people, and the DPM does not define the phrase “consultative activities” as it is used in DPM § 1807.4. Therefore, to lend some meaning for purposes of this opinion, consulting is deemed to involve the provision of services by an employee, including, but not limited to, giving advice and procuring other services. Consulting also involves the use of knowledge or skills generally acquired through specialized or advanced instruction and/or by years of experience in the area or field in which the consulting services are rendered.<sup>29</sup>

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<sup>25</sup> 6A DCMR § 300.9.

<sup>26</sup> Effective July 24, 1982 (D.C. Law 4-132; 29 DCR 2450). *See also* GO-PER-201.17 (Apr. 16, 2004) (Outside Employment).

<sup>27</sup> Section II.A. of Office Order No. 2006-27 (Aug. 23, 2006).

<sup>28</sup> *See* DPM § 1807.2 (providing, in pertinent part, that “[a] District government employee may receive compensation for engaging in teaching activities, writing for publication, consultative activities, and speaking engagements *that are not prohibited by law, regulation, or agency standards*” (emphasis added)); *see also, e.g.*, federal OGE Advice Memorandum DO-08-006, Part I, at 19-20 (Mar. 6, 2008) (discussing application of misuse of position limitations “even when an employee may otherwise receive compensation for writing a book unrelated to his official duties”).

<sup>29</sup> *Cf.* 5 C.F.R. § 9001.105(c)(3) (supplemental standards of ethical conduct for Federal Housing Finance Agency) (defining “consultative services” to mean, for outside employment purposes, “the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility”).

Fourth, the term “compensation” also is not defined in the DPM. However, as evidenced by its use in the phrase “compensation or anything of monetary value” in DPM § 1807.4, the term was clearly intended to have a broad meaning. Further guidance is provided by 5 C.F.R.

§ 2635.807(a)(2)(iii), which defines “compensation” for purposes of the analogous federal regulation on outside teaching, speaking, and writing. While equally broad so as to include “any form of consideration, remuneration or income, including royalties,” the federal definition does contain several exceptions (*e.g.*, “[c]opies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity”). On the subject of what it means to receive compensation, *see* 5 C.F.R. § 2635.807(a)(2)(iv) (defining “receive”).

Fifth, as noted above, the DPM does not contain any provisions related to employees testifying as expert witnesses in litigation in which the District is neither a party nor has a substantial interest. However, because many of the same considerations applicable to outside teaching, writing for publication, consulting, and speaking apply to such testimony,<sup>30</sup> this opinion applies to it as well.

Sixth, depending on the circumstances, there may be exceptions that apply for teaching certain courses requiring multiple presentations.<sup>31</sup>

Seventh, notwithstanding the general probation against engaging in any outside activity or interest which permits a District employee, or others, to capitalize on his or her official title or position,<sup>32</sup> there are limits within which an employee’s title or position may be used to identify him or her in connection with compensated outside activities.<sup>33</sup>

## VI. Illustrative Examples

The following examples are offered to illustrate the guidance in this opinion:

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<sup>30</sup> *See* 5 C.F.R. § 2635.805(c)(2) (authorizing employee to testify as expert witness where “[t]he designated agency ethics official determines that the subject matter of the testimony does not relate to the employee’s official duties within the meaning of [5 C.F.R.] § 2635.807(a)(2)(i)”). This provision reflects the federal OGE’s response to a comment that the proposed regulation was “overly broad” and that it should be revised “to provide for authorization to serve as an expert witness if the employee’s credentials as an expert are unrelated to his or her Government employment.” *See* preamble to final rulemaking, 57 Fed. Reg. at 35,035; *see also* federal OGE Advice Memorandum DO-07-019 (July 12, 2007) (outlining cases and issues regarding expert witnesses and relevant ethical restrictions).

<sup>31</sup> *See* 5 C.F.R. § 2635.807(a)(3) (authorizing exceptions for teaching certain courses); *see also* DPM § 1147.4 (authorizing certain exceptions to rule that employee cannot receive basic pay from more than one position in District government for more than aggregate of forty hours of work in one calendar week, with respect to teaching on part-time or intermittent basis in certain District agencies).

<sup>32</sup> *See* DPM § 1807.1(e).

<sup>33</sup> *See* 5 C.F.R. § 2635.807(b); *see also, e.g.*, federal OGE Advice Memorandum DO-08-006, Part I, at 29.

*Example 1*

An employee of the Department of Energy & Environment (“DOEE”) assisted in drafting DOEE’s lead-based paint regulations in 2011. He is assigned to help draft proposed amendments to those regulations following an unrelated project that he expects to complete within two months. The employee has been offered a consulting contract to provide advice to a development company in restructuring its lead-based paint abatement operations.

Answer: The employee should not enter into the consulting contract, even though he is not currently working on DOEE regulations affecting the development company and the consulting contract can be expected to be completed before he begins drafting the proposed lead-based paint regulations. While the consulting contract would not violate DPM § 1807.4, it would create an appearance that the employee had used his official position to obtain the contract and it would create the further appearance of using his position for the private gain of the development company.

*Example 2*

The DOEE employee in Example 1 is writing a book for publication about the history of lead-based paint abatement in the United States. The book contains brief references to the establishment and responsibilities of DOEE.

Answer: The employee may receive compensation for writing the book because it deals with the general subject matter area affected by DOEE programs and operations. However, the employee could not receive compensation for writing a book that deals in significant part with specific DOEE lead-based paint abatement programs or operations.

*Example 3*

A Section Chief in the Civil Litigation Division of the Office of the Attorney General has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to speak at a society convention on how to assess the value of American stamps and wishes to know if he can be paid for his appearance at the event.

Answer: Because the subject does not relate to his official duties, the Section Chief may accept compensation for the speaking engagement. Obviously, government time should not be used.

*Example 4*

The Section Chief in Example 3 wants to know if he may accept a waiver of the fee for attending the society convention, in addition to receiving a speaker's fee.

Answer: The Section Chief may accept the attendance fee waiver, as well as other incidents of attendance, such as meals or course materials furnished as part of the convention.<sup>34</sup>

*Example 5*

A professor at the University of the District of Columbia ("UDC") who conducts research into the molecular basis of the development of cancer is asked by a textbook company to contribute a chapter on her work in the field.

Answer: The professor may not be compensated for writing about the research she conducts at UDC because it would deal in significant part with her official duties. However, the professor could receive compensation for writing a chapter on the molecular basis of cancer development, provided that the chapter conveys scientific knowledge gleaned from the scientific community as a whole. The chapter could contain brief discussions of recent developments in the field, even though some of those developments are derived from UDC research, as long as the information is available to the public.

*Example 6*

The professor in Example 5 wants to know if she can talk about her work on Career Night sponsored by her daughter's youth group. She would not receive any compensation for the talk.

Answer: The professor may give the talk, even though it would deal in significant part with her official duties, because she would not be receiving any compensation. However, during the talk, she may not disclose any non-public information.

*Example 7*

An attorney with the Office of Labor Relations and Collective Bargaining ("OLRCB") is an acknowledged expert in the field of employee labor relations and participates in collective bargaining negotiations with employee unions and impasse proceedings. The attorney wants to know if he may receive compensation from a private training institute for a series of lectures on the decisions of the Public Employee Relations Board ("PERB") on unfair labor practices.

Answer: The attorney may be compensated for the lectures, provided that they do not contain any significant discussion of

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<sup>34</sup> See 5 C.F.R. § 2635.807(a)(2)(iii)(B).

either specific labor relations cases handled by the OLRCB or information that is unavailable to the public. PERB decisions on unfair labor practices are not a specific OLRCB program or operation and, therefore, do not relate to the attorney's official duties. However, a PERB employee could not give the same lectures for compensation.

*Example 8*

An attorney employed by the Office of Human Rights ("OHR") is asked by UDC to teach a course on discrimination in public accommodations. The attorney wants to know if she may be compensated for teaching the course without violating the dual government income prohibition.

Answer: The attorney may accept compensation for teaching the course because of a specific exception for teaching at UDC found in the DPM. However, she could not accept compensation for teaching an abbreviated version of the course as part of a continuing education program sponsored by the D.C. Bar because the subject matter deals in significant part with the operations or programs of OHR.<sup>35</sup>

*Example 9*

A toxicologist in the Forensic Toxicology Department, Office of the Chief Medical Examiner, is asked to return to New Jersey to testify as an expert witness in a case she worked on while a State employee there. The toxicologist would receive a witness fee and be reimbursed for her reasonable expenses.

Answer: The toxicologist may accept the witness fee and reimbursement because the New Jersey case does not relate to her official duties or to information she obtained from her District employment.

*Example 10*

Among his other duties, an employee of the Office of Unified Communications ("OUC") oversees a new management program for District building facilities supporting public safety voice radio technology. He is asked by a party to a Virginia civil action to testify as an expert on public safety voice radio technology.

Answer: The employee cannot serve as an expert witness for at least two principal reasons. First, the employee's testimony would deal in significant part with one of OUC's core operations – the management of building facilities supporting public safety voice

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<sup>35</sup> Cf. DPM § 1147.4(i) (authorizing pay for part-time or intermittent employment as instructor, teacher, or professor at UDC).



radio technology. Second, because the management program he oversees is new, it is reasonably likely that information used as part of his testimony would be derived in significant part from his experience with the OUC program itself. A consideration related to the second reason is that the employee's testimony would create the appearance of his using non-public information for private gain.

*Example 11*

The Director of the District Department of Transportation is asked by a local private university to teach a graduate course on current issues in urban transportation. The Director wants to know how his title may be used in the course materials.

Answer: The university may include the Director's title, together with other information about his education and previous employment, in course materials setting forth biographical data on all teachers involved in the graduate program. However, the Director's title or position may not be used by the university to promote the course, for example, by featuring his name and title in bold or some other distinctive type in the course materials.

These examples are meant to be illustrative only and certainly are not exhaustive. Moreover, the analysis for determining permissible outside activities is entirely fact-driven, and small details can make a big difference. Accordingly, notwithstanding the guidance provided herein, employees should continue to seek formal safe-harbor advice from this Office when considering engaging in any outside activity that may overlap with or relate to their District government duties.

/s/

DARRIN P. SOBIN

Director of Government Ethics

Board of Ethics and Government Accountability

#1448-001

**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Psychology (“Board”) hereby gives notice of its regular meeting, 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’s next regular meeting will be held on Friday, February 19, 2016. The meeting will be open to the public from 9:30 am until 10:30 am to discuss various agenda items and any comments and/or concerns from the public. At this meeting, the Board will consider and set its new meeting schedule for fiscal year 2015. 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 10:30 am to 12:00 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 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](http://www.doh.dc.gov/events) to view the agenda.

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

**Judicial Tenure Commission Begins Reappointment Evaluation Of  
Judge Lynn Leibovitz**

This is to notify members of the bar and the general public that the Commission has begun inquiries into the qualifications of Judge Lynn Leibovitz of the Superior Court of the District of Columbia, who is a declared candidate for reappointment as an Associate Judge upon the expiration of her term on August 6, 2016.

Under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 796 (1973), §443(c) as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §12(1) provides in part as follows:

"...If a declaration (of candidacy) is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written statement of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Judge Leibovitz which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission no later than **May 5, 2016**, and addressed to:

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

The members of the Commission are:

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

BY: /s/ Gladys Kessler  
Chairperson

**KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Multiple Services**

Kingsman Academy Public Charter School is seeking competitive proposals for the following services:

- auditing and tax services;
- communications and social media services;
- data management services;
- fleet maintenance and repair;
- general contracting services;
- general facility maintenance and repair;
- roof repair;
- school uniforms;
- security camera monitoring, installation, and repair;
- security personnel;
- special education legal services; and
- staffing services.

For details and information, email [rfp@kingsmanacademy.org](mailto:rfp@kingsmanacademy.org). Deadline for submissions is 5:00 pm on Monday, February 29, 2016. **No phone calls please.**

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION****BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING**

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00am on Wednesday, February 24, 2016. The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Room 2/3. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

**DRAFT AGENDA****I. CALL TO ORDER****II. DETERMINATION OF A QUORUM****III. APPROVAL OF AGENDA****IV. BOARD EDUCATION**

*Access and Use of the Board Portal* – Thomas E. Hallisey, Chief Information Officer

*Confidentiality and FOIA* – Kai Blissett, General Counsel

**V. CONSENT AGENDA****A. READING AND APPROVAL OF MINUTES**

1. January 29, 2016 – General Board Meeting

**B. EXECUTIVE REPORTS**

1. Dr. Julian Craig, Chief Medical Officer
2. Thomas E. Hallisey, Chief Information Officer
3. Jackie Johnson, VP of Human Resources
4. Pamela Lee, EVP of Hospital Operations & CQO
5. David Thompson, Director of Public Relations and Communications
6. Maribel Torres, Chief Nursing Officer
7. Charletta Washington, VP of Ambulatory & Ancillary Services

**VI. NONCONSENT AGENDA****A. CHIEF EXECUTIVE REPORTS**

1. Andrew L. Davis, Interim CEO
2. Finance Report – Steve Lyons, Finance Committee Chair

**B. MEDICAL STAFF REPORT**

1. Raymond Tu, Medical Chief of Staff

**C. COMMITTEE REPORTS**

1. Governance Committee Report
2. Patient Safety and Quality Committee
3. Strategic Planning Committee
4. Audit Committee

**D. OTHER BUSINESS**

1. Old Business
2. New Business

**E. ANNOUNCEMENT**

Next Meeting – Wednesday, March 23, 2016 at 9:00am in Conference Rooms 2/3.

**F. ADJOURNMENT**

***NOTICE OF INTENT TO CLOSE.*** The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

**PERRY STREET PREP PUBLIC CHARTER SCHOOL  
REQUEST FOR MULTIPLE SERVICES**

**Phone Services, IT Services and Internet & Networking Equipment**

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide:

- Cell Phone (Category 1)
- Voice Over IP (Category 1)
- Internet Services (Category 1)
- IT services and Networking Equipment (Category 2)

The first RFP will include Cell Phone Service, Voice over IP and will include internet services. The second RFP will include IT Services and Networking Equipment.

Please visit [www.pspdc.org/bids](http://www.pspdc.org/bids) to request a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 9:00 A.M., Monday, March 21, 2016.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator  
[psp\\_bids@pspdc.org](mailto:psp_bids@pspdc.org)



**OFFICE OF THE DEPUTY MAYOR  
FOR PLANNING AND ECONOMIC DEVELOPMENT**

**NOTICE OF FUNDING AVAILABILITY**

C&O Canal National Historic Park Grant

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the C&O Canal National Historic Park Grant authorized pursuant to Fiscal Year 2016 Deputy Mayor for Planning and Economic Development Limited Grant-making Amendment Act of 2015"

**Grant funds purpose and availability**

The purpose of the C&O Canal National Historic Park Grant is to support the improvement of infrastructure or facilities on or along the Georgetown section of the C&O Canal. DMPED will award one grant at a maximum award of \$3,000,000.00.

**Eligible applicants**

- Have a partnership arrangement with the National Park Service (NPS) to support improvements on and along the C&O Canal National Historic Park in Georgetown.
- 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.

**Eligible Project Uses:**

- Infrastructure or facilities improvements on or along the Georgetown section of the C&O Canal.

