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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-122, Mobile DMV Act of 2017
- D.C. Council schedules a public hearing on Bill 22-019, Personal Delivery Device Act of 2017 and Bill 22-096, Electric Vehicle Public Infrastructures Expansion Act of 2017
- D.C. Council schedules a public hearing on "Proposed Resolution 22-73, Opposition to the Revocation of the Operator Permit (Driver License) or Driving Privilege of a Person Convicted of a Drug Offense Resolution of 2017"
- D.C. Council schedules a public oversight roundtable on the "Department of Behavioral Health's Proposed School-Based Behavioral Health Comprehensive Plan"
- Office of Tax and Revenue establishes bulk sale notice requirements
- Public Service Commission proposes regulations for establishing consumer protection standards and licensing and bonding requirements for Natural Gas Suppliers
- Office of the Secretary extends the submission deadline for the Grant to Promote District of Columbia Voting Rights and Statehood

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

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

D.C. ACTS CONT'D

RESOLUTIONS

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -

COUNCIL HEARINGS

Notice of Public Hearings -

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

COUNCIL HEARINGS CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING

PROPOSED RULEMAKING

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-54

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To amend, on a temporary basis, the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 to require insurers to cover preventive services for women without cost-sharing.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Defending Access to Women's Health Care Services Temporary Amendment Act of 2017".

Sec. 2. The Women's Health and Cancer Rights Federal Law Conformity Act of 2000, effective April 3, 2001 (D.C. Law 13-254; D.C. Official Code § 31-3831 *et seq.*), is amended by adding a new section 5b to read as follows:

"Sec. 5b. Coverage of women's preventive health services.

"(a) An individual health plan or group health plan, a health insurer offering health insurance coverage for prescription drugs, and health insurance coverage through Medicaid and the DC Alliance program shall provide coverage for, and shall not impose any cost-sharing requirements on, women for the following preventive health services required to be covered under section 2713 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 131; 42 U.S.C. § 300gg-13), and the act's implementing regulations, guidelines, and recommendations:

"(1) Those evidence-based items or services that have in effect a rating of "A" or "B" in the recommendations of the United States Preventive Services Task Force as of April 4, 2017, available at https://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/;

"(2) Such additional preventive care and screenings not described in paragraph (1) of this subsection as provided for in comprehensive guidelines supported by the Health Resources and Services Administration as of April 4, 2017, available at https://www.hrsa.gov/womensguidelines/; and

"(3) Any additional preventive services identified by the United States Preventive Services Task Force or the Health Resources and Services Administration after April 4, 2017.

"(b) Subsection (a) of this section shall be construed consistently with all provisions of the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 141; 42 U.S.C. § 18001 *et seq.*).".

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-55

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grocery Store Restrictive Covenant Prohibition Emergency Act of 2017".

Sec. 2. (a) It shall be unlawful for the owner or operator of a grocery store to impose a restrictive land covenant or use restriction in a contract for the sale, or other transfer, or lease of real property being used as a grocery store that prohibits the subsequent use of the real property as a grocery store.

(b) Any contract, including a private agreement, that includes a restrictive land covenant or use restriction on real property as described in subsection (a) of this section shall be void and unenforceable.

(c) The prohibition imposed by this section shall not apply to an owner or operator of a grocery store or food retail store that terminates operations at a site for purposes of relocating the grocery or food retail store into a comparable or larger store located within the District of Columbia within one-half mile of the site where the prior operation was terminated; provided, that relocation and commencement of the operation of the new grocery store or food retail store at the new site occurs within 2 years of the sale, transfer, or lease of the prior site, and the restrictive covenant imposed on the prior site does not have a term in excess of 3 years. If the new grocery store or food retail store is not relocated within the District within one-half mile of the prior site within 2 years, the restrictive land covenant or use restriction shall not be enforceable.

(d) For the purposes of this act, the term:

(1) "Grocery store" means a retail establishment with a primary business of selling grocery products and includes a selling area that is used for a general line of food and nonfood grocery products.

(2) "Private agreement" means a mutually agreed upon and entered into exchange of promises.

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-56

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To amend, on an emergency basis, the Electric Company Infrastructure Improvement Financing Act of 2014 to authorize the collection and use by the District of Columbia and the electric company of certain charges to finance the undergrounding of certain electric power lines and ancillary facilities, and to repeal Title II of that act, which provided authorization for the issuance of bonds; and to amend the District of Columbia Recordation Tax Act and sections 47-902, 47-2005, and 47-2206 of the District of Columbia Official Code to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Electric Company Infrastructure Improvement Financing Emergency Amendment Act of 2017".

Sec. 2. The Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1311.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 34-1311.01) is amended as follows:

(1) Paragraphs (1), (2), (3), (4), (6), and (8) are repealed.

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

(A) Strike the phrase "conduits and duct banks for the distribution of electricity within the District," and insert the phrase "conduits, duct banks" in its place.

(B) Strike the phrase "similar facilities" and insert the phrase "similar facilities for the distribution of electricity within the District" in its place.