Prior to the execution of a grant agreement with the District, the grantee must enter into a First Source Agreement with DOES and Subcontracting Plan with DSLBD. More information about the First Source Employment Program can be found at [does.dc.gov](http://does.dc.gov).

**Application process**

The grant application will be released on **Friday, February 26<sup>th</sup>, 2016**. The grant application will be available on the DMPED website at [www.dmped.dc.gov](http://www.dmped.dc.gov).

**Please direct all inquiries to:**

LaToyia Hampton, Grants Manager  
Office of the Deputy Mayor for Planning and Economic Development  
1100 4<sup>th</sup> Street SW, Suite E500  
Washington, DC 20024  
Telephone: [\(202\) 724-7648](tel:(202)724-7648)  
Email: [LaToyia.Hampton@dc.gov](mailto:LaToyia.Hampton@dc.gov)

**OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**  
**RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after March 15, 2016.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on February 19, 2016. Additional copies of this list are available at the above address or the website of the Office of the Secretary at [www.os.dc.gov](http://www.os.dc.gov).

D.C. Office of the Secretary  
 Recommendations for appointment as DC Notaries Public

Effective: March 15, 2016

Page 2

Alexander	Alexia	Self 1245 4th Street, SW, E809	20024
Bernard	Sonia	Mayer Brown, LLP 1999 K Street, NW	20006
Bynum	Susan M.	Whiteford, Taylor, & Preston, LLP 1800 M Street, NW, Suite 450N	20036
Childress	Brittney N.	Transit Employees Federal Credit Union 2000 Bladensburg Road, NE	20018
Clark	Nia Imani	Bank of America 1001 Pennsylvania Avenue, NW	20004
Diallo Toure	Marie	Transit Employee Federal Credit Union 2000 Bladensburg Road, NE	20018
Diawara	Mariamama Veronique	Echelon Community Services, Inc 4274 Foote Street, NE, Unit 3	20019
Domingo	Kristina Sharon	Baker & McKenzie LLP 815 Connecticut Avenue, NW	20006
Donovan	Laurie Bangart	Henderson Legal Services 1015 15th Street, NW	20005
Felter	Kathleen S.	Capitol Process Services, Inc. 1827 18th Street, NW	20009
Ford-Hall	Cher'Rita	World Food Program USA 1725 Eye Street, NW	20006
Foulke	Faith F.	John F. Kennedy Center for the Performing Arts 2700 F Street, NW	20566
Golden	Shavar D.	Self 2002 Mississippi Avenue, SE	20020
Golson	Lawrence	Self 3924 Illinois Avenue, NW	20011
Hampton	Scott L.	ZwillGen 1900 M Street, NW, Suite 250	20036

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public

Effective: March 15, 2016

Page 3

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Heng	Mony K.	JW Marriott Hotel 1331 Pennsylvania Avenue, NW	20004
Herrera	Olga L.	Wells Fargo Bank 1300 I Street, NW	20005
Humphreys	Joan	Mayer Brown, LLP 1999 K Street, NW	20006
Hunter	Joyce	Central Pension Fund 4115 Chesapeake Street, NW	20016
Hutchingson	Albert N.	Tompkins Builders 2220 25th Place, NE	20018
Johnson	Kathy E.	Williams & Connolly LLP 725 12th Street, NW	20005
Kline	Noah	Self 1421 Massachusetts Avenue, NW, Apt 410	20005
Lane	Shakina	TD Bank, N.A. 1753 Connecticut Avenue, NW	20009
Lemon	Crystal	Georgetown Day School 4530 MacArthur Boulevard, NW	20007
Miller	Alexander Franklin	Cardinal Bank  1776 K Street, NW	20006
Miller	Regina Lee	Beveridge & Diamond, PC 1350 I Street, NW, Suite 700	20005
Miskovic	Aleksanda	Transit Employees Federal Credit Union 2000 Bladensburg Road, NE	20018
Municchi	Stephanie J.	Wilkes Artis 1825 I Street, NW, Suite 300	20006
Newman-Jordan	Barbara M.	US Department of Justice 1400 New York Avenue, NW	20530

D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries PublicEffective: March 15, 2016  
Page 4

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Nowlin	Teairra Nicole	TD Bank, N.A. 1753 Connecticut Avenue, NW	20009
Oliver	Ralph A.	Self 1429 Girard Street, NW, #205	20009
Parker	Aisha K.	Uptown Studios 3549 Georgia Avenue, NW	20010
Perry	Cody	TD Bank, N.A. 904 7th Street, NW	20001
Powe	Sharon D.	Ashcraft & Gerel, LLP 1825 K Street, NW	20006
Price	Crystal Renay	Cushman and Wakefield, Inc. 500 New Jersey Avenue, NW	20001
Saca	Allyson Jo	Bancroft PLLC 500 New Jersey Avenue, NW	20001
Sims	Sheryl E.	Shipman & Goodwin, LLP 1875 K Street, NW, Suite 600	20006
Smith	Toni S.	GKG Law, P.C. 1055 Thomas Jefferson Street, NW, Suite 500	20007
Stewart	Maurika D.	The Slocumb Law Firm 777 6th Street, NW, Suite 520	20001
Tampio	Christine M.	American Insurance Association 2101 L Street, NW, Suite 400	20037
Thompson	Stephanie R.	The Alliance for Climate Protection 750 9th Street, NW	20001
Walker	Lakiesha	Mayors Office of Community Affairs 1350 Pennsylvania Avenue, NW, Suite 332	20004
Watson	Rozlyn K.	Covington & Burling, LLP 850 10th Street, NW	20001

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public**

**Effective: March 15, 2016**

**Page 5**

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Willoughby	Aritha F.	Self 1266 Delafield Place, NE	20017
Wilson	Clemmie M.	Self 2917 26th Street, NE	20018

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

The Commission meeting will be held on Tuesday, February 16, 2016 at 5:00 p.m. The meeting will be held at 441 4<sup>th</sup> Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

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

**Meeting Agenda**

1. Review and Approval of the Meeting Minutes from January 19, 2016 Meeting - Action Item, Judge Weisberg.
2. Director's Report – Informational Item, Barb Tombs-Souvey.
  - a. Overview of Agency Performance Hearing.
  - b. Status of Agency FY 2017 Budget.
  - c. Annual Report Review Schedule.
3. Sentencing Guideline Evaluation Project Update - Informational Item, LaToya Wesley and Barb Tombs-Souvey.
  - a. Evaluation Study Period.
  - b. Overview of Phase I Findings
4. Discussion and Approval of the revised Project Plan for Criminal Code Revision Project – Action Item, Richard Schmechel.
5. Next Meeting – March 15, 2016.
6. Adjourn

**DISTRICT OF COLUMBIA TAXICAB COMMISSION****NOTICE OF CONTRACTOR OPPORTUNITY****Digital Meter Software Application**

The District of Columbia Taxicab Commission (DCTC) provides services to and regulates approximately 44,000 for-hire drivers in four broad categories - taxicabs, limousines, alternative paratransit, and private sedans. Drivers in each category charge for a ride based on predetermined and/or dynamic rates. In an effort to protect consumers and provide more transparency in fare calculation, DCTC is seeking a contractor to provide a digital meter software application for for-hire vehicles and drivers regulated by DCTC. The contractor must have knowledge of, and familiarity with, the District Government generally, as well as applications and licensing processes related to taxicab fares, limousine rates, and rates charged by digital dispatch services and private sedan businesses. The contractor must also have specific software development experience and expertise, with successes developing and implementing mobile apps and similar solutions in comparable business environments.

**System Requirements:**

- Authenticate drivers through a driver and vehicle application program interface provided by DCTC before the digital meter is activated.
- Protect sensitive information end-to-end via encryption and secure transmission protocols.
- Transmit trip data (geocoded origination and destination address, driver identifier, vehicle identifier, no. of passengers, fare amount, time, distance, duration) to DCTC through APIs.
- Safety feature to alert or broadcast designated contacts with location, and audio, or video.
- Capability of calculating time and distance of DC taxi rates and alternative rates through an algorithm that can be easily configured on a back end.
- Capability of calculating rideshare or group riding rates such that each additional passenger pays less than the total amount s/he would have paid if travelling by themselves.
- Allow minimum and maximum fare amounts to be configured on the backend.
- Provide the driver access to an electronic trip manifest and ride history of at least the last 48 hours.
- Geo fence vehicles to specific areas by a configuration at the back end.
- Make an in-person presentation at 2235 Shannon Place SE, Washington DC within two weeks' notice from the close date of this opportunity.
- Enable maximum limits for hours worked in a single shift.
- Open API with restful services available out of the box.

**Download** the market survey by visiting the DCTC website, [www.dctaxi.dc.gov](http://www.dctaxi.dc.gov).

**Email** any questions to Pedro Agosto via email at [pedro.agosto@dc.gov](mailto:pedro.agosto@dc.gov). The subject line must include "Questions regarding market survey."

**In person** by making an appointment to pick up a copy of the market survey at 2235 Shannon Place, SE, Suite 2001, Washington, DC 20020 (call Pedro Agosto at (202) 645-6018 and mention this survey by name); or

**Write** DC Taxicab Commission, Office of Taxicabs at 2235 Shannon Place, SE Washington, DC 20020, Attn: "Request Market Survey" on the outside of the letter.

**All questions must be received by February 22, 2016 at 2:00 pm.**



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

**NOTICE OF SPECIAL MEETING**

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled a Special Meeting for Friday, February 19, 2016 for the purpose of receiving reports from its Sports and Entertainment and Development and Strategic Initiatives Committees.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mount Vernon Place, N.W., Washington, D.C. 20001, beginning at 10 a.m.

For additional information, please contact:

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

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

**WILLIAM E. DOAR JR. PUBLIC CHARTER SCHOOL  
FOR THE PERFORMING ARTS**

**REQUEST FOR PROPOSALS**

**Heat and Air Conditioning Services & Special Education Services**

The William E. Doar Jr. Public Charter School for the Performing Arts, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 (“Act”), hereby solicits expressions of interest from Vendors or Consultants for the following services:

- Heat and Air conditioning services
- Special Education services

**Proposal Submission**

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **2:00 p.m. EST on February 26, 2016** unless otherwise stated in associated RFP’s. Proposals should be emailed to [bids@wedjschool.us](mailto:bids@wedjschool.us)

For information regarding the school please see: [www.wedjschool.us](http://www.wedjschool.us)

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

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

**Application No. 18844-A<sup>1</sup> of Alexander Pitt**, as amended,<sup>2</sup> pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and the open court requirements under § 406, and a special exception under § 2001.3 for enlargements or additions to nonconforming structures, to construct a third-floor addition to an existing one-family dwelling in the DC/R-5-B District at premises 2131 N Street, N.W. (Square 69, Lot 181).

**HEARING DATE:** February 2, 2016  
**DECISION DATE:** February 2, 2016

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR & SELF-CERTIFIED**

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief under § 223. (Exhibit 8.) In response to the recommendations of the Office of Planning (“OP”) that special exception relief is also needed under § 2001.3, the Applicant amended the application to request the suggested relief and submitted a self-certification form to that effect. (Exhibit 26.)

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”) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B which is automatically a party to this application. ANC 2B submitted a resolution dated January 19, 2016, stating that at its regular meeting on January 13, 2016, with a quorum present, the ANC considered the application and voted 7-0-0 to support the project. (Exhibit 21.) No ANC representative testified at the hearing in the case.

OP submitted a timely report dated January 26, 2016, recommending approval of the application and testified at the hearing in support. In its report, OP recommended adding special exception relief from § 2001.3 – enlargements or additions to nonconforming structures – to the application for § 223 relief. (Exhibit 23.)

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<sup>1</sup> A prior application, Application No. 18844, was withdrawn by the Applicant on January 30, 2015. Thus, this application is No. 18844-A.

<sup>2</sup> In response to the Office of Planning’s recommendation, the Applicant amended the application to add special exception relief from § 2001.3 for enlargements or additions to nonconforming structures. The Applicant submitted a self-certification (Exhibit 26) for the additional relief, having already submitted a Zoning Administrator’s referral for the rest of the relief. The caption has been revised accordingly.

**BZA APPLICATION NO. 18844-A**  
**PAGE NO. 2**

The District Department of Transportation filed a timely report dated January 19, 2016, expressing no objection to the application. (Exhibit 22.)

A letter in opposition was submitted by the adjacent neighbor at 2137 N Street, N.W. (Exhibit 20.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions under §§ 223, 403, 406, and 2001.3. The only parties to the application were the Applicant and ANC 2B which was in support of the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403, 406, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 3-0-2** (Frederick L. Hill, Anthony J. Hood, and Jeffrey L. Hinkle to Approve; Marnique Y. Heath not present, not voting; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2016

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE

**BZA APPLICATION NO. 18844-A  
PAGE NO. 3**

WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

**Application No. 19166 of The Department of General Services of DC**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3104.1, for a special exception from the new rooftop mechanical equipment requirements under § 411.11 (as per § 411.6) and § 411.18 to allow the installation of new rooftop mechanical equipment to an existing school building in the R-1-B District at premises 4601 Texas Avenue, S.E. (Square 5351, Lot 878).

**HEARING DATE:** February 2, 2016

**DECISION DATE:** February 2, 2016

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

This application was accompanied by a memorandum, dated August 12, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 20.)

The Board of Zoning Adjustment (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") 7F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. ANC 7F did not submit a report or attend the hearing. The Applicant testified that it had not met with the ANC or the Single Member District ("SMD") Commissioner. The Board noted that the ANC and SMD were notified of the application and hearing date, and therefore would move forward with the decision on the application.

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 22), and testified in support of the application at the hearing. The District Department of Transportation submitted a timely report, indicating that it had no objection to the approval of the application. (Exhibit 21.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 for a special exception under §§ 411.11, 411.6, and 411.18. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104.1,

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<sup>1</sup> Based on the Office of Planning's recommendation, the application was amended by the Board's motion to add special exception relief for roof structures under § 411.18 to the relief originally requested. The caption has been changed accordingly.

**BZA APPLICATION NO. 19166**  
**PAGE NO. 2**

411.11, 411.6, and 411.18, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6**.

**VOTE: 3-0-2** (Frederick L. Hill, Anthony J. Hood, and Jeffrey L. Hinkle, to APPROVE; Marnique Y. Heath not present, not voting; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 8, 2016

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

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

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

**BZA APPLICATION NO. 19166****PAGE NO. 3**

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. 19171 of Matcap LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, the alley lot garage setback requirements under § 2300.4, and the record lot requirements under § 3202.3, to construct a two-story carriage house with ground-floor private garage and upper-floor accessory storage in the R-5-B District at premises (rear) 12 Logan Circle N.W. (Square 241, Lot 837).

**HEARING DATE:** February 2, 2016  
**DECISION DATE:** February 2, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3 (original) and 28 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 2F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report of support in this case. The ANC's report, dated January 16, 2016, indicated that at a duly called and properly noticed public meeting on November 4, 2015, at which a quorum was present, the ANC voted 7-0 to support the application. (Exhibit 29.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application and testified in support at the hearing. (Exhibit 27.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 26.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, the alley lot garage setback requirements under § 2300.4, and the record lot requirements under §

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<sup>1</sup> The Applicant amended its application to add a request for variance relief from the open court requirements under § 406 to the variances initially sought and submitted a revised application and self-certification. (Exhibits 25B and 28.) The caption has been amended accordingly.