(3) Paragraph (12) is amended by striking the phrase "financing costs, to fund any required reserves with respect to the Bonds and to maintain any coverage ratios required by the financing documents" and inserting the phrase "DDOT Underground Electric Company Infrastructure Improvement Costs for the applicable year" in its place.

(4) Paragraph (13) is amended to read as follows:

"(13) "DDOT Underground Electric Company Infrastructure Improvement Charge" means a charge imposed by the District on the electric company pursuant to a financing order issued by the Commission, which charge shall be used by the District to pay the DDOT Underground Electric Company Infrastructure Improvement Costs.".

(5) Paragraph (14) is amended by striking the phrase "construction plans," and inserting the phrase "construction plans, contingency for the cost to complete and place in

service the electric plant to be installed in the applicable biennial Underground Infrastructure Improvement Projects Plan," in its place.

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

"(14A) "DDOT Underground Electric Company Infrastructure Improvement Fund" means the fund established by section 303a.".

(7) Paragraphs (15), (16), and (17) are repealed.

(8) Paragraph (19) is amended as follows:

(A) Strike the phrase "including the electric company's portion of conduit" and insert the phrase "that may include underground conduit and duct banks for the distribution of electricity within the District, electrical vaults, manholes, transformers and transformer pads, and other ancillary electric distribution infrastructure to be procured, constructed, or installed by the electric company and" in its place.

(B) Strike the phrase "Improvements that is required" and insert the phrase "Improvements (except as otherwise approved by the Commission), that is included in a biennial Underground Infrastructure Improvement Projects Plan approved by the Commission, and that is required" in its place.

(9) Paragraph (21) is amended by striking the phrase " Activity, and" and inserting the phrase "Activity, and contingency for the cost to complete and place in service the electric plant to be installed in the applicable biennial Underground Infrastructure Improvement Projects Plan, and" in its place.

(10) Paragraph (24) is amended to read as follows:

"(24) "Financial advisor" means an entity whose services were retained by the Commission on July 31, 2014, as may be extended by the Commission from time to time, and any successor or replacement of the entity, to assist the Commission in the issuance, amendment, or administration of a financing order.".

(11) Paragraphs (25) and (26) are repealed.

(12) Paragraph (27) is amended as follows:

(A) Strike the phrase "creation of the DDOT Underground Electric Company Infrastructure Improvement Property and the imposition and periodic true up" and insert the word "imposition" in its place.

(B) Strike the phrase "Charges." and insert the phrase "Charges and the imposition and periodic true-up of the Underground Rider." in its place.

(13) Paragraph (31) is repealed.

(14) Paragraph (35) is repealed.

(15) Paragraphs (39) and (40) are repealed.

(16) Paragraph (41) is amended by striking the phrase "Activity to be undertaken" and inserting the phrase "Activity planned to be undertaken in a 2-year period, which may be amended from time to time with the approval of the Commission" in its place.

(17) Paragraph (42) is amended as follows:

(A) Strike the word "certain" and insert the phrase "all distribution service" in its place.

(B) Strike the phrase "electric company for" and insert the phrase "electric company (except for customers served under the electric company's residential aid

discount or a succeeding discount program) for" in its place.

(18) A new paragraph (42A) is added to read as follows:

"(42A) "Underground Rider" means an annually adjusted rider to the electric company's volumetric distribution service rates paid by all distribution service customers of the electric company (except for customers served under the electric company's residential aid discount or a succeeding discount program) for its recovery of an amount equal to the aggregate of the DDOT Underground Electric Company Infrastructure Improvement Charges.".

(19) Paragraph (43) is repealed.

(b) Section 102 (D.C. Official Code § 34-1311.02) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "users of electricity." and inserting the phrase "users of electricity, and has otherwise adversely affected the general welfare of the public." in its place.

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

(A) Strike the phrase "resiliency, reliability," and insert the phrase "resiliency," in its place.

(B) Strike the phrase "impacts on the District's electricity users caused by repeated power outages." and insert the phrase "impacts caused by repeated power outages on the District's residents, businesses, workers, and visitors." in its place.

(3) Paragraphs (3) and (4) are repealed.

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

"(5) Electric system modernization will require an unprecedented investment in the electric distribution infrastructure in the District.".

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

(A) Strike the phrase "recovered through" and insert the phrase "paid by the District from" in its place.

(B) Strike the phrase "Charge or the Underground" and insert the phrase "Charge or recovered by the electric company through the Underground" in its place.

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

(A) Strike the phrase "and June 30th thereafter until December 31, 2027, or the sooner" and insert the phrase "thereafter until the" in its place.

(B) Strike the phrase "award construction contract" and insert the phrase "to award construction contracts" in its place.

(c) Title II (D.C. Official Code §§ 34-1312.01 through 34-1312.12) is repealed.

(d) Sections 301, 302, and 303 (D.C. Official Code §§ 34-1313.01, 34-1313.02, and 34-1313.03) are amended to read as follows:

"Sec. 301. Commission authorizations.

"(a) The Commission is authorized to issue financing orders upon application by the electric company. The Commission may include its financing order as part of its order issued with respect to a biennial Underground Infrastructure Improvement Projects Plan. All financing orders, among their other provisions, shall:

"(1) Describe the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the DDOT Underground Electric Company Infrastructure Improvement Charge for the next 2-year period;

"(2)(A) Assess the DDOT Underground Electric Company Infrastructure Improvement Charge on the electric company for the next 2-year period sufficient to fully satisfy the DDOT Underground Electric Company Infrastructure Annual Revenue Requirement to enable DDOT Underground Electric Company Infrastructure Improvement Activity to be undertaken in the next 2-year period plus an amount necessary to recover any DDOT Underground Electric Company Infrastructure Improvement Costs incurred by DDOT but not reimbursed through prior collections of the DDOT Underground Electric Company Infrastructure Improvement Charge; provided, that the DDOT Underground Electric Company Infrastructure Charges approved by the Commission under this act shall not exceed $187.5 million in the aggregate; provided further, that any amounts collected with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge and not expended for DDOT Underground Electric Company Infrastructure Improvement Costs as contemplated by this act shall be refunded to the electric company and thereafter credited to customers as the Commission may direct; and

"(B) By the 10th day of each month during the applicable 2-year period, the electric company shall remit a payment equal to 1/24 of the DDOT Underground Electric Company Infrastructure Improvement Charges approved for the applicable 2-year period pursuant to the financing order to the DDOT Underground Electric Company Infrastructure Improvement Fund established pursuant to section 303a;

"(3) Assess the Underground Rider for the next 2-year period among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the electric company's most recently decided base rate case in an amount sufficient for the electric company to recover the DDOT Underground Electric Company Infrastructure Charge; provided, that no such charges shall be assessed against the electric company's residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class; provided further, that the Underground Rider shall be billed to customers by the electric company on a volumetric basis;

"(4) Describe the true-up mechanism as provided in section 312 to reconcile actual collections of the Underground Rider with forecasted collection on at least an annual basis to ensure that the collections of the Underground Rider are adequate for the electric company to recover an amount equal to the aggregate amount of the DDOT Electric Company Infrastructure Improvement Charges;

"(5) Prescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Rider; and

"(6) Consistent with this act, contain such other findings, determinations, and authorizations as the Commission considers necessary or appropriate.

"(b) All financing orders shall be operative and in full force and effect from the time fixed for them to become effective by the Commission.

"(c) The financing order shall provide that except to implement any true-up mechanism as required by section 312, the Commission may not reduce, impair, postpone, terminate, or

otherwise adjust the Underground Rider approved in the financing order unless it has similarly adjusted the DDOT Underground Electric Company Infrastructure Improvement Charges by an equal amount.

"(d) The electric company shall have no liability or obligation with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge except for the 2-year period that is the subject of the financing order then in effect.

"Sec. 302. Application for financing order.

"(a) The electric company may include its application for a financing order as part of its application for approval of a biennial Underground Infrastructure Improvement Projects Plan.

"(b)(1) Concurrently with each application filed for approval of a biennial Underground Infrastructure Improvement Projects Plan, the electric company shall file for the Commission's consideration and decision an application for a financing order for the 2-year period corresponding to the biennial Underground Infrastructure Improvement Projects Plan.

"(2) The financing order application and all subsequent applications by the electric company for a financing order shall contain:

"(A) The DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period;

"(B) A calculation by the electric company of the Underground Rider by distribution service customer class estimated to be sufficient to generate an amount equal to the DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period; and

"(C) A proposed form of public notice of the application suitable for publication by the Commission, which notice may be combined with the form of public notice for the application for approval of the biennial Underground Infrastructure Improvement Projects Plan.

"Sec. 303. Consideration of applications for a financing order.

"(a)(1)(A) The Commission shall publish notice to the public of an application for a financing order before deciding upon the application for a financing order and provide for a period of no less than 60 days after publication of the notice for public comment and 14 days after publication of the notice for filing of motions to intervene.

"(B) The electric company shall provide notice of the application as provided in section 8 of the Public Utilities Commission Act (D.C. Official Code § 34-909), as that section reads as of the effective date of this act, or as amended or superseded.

"(2) The District, OPC, and DDOT shall each be a party to the Commission proceeding on the application, as a matter of right.

"(3)(A) Any other person desiring to be heard on the application shall file a motion to intervene with the Commission requesting to be made a party to the proceeding.

"(B) The applicant and any party to the proceeding may file an answer or oppose the granting of the motion.

"(C) The Commission shall, by order, approve or deny the motion at its reasonable discretion.

"(b)(1) The Commission shall decide upon an application for a financing order based upon the pleadings in the matter and, if no protest or objection is filed in response to the

Commission's public notice of the application, at its discretion, without a hearing.

"(2) A formal evidentiary hearing shall be required only if contested issues of material fact are present and those issues cannot be resolved by the Commission based on the pleadings and discovery responses filed, if any, in the matter. Except as provided in paragraph (3) of this subsection, the Commission may approve, approve with condition, modify, or reject the application in whole or in part, as it considers necessary and appropriate.