BZA APPLICATION NO. 19171  
PAGE NO. 2

3202.3, to construct a two-story carriage house with ground-floor private garage and upper-floor accessory storage in the R-5-B District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 403.2, 404.1, 406.1, 2300.4, and 3202.3, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 25A.**

**VOTE:**           **3-0-2** (Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to APPROVE; Marnique Y. Heath not present or voting; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 5, 2016

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR

BZA APPLICATION NO. 19171  
PAGE NO. 3

PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

**Application No. 19181 of The Department of General Services of DC**, pursuant to 11 DCMR §§ 3103.2 for a variance from the screening requirements under § 2117.12, and pursuant to 11 DCMR § 3104.1, special exceptions from the rooftop structure requirements under § 411, and the retaining wall requirements under § 413, to renovate an existing public elementary school in the R-1-B District at premises 5701 Broad Branch Road, N.W. (Square 2012, Lot 809).

**HEARING DATES:** January 12, 2016 and February 2, 2016<sup>1</sup>  
**DECISION DATE:** February 2, 2016

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibit 17.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 3G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. ANC 3G submitted a report dated December 16, 2015, noting that at a properly noticed public meeting on December 14, 2015, with a quorum present, it voted 5 to 0 in support of the application. (Exhibits 20 and 22.) At the hearing on January 12, 2016, during the discussion about whether to postpone the case because of posting issues, ANC 3G testified about the community’s widespread support for the application and the need to proceed and not delay the project.

The Office of Planning (“OP”) submitted a timely report dated January 5, 2016, and testified at the hearing in support of the application. (Exhibit 19.)

The D.C. Department of Transportation submitted a timely report dated January 5, 2016, expressing no objection to the application. (Exhibit 18.)

**Variance Relief:**

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<sup>1</sup> At the hearing of January 12, 2016, the Board noted that the subject property had not been posted, and a discussion was held about the importance of posting the property to provide notice to the community. The hearing on the merits was continued to February 2, 2016 to afford the Applicant an opportunity to post the property as required, and submit the affidavit of posting. The affidavit of posting was filed in the record on January 22, 2016. (See Exhibit 23.)

**BZA APPLICATION NO. 19181****PAGE NO. 2**

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from § 2117.12. The only parties to this case were the Applicant and ANC 3G which supported the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 2117.12, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

**Special Exception Relief:**

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under §§ 411 and 413. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the ANC and the OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, and 413, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 - ARCHITECTURAL PLANS AND ELEVATIONS:**

**VOTE: 3-0-2** (Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to Approve; Marnique Y. Heath not present, not voting; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

**BZA APPLICATION NO. 19181**  
**PAGE NO. 3**

A majority of the Board members approved the issuance of this summary order.

**FINAL DATE OF ORDER:** February 8, 2016

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

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

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

**Application No. 19190 of Patricia Harris and Sandor Slager**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the rear yard requirements under § 404.1, to construct a second-story addition to an existing one-family dwelling in the R-2 District at premises 3621 Jocelyn Street, N.W. (Square 1990, Lot 115).

**HEARING DATE:** Applicant waived right to a public hearing

**DECISION DATE:** February 2, 2016 (Expedited Review Calendar).

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment's ("Board") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3G, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. The ANC did not submit a report to this application. In its report, the Office of Planning ("OP") indicated that the ANC voted unanimously in support of the application at the ANC's scheduled meeting on December 14, 2015.

The Office of Planning submitted a timely report and testified at the hearing in support of the application. (Exhibit 20.) The District Department of Transportation ("DDOT") submitted a report expressing no objection to the approval of the application. (Exhibit 21.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

**BZA APPLICATION NO. 19190**  
**PAGE NO. 2**

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223 and 404.1. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report<sup>1</sup>, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, and 404.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

**VOTE:**           **3-0-2** (Anthony J. Hood, Jeffrey L. Hinkle, and Frederick L. Hill to APPROVE; Marnique Y. Heath, not present, not voting; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 8, 2016

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF

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<sup>1</sup> Without a written report, the ANC's recommendation could not be afforded great weight.



**BZA APPLICATION NO. 19190****PAGE NO. 3**

THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

**Application No. 19226<sup>1</sup> of Christopher Pashby**, as amended,<sup>2</sup> pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow an accessory garage to an existing one-family dwelling in the R-2 District at premises 5526 39th Street N.W. (Square 1747, Lot 37).

**HEARING DATES:** November 17, 2015, December 15, 2015, and January 26, 2016<sup>3</sup>

**DECISION DATE:** January 26, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 2 (original) and 54 (revised).)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3G and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. The ANC submitted a timely report dated November 10, 2015, which indicated that at a regularly scheduled and properly noticed public meeting on November 9, 2015, the ANC voted 5 to 2 to support the application with one condition, i.e. that the Board require further discussion and mediation between the parties. (Exhibit 39.) A Single Member District Commissioner also submitted a letter in support of the opposing neighbors, particularly their request for a continuance so as to seek professional counsel, and reiterated the ANC's request for additional mediation. (Exhibit 45.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 38) and testified in support of the application at the hearing. The District

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<sup>1</sup> The case was initially processed and noticed as Application No. 18843A, as it was originally filed as a modification of a previously filed and approved case. Upon clarification at the December 15, 2015 hearing by the Applicant that this application only pertains to construction of the garage and does not impact the previously approved two-story addition together with the filing of a revised self-certification form (Exhibit 54), the case was continued to January 26, 2016, to allow for additional notice and posting, and renumbered to reflect that the case proposes new construction, not a modification of previously approved plans.

<sup>2</sup> Although the case was originally framed as a request for a modification, the Applicant clarified that the relief being requested is for a garage structure and will not modify the plans for the rear deck that had been previously approved in Application No. 18843. The caption has been changed accordingly.

<sup>3</sup> The hearing was postponed from November 17, 2015 at the request of the neighbors in opposition and later continued from the hearing on December 15, 2015 to January 26, 2016.

BZA APPLICATION NO. 19226  
PAGE NO. 2

Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 26.)

At the December 15, 2015 hearing, the Board granted party status in opposition to Lisa Terry, 3904 McKinley Street, N.W. and Bruce Meredith, 3902 McKinley Street, N.W. (“Opposition Party”) (Exhibits 29 and 34) who were represented by Claude Bailey, Esq., Venable LLP. (Exhibit 48.) Another party request was submitted by Peter and Ann Kolker, 5524 39<sup>th</sup> Street, N.W. (Exhibit 30) but it was withdrawn before the December 15 hearing, based on testimony from the other neighbors in opposition. The Kolkers were represented by Meridith Moldenhauer, Esq., Griffin, Murphy, Moldenhauer, & Wiggins, LLP. (Exhibit 41.) At the January 26, 2016 hearing, the Opposition Party did not appear and through counsel, later informed staff that it withdrew its opposition. Subsequently, and with leave from the Board, the Opposition Party formally submitted its withdrawal to the record. (Exhibit 58.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow an accessory garage to an existing one-family dwelling in the R-2 District. Upon withdrawal of the parties in opposition, the only parties to the case were the ANC and the Applicant. No parties appeared at the final public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, and 403.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4**.

**VOTE:**       **3-0-2** (Marnique Y. Heath, Michael G. Turnbull, and Frederick L. Hill, to APPROVE; Jeffrey L. Hinkle, not present or participating, and one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 8, 2016

BZA APPLICATION NO. 19226  
PAGE NO. 3

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 10-03B**  
**Z.C. Case No. 10-03B**  
**Parcel Seven Associates, LLC**  
**(One-Year PUD Time Extension @ Square 912)**  
**January 11, 2016**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 11, 2016. At the meeting, the Commission approved a request on behalf of Parcel Seven Associates, LLC ("Applicant") for a one-year extension of time in which to start construction of a mixed-use project composed of retail and residential uses, which was approved in Z.C. Order No. 10-03, and extended in Z.C. Order No. 10-03A.

**FINDINGS OF FACT**

1. On February 25, 2010, the Applicant filed an application seeking preliminary and consolidated approval of a planned unit development ("PUD") for Lot 55 in Square 912 ("Property"). The Property is zoned C-2-B and is located within the H Street Northeast Commercial Overlay District.
2. The Property has a land area of approximately 87,053 square feet and is located in the northeast quadrant of the District. The Property is located on the south side of H Street, N.E., between 8<sup>th</sup> and 10<sup>th</sup> Streets, and is improved with the one-story "H Street Connection" strip retail development, which has a gross floor area of approximately 37,992 square feet.
3. The project will be a mixed-use development composed of retail and residential uses. The overall project will have a density of 5.0 floor area ratio ("FAR"), less than the maximum permitted density of 6.0 FAR under the C-2-B PUD requirements, and will include approximately 380,560 square feet of residential uses, comprising 284 units plus or minus 10%, and approximately 51,420 square feet of retail uses. The building will have varying heights and cornice lines and will be constructed to a maximum height of 90 feet with a maximum of eight stories. The project will have an overall lot occupancy of approximately 70%. A total of 405 off-street parking spaces will be provided in a below-grade parking garage, with approximately 340 spaces for residential use and 65 spaces for commercial use. The above-referenced improvements collectively referred to herein as the "Project."
4. Pursuant to Z.C. Order No. 10-03, the Commission granted consolidated PUD approval for the Project. The Order became effective upon publication in the *D.C. Register* on January 14, 2011, and required the Applicant to file a building permit application for the Project no later than January 14, 2013, with construction to begin no later than January 14, 2014.
5. On December 4, 2012, the Applicant filed an application for a two-year extension of the time period in which to file a building permit application for the Project. Pursuant to

Z.C. ORDER NO. 10-03B  
Z.C. CASE NO. 10-03B  
PAGE 2

- Z.C. Order No. 10-03A, the Commission granted the two-year extension, which required the Applicant to file a building permit application for the Project no later than January 14, 2015, with construction to begin no later than January 14, 2016.
6. Consistent with Z.C. Order No. 10-03A, the Applicant filed a building permit application for the Project prior to January 14, 2015.
  7. On December 8, 2015, the Applicant filed an application for a one-year extension of the time period in which to start construction of the Project, such that construction must begin no later than January 14, 2017.
  8. The Office of Planning (“OP”) submitted a report dated December 15, 2015, indicating that the application meets the standards of 11 DCMR §§ 2408.10 and 2408.11. OP thus recommended that the Commission approve the requested one-year PUD extension. (Exhibit [“Ex.”] 5.)
  9. Advisory Neighborhood Commission (“ANC”) 6A submitted a letter dated October 9, 2015, indicating that at its regularly scheduled, duly noticed meeting of October 8, 2015, ANC 6A voted to support the requested extension. (Ex. 1C.)
  10. As to the merits, the Applicant submitted evidence of factors beyond its reasonable control that rendered the Applicant unable to comply with the time limits of Z.C. Order No. 10-03A. The Applicant filed a raze permit application (Cap ID No. R1500147), and has already been granted raze approvals from the District Department of Transportation (“DDOT”), Rental Accommodation, Zoning Review, Historic Preservation, and DC Water. However, due to the Applicant’s existing retail leasing obligations at the Property, the Applicant is unable to obtain the additional required raze permits that would permit demolition of the existing structures on the Property and facilitate construction of the Project prior to January 14, 2016. The Applicant provided written testimony that it worked diligently with the retailers in operation at the Property to renegotiate their leases that extended beyond 2016 and/or to provide for relocation services in a manner feasible to all parties, such that all existing buildings on the Property would be vacant by December 31, 2015.
  11. The Applicant also submitted evidence of the steps that it took to move forward with the Project, including the following:
    - a. In the summer of 2014, the Applicant selected its residential development partner and architect, and commenced the full design process for the PUD;
    - b. The Applicant executed a First Source Employment Agreement with the District’s Department of Employment Services (“DOES”);

Z.C. ORDER NO. 10-03B

Z.C. CASE NO. 10-03B

PAGE 3

- c. On September 22-24, 2014, and September 29 through October 10, 2014, respectively, the Applicant completed extensive environmental and geotechnical due diligence at the Property;
- d. On November 26, 2014, the Applicant submitted an initial service application to Washington Gas regarding utility distribution systems for the Project. The Applicant submitted an updated application on November 11, 2015;
- e. On January 9, 2015, the Applicant submitted a foundation-to-grade permit application to the District Department of Consumer and Regulatory Affairs (“DCRA”) (Permit Tracking No. FD 1500034);
- f. On February 17, 2015, the Applicant submitted an initial service application to Pepco regarding utility distribution systems for the Project. The Applicant submitted an updated application on October 30, 2015;
- g. On April 4, 2015, the Applicant conducted a Preliminary Design Review Meeting (“PDRM”) with DDOT;
- h. On July 2 and October 28, 2015, the Applicant submitted water and sewer plans to DC Water for approval (Tracking No. 15-270844);
- i. On August 5, 2015, the Applicant recorded the required PUD Covenant for the Project (Instrument No. 2015079869);
- j. On September 10, 2015, the Applicant submitted its construction drawings for third-party review, to which it received substantive comments;
- k. On September 15, 2015, the Applicant submitted an application to DDOT for public space improvements for the Project (DDOT Tracking No. 116048);
- l. On September 17, 2015, the Applicant received a No Further Action letter from the Department of Energy and Environment (“DOEE”), following its submission of an Environmental Impact Screening Form (EISF # 15-00616);
- m. On October 6, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for Support of Excavation and Dewatering scopes of work;
- n. On October 8, 2015, the Applicant presented the PUD extension request to ANC 6A, which voted unanimously (7-0) to support the application;

Z.C. ORDER NO. 10-03B

Z.C. CASE NO. 10-03B

PAGE 4

- o. On October 16, 2015, the Applicant received approved demolition plans from DC Water;
  - p. On October 19 and 28, 2015, the Applicant submitted a response to the initial set of comments from the third-party reviewer;
  - q. On November 5, 2015, the Applicant awarded bids for support of excavation and dewatering via a Notice to Proceed sent to its general contractor, WCS Construction, LLC;
  - r. On November 11, 2015, the Applicant engaged a general contractor, WCS Construction, LLC, via the issuance of an RFP for demolition, environmental abatement associated with demolition, rodent abatement associated with demolition, excavation, wet utility installation, and site fencing;
  - s. On November 12, 2015, the Applicant presented a safety and security plan to ANC 6A and committed to continually work with the community as security and safety issues evolve over the life of the Project;
  - t. On November 12, 2015, the Applicant presented the public space improvements for the Project to ANC 6A, which voted unanimously (6-0) to support the proposed improvements (DDOT Tracking No. 116048); and
  - u. The Applicant presented the Project's public space plan to DDOT's Public Space Committee.
12. The Commission finds that despite the Applicant's diligent, good faith efforts, to move forward with the Project, construction of the Project cannot begin at this time. Given the time and process involved in addressing the retail leases for tenants on the Property, and given that several tenants did not vacate the Property until December 31, 2015, the Commission finds that the Applicant is unable to obtain all required raze permits to demolish the existing structures and begin construction prior to January 14, 2016. Although the Applicant has already been granted raze approvals from DDOT, Rental Accommodation, Zoning Review, Historic Preservation, and DC Water, the outstanding raze approvals cannot be obtained until the existing structures on the Property are entirely vacant. The Commission further finds that even after the structures are vacated, the regulatory process for obtaining a raze permit can still take many months, thus necessitating a one-year extension to begin construction. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in 11 DCMR § 2408.11(c).