"(3) The Commission may not approve the DDOT Underground Electric Company Infrastructure Improvement Charges unless it shall have also approved the Underground Rider in an amount reasonably expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(c) The Commission is authorized to issue a financing order if the Commission finds that the projected DDOT Underground Electric Company Infrastructure Improvement Costs to be funded by the DDOT Underground Electric Company Infrastructure Improvement Charges are prudent and that the amount of the DDOT Underground Electric Company Infrastructure Improvement Charges is reasonable and that the Underground Rider reasonably can be expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(d)(1) The Commission shall expedite its consideration of applications for financing orders.

"(2) The Commission shall issue its decision on the electric company's application no later than 60 days following the closing of the period for public comment upon the application; provided, that if a protest or objection to the application that can be resolved without an evidentiary hearing is timely filed with the Commission, the period for the Commission's decision shall be extended by an additional 15 days; provided further, that the time may be tolled at the Commission's reasonable discretion for periods in which it determines the electric company's application is deficient.

"(3) If an evidentiary hearing is required, the Commission shall issue a decision no more than 60 days following the close of the hearing record.

"(e)(1) The Commission is authorized to retain the services of a financial advisor to assist it in its consideration of an application for a financing order, and in the formulation and administration of a financing order.

"(2) Notwithstanding section 8(a)(3) of the Public Utilities Commission Act (D.C. Official Code § 34-912(a)(3)), the Commission shall pay the financial advisor amounts due from the Public Service Commission Agency Fund pursuant to section 8 of the Public Utilities Commission Act (D.C. Official Code § 34-912), with any subsequent amounts due to the financial advisor paid in accordance with this act.".

(e) A new section 303a is added to read as follows:

"Sec. 303a. DDOT Underground Electric Company Infrastructure Improvement Fund.

"(a) There is established as a special fund the DDOT Underground Electric Company Infrastructure Improvement Fund ("Fund"), which shall be administered by the Director of DDOT in accordance with subsection (c) of this section.

"(b) All payments from the electric company of the DDOT Underground Electric

Company Infrastructure Improvement Charges shall be deposited in the Fund.

"(c) The Fund shall be used solely to pay for DDOT Underground Electric Company Infrastructure Improvement Costs.

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

"(e) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.".

(f) Sections 304, 305, and 306 (D.C. Official Code §§ 34-1313.04, 34-1313.05, and 34-1313.06) are repealed.

(g) A new section 306a is added to read as follows:

"Sec. 306a. Commission's authority to terminate.

"Notwithstanding any other provision of law, the Commission shall have the authority to terminate any financing order issued in Formal Case No. 1121 before the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184); provided, that no bonds have been issued pursuant to such financing order.".

(h) Section 307 (D.C. Official Code § 34-1313.07) is amended as follows:

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

"(a) Within 45 days after the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184), and, except as provided in subsection (d) of this section, every 2 years thereafter, the electric company and DDOT shall jointly file with the Commission and concurrently serve upon OPC an application for approval of their biennial Underground Infrastructure Improvement Projects Plan.".

(2) Subsection (b) is amended by striking the word "triennial" both times it appears and inserting the word "biennial" in its place.

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

(A) Strike the word "triennial' and insert the word "biennial" in its place.

(B) Strike the phrase "Plan." and insert the phrase "Plan; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program." in its place.

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

"(d) The Commission, on its own motion or upon motion of the electric company, the District, OPC, or DDOT, or other person made a party pursuant to section 303(a)(3), may hold in abeyance or waive the obligation to file an application for approval of a biennial Underground Infrastructure Improvement Projects Plan and an application for a financing order for the corresponding period upon a finding of good cause as necessary or desirable:

"(1) To protect public safety;

"(2) To avoid or minimize unreasonable project costs;

"(3) Because additional DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity is unnecessary to meet the purposes of this act;

"(4) Because the electric company's liability with respect to the DDOT Underground Electric Company Infrastructure Improvement Charges can reasonably be demonstrated to contribute materially to an adverse credit action by a rating agency, including a down grade or placement on credit watch; or

"(5) To otherwise promote the public interest.".

(i) Section 308 (D.C. Official Code § 34-1313.08) is amended as follows:

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

(A) The lead-in text is amended by striking the word "triennial" and inserting the word "biennial" in its place.

(B) Paragraph (1)(A) is amended by striking the phrase "District over the preceding 3 years" and inserting the phrase "District since January 1, 2010 through the most recently completed calendar year" in its place.

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

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

(I) Strike the phrase "interruptions (inclusive" and insert the phrase "interruptions that affect the public welfare (inclusive" in its place.

(II) Strike the phrase "District, the most recent 3 calendar years average of the following," and insert the phrase "District since January 1, 2010 through the most recently completed calendar year, averaged using the following data," in its place.

(ii) Subparagraph (C) is amended by striking the phrase "interruption on" and inserting the phrase "interruption per cost of undergrounding on" in its place.

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

(i) The lead-in text is amended by striking the phrase "company as follows:" and inserting the phrase "company or DDOT, as applicable, as follows:" in its place.

(ii) Subparagraph (E) is amended by striking the phrase "funded by DDOT" and inserting the phrase "funded by the Underground Project Charge and DDOT" in its place.

(iii) Subparagraph (G) is amended by striking the word "and".

(iv) Subparagraph (H) is amended by striking the period and inserting the phrase "; and" in its place.

(v) A new subparagraph (I) is added to read as follows:

"(I) A status report and an explanation of the reasons why DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity associated with projects contained in a biennial Underground Infrastructure Projects Plan previously approved by the Commission have not been completed and the dates upon which the projects are expected to be completed.".

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

(A) The lead-in text is amended by striking the phrase "after the Underground" and inserting the phrase "after the biennial Underground" in its place.

(B) Paragraph (2) is amended by striking the word "and" at the end.

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

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

"(4) The ability to complete and place in service the feeder circuits to be undergrounded pursuant to the biennial Underground Infrastructure Improvement Projects Plan from funding generated by the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Project Charge for the corresponding plan period.".

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

(A) The lead-in text is amended by striking the phrase "for the Underground" and inserting the phrase "for the biennial Underground" in its place.

(B) Paragraph (1) is amended by striking the phrase "costs shown" and inserting the phrase "costs that correspond with an itemized list of the Electric Company Infrastructure Investment Activity shown" in its place.

(C) Paragraph (2) is amended by striking the phrase "Costs;" and inserting the phrase "Costs that correspond with an itemized list of the DDOT Underground Electric Company Infrastructure Improvement Activity;" in its place.

(D) Paragraph (4) is amended by striking the word "annual" and inserting the word "biennial" in its place.

(E) Paragraph (6)(A)(iv) is amended as follows:

(i) Strike the phrase "requirement, rate of" and insert the phrase "requirement, including the rate of" in its place.

(ii) Strike the phrase "rate base" and insert the phrase "base rate" in its place.

(4) Subsection (d) is amended by striking the word "customer".

(j) Section 309 (D.C. Official Code § 34-1313.09) is amended as follows:

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

(A) Strike the sentence "Before deciding upon an application for an order approving the triennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days for public comment and filing of motions to intervene." and insert the sentence "Before deciding upon an application for an order approving the biennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days after publication of the notice for public comment and 14 days after publication of the notice for filing of motions to intervene." in its place.

(B) Strike the phrase "to its customers in the District".

(2) Subsections (b), (c), and (d) are amended by striking the word "triennial" wherever it appears and inserting the word "biennial" in its place.

(k) Section 310 (D.C. Official Code § 34-1313.10) is amended as follows:

(1) Subsection (a) is amended by striking the word "triennial" both times it appears and inserting the word "biennial' in its place.

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

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

(i) Strike the phrase "Charges to customers" and insert the phrase "Charges to distribution service customers" in its place.

(ii) Strike the phrase "surcharge;" and insert the phrase

"surcharge; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program;" in its place.

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

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

(A) Strike the phrase "$500 million" and insert the phrase "$250 million" in its place.

(B) Strike the phrase "Commission, included" and insert the phrase "Commission in the most recently decided base rate case, included" in its place.

(l) Section 311 (D.C. Official Code § 34-1313.11) is amended by adding a new subsection (c) to read as follows:

"(c) The transfer of real and personal property between the electric company and the District, including DDOT or any other District agency or instrumentality, pursuant to subsection (a) of this section or which is included in, or forms a part of, the DDOT Underground Electric Company Infrastructure Improvements shall be exempt from all taxes imposed by the District that relate to the transfer of real or personal property, including, as any may be amended from time to time, the:

"(1) Transfer tax imposed under D.C. Official Code § 47-903;

"(2) Recordation tax imposed under section 303 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C. Official Code § 42-1103);

"(3) Sales tax imposed under D.C. Official Code § 47-2002; and

"(4) Use tax imposed under D.C. Official Code § 47-2202.".

(m) Section 312 (D.C. Official Code § 34-1313.12) is amended as follows:

(1) The heading is amended by striking the phrase "Plan." and inserting the phrase "Plan and financing order." in its place.

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

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

"(b) In addition to the requirements of subsection (a) of this section, an application to amend an existing Underground Infrastructure Improvement Projects Plan shall request any amendment to the Commission's financing order for the corresponding period such that the work, surcharges and riders, and other contents of the financing order, as amended, are coordinated with the Underground Infrastructure Improvement Projects Plan, as amended.".

(n) Section 313 (D.C. Official Code § 34-1313.13) is amended as follows:

(1) The heading is amended by striking the phrase "Charges." and inserting the phrase "Charges, financing order." in its place.

(2) The text is amended as follows:

(A) Strike the phrase "section 308(c)." and insert the phrase "section 308(c) and, with respect to the financing order for the corresponding period, shall include the information required pursuant to section 302." in its place.