Z.C. ORDER NO. 10-03B

Z.C. CASE NO. 10-03B

PAGE 5

**CONCLUSIONS OF LAW**

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the Applicant demonstrates with substantial evidence that there is good cause for such extension as provided in 11 DCMR § 2408.11. (See 11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written recommendation. By letter dated October 9, 2015, ANC 6A indicated that at its regularly scheduled, duly noticed meeting of October 8, 2015, ANC 6A voted to recommend that the Commission grant the one-year extension requested by the Applicant, such that construction must begin no later than January 14, 2017. The Commission carefully considered the ANC's recommendation in its deliberations and has given ANC 6A's recommendation great weight in approving this application.
4. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP submitted a report indicating that the Applicant meets the extension standards of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. The Commission carefully considered OP's recommendation in its deliberations and has given OP's recommendation great weight in approving this application.
5. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(c).

Z.C. ORDER NO. 10-03B  
Z.C. CASE NO. 10-03B  
PAGE 6

Specifically, the Applicant has been unable to obtain outstanding raze approvals due to leasing obligations at the Property and the timing of the regulatory permit process, and is therefore unable to comply with the time limits set forth in Z.C. Order No. 10-03A.

6. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in 11 DCMR § 2408.11. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in 11 DCMR § 2408.11.
7. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a one-year time extension of the validity of Z.C. Order No. 10-03A, such that construction of the Project must begin no later than January 14, 2017.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On January 11, 2016, upon the motion made by Commissioner Turnbull as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 19, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FILING**

**Z.C. Case No. 16-04**

**(The Bard, a joint development between Erkiletian Development Co. and The Shakespeare Co., LLC – Consolidated PUD and Related Map Amendment @ Square 498)**

**February 8, 2016**

**THIS CASE IS OF INTEREST TO ANC 6D**

On February 3, 2016, the Office of Zoning received an application from The Bard, a joint development between Erkiletian Development Co. and The Shakespeare Co., LLC (the “Applicant”) for approval of a consolidated planned unit development (“PUD”) and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lot 52 in Square 498 in southwest Washington, D.C. (Ward 6), on property located at 501 I Street, S.W. The property is currently zoned R-3. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to the SP-2 Zone District.

The Applicant proposes to construct a seven-story, mixed-use building with residential use, artist studios, non-profit office, and educational space. The development will have a density of 4.09 floor area ratio (“FAR”) and a maximum height of 73 feet, two inches. The development will include 93 market-rate housing units and nine inclusionary zoning (“IZ”) housing units, as well as having 29 housing units for actors and five housing units for fellows. The building will house The Shakespeare Co.’s costume fabrication studio as well as rehearsal, administrative, and educational space.

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia  
Public Employee Relations Board

_____	)	
In the Matter of:	)	
	)	
Michael Thomas Moore,	)	
	)	
Complainant,	)	PERB Case Nos. 12-S-03
	)	
v.	)	Opinion No. 1290
	)	
Fraternal Order of Police/ Department of	)	Standards of Conduct Complaint
Youth Rehabilitation Services Labor	)	
Committee,	)	
	)	
Respondent.	)	
_____	)	

**DECISION AND ORDER**

**I. Statement of the Case:**

Michael Thomas Moore (“Complainant”) filed a standards of conduct complaint, and amended standards of conduct complaint (“Complaint”) against the Fraternal Order of Police/Department of Youth Rehabilitation Services Labor Committee (“FOP”, “Respondent” or “Union”). The Complainant asserts that FOP has violated § 1-617.03 of the Comprehensive Merit Personnel Act (“CMPA”).<sup>1</sup>

The FOP filed an answer denying violation of the CMPA and asserting that the Complaint is both untimely and fails to state a cause of action.

The Complainant’s Complaint and the Respondent’s Answer are before the Board for disposition.

<sup>1</sup> The Complainant actually cites to the previous codification of D.C. Code Section 1-618.3.

Decision and Order  
PERB Case Nos. 12-S-03  
Page 2

## II. Background

Complainant filed a grievance with the Department of Youth Rehabilitation Services asserting that the Department had failed to pay the Complainant his appropriate wage rate and that it had failed to promote him to a higher grade based upon his work duties. (See Complaint at p. 2). On April 20, 2010, the grievance progressed to Step 3 under the terms of the collective bargaining agreement between the Union and the Department. (See Complaint at p. 2). Following the Step 3 portion of the grievance, a series of communications transpired between the Complainant, the Union Chair Tasha Williams and the Union's attorney, Kelly Burchell. (See Complaint at p. 2).

Complainant contends that on November 30, 2011, he was informed by the Ms. Williams that arbitration was not pending concerning his grievance and that any subsequent action would need to take place in January of 2012 when a new Union "Board" would convene. (See Complaint at p. 2).

## III. Discussion

As a threshold matter, it is necessary to determine whether the Complaint is timely. Board Rule 544.4 provides that a complaint alleging a standards of conduct violation shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred. In the instant case, the Complainant asserts that the basis for his Complaint centers on the information he received on November 30, 2011; that his grievance had not proceeded to arbitration.

The Board has held that "the time for filing a complaint with the Board concerning [alleged standards of conduct] violations as a statutory cause of action commenced when the basis of those violations occurred.... However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, *i.e.* proof, of the alleged statutory violations is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414, PERB Case No. 95-S-01 (1995). In light of the above, it is clear that on November 30, 2011, the Complainant became aware that the Union had not made plans to pursue his grievance through arbitration. Therefore, the time for filing a complaint with the Board concerning the Union's alleged violation commenced when the basis of that violation occurred (namely, November 30, 2011). However, the Complaint was not filed with the Board until April 4, 2012. This filing date was one hundred and twenty-six (126) days after the alleged violation occurred. Thus, the filing exceeded the 120 days noted in Board Rule 544.4.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. *Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (1991). Moreover, the Board has held

Decision and Order  
PERB Case Nos. 12-S-03  
Page 3

that a complainant's "ignorance of Board Rules governing [the Board's] jurisdiction over standards of conduct complaints provides no exception to [the Board's] jurisdictional time limit for filing a complaint." *Jackson and Brown v. American Federation of Government Employee, Local 2741, AFL-CIO*, Slip Op. No. 414, PERB Case No. 95-S-01 (1995).

Whereas the Board finds that this matter was not filed within the 120 days proscribed by Board Rule 544.4, the Complaint is dismissed as untimely.<sup>2</sup>

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Complaint is dismissed as untimely.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**  
Washington, D.C.

May 30, 2012

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<sup>2</sup> Whereas the Board has determined the Complaint to be untimely, no determination on the merits is necessary.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order and Notice in PERB case No. 12-S-03, Slip Opinion No. 1290 is being transmitted via U.S. Mail to the following parties on this the 28<sup>th</sup> day of June, 2012.

Michael Thomas Moore  
156 Pine Cone Avenue  
Odenton, Maryland 21113

**U.S. MAIL**

Alan Mitchell, Esq.  
The O'Neal Firm, LLC  
700 12<sup>th</sup> Street, N.W.  
Suite 700  
Washington, D.C. 20005

**U.S. MAIL**

/s/ David B. Washington  
David B. Washington  
Attorney Advisor

Government of the District of Columbia  
Public Employee Relations Board

_____	)	
In the Matter of:	)	
	)	
District of Columbia	)	
Metropolitan Police Department	)	
	)	PERB Case No. 12-A-04(R)
Petitioner	)	
	)	Opinion No. 1509
and	)	
	)	
Fraternal Order of Police,	)	
Metropolitan Police Department	)	
Labor Committee, (on behalf of Charles Jacobs)	)	
	)	
Respondent	)	
_____	)	

**DECISION AND ORDER ON REMAND**

I. Statement of the Case

This matter comes before the Public Employee Relations Board on remand from the Superior Court of the District of Columbia, concerning the Board’s decision in *Dist. of Columbia Metro. Police Dep’t and. Fraternal Order of Police/Metro. Police Dep’t Labor Comm. (on behalf of Charles Jacobs)*.<sup>1</sup>

In *MPD and FOP/Labor Committee*, the Metropolitan Police Department appealed to the Board an arbitration award by Arbitrator Arline Pacht, in which she reduced a grievant’s termination to a suspension. Pursuant to D.C. Official Code § 1-605.02(6), the Board upheld the arbitration award. MPD appealed the Board’s Decision and Order to the Superior Court, alleging

<sup>1</sup> 60 D.C. Reg. 3060, Slip Op. No. 1366. PERB Case No. 12-A-04 (2013).



Decision and Order  
PERB Case No. 12-A-04(R)  
Page 2 of 9

that the Board failed to adequately review the arbitration award. The Superior Court remanded the case to the Board pursuant to an Order. The Order instructed the Board to:

more thoroughly examine the Arbitrator's jurisdiction and explicitly consider whether the Arbitrator reasonably and consciously reconciled the potentially inconsistent mandates of Article 12 of the parties' Collective Bargaining Agreement ("CBA") which limits the record of review to the Departmental hearing and Article 19 of the CBA, which does not address or limit what constitutes the record, but limits the scope of the Arbitrator's jurisdiction to only the "precise issue submitted for arbitration."<sup>2</sup>

In addition, the court ordered the Board to "consider the legal precedents concerning disparate treatment under different supervisors, and specifically distinguish cases in which the alleged disparate treatment occurred during the tenure of Chief of Police Charles Ramsey from those in which the treatment took place during the tenure of Chief of Police Cathy Lanier."<sup>3</sup> Lastly, the Superior Court ordered the Board to "address whether the burden of proof for disparate treatment is on the alleged victim of the disparate treatment or on the MPD to prove that the disparate treatment did not occur."<sup>4</sup>

The Board has considered the issues presented by the Superior Court, and for the reasons provided herein maintains its denial of MPD's arbitration review request.

## II. Background

The crux of the issues that are discussed on remand involve the penalty determination of the Arbitrator in reaching her decision to reduce the grievant's termination to a suspension. The parties submitted as a joint issue whether the Agency had met its burden of proof for sustaining the charges against the grievant. The Arbitrator found that the Agency had met its burden in all but one charge. In addition, the parties presented the joint issue as to whether the grievant's penalty was appropriate. The Arbitrator found that the penalty of termination was inappropriate for the grievant upon a review of MPD's Adverse Action Panel's (AAP) *Douglas* factor analysis, and reduced the grievant's penalty to a suspension.

MPD filed an arbitration review request of the award to the Board asserting that (1) the arbitrator was without authority to grant the award and (2) the award was contrary to law and public policy. MPD argued that the Arbitrator exceeded her jurisdiction by considering decisions in other adverse action cases that had not been considered by the AAP, because they were rendered after the AAP hearing, and were outside of the record that the Arbitrator could consider, in accordance with the parties' collective bargaining agreement.<sup>5</sup> The Board rejected MPD's argument, determining that the Arbitrator's findings and conclusions drew its essence

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<sup>2</sup> Case No. 2013 CA 0002188, at p. 1, 12-13.

<sup>3</sup> *Id.* at 13.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5.

Decision and Order  
PERB Case No. 12-A-04(R)  
Page 3 of 9

from the parties' collective bargaining agreement and, therefore, was not outside the Arbitrator's jurisdiction.<sup>6</sup>

In addition, MPD requested a review of the arbitration decision on the basis that the award was facially contrary to law and public policy, because the Arbitrator improperly applied a *Douglas* factor analysis by considering subsequent disciplinary cases of employees under different administrations. The Board found that MPD did not cite any particular statute or applicable PERB case law that the Arbitrator misinterpreted on its face. MPD raised the argument that the use of disciplinary cases as comparable cases under different administrations was contrary to law and public policy, because it would discourage a new administration from changing its disciplinary policy.<sup>7</sup> The Board rejected MPD's argument on the basis that the law and public policy exception has an extremely narrow scope of review, and that MPD failed to articulate a law and public policy that demonstrated that the arbitration award compelled the violation of an explicit, well defined public policy grounded in law and/or legal precedent.<sup>8</sup> The Board consequently denied MPD's review request on the basis of law and public policy.<sup>9</sup>

MPD appealed the Board's Decision and Order to the Superior Court. The Superior Court remanded to the Board to discuss the aforementioned issues.

### III. Analysis and conclusions

The Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>10</sup> The Board has only "limited authority to overturn an arbitral award."<sup>11</sup> Further, there is a "well defined and dominant" policy favoring arbitration of a dispute where the parties have chosen that course.<sup>12</sup> Just as "Congress [has] declared a national policy favoring arbitration," so has the District of Columbia.<sup>13</sup> Indeed, this preference for honoring the parties' agreement to arbitrate disputes underlies the practical "hands-off" approach to review arbitrators' decisions, except in

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<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> Case No. 2013 CA 0002188 at 7-8.

<sup>8</sup> *Id.* at 7-9.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> D.C. Official Code § 1-605.02(6).

<sup>11</sup> *Fraternal Order of Police v. District of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 177 (D.C. 2009).

<sup>12</sup> *District of Columbia Metro. Police Dep't*, 901 A. 2d at 789.

<sup>13</sup> *District of Columbia v. Greene*, 806 A. 2d 216, 221 (D.C. 2002) (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). See, e.g., *Masurovsky v. Green*, 687 A.2d 198, 201 (D.C. 1997) ("Variously called a presumption, preference or policy, the rule favoring arbitration is identical under the D.C. Uniform Arbitration Act and the Federal Arbitration Act.") (citation omitted)

Decision and Order  
PERB Case No. 12-A-04(R)  
Page 4 of 9

certain “restricted” circumstances.<sup>14</sup> In addition, the Board will not substitute its own interpretation or that of the parties for that of the duly designated arbitrator.<sup>15</sup>

A. Arbitrator’s jurisdiction

The Superior Court has ordered the Board “to more thoroughly examine the Arbitrator’s jurisdiction and explicitly consider whether the Arbitrator reasonably and consciously reconciled the potentially inconsistent mandates” of Article 12 and Article 19 of the parties’ CBA.<sup>16</sup> Whether the Arbitrator exceeded her jurisdiction under a collective bargaining agreement is determined by whether the arbitrator ‘arguably construed’ the CBA.<sup>17</sup> For the following reasons, the Board finds that the Arbitrator had jurisdiction over the dispute.

The statutory scope of the Board’s jurisdiction to review an arbitration award is a highly deferential standard.<sup>18</sup> The jurisdiction of an arbitrator’s authority is derived “from the parties’ agreement and any applicable statutory and regulatory provisions.”<sup>19</sup> When submitting an issue to arbitration, “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.”<sup>20</sup>

One of the tests used by the Board to determine whether an arbitrator has exceeded her jurisdiction is “whether the Award draws its essence from the collective bargaining agreement.”<sup>21</sup> The Board adopted the Sixth Circuit’s analysis of “essence of the agreement” issues:

Did the arbitrator act “outside his authority” by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator “arguably construing or applying the contract?” So long as the arbitrator does not offend any of these requirements, the request for judicial

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<sup>14</sup> *District of Columbia Metro. Police Dep’t, supra*, 901 A.2d at 787; see *Fraternal Order of Police, supra*, 973 A.2d at 177 n.2

<sup>15</sup> *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

<sup>16</sup> Case No. 2013 CA 0002188 at 1.

<sup>17</sup> See *Mich. Family Resources, Inc. v. SIEU, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007).

<sup>18</sup> *Id.*

<sup>19</sup> *D.C. Dep’t of Public Works v. AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988).

<sup>20</sup> *MPD v. FOP/MPD Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000);

<sup>21</sup> *D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987).

Decision and Order  
PERB Case No. 12-A-04(R)  
Page 5 of 9

intervention should be resisted even though the arbitrator made “serious,” “improvident,” or “silly” errors in resolving the merits of the dispute.<sup>22</sup>

In considering whether the Arbitrator resolved a dispute not committed to arbitration, MPD argues that the Arbitrator acted outside of her jurisdiction by admitting certain evidence that the MPD asserts was improper under the CBA for her review. Notwithstanding, MPD does not dispute that the Arbitrator was presented with the joint issues of whether the Agency met its burden of proof for all of its charges and whether the penalty determination was appropriate, and that the Arbitrator resolved these issues.<sup>23</sup> Therefore, the Board finds that the Arbitrator resolved the issues presented at Arbitration.

Even though the Arbitrator did not explicitly construe Article 12 or Article 17 in her arbitration award or reconcile the two provisions with regards to the admission of the alleged improper evidence, the Board finds that MPD’s jurisdictional argument speaks to the Arbitrator’s use of evidence that was arguably outside the record for her to consider under the parties’ contract. The Board finds that the MPD’s argument that the Arbitrator improperly permitted evidence does not rise to a challenge of the Arbitrator’s jurisdiction on the basis that the Arbitrator resolved an issue not committed to arbitration. MPD’s contention amounts to an objection to the Arbitrator’s evaluation of certain evidence and the significance that should be accorded with respect to the Award. As stated above, even if this was a serious error, this did not divest the Arbitrator of jurisdiction to resolve the issues presented to her. Furthermore, the Board has held on numerous occasions that such evidentiary objections do not raise the asserted statutory basis for review.<sup>24</sup>

The Board notes that MPD did not assert nor did it provide any evidence that it objected to the inclusion of the two subsequent cases of discipline to the Arbitrator that it now disputes as part of the record that the Arbitrator had jurisdiction to consider. A review of the arbitration review request record reveals that MPD raised an objection to the admission of that evidence for the first time in its arbitration review request. By submitting the matter to arbitration, MPD agreed to be bound by the evidentiary findings of the Arbitrator. Even though MPD argues that the Arbitrator was outside of her jurisdiction in her consideration of the evidence, she determined the issues under the contract and weighed the evidence before her. MPD failed to object to the inclusion of the cases in dispute until after it received an unfavorable arbitration award. Because MPD did not object to the evidence before the Arbitrator, thereby leaving her without an opportunity to correct the alleged defect.

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<sup>22</sup> *Nat'l Ass'n of Government Employees, Local R3-07 v. D.C. Office of Communications*, 59 D.C. Reg. 6832, Slip Op. No. 1203, PERB Case No. 10-A-08 (2011) (citing *Michigan Family Resources, Inc. v. SEIU Local 517M*, 475 F.3d 746, 753 (2007)). [FN2]

<sup>23</sup> MPD has not asserted, and the Board does not find, that the Arbitrator committed fraud, had a conflict of interest, or otherwise acted dishonestly in issuing the award by allowing potentially impermissible evidence.

<sup>24</sup> See, e.g., *University of the District of Columbia Faculty Association/NEA and University of the District of Columbia*, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

Decision and Order

PERB Case No. 12-A-04(R)

Page 6 of 9

Even if the Board considers that the Arbitrator erred by considering the cases, the Board evaluates the arbitration award to determine if a fair hearing has been conducted in accordance with its limited statutory basis of review.<sup>25</sup> The Board has found that where an Arbitrator has considered improper evidence, “such misbehavior does not deprive the objecting party of a fair hearing or taint the entire decision where the decision is also supported by the evidence presented at hearing.”<sup>26</sup> The parties agreed to forego an evidentiary hearing and instead submitted a record of the AAP to the Arbitrator for final resolution.<sup>27</sup> By agreement, the FOP filed its post-hearing brief on April 1, 2011, and MPD filed its post-hearing brief May 10, 2011. On June 8, 2011, FOP submitted a reply brief to the Arbitrator.<sup>28</sup> MPD did not submit a reply brief. As discussed above, MPD did not object to the evidence before the Arbitrator. Further, in evaluating whether grievant’s proposed penalty was consistent with those imposed on other employees for similar offenses and in accord with General Order 1202.1, the Arbitrator noted, “[N]either the Panel nor the Department identified any supporting decisions, thereby failing to provide the Arbitrator with a way to determine whether the facts and findings in this matter are comparable with those in other cases....”<sup>29</sup> Notwithstanding, the Arbitrator rendered her decision on the entire record and considered not only the cases that MPD argues were improper, but weighed and reviewed all of the *Douglas* factors in determining the appropriateness of penalty for the grievant. In light of MPD’s failure to object to the evidence and that the Arbitrator’s decision was based on the entirety of the record before her, the Board finds that MPD was not deprived of a fundamentally fair hearing. Consequently, the Board cannot find that by such action the Arbitrator exceeded her jurisdiction.

#### B. Disparate treatment

The Board's scope of review in arbitration review requests is extremely narrow, particularly in the case of the law and public policy exception.<sup>30</sup> A petitioner must demonstrate that the award “compels” the violation of an explicit, well-defined public policy grounded in law or legal precedent.<sup>31</sup> Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its own judgment for that of the arbitrator.<sup>32</sup> Disagreement with an arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law and public policy.<sup>33</sup> MPD argued that the Arbitrator’s award was contrary to law and public policy, because the Arbitrator analyzed consistency of the penalty under *Douglas* by comparing disciplinary cases arising from two different administrations.

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<sup>25</sup> *DCPS and WTU*, Slip Op. No. 349, PERB Case No. 93-A-01 (1994).

<sup>26</sup> *Id.*

<sup>27</sup> Award at 1.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 23.

<sup>30</sup> See *MPD v. FOP/MPD Labor Committee*, 60 D.C. Reg. 3052, Slip Op. No. 1365 at p. 5, PERB Case No. 11-A-02 (2013).

<sup>31</sup> See *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987).

<sup>32</sup> *Fraternal Order of Police/Dep't of Corrections Labor Committee v. Public Employee Relations Board*, 973 A.2d 174, 177 (D.C. 2009).

<sup>33</sup> *MPD v. FOP/MPD Labor Committee*, 31 D.C. Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).

Decision and Order

PERB Case No. 12-A-04(R)

Page 7 of 9

The Superior Court found that there is a “defined public policy in which one administration cannot be compelled to adhere to the disciplinary policies of another” and that “this precedent is sufficiently specific to warrant review under public policy” of the Arbitrator’s determination on disparate treatment.<sup>34</sup> As further explained below, the Arbitrator’s decision does not compel one administration to adhere to the disciplinary policies of another and, thus, the Arbitrator’s award is not contrary to the public policy set forth by the Superior Court.

In citing legal precedent as support for the public policy in favor of allowing new administrators to adjust disciplinary policies within agencies, the Superior Court primarily relies upon *Jahr v. District of Columbia*, 968 F.Supp.2d 186, 192, (D.C. 2013), in which a District of Columbia paramedic brought a Title VII case based on disparate treatment, but where the court found collateral estoppel precluded the employee from bringing that case. The employee was estopped because he had brought the same case through the Office of Employee Appeals (OEA) which had been appealed to the District of Columbia Court of Appeals. The employee was terminated by the District of Columbia Fire and Emergency Medical Services Department for dishonesty and inexcusable neglect of duty.<sup>35</sup> The employee appealed his suspension through the Office of Employee Appeals (“OEA”).<sup>36</sup> The OEA made a factual determination as to whether the *Douglas* factors, including the consistency of the penalty factor, supported the employee’s claims that he had been subject to disparate treatment, which the Superior Court and Court of Appeals affirmed under an “arbitrary, capricious, or . . . abuse of discretion” standard of review.

In this case, the parties submitted the determination as to whether the discipline imposed was proper to the arbitrator based on her fact-finding, her determination of the issues, and her interpretation of the collective bargaining agreement. As the Arbitrator stated, “When considering a penalty that would be appropriate in the instant case, the [Adverse Action] Panel assessed the record evidence in accordance with the twelve factors identified in *Douglas*, as called for in the MPD Trial Board Handbook.”<sup>37</sup> The parties submitted the joint issue of whether the penalty of termination was appropriate in the grievant’s case. In determining the appropriateness of the grievant’s penalty, the Arbitrator reviewed the AAP’s application of the *Douglas* factors, as well as applied the twelve factors as found in *Douglas v. Veterans Administration*.<sup>38</sup>

The Superior Court ordered the Board to consider legal precedents regarding disparate treatment under different supervisors. The precedent that the Superior Court relies upon for the public policy of disparate treatment largely involves allegations of discrimination under Title VII, which are not at issue in the present case. The purpose behind the *Douglas* factor analysis is to “ensure that ‘managerial discretion has been legitimately invoked and properly exercised.’”<sup>39</sup>

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<sup>34</sup> Case No. 2013 CA 0002188 at 10-11.

<sup>35</sup> *Jahr v. D.C. Office of Emple. Appeals*, 19 A.3d 334, 336 (D.C. 2011).

<sup>36</sup> *Id.*

<sup>37</sup> Award at 18.

<sup>38</sup> 5 M.S.P.B. 313, 5 M.S.P.R. 280 (1981).

<sup>39</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (quoting *Douglas*, 328, 301).

Decision and Order  
PERB Case No. 12-A-04(R)  
Page 8 of 9

The “similarly situated” element of *Douglas* is to ensure that penalty determinations are made consistently among employees. Thus, the similarly situated employee analysis is often used in conjunction with consistency of the penalty under an Agency’s table of penalties.

The Arbitrator considered the *Douglas* factors – consistency of the penalty with those imposed upon other employees for the same or similar offenses and consistency of the penalty with any applicable agency table of penalties – along with the other *Douglas* factors and the evidence both sides presented at the arbitration in finding that the MPD’s penalty of termination was an inappropriate penalty. The Board has been presented with numerous cases involving *Douglas*, and as a quasi-judicial body, we have exclusive, limited statutory authority to review appeals from arbitration. Nonetheless, application of *Douglas* is drawn on an *ad hoc* basis. *Douglas* will be reviewed and applied in different manners based on the information presented to an arbitrator at the arbitration. Further, MPD failed to argue nor did it present any evidence that the subsequent Administration promulgated any information on a different disciplinary policy or that *Douglas* would be applied in any manner differently. As stated above, when submitting an issue to arbitration, “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.”<sup>40</sup>

The arbitrator here made the factual determination regarding the consistency of MPD’s application of its penalties. Even though the Arbitrator may have considered cases from other administrations when weighing the evidence before her, she did not hold that agencies are prevented from adjusting discipline under new administrations. As such, nothing in the award would prevent MPD or any other District agency from adjusting its disciplinary policies when there is a new administration. As well, the award would not prevent MPD or any other District agency from explaining that departure from prior penalties was made based on a change in the administration. Indeed, the MPD did not make such an argument and, thus, the arbitrator’s decision does not provide any guidance on that type of argument. The Board finds that the Arbitrator’s award and application of *Douglas* is not on its face contrary to the public policy described by the Superior Court and, thus, finds no law and public policy grounds to modify the Award.

In addition, the Superior Court remanded this case back to the Board to determine who bears the burden of proof under the *Douglas* factors. In a *Douglas* factor analysis, the burden is on the Agency to prove its facts by a preponderance of the evidence.<sup>41</sup> As stated in *Douglas*, “an agency’s decision to impose the particular sanction rests upon the considerations of fact, those facts must be established under the preponderance standard and the burden is on the agency to so establish them. This is to determine if facts related to aggravating circumstances in the individual case, the employee’s past work record, nature of the employee’s responsibilities, specific effects of the employee’s conduct on the agency’s mission or reputation, *consistency with other agency actions* and agency rules, or similar factual considerations which may be

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<sup>40</sup> *MPD v. FOP/MPD Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000);

<sup>41</sup> *Douglas*, 5 M.S.P.B. 313 at 297, 325.

Decision and Order  
PERB Case No. 12-A-04(R)  
Page 9 of 9

deemed relevant by the agency to justify the particular punishment.”<sup>42</sup> In addition, “when the appellant challenges the severity of the penalty, or when the Board’s presiding official perceives that there are genuine issues of justice or equity, the agency will be called upon to represent such further evidence as it may choose to rebut the appellant’s challenge or to satisfy the presiding official.” Furthermore, the Board notes that the Arbitrator had found that one charge against the grievant was not sustained. According to *Douglas*, “[w]henver the agency’s action is based on multiple charges some of which are not sustained, the presiding official should consider carefully whether the sustained charges merited the penalty imposed by the agency.”<sup>43</sup>

The Board finds that the Arbitrator’s application of the burden of proof of the *Douglas* factors did not contravene law or public policy.

#### IV. Conclusion

The Board finds that the Arbitrator’s conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. For the reasons discussed, no statutory basis exists for setting aside the Award; the Request is therefore, denied.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The District of Columbia Metropolitan Police Department’s Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy, Member Donald Wasserman, and Member Keith Washington

Washington, D.C.

November 20, 2014

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<sup>42</sup> *Id.* at 297, 325.

<sup>43</sup> *Id.* at 334.



Government of the District of Columbia  
Public Employee Relations Board

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In the Matter of:		)	
		)	
Christopher Collins,		)	PERB Case No. 10-S-10
		)	
Complainant,		)	
		)	Opinion No. 1557
v.		)	
		)	<b>CORRECTED COPY</b>
American Federation of Government		)	
Employees, National Office, and Local 1975,		)	
		)	
Respondents.		)	
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**DECISION AND ORDER**

On December 16, 2014, the D.C. Superior Court affirmed in part and remanded in part PERB’s Decisions and Orders in *Collins v. Am. Fed. of Gov’t Emp., National Office & Local 1975*, Slip Op. No. 1289, PERB Case No. 10-S-10 (June 27, 2012) (hereinafter “Op. No. 1289”) and *Collins v. Am. Fed. of Gov’t Emp., National Office & Local 1975*, 60 D.C. Reg. 2541, Slip Op. No. 1351, PERB Case No. 10-S-10 (2013) (hereinafter “Op. No. 1351”). The Court ordered PERB to address the American Federation of Government Employees, National Office (hereinafter “AFGE”) argument that the Board lacked subject matter jurisdiction over the complaint.<sup>1</sup> As explained below, the Board vacates the parts of Op. Nos. 1289 and 1351 that found that because AFGE’s Motion to Dismiss was untimely, it would not consider AFGE’s subject matter jurisdiction defense. Consistent with the Court’s Opinion, the Board rejects AFGE’s arguments, and finds that it has subject matter jurisdiction over the complaint.