(B) The second sentence is amended to read as follows:

"The application to amend shall apply only to future Underground Project Charges and the future Underground Rider. Any approval of an application to amend shall allow for recovery by the electric company through:

ENROLLED ORIGINAL

"(1) Underground Project Charges of any prudent and reasonable expenses or costs for any project previously approved by the Commission; and

"(2) The Underground Rider, any amounts paid with respect to DDOT Underground Electric Company Infrastructure Improvement Charges.".

(o) Section 314 (D.C. Official Code § 34-1313.14) is amended as follows:

(1) The heading is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charge" and inserting the phrase "the Underground Rider" in its place.

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

"(a) The electric company shall not file a request for approval of a schedule applying the true-up mechanism to the Underground Rider with the Commission more frequently than twice per year.".

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

(A) Paragraph (1) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and inserting the phrase "the Underground Rider" in its place.

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

"(2) Billing and collection data that show the proposed adjustment is expected to generate payments that will permit the electric company to recover an amount equal to the aggregate amount of the DDOT Underground Electric Company Infrastructure Improvement Charges adjusted for any over-collection or under-collection through the prior year under the Underground Rider;

"(3) A showing that the proposed adjustment is expected to result in neither a net over-collection nor under-collection by the electric company of an amount equal to the aggregate of the DDOT Underground Electric Company Infrastructure Improvement Charges through the Underground Rider; and".

(C) Paragraph (4) is amended by striking the phrase "and disbursements of" and inserting the phrase "of the Underground Rider and payment of" in its place.

(4) Subsection (c) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and inserting the phrase "Underground Rider" in its place.

(5) Subsection (d) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" both times it appears and inserting the phrase "Underground Rider" in its place.

(6) Subsection (e) is amended to read as follows.

"(e) Notwithstanding any other provision of this act, if the electric company has not recovered the full amount of the aggregate DDOT Underground Electric Company Infrastructure Improvement Charges that it has paid, the Underground Rider shall continue to be collected until the electric company has recovered the full amount even if there is no current biennial Underground Infrastructure Improvement Projects Plan in effect.".

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

"(f)(1) In conducting the true-up, the recovery for the under-collection of the DDOT Underground Electric Company Infrastructure Improvement Charges through the Underground

Rider shall be allocated to each customer class in the proportion to which the customer class contributed to the under-collection of the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(2) Nothing in the operation of the true-up shall be deemed to violate the requirement of this act that the Underground Rider be non-bypassable.".

(p) Section 315 (D.C. Official Code § 34-1313.15) is amended as follows:

(1) Subsection (a) is amended by striking the word "triennial" and inserting the word "biennial" in its place.

(2) Subsection (b) is amended by striking the phrase "to its customers".

(3) Subsection (c)(5) is amended by striking the phrase "Commission in the" and inserting the phrase "Commission for the electric company and in the" in its place.

(q) Section 319 (D.C. Official Code § 34-1313.19) is amended as follows:

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

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

(i) The lead-in text is amended by striking the year "2019" and inserting the year "2022" in its place.

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

(I) Strike the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and insert the phrase "Underground Rider" in its place.

(II) Add a comma after the phrase "residential customers".

(III) Strike the phrase "implications of the Underground" and insert the phrase "implications of the Underground Rider and the Underground" in its place.

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

"(C-i) Evaluates whether the impact of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity otherwise is in the public interest; and".

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

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

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

"(ii) Adjust the limit of the electric company's investment to be recovered through the Underground Project Charges as set forth in section 310(d);".

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

"(ii-I) Adjust the limit of the DDOT Underground Electric Company Infrastructure Charges as set forth in section 301(a)(2); or".

(B) Paragraph (2) is repealed.

(C) Paragraph (3) is amended to read as follows:

"(3) The report required by paragraph (1) of this subsection shall include any separate statements of the Mayor, Commission, OPC, or the electric company that the Mayor, Commission, OPC, or the electric company requests be included in the report.".

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

(A) Strike the word "reports" and insert the word "report" in its place.

(B) Strike the phrase "each report" and insert the phrase "the report" in its place.

Sec. 3. Conforming amendments.

(a) Section 302 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102), is amended as follows:

(1) Paragraph (33) is amended by striking the word "and".

(2) Paragraph (34) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (35) is added to read as follows:

"(35) Deeds to property transferred between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(b) Section 47-902 of the District of Columbia Official Code is amended by adding a new paragraph (27) to read as follows:

"(27) The transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(c) Section 47-2005 of the District of Columbia Official Code is amended by adding a new paragraph (40) to read as follows:

"(40) Any sales concomitant to the transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(d) Section 47-2206 of the District of Columbia Official Code is amended as follows:

(1) Paragraph (3) is amended by striking the word "and".