**I. Statement of the Case**

On July 6, 2010, complainant Christopher Collins filed a standards of conduct complaint against AFGE and American Federation of Government Employees, Local 1975 (“Local 1975”). Collins alleged that AFGE and Local 1975 had mismanaged membership dues and other finances, and had failed to provide an accounting or other financial reports and summaries to

<sup>1</sup> AFGE Local 1975 did not take part in the appeal of this case to Superior Court and is therefore, not a respondent in this decision.

Decision and Order  
PERB Case No. 10-S-10  
Page 2

members when requested.<sup>2</sup> Additionally, Collins alleged that Local 1975 had operated for at least 18 months without a treasurer and had not made any efforts to hold an election.<sup>3</sup> Neither AFGE nor Local 1975 filed an answer.

On October 27, 2010, 113 days after the Complaint was filed, AFGE filed a Motion to Dismiss the Complaint against AFGE only arguing that PERB lacked subject matter jurisdiction over it, and alternatively, that the Complaint against AFGE was moot since Collins had already been given all of the requested documents that AFGE had in its possession and could give him.<sup>4</sup>

In Op. No. 1289, the Board found that because AFGE had failed to file an answer within 15 days from the service of the Complaint as required by PERB Rule 544.6, then under PERB Rule 544.7 the allegations in the Complaint were deemed admitted.<sup>5</sup> Accordingly, the Board denied AFGE's Motion to Dismiss and found that the Respondents' actions violated D.C. Official Code § 1-617.03(a) (5), which requires unions to maintain "fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members."<sup>6</sup>

AFGE filed a Motion for Reconsideration arguing that subject matter jurisdiction defenses can be raised at any time, and that the Board had erred when it failed to consider those arguments in AFGE's Motion to Dismiss.<sup>7</sup> In Op. No. 1351, the Board denied AFGE's Motion for Reconsideration, finding that the arguments presented constituted nothing more than a mere disagreement with the Board's initial decision.<sup>8</sup>

AFGE appealed the Board's decisions to the D.C. Superior Court. In its Opinion, the Court made three findings.

First, the Court found that Op. Nos. 1289 and 1351 erred by not addressing AFGE's argument that PERB lacked subject matter jurisdiction, which the Court asserted "can never be waived."<sup>9</sup> The Court reasoned that PERB Rule 544.6's use of the term "jurisdiction" is unclear as to whether it is referring to personal jurisdiction, subject matter jurisdiction or PERB's authority to act under a statute, but that Ops. No. 1289 and 1351 applied the term "to encompass subject matter."<sup>10</sup> Further, the Court noted that under D.C. Official Code §§ 1-605.02(9) and (11), "[a] Standards of Conduct Complaint is incontrovertibly a subject matter under the authority of the Board," and that the Board's adoption of PERB Rules 544.6 and 544.7 is also within its authority.<sup>11</sup> The Court remanded the matter to PERB to consider AFGE's subject

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<sup>2</sup> Complaint at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> Motion to Dismiss at 1, 5.

<sup>5</sup> Op. No. 1289 at p. 1.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> Motion for Reconsideration at 2.

<sup>8</sup> Op. No. 1351 at p. 3.

<sup>9</sup> *Am. Fed'n of Gov't Emp, Nat'l Office v. D.C. Public Emp. Relations Bd.*, Case No. 2013 CA 000846 P(MPA) at p. 6-7 (D.C. Super. Ct. Dec. 16, 2014) (internal citations omitted).

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 6.

Decision and Order  
PERB Case No. 10-S-10  
Page 3

matter jurisdiction defense, “which PERB... erred as a matter of law in not addressing,” since subject matter jurisdiction arguments “can be raised at any time.”<sup>12</sup>

Second, the Court affirmed the Board’s findings that it had personal jurisdiction over AFGE.<sup>13</sup> The Court stated that subject matter jurisdiction covers “what” a court can hear, and personal jurisdiction covers “who” that court can reach.<sup>14</sup> Further, the Court held that while subject matter jurisdiction can never be waived, “parties can waive personal jurisdiction.”<sup>15</sup> AFGE argued that PERB Rule 544.1 only applies to exclusive representatives, and that AFGE Local 1975 is the exclusive representative, not the AFGE National Office. However, the Court reasoned that AFGE’s argument was a personal jurisdiction defense, and that by failing to timely assert its position, AFGE “waived personal jurisdiction thereby placing [AFGE] within reach of PERB’s personal jurisdiction.”<sup>16</sup>

Third, the Court rejected AFGE’s argument that Collins’ complaint is moot.<sup>17</sup> The Court found that the case is not moot “because [AFGE] has the authority under its own constitution to request and have access to all financial documents of [Local 1975] and all financial records have not been submitted.”<sup>18</sup> The Court reasoned:

[AFGE] has given annual financial submissions over the past four years, but it has not granted all relief. They claim that they do not have access to all of Local 1975’s financial records. However, [AFGE] has control of Local 1975’s record by operation [of] AFGE’s National Constitution and Local 1975’s Constitution. Local 1975 has yet to respond to these legal proceedings. In their absence, [AFGE] has the authority and must act within that authority to provide all relief requested to the complainant, not just the parts [AFGE] deems readily accessible. The case and controversy has not been resolved, and, therefore, the case is not moot.<sup>19</sup>

Based on these findings, the Court affirmed in part, and remanded in part, the Board’s Decisions and Orders in Op. Nos. 1289 and 1351. On remand, the Court ordered PERB to address AFGE’s argument that it lacked subject matter jurisdiction.

## II. Analysis

Consistent with the Court’s Opinion, the Board vacates the parts of Ops. No. 1289 and 1351 that stated PERB could not consider AFGE’s subject matter jurisdiction argument because

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<sup>12</sup> *Id.* (citing *District of Columbia v. AFGE, Local 1403*, 19 A.3d 764, 771 (D.C. 2011)).

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* (citing *Black’s Law Dictionary*, 870 (8<sup>th</sup> ed. 1999)).

<sup>15</sup> *Id.* (citing *Jemison v. Nat’l Baptist Convention*, 720 A.2d 275, 282) (D.C. 1998)).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 9-10 (citing AFGE Local 1975 Constitution, Art. 5 § 5 and AFGE National Office Constitution, Article XIX, § 7).

Decision and Order  
PERB Case No. 10-S-10  
Page 4

AFGE's pleading was untimely. Indeed, subject matter jurisdiction defenses cannot be waived and may be raised at any time.<sup>20</sup>

In its Motion to Dismiss, AFGE argued that under PERB Rule 544.1, a standard of conduct complaint can only be filed against an organization that has been certified by PERB as the exclusive representative through an election, or against an organization whose exclusive recognition was already established prior to the effective date of the CMPA and has continued until the date of the filing of the complaint without being decertified.<sup>21</sup> AFGE asserted that it is not the certified exclusive representative of Mr. Collins' bargaining unit. Only Local 1975 is certified as the exclusive representative. AFGE contends that PERB therefore lacks subject matter jurisdiction over AFGE and that Collins' complaint against it must be dismissed.<sup>22</sup>

In its Opinion, the Court found that D.C. Official Code § 1-605.02(9) grants the Board incontrovertible subject matter jurisdiction over standards of conduct complaints.<sup>23</sup> Further, D.C. Official Code §§ 1-617.03(a)(1) and (5), as well as PERB Rules 544.2(a) and (e), allow any individual to file a standards of conduct complaint with PERB if that individual has been aggrieved by his or her union's failure to hold periodic democratic elections, to maintain fiscal integrity in the conduct of the affairs of the union, or to provide members with regular financial reports. Since these are the very bases of Collins' allegations, the Board finds that it has subject matter jurisdiction over his complaint.

In regard to whether PERB has jurisdiction over AFGE in this case, the Court expressly rejected AFGE's argument that the standards of conduct requirements in PERB Rule 544.1 only apply to the certified exclusive representative, which is Local 1975, and not to AFGE. The Court found that Respondent's assertion was a personal jurisdiction argument couched as a subject matter jurisdiction defense, and that AFGE waived its right to raise its argument when it failed to file a timely response.<sup>24</sup>

AFGE's argument fails. The title of "exclusive representative" applies to a person or entity, answering the question "who" the court can reach, clearly the very definition of personal jurisdiction. In accordance to PERB Rule 544.6, when jurisdiction is not asserted within the allotted time frame, 15 days in this case, jurisdiction is waived. AFGE waived personal jurisdiction thereby placing AFGE lawfully within reach of PERB's personal jurisdiction.<sup>25</sup>

Accordingly, consistent with the Court's Opinion, the Board finds that it has subject matter and personal jurisdiction over AFGE in this matter.

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<sup>20</sup> *Id.* at 6-7.

<sup>21</sup> Motion to Dismiss at 3-4.

<sup>22</sup> *Id.*

<sup>23</sup> *Am. Fed'n of Gov't Emp, Nat'l Office v. D.C. Public Emp. Relations Bd.*, Case No. 2013 CA 000846 P(MPA) at p. 6.

<sup>24</sup> *Id.* at 8.

<sup>25</sup> *Id.* at 8.

Decision and Order  
PERB Case No. 10-S-10  
Page 5

Furthermore, in accordance with the Court's findings that, due to the absence of any response by Local 1975 in this matter, AFGE "must act within [the oversight authority it has over AFGE Local 1975 under its own Constitution] to provide all relief requested to the complainant," the Board reaffirms the relief it ordered in Ops. No. 1289 and 1351.<sup>26</sup>

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The parts of Op. Nos. 1289 and 1351 that stated the Board could not consider the AFGE National Office's subject matter jurisdiction arguments because the AFGE National Office's responsive pleading was untimely is vacated;
2. Complainant Christopher Collins' Standard of Conduct Complaint is granted;
3. AFGE National Office will provide Complainant with requested financial information for the four years prior to filing of the Complaint;
4. AFGE National Office will cease and desist refusing to provide regular financial reports or summaries to members.
5. AFGE National Office shall conspicuously post, within ten (10) days from the receipt of this Decision and Order, the attached Notice where notices to members are normally posted. The Notice shall remain posted for thirty (30) consecutive days;
6. AFGE National Office shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the receipt of this Decision and Order that the Notice has been posted accordingly and that the requested information has been provided;
7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

### BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

December 17, 2015  
Washington, D.C.

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<sup>26</sup> *Id.* at 10.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 10-S-10, Op. No. 1557 was sent by File and ServeXpress (and by U.S. Mail where noted) to the following parties on this the 5<sup>th</sup> day of January, 2016.

Matthew LeFande  
4585 North 25<sup>th</sup> Street  
Arlington, VA 22207

Andres M. Grajales  
AFGE, Office of the General Counsel  
80 F St., NW  
Washington, DC 20001

Clifford Lowery  
AFGE Local 1975  
64 New York Ave., NE  
Washington, DC 20002

BY U.S. MAIL

/s/ Sheryl Harrington  
PERB



Public Employee Relations Board



1100 4<sup>th</sup> Street S.W. Suite E630 Washington, D.C. 20024 Business: (202) 727-1822 Fax: (202) 727-9116 Email: [perb@dc.gov](mailto:perb@dc.gov)

# NOTICE

**TO ALL MEMBERS OF AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL OFFICE (“AFGE”), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN OPINION NOS. 1289, 1351 and 1557, PERB CASE NO. 10-S-10.**

**WE HEREBY NOTIFY** our MEMBERS that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered AFGE to post this Notice. Specifically, AFGE failed to exercise financial control over the membership dues of Local 1975, failed provide requested reports and financial summaries to AFGE Local 1975 Member, Christopher Collins and failed to ensure democratic elections were held for the position of Local 1975 Treasurer for the eighteen (18) months prior to the filing of the Complaint.

**WE WILL** cease and desist from violating D.C. Code § 1-617.03(a)(5) by the actions and conduct set forth in Opinion Nos. 1289, 1351 and 1557.

**WE WILL** cease and desist from failing to provide regular financial reports or summaries to members upon proper request.

**WE WILL** cease and desist from violating the standards of conduct for a labor organization set forth by the Labor-Management subchapter of the Comprehensive Merit Personnel Act (“CMPA”).

**WE WILL** provide the Complainant, Christopher Collins with the requested financial information for the four (4) years prior to filing his Complaint.

American Federation of Government Employees

Date: \_\_\_\_\_ By: \_\_\_\_\_

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4<sup>th</sup> Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

**BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.  
January 4, 2016

**Government of the District of Columbia  
Public Employee Relations Board**

<hr/>		)	
In the Matter of:		)	
		)	
Fraternal Order of Police/Metropolitan Police		)	
Department Labor Committee,		)	
		)	
	Complainant,	)	PERB Case No. 09-U-55
		)	
	v.	)	Opinion No. 1558
		)	
District of Columbia Metropolitan Police		)	
Department,		)	
		)	
	Respondent.	)	
<hr/>		)	

**DECISION AND ORDER**

The instant case presents a claim of direct dealing, including polling of members, and a claim of repudiation of the collective bargaining agreement. As these claims are not supported by the evidence submitted, the case is dismissed.

**I. Statement of the Case**

**A. Proceedings**

On July 16, 2009, Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union” or “FOP”) filed a complaint alleging that the Metropolitan Police Department (“MPD” or “Department”)<sup>1</sup> modified and restricted leave for eight weekends in 2009 to implement an initiative called All Hands on Deck (“AHOD”). FOP further alleged that after the announcement of the leave restrictions, MPD considered, and in some cases granted, leave that would not have been allowed under the leave restrictions. FOP asserted in the complaint that in so doing MPD engaged in the unfair labor practice of direct dealing with Union members and that MPD tried to induce Union members into waiving their rights under Article 24 of the collective bargaining agreement (“CBA”). FOP asserted that the direct negotiations constituted improper polling of union members and that MPD repudiated the

<sup>1</sup> On March 12, 2013, FOP dismissed two individually named respondents.



Decision and Order  
PERB Case No. 09-U-55  
Page 2

CBA. MPD filed an answer admitting certain allegations concerning the AHOD initiative, denying the commission of an unfair labor practice, and requesting dismissal of the complaint.

FOP applied for the issuance of a subpoena to MPD's custodian of records requiring the production of certain documents at a deposition. MPD moved to quash the subpoena. After a hearing was scheduled, counsel for MPD advised the Executive Director in a letter that the parties had reached an agreement on the production and exchange of exhibits and that MPD withdrew its motion to quash. The letter also advised that the parties had agreed that in lieu of a hearing the case should be decided on the pleadings. The letter stated, "Witness testimony is not required in this case as the pleadings and exhibits speak for themselves. As such and pursuant to PERB Rule 520.10, the parties request that the hearing in this matter . . . be cancelled and that the case be decided upon direct briefing to PERB. The parties have agreed to April 30, 2015, as the deadline to submit written briefs to PERB." The Executive Director cancelled the hearing and accepted the proposed due date for briefs. The Executive Director added that the parties should stipulate to the facts and to the authenticity and admissibility of the exhibits and that, if objections to the exhibits are raised, the hearing might be re-scheduled.

On the assigned date, both parties filed their briefs along with their exhibits. The parties did not stipulate to anything, but neither of them objected to any exhibit. FOP's unfair labor practice complaint is before the Board for disposition.

## **B. Facts**

The facts established by the pleadings, having been alleged in the complaint and admitted in the answer, are as follows:

On January 7, 2009, Chief Cathy Lanier issued teletype 01-033-09 (the "January Teletype"), in which she issued an All Hands on Deck ("AHOD") initiative for calendar year 2009.<sup>2</sup> On March 5, 2009, Phase I of the AHOD initiative of the Teletype was modified.<sup>3</sup> On March 30, 2009, FOP members were notified as to which officers would actually be working Phase I of the AHOD initiative.<sup>4</sup> On May 12, 2009, FOP members were notified as to which officers would actually be working Phase II of the AHOD initiative.<sup>5</sup>

FOP filed a grievance and requested arbitration regarding the issuance of the January Teletype and the 2009 AHOD initiative. The arbitration took place June 17, 2009.<sup>6</sup>

The uncontested exhibits submitted by the parties establish the following additional facts:

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<sup>2</sup> Complaint ¶ 3; Answer ¶ 3.

<sup>3</sup> Complaint ¶ 5; Answer ¶ 5.

<sup>4</sup> Complaint ¶ 6; Answer ¶ 6.

<sup>5</sup> Complaint ¶ 7; Answer ¶ 7.

<sup>6</sup> Complaint ¶¶ 8, 9; Answer ¶¶ 8, 9.

Decision and Order  
PERB Case No. 09-U-55  
Page 3

The March 30, 2009 and May 12, 2009 notifications regarding Phase I and Phase II, respectively, of the AHOD initiative stated, "Once finalized, no changes shall be made to these assignments without the approval of the Executive Officer, Executive Office of the Chief of Police."<sup>7</sup>

At the June 17, 2009 arbitration hearing, Assistant Chief Alfred Durham testified as follows:

So, whenever a member -- if Al Durham was assigned to a specialized unit and I had a graduation, that commanding officer or that supervisor would e-mail it to me and I would make that decision. And I have not since AHOD denied one person, sir, who had a legitimate -- and I'm talking about a family event they can show me they have tickets for an airplane, something like - airplane. I'm sorry -- a trip, a planned vacation, prior to even if that would have been the April instance, sir, that I have denied them. Never.

Q. You're saying this, "Once finalized, no changes shall be made without the approval of the Executive Officer," you're saying that's notifying the Department that there's a procedure in place where you can submit requests and ask for exceptions and present to you circumstances to get leave on these days?

A. Yes, sir. . . . As a matter of fact, I just received one yesterday for a detective whose son is going to try out to play football for Penn State. . . .

Q. Am I correct then that you're negotiating the terms of AHOD directly with members?

A. No. . . . What we're saying is hey, everybody's part of this plan. Again, teamwork is what this is all about, and an officer - trust me, I was an officer. I started from the ground, Sixth District, and when you got the support of your Sergeants, your Lieutenant, it motivates you to want to do better, sir.

Q. I'm just asking was the FOP included in these discussions.

A. No, they were not, sir.<sup>8</sup>

MPD produced e-mails involving requests for leave on days covered by AHOD assignments. In its brief, FOP accurately summarized the communications in the e-mails ("Communications") as follows:

[O]n June 16, 2009, as Assistant Chief Durham had testified, a D.C. Police Union member requested to be excused from AHOD to attend a recruitment football camp with his grandson at Penn State University. *See* June 16, 2009 email attached as Exhibit 8. Similarly, on May 21, 2009, Assistant Chief Durham approved administrative leave for two D.C. Police Union members who had requested to be excused from AHOD to attend training. *See* May 21, 2009 email, attached as Exhibit 9. On June 3, 2009, a D.C. Police Union member requested to be excused from AHOD to attend her daughter's

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<sup>7</sup> Complaint Ex. 4, 5; MPD Br. Ex. 3, 4.

<sup>8</sup> FOP Br. Ex. 3 Tr. at 52-53.

Decision and Order  
PERB Case No. 09-U-55  
Page 4

dance performance in Canada. *See* June 3, 2009 email, attached as Exhibit 10. In response to the request, Inspector Sims replied: “Please forward a copy of the Canada itinerary, so it can be forwarded to the EOACOP [Assistant Chief Durham] for his approval and consideration.” *Id.* Similarly, on May 20, 2009, a D.C. Police Union member requested to be excused from AHOD to attend his son’s high school graduation, stating: “I am so proud that he was able to overcome this situation and wouldn’t want to miss it for the world.” *See* May 20, 2009 email, attached as Exhibit 11. In response, Captain Paul Shelton forwarded the request to Assistant Chief Rodney Parks, stating, “In light of the occasion, I concur and support the request.” *See id.* On May 27, 2009, a D.C. Police Union member requested to be excused from AHOD to attend his son’s high school graduation, stating as follows:

I am requesting leave for June 6, 2009. My one and ONLY son is graduating from high school on this day. This day is a very special day for me and him and I look forward to celebrating it with him. . . . I understand AHOD is scheduled during this period, however, this day is a very monumental day and only comes once. I also know that leave is not guaranteed, but it would be greatly appreciated if my request was granted.

*See* May 27, 2009 email, attached as Exhibit 12. In response, Assistant Chief Parks stated “Consideration. Worthy I believe of favorable thought.” *See id.*<sup>9</sup>

## II. Analysis

FOP considers the foregoing Communications to be an unfair labor practice. FOP argues “MPD management instituted a new leave policy by directly negotiating individual exceptions to the AHOD work schedule with individual members of the D.C. Police Union.”<sup>10</sup> The Communications, however, do not contain any negotiations. The AHOD initiative, which FOP contests in a *different* proceeding, led to certain assignments. The assignments and certain terms of the assignments were set forth in the March 30, 2009 and May 12, 2009 notifications. Those notifications stated, “Once finalized, no changes shall be made to these assignments without the approval of the Executive Officer, Executive Office of the Chief of Police.” In the Communications, which FOP contests in *this* proceeding, MPD did not negotiate with members on this policy. Instead MPD followed its policy without any suggestion that an alteration might be considered. In accordance with the policy, MPD received and considered requests for changes to assignments that were submitted to the Executive Officer, Executive Office of the Chief of Police.

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<sup>9</sup> FOP Br. 4-5.

<sup>10</sup> FOP Br. 8.

Decision and Order  
PERB Case No. 09-U-55  
Page 5

The difference between this case and the Supreme Court's case of *Medo Photo Supply v. National Labor Relations Board*,<sup>11</sup> which FOP cites in its brief as precedent on direct dealing,<sup>12</sup> is that the latter case involved *dealing*. The employees in *Medo Photo Supply* made a proposal to abandon their union that "was contingent upon petitioner's willingness to give the desired wage increase."<sup>13</sup> The present case, in contrast, does not involve a contingent proposal. It involves communication. Mere communication with membership does not violate the CMPA.<sup>14</sup>

Communications by employers that do not attempt to induce employees to take action against their union do not constitute direct dealing.<sup>15</sup> FOP argues that the alleged direct dealing "improperly persuaded union members into believing that they could achieve their objectives by bypassing the D.C. Police Union and dealing directly with the MPD."<sup>16</sup> The Communications could not reasonably be expected to induce employees into having such a belief. The Communications contain nothing that would persuade a member to change his view of the Union one way or the other. No one refers to FOP in the Communications. In particular, the officers responding to the requests say nothing about a member's support or lack of support for FOP in their evaluations of the requests (e.g., "In light of the occasion, I concur and support the request."<sup>17</sup>). The officers do not ask for anything in return for granting a request. The complaint alleges that by direct dealing with members in an effort to induce them to volunteer to change their schedule of days off, MPD attempted to induce union members into waiving their rights under Article 24 of the CBA.<sup>18</sup> Article 24 concerns scheduling. In its brief, FOP presented no explanation, argument, or evidence that would connect the Communications with an inducement to waive any rights set forth in Article 24. Therefore, we find that the Communications do not attempt to induce employees to take action against FOP.

The Board has held that "[a]lleged examples of direct dealing must be examined in context to determine whether the agency intended to disparage or undermine the union's leadership."<sup>19</sup> The context here is that no evidence was presented that the Union ever negotiated on behalf of individuals for leave on a particular day or played any role in leave requests. Article 15 of the CBA, entitled "Leave" does not refer to any such role nor does it make any provision for procedures for leave requests. It contains sections on "Funeral Leave" (section 1), "Leave for Convention and Union Functions" (section 2), "Leave for Membership Meetings" (section 3), sick leave (sections 4 and 5), and performance-of-duty injuries (section 6). Article 15 has no provisions on annual leave taken for personal reasons.<sup>20</sup> Rather than being a departure from the norm that could be seen as disparaging, the procedure followed here seems to be the ordinary procedure contemplated by the District Personnel Manual. As MPD points out in its brief, Title 6B-12, Section 1235.4 of the D.C. Municipal regulations provides that "[a]n employee is entitled to his or her annual leave, and the taking of annual leave for the

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<sup>11</sup> 321 U.S. 678 (1949).

<sup>12</sup> FOP Br. 8.

<sup>13</sup> 321 U.S. at 683.

<sup>14</sup> *AFGE, Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at 5, PERB Case No. 13-U-06 (2014).

<sup>15</sup> *Id.*

<sup>16</sup> FOP Br. 9-10.

<sup>17</sup> FOP Br. Ex. 11.

<sup>18</sup> Complaint ¶ 12.

<sup>19</sup> *D.C. Dep't of Youth Rehab. Servs.*, Slip Op. No. 1449 at 5.

<sup>20</sup> FOP Complaint Ex. 1 at 16.

Decision and Order  
PERB Case No. 09-U-55  
Page 6

purposes set forth in subsection 1235.1 of this section should be encouraged, subject to scheduling approval by the agency head.” An intent to disparage or undermine union leadership cannot be gleaned from these facts in which the agency followed ordinary procedures called for in the District Personnel Manual and did not exclude the Union from a role it had previously played.

The complaint also alleged that MPD engaged in polling of its members, a type of direct dealing, and repudiated the contract. FOP’s brief contains no argument on those claims, and neither claim is supported by the evidence submitted. Accordingly, we deem those two claims to be abandoned.

In view of the above, the Board finds that MPD did not commit an unfair labor practice.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairman Charles Murphy and Members Ann Hoffman, and Yvonne Dixon

December 17, 2015  
Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Number 09-U-55 is being transmitted to the following parties on this the 31st day of December 2015.

Anthony M. Conti  
Daniel J. McCartin  
36 South Charles St., suite 2501  
Baltimore, MD 21201

**via File&ServeXpress**

Mark Viehmeyer  
Metropolitan Police Department  
300 Indiana Ave. NW, room 4126  
Washington, DC 20001

**via File&ServeXpress**

/s/ Sheryl V. Harrington  
Sheryl V. Harrington  
Secretary

**Government of the District of Columbia  
Public Employee Relations Board**

_____	)	
In the Matter of:	)	
	)	
District of Columbia Public Schools,	)	
	)	PERB Case No. 15-A-07
Petitioner,	)	
	)	Opinion No. 1559
and	)	
	)	Corrected Copy
Council of School Officers, Local 4,	)	
American Federation of School Administrators,	)	
	)	
Respondent.	)	
_____	)	

**Decision and Order**

**I. Statement of the Case**

On February 23, 2015, the District of Columbia Public Schools (“DCPS” or “Petitioner”) filed a timely Arbitration Review Request (“Request”), pursuant to the Board’s authority in D.C. Official Code § 1-605.02(6) to consider appeals from arbitration awards. DCPS requests that the Board overturn an arbitration award (“Award”) on the grounds that (1) Arbitrator Joseph Sharnoff (“Arbitrator”) exceeded his jurisdiction as arbitrator under the parties’ collective bargaining agreement, and (2) the Award is contrary to law and public policy. The Council of School Officers, Local 4, American Federation of School Administrators (“CSO” or “Respondent”) filed a timely Opposition to DCPS’s Request.

For the following reasons, DCPS’s Request is denied.

**II. Background**

The grievance before the Arbitrator was filed on behalf of an employee (“Grievant”) by CSO, concerning Grievant’s termination.<sup>1</sup> DCPS removed Grievant from his position of Dean of Students at a DCPS high school for adults for an alleged improper relationship with a student

<sup>1</sup> Award at 2-3.

Decision and Order

Case No. 15-A-07

Page 2 of 8

(“Student”).<sup>2</sup> The parties presented their cases at a December 14, 2014 hearing before the Arbitrator.<sup>3</sup> After DCPS rested its case-in-chief without any testimony from the Student, CSO moved for a “Directed Verdict” (“Motion”) on the grounds that DCPS had failed to meet its burden of proof that DCPS had just cause to terminate Grievant.<sup>4</sup> DCPS objected to CSO’s motion, arguing that the case involved “a credibility issue that the arbitrator is appropriate to weigh” and that further briefing should take place.<sup>5</sup> The Arbitrator continued the hearing, and CSO presented its witness.<sup>6</sup> At the close of the hearing, the parties agreed off the record that DCPS could file a position regarding CSO’s Motion.<sup>7</sup> The Arbitrator then closed the evidentiary record at the end of the hearing, but instructed that any evidence that needed to be added to the record would require a conference call before admission.<sup>8</sup>

In an email to the Arbitrator, DCPS opposed CSO’s motion and requested a conference call to discuss reopening the record for testimony from the Student who had not testified during the hearing, along with other unnamed witnesses.<sup>9</sup> The Arbitrator granted DCPS’s request for a conference call, but placed DCPS on notice that the bar for reopening the record would be high for a witness that he believed should have been called during the hearing.<sup>10</sup> On January 28, 2015, the Arbitrator held a conference call with the parties. The Award noted that, during the conference call, DCPS provided for the first time some of the efforts it made to locate the Student in order to have her testify at the December 17, 2014 arbitration hearing. According to the Arbitrator, “No specifics were provided by the DCPS as to dates of telephone calls, e-mails, letters, etc., which assertedly had been made by the DCPS to” the Student.<sup>11</sup> The Arbitrator denied DCPS’s request to present the Student as a witness. In denying DCPS’s request, the Arbitrator noted that DCPS made no arguments about its attempts to obtain the Student’s cooperation and attendance before or during the hearing, nor did DCPS request to have the record be held open in order for DCPS to reach the Student as a witness.<sup>12</sup> The Arbitrator found that DCPS’s request at that point in the proceedings was “inappropriate and harmful to the Arbitration process, given that the request was not made until after the DCPS had rested its direct case, after the Union had presented the testimony of the Grievant, and after the evidentiary record at the instant Arbitration hearing was declared closed by the Arbitrator following the full, complete and unreserved agreement of the DCPS and the Union.”<sup>13</sup>

The Arbitrator sustained CSO’s motion, finding that DCPS failed to meet its burden of proof that the Grievant engaged in the alleged misconduct.<sup>14</sup> In finding that DCPS failed to

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<sup>2</sup> Award at 3.

<sup>3</sup> *Id.* at 10.

<sup>4</sup> Transcript at 166, Award at 12.

<sup>5</sup> *Id.* at 167.

<sup>6</sup> *Id.* at 168.

<sup>7</sup> *Id.* at 207.

<sup>8</sup> *Id.*

<sup>9</sup> Award at 11.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Award at 11-12.

<sup>14</sup> *Id.* at 13.