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

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

"(5) Any sales concomitant to the transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer for the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

ENROLLED ORIGINAL

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-57

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To approve, on an emergency basis, Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097F with Jacobs Project Management Co. for construction management services, and authorize payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Contract No. DCAM-15-CS-0097F Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097F with Jacobs Project Management Co. for construction management services, and authorizes payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-58

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To approve, on an emergency basis, Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097B with The Temple Group, Inc. for construction management services, and authorize payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Contract No. DCAM-15-CS-0097B Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097B with The Temple Group, Inc. for construction management services, and authorizes payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 17,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-59

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To approve, on an emergency basis, Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097L with JDC Construction Company, LLC for construction management services, and authorize payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Contract No. DCAM-15-CS-0097L Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 001 and 002 to Contract No. DCAM-15-CS-0097L with JDC Construction Company, LLC for construction management services, and authorizes payment in the not-to-exceed amount of $2.5 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-60

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To approve, on an emergency basis, Modification Nos. M021, M022, M023, and M024 and proposed Modification No. M026 to Human Care Agreement No. DCRL-2013-H-0039B with Boys Town Washington DC, Inc. to provide case management and traditional family-based foster care services for children and youth during Option Year 3, and to authorize payment for the services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCRL-2013-H-0039B Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. M021, M022, M023, and M024 and proposed Modification No. M026 to Human Care Agreement No. DCRL-2013-H-0039B with Boys Town Washington DC, Inc. to provide case management and traditional family-based foster care services for children and youth, and authorizes payment in the total not-to-exceed amount of $1,777,622.54 for the services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 17,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-61

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 17, 2017

To amend, on an emergency basis, the Prevention of Child Abuse and Neglect Act of 1977 to broaden the definitions of neglected child and abused to include a victim of sex trafficking or severe forms of trafficking in persons; and to amend An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children to make a conforming amendment..

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Child Neglect and Sex Trafficking Emergency Amendment Act of 2017".

Sec. 2. Section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2–22; D.C. Official Code § 4–1301.02), is amended as follows:

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

"(1) "Abused", when used in reference to a child, means:

"(A) Abused as that term is defined in D.C. Official Code § 16-2301(23); or

"(B) Sexual abuse, which shall include sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).".

(b) Paragraph (15A) is amended to read as follows:

"(15A) "Neglected child" means a child who is a:

"(A) Neglected child as that term is defined in D.C. Official Code § 16-2301(9); or

"(B) Victim of sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).".

Sec. 3. Section 2(a) of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.02(a)), is amended by striking the phrase "neglected child, as defined in D.C. Code, sec. 16-2301(9), shall" and inserting the phrase

ENROLLED ORIGINAL

"neglected child, as defined in section 102(15A) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02(15A)), shall" in its place.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 17, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-62

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To approve, on an emergency basis, Change Order Nos. 001 through 005 to Contract No. DCAM-16-CS-0032 with MCN Build, Inc. for design-build services to modernize and expand Watkins Elementary School, and to authorize payment in the not-to-exceed amount of $38,356,819.20 for the goods and services received and to be received under the change orders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Change Order Nos. 001 through 005 to Contract DCAM-16-CS-0032 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Change Orders Nos. 001 through 005 to Contract DCAM-16-CS-0032 with MCN Build, Inc. to provide design-build services to modernize and expand Watkins Elementary School, and authorizes payment in the not-to-exceed amount of $38,356,819.20 for the goods and services received and to be received under the change orders.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 19,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-63

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To approve, on an emergency basis, Modification Nos. M017 and M020 and proposed Modification No. M021 to Human Care Agreement No. DCRL-2013-H-0039J with Latin American Youth Center to provide case management and traditional family-based foster care services for children and youth during Option Year 3, and to authorize payment for the services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCRL-2013-H-0039J Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. M017 and M020 and proposed Modification No. M021 to Human Care Agreement No. DCRL-2013-H-0039J with Latin American Youth Center to provide case management and traditional family-based foster care services for children and youth, and authorizes payment in the total not-to-exceed amount of $1,171,050.54 for the services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 19,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-64

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To approve, on an emergency basis, proposed Modification No. 003 to Contract No. DCRL-2016-C-0113 with Total Healthcare Solutions, LLC to provide licensed registered nurse practitioners, certified medical assistants, and medical records technicians to provide medical services to the District's children and youth removed from their homes due to abuse or neglect, and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification to Contract No. DCRL-2016-C-0113 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves proposed Modification No. 003 to Contract No. DCRL-2016-C-0113 with Total Healthcare Solutions, LLC to provide licensed registered nurse practitioners, certified medical assistants, and medical records technicians to provide medical services to the District's children and youth removed from their homes due to abuse or neglect, and authorizes payment in the amount of $1,317,521.04 for the services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 19,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-65

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To approve, on an emergency basis, Modification Nos. M019 and M021 and proposed Modification No. M022 to Human Care Agreement No. DCRL-2013-H-0039M with Lutheran Social Services of the National Capital Area to provide case management and therapeutic family-based foster care services for children and youth, and to authorize payment for the services received and to be received under the human care agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCRL-2013-H-0039M Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. M019 and M021 and proposed Modification No. M022 to Human Care Agreement No. DCRL-2013-H-0039M with Lutheran Social Services of the National Capital Area to provide case management and therapeutic family-based foster care services for children and youth, and authorizes payment in the total not-to-exceed amount of $1,150,982.31 for the services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 19,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-66