Decision and Order

Case No. 15-A-07

Page 3 of 8

prove just cause for the Grievant's termination, the Arbitrator determined that DCPS improperly based the Grievant's termination upon a Report of Investigation that was compiled by an investigator. The Arbitrator found that the Report of Investigation yielded no "probative evidence to support the bare allegation" that the Grievant and the Student had an improper relationship.<sup>15</sup> The Arbitrator also found that DCPS failed "to present on its direct case sufficient credible, probative evidence to support" the charge that the Grievant and the Student engaged in an improper relationship.<sup>16</sup> The Arbitrator ordered the Grievant reinstated and made whole for his losses.<sup>17</sup>

### III. Discussion

DCPS requests the Board overturn the Arbitrator's Award on the grounds that the Arbitrator exceeded his jurisdiction under the parties' collective bargaining agreement, and that the Award is contrary to law and public policy because the Arbitrator did not allow DCPS to present evidence material to its case and the Arbitrator incorrectly applied the D.C. Court of Appeals' standard for a directed verdict.<sup>18</sup>

The Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>19</sup> The Board has only "limited authority to overturn an arbitral award."<sup>20</sup> There is a "well defined and dominant" policy favoring arbitration of a dispute where the parties have chosen that course.<sup>21</sup> Just as "Congress [has] declared a national policy favoring arbitration," so has the District of Columbia.<sup>22</sup> This preference for honoring the parties' agreement to arbitrate disputes underlies the practical "hands-off" approach to review arbitrators' decisions, except in certain "restricted" circumstances.<sup>23</sup> The Board will not substitute its own interpretation of the collective bargaining agreement for that of the parties or the interpretation of the duly designated arbitrator.<sup>24</sup>

#### A. Arbitrator's jurisdiction

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.* at 20.

<sup>18</sup> Request at 5-6.

<sup>19</sup> D.C. Official Code § 1-605.02(6).

<sup>20</sup> *Fraternal Order of Police v. District of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 177 (D.C. 2009).

<sup>21</sup> *District of Columbia Metro. Police Dep't v. Public Employee Relations Bd.*, 901 A. 2d 784, 789 (D.C. 2006).

<sup>22</sup> *District of Columbia v. Greene*, 806 A. 2d 216, 221 (D.C. 2002) (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). *See, e.g., Masurovsky v. Green*, 687 A.2d 198, 201 (D.C. 1997) ("Variously called a presumption, preference or policy, the rule favoring arbitration is identical under the D.C. Uniform Arbitration Act and the Federal Arbitration Act.") (citation omitted)

<sup>23</sup> *District of Columbia Metro. Police Dep't*, *supra*, 901 A.2d at 787; *see Fraternal Order of Police*, *supra*, 973 A.2d at 177 n.2.

<sup>24</sup> *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

Decision and Order

Case No. 15-A-07

Page 4 of 8

The jurisdiction of an arbitrator is derived “from the parties' agreement and any applicable statutory and regulatory provisions.”<sup>25</sup> When submitting an issue to arbitration, “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based.”<sup>26</sup>

One of the tests used by the Board to determine whether an arbitrator has exceeded his jurisdiction is “whether the Award draws its essence from the collective bargaining agreement.”<sup>27</sup> The Board adopted the Sixth Circuit's analysis of “essence of the agreement” issues:

Did the arbitrator act “outside his authority” by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator “arguably construing or applying the contract?” So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made “serious,” “improvident,” or “silly” errors in resolving the merits of the dispute.<sup>28</sup>

DCPS asserts that the Arbitrator exceeded his jurisdiction when he denied DCPS’s request to reopen the arbitration record for the Student’s testimony.<sup>29</sup> DCPS argues that the collective bargaining agreement requires that “both parties are to be given a full opportunity to present evidence and to examine and cross-examine witnesses,” and that the “arbitrator shall have no power to delete or modify in any way any of the provisions of this Agreement.”<sup>30</sup> DCPS argues that the Arbitrator modified the contract by creating a new standard that DCPS needed to meet in order to reopen the record.<sup>31</sup> DCPS argues that the Arbitrator did not have the authority under the parties’ CBA to deny DCPS’s witness, because the CBA’s contains a provision that each side have a “full opportunity to present evidence and to examine and cross-examine witnesses.”<sup>32</sup>

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<sup>25</sup> *D.C. Dep’t of Public Works v. AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988).

<sup>26</sup> *MPD v. FOP/MPD Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000);

<sup>27</sup> *Mich. Family Resources, Inc. v. Serv. Employees Int’l Union, Local 517M*, 475 F.3d 746, 753 (2007), quoted in *F.O.P./Dep’t of Corrs. Labor Comm. v. D.C. Dep’t of Corrs.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at 4, PERB Case No. 10-A-09 (2012).

<sup>28</sup> *Nat’l Ass’n of Government Employees, Local R3-07 v. D.C. Office of Communications*, 59 D.C. Reg. 6832, Slip Op. No. 1203, PERB Case No. 10-A-08 (2011) (citing *Michigan Family Resources, Inc. v. SEIU Local 517M*, 475 F.3d 746, 753 (2007)).

<sup>29</sup> Request at 5.

<sup>30</sup> *Id.* (citing Article VIII, Sections B and C(2)(c)(3), respectively, of the parties’ collective bargaining agreement).

<sup>31</sup> Request at 5.

<sup>32</sup> Request at 4-5.

Decision and Order

Case No. 15-A-07

Page 5 of 8

The key word in the CBA is “opportunity.” The Arbitrator determined that DCPS had the opportunity to present the testimony of the Student as part of its case in chief and never attempted to do so or to present any explanation for its failure to do so or to keep the record open for such a presentation. The Arbitrator noted numerous opportunities in which DCPS failed to even mention the possibility of the Student testifying. For instance, DCPS requested a postponement of the arbitration due to DCPS’s counsel’s “heavy schedule” but did not request a postponement because it was having problems locating the Student as a witness.<sup>33</sup> Further, DCPS did not raise its intention of calling the Student as a witness at any time prior to the hearing or at the hearing.<sup>34</sup> DCPS failed to explain to the Arbitration its problems of securing the Student as a witness when it rested its case-in-chief. Lastly, at the close of the hearing, the Arbitrator specifically asked the parties if there was any additional evidence, and DCPS failed to request that the record be held open while it located the Student.<sup>35</sup> DCPS only raised the issue of the Student as a potential witness when submitting its brief in opposition to CSO’s motion.<sup>36</sup> Additionally, at the time of the conference call concerning reopening the record to hear the Student as a witness, DCPS did not provide any dates, emails, or other evidence of its efforts prior to the hearing to find the Student to testify.<sup>37</sup>

DCPS does not dispute that it submitted to the Arbitrator the matter underlying the arbitration, and does not argue that the Arbitrator resolved an issue not submitted to arbitration. In making his determinations regarding the misconduct charge, the Arbitrator was applying the collective bargaining agreement’s requirement that discipline shall be imposed for just cause.<sup>38</sup> DCPS does not dispute that this issue was presented to the Arbitrator to resolve. The Award must be upheld because it was arguably construing or applying that requirement of the collective bargaining agreement.<sup>39</sup>

As has often been noted in the Boards decisions, “[I]n most cases, it will suffice to enforce the award that the arbitrator appeared to be engaged in interpretation, and if there is doubt we will presume that the arbitrator was doing just that. . . This view of the ‘arguably construing’ inquiry no doubt will permit only the most egregious awards to be vacated. But it is a view that respects the parties’ decision to hire their own judge to resolve their disputes.”<sup>40</sup> DCPS’s argument that the Arbitrator modified the contract because of his criteria for admitting evidence is not a jurisdictional argument. The Board finds DCPS’s jurisdiction argument is in fact an argument concerning the admissibility of evidence. By submitting the matter to arbitration, DCPS agreed to be bound by the evidentiary rulings of the Arbitrator. By agreeing to

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<sup>33</sup> Award at 12.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 11.

<sup>38</sup> Award at 10, Transcript at 5.

<sup>39</sup> *See D.C. Hous. Auth. v. AFGE (on behalf of Hendrix-Smith) Local 2725, 60 D.C. Reg. 13706, Slip Op. No. 1415 at p. 5, PERB Case No. 13-A-07 (2013).*

<sup>40</sup> *Mich. Family Resources, Inc. v. Serv. Employees Int’l Union, Local 517M, 475 F.3d 746, 753 (2007), quoted in F.O.P./Dep’t of Corrs. Labor Comm. v. D.C. Dep’t of Corrs., 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012), and D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721, 59 D.C. Reg. 9757, Slip Op. No. 1258 at 4, PERB Case No. 10-A-09 (2012).*

Decision and Order

Case No. 15-A-07

Page 6 of 8

submit a matter to arbitration the parties also agreed to be bound by the Arbitrators interpretation of the parties' agreement and related rules concerning substantive as well as procedural matters.<sup>41</sup>

DCPS's argument that the Arbitrator exceeded his jurisdiction by refusing to reopen the record amounts to an objection to the Arbitrator's evaluation of certain evidence. A dispute over the weight and significance of evidence leading an arbitrator to conclude that a termination was not for cause does not state a statutory basis for review.<sup>42</sup> Even if the denial of a witness was a serious error, this did not divest the Arbitrator of jurisdiction to resolve the issues presented to him. Furthermore, the Board has held on numerous occasions that such evidentiary objections do not rise to the asserted statutory basis for review.<sup>43</sup> The Board denies DCPS's Request to overturn the Award on grounds that the Arbitrator exceeded his jurisdiction.<sup>44</sup>

## **B. Contrary to law and public policy**

To overturn an arbitrator's award as a violation of law and public policy, a petitioner must demonstrate that the award "compels" the violation of an explicit, well-defined public policy grounded in law or legal precedent.<sup>45</sup> Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its own judgment for that of the arbitrator.<sup>46</sup> A party's disagreement with an arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law and public policy.<sup>47</sup>

### **1. Revised Uniform Arbitration Act**

DCPS asserts that the Award is contrary to public policy, as found in the D.C. Revised Uniform Arbitration Act ("RUAA").<sup>48</sup> DCPS argues that an "award that is contrary to a specific law *ipso facto* may be said to be contrary to the public policy that the law embodies."<sup>49</sup> DCPS asserts that the RUAA requires an arbitration award be vacated for "failure to consider material evidence."<sup>50</sup> DCPS claims that the Student's prospective testimony would have been evidence material to the underlying matter of the case and that the Arbitrator erred by denying the Student

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<sup>41</sup> *Washington Teachers' Union, Local 6, AFT, v. D.C. Public Schs.*, Slip Op. No. 432, PERB Case No. 95-A-07. See, e.g., *D.C. Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 412, PERB Case No. 95-A-01 (1995).

<sup>42</sup> *Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 7380, Slip Op. No. 1473 at p. 5, PERB Case No. 14-A-05 (2014).

<sup>43</sup> See, e.g., *University of the District of Columbia Faculty Association/NEA and University of the District of Columbia*, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).

<sup>44</sup> See, e.g., *DOC and FOP/DOC Labor Committee*, Slip Op. No. 412 at 2-3, fn 3, PERB Case No. 95-A-01 (finding that an arbitrator did not exceed his jurisdiction by excluding proffered evidence after the agency presented its case-in-chief and the union moved for a summary decision).

<sup>45</sup> See *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987).

<sup>46</sup> *Fraternal Order of Police/Dep't of Corrections Labor Committee v. Public Employee Relations Board*, 973 A.2d 174, 177 (D.C. 2009).

<sup>47</sup> *MPD v. FOP/MPD Labor Committee*, 31 D.C. Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).

<sup>48</sup> Request at 5.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

Decision and Order

Case No. 15-A-07

Page 7 of 8

as DCPS's witness. DCPS asserts that the alleged error violated the RUAA and is *ipso facto* contrary to public policy.

The Board notes that it derives its power to consider the present arbitration appeal from the CMPA, D.C. Official Code § 1-605.02(6), and not the RUAA.<sup>51</sup> The Board does not find that there is a clear, well-defined public policy applicable to this case.

The RUAA requires a court to vacate an arbitration award if “[a]n arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding.”<sup>52</sup> Section 16-4415 sets the parameters for acceptable arbitration proceedings. In particular, § 16-4415(a) states, in relevant part, “An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding.”

The D.C. Court of Appeals has considered this statutory provision. The Court stated,

Under D.C. Code § 16-4423(a)(3) we are neither required nor authorized to comb the record for technical errors in the receipt or rejection of evidence by arbitrators. The court's review is restricted to determining whether the procedure was fundamentally unfair. We only evaluate whether the arbitrator gave each of the parties to the dispute an adequate opportunity to present its evidence and argument.<sup>53</sup>

The Board does not find an explicit, well-defined public policy that compels the Board to overturn the Award under the RUAA and the legal precedent of the D.C. Court of Appeals.

The Board notes, in reaching his decision to deny DCPS's request to reopen the hearing, the Arbitrator considered that DCPS had multiple opportunities throughout the proceedings to raise the possibility of the Student as a witness. DCPS failed to mention the Student as a potential witness prior to the close of the record, and only raised the Student as a potential witness when responding to CSO's Motion. The Arbitrator gave each side a fair opportunity to litigate their case. The Board finds that there is no clear violation of law and public policy evident on the face of the Award, and denies DCPS's Request.

## 2. Directed Verdict Standard

DCPS asserts that the Award is contrary to law, because it is contrary to the D.C. Court of Appeals' standard for granting a directed verdict.

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<sup>51</sup> See *MPD v. FOP*, 997 A.2d 65 (D.C. 2013)(finding that D.C. Official Code § 1-605.02(6) designates PERB as the forum for appeals after a labor-relations arbitration award has been rendered).

<sup>52</sup> D.C. Official Code § 16-4423(a)(3).

<sup>53</sup> *Zegeye v. Liss*, 70 A.3d 1208, 1211 (D.C. 2013)(internal quotation marks, brackets and citations omitted).

Decision and Order

Case No. 15-A-07

Page 8 of 8

As stated in the transcript and the Award, CSO requested the Arbitrator to find in favor of the CSO after DCPS rested its case-in-chief. CSO and the Arbitrator both noted that the motion would be called a “Directed Verdict” for lack of a better term.<sup>54</sup> DCPS asserts that the Arbitrator in making his decision applied the incorrect standard for a Directed Verdict in the D.C. Court of Appeals, which renders the Award contrary to law.

The Board rejects DCPS’s argument. DCPS does not contend that the Arbitrator was contractually bound to apply the D.C. Court of Appeals’ rules nor does the Board find grounds that the D.C. Court of Appeals’ rules are applicable. DCPS does not dispute that the Arbitrator made his decision based on the record presented. The Arbitrator reviewed the evidence presented during the hearing and concluded that DCPS had not proved its case. DCPS does not cite any law that mandates a contrary decision, and therefore, the Board denies DCPS’s Request.

#### **IV. Conclusion**

The Board finds that the Arbitrator did not exceed his jurisdiction and the Award is not clearly erroneous or contrary to law and public policy. For the reasons discussed above, no statutory basis exists for setting aside the Award. The Request is denied.

#### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. DCPS’s Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, and Member Ann Hoffman. Member Keith Washington was not present.

Washington, D.C.

December 17, 2015

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<sup>54</sup> Transcript at 165-166.

CERTIFICATE OF SERVICE

This is to certify that the attached Corrected Copy of the Decision and Order in PERB Case No. 15-A-07 was served to the following parties via File & ServeXpress on this the 4th day of January 2016:

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