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To approve, on an emergency basis, Change Order Nos. 3, 4, and 5 to Contract No. DCAM-15-CS-0075 with Lightbox-Bluefin Partners for roof management services, and to authorize payment in the not-to-exceed amount of $1,849,173.34 for the goods and services received and to be received under the change orders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Change Order Nos. 3, 4, and 5 to Contract No. DCAM-15-CS-0075 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Change Order Nos. 3, 4, and 5 to Contract No. DCAM-15-CS-0075 with Lightbox-Bluefin Partners for roof management services, and authorizes payment in the aggregate not-to-exceed amount of $1,849,173.34 for the goods and services received and to be received under the change orders.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 19,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-67

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 19, 2017

To amend the Electric Company Infrastructure Improvement Financing Act of 2014 to authorize the collection and use by the District of Columbia and the electric company of certain charges to finance the undergrounding of certain electric power lines and ancillary facilities, and to repeal Title II of that act, which provided authorization for the issuance of bonds; and to amend the District of Columbia Recordation Tax Act and sections 47-902, 47-2005, and 47-2206 of the District of Columbia Official Code to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Electric Company Infrastructure Improvement Financing Amendment Act of 2017".

Sec. 2. The Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1311.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 34-1311.01) is amended as follows:

(1) Paragraphs (1), (2), (3), (4), (6), and (8) are repealed.

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

(A) Strike the phrase "conduits and duct banks for the distribution of electricity within the District," and insert the phrase "conduits, duct banks" in its place.

(B) Strike the phrase "similar facilities" and insert the phrase "similar facilities for the distribution of electricity within the District" in its place.

(3) Paragraph (12) is amended by striking the phrase "financing costs, to fund any required reserves with respect to the Bonds and to maintain any coverage ratios required by the financing documents" and inserting the phrase "DDOT Underground Electric Company Infrastructure Improvement Costs for the applicable year" in its place.

(4) Paragraph (13) is amended to read as follows:

"(13) "DDOT Underground Electric Company Infrastructure Improvement Charge" means a charge imposed by the District on the electric company pursuant to a financing order issued by the Commission, which charge shall be used by the District to pay the DDOT Underground Electric Company Infrastructure Improvement Costs.".

(5) Paragraph (14) is amended by striking the phrase "construction plans," and

inserting the phrase "construction plans, contingency for the cost to complete and place in service the electric plant to be installed in the applicable biennial Underground Infrastructure Improvement Projects Plan," in its place.

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

"(14A) "DDOT Underground Electric Company Infrastructure Improvement Fund" means the fund established by section 303a.".

(7) Paragraphs (15), (16), and (17) are repealed.

(8) Paragraph (19) is amended as follows:

(A) Strike the phrase "including the electric company's portion of conduit" and insert the phrase "that may include underground conduit and duct banks for the distribution of electricity within the District, electrical vaults, manholes, transformers and transformer pads, and other ancillary electric distribution infrastructure to be procured, constructed, or installed by the electric company and" in its place.

(B) Strike the phrase "Improvements that is required" and insert the phrase "Improvements (except as otherwise approved by the Commission), that is included in a biennial Underground Infrastructure Improvement Projects Plan approved by the Commission, and that is required" in its place.

(9) Paragraph (21) is amended by striking the phrase " Activity, and" and inserting the phrase "Activity, and contingency for the cost to complete and place in service the electric plant to be installed in the applicable biennial Underground Infrastructure Improvement Projects Plan, and" in its place.

(10) Paragraph (24) is amended to read as follows:

"(24) "Financial advisor" means an entity whose services were retained by the Commission on July 31, 2014, as may be extended by the Commission from time to time, and any successor or replacement of the entity, to assist the Commission in the issuance, amendment, or administration of a financing order.".

(11) Paragraphs (25) and (26) are repealed.

(12) Paragraph (27) is amended as follows:

(A) Strike the phrase "creation of the DDOT Underground Electric Company Infrastructure Improvement Property and the imposition and periodic true up" and insert the word "imposition" in its place.

(B) Strike the phrase "Charges." and insert the phrase "Charges and the imposition and periodic true-up of the Underground Rider." in its place.

(13) Paragraph (31) is repealed.

(14) Paragraph (35) is repealed.

(15) Paragraphs (39) and (40) are repealed.

(16) Paragraph (41) is amended by striking the phrase "Activity to be undertaken" and inserting the phrase "Activity planned to be undertaken in a 2-year period, which may be amended from time to time with the approval of the Commission" in its place.

(17) Paragraph (42) is amended as follows:

(A) Strike the word "certain" and insert the phrase "all distribution service" in its place.

ENROLLED ORIGINAL

(B) Strike the phrase "electric company for" and insert the phrase "electric company (except for customers served under the electric company's residential aid discount or a succeeding discount program) for" in its place.

(18) A new paragraph (42A) is added to read as follows:

"(42A) "Underground Rider" means an annually adjusted rider to the electric company's volumetric distribution service rates paid by all distribution service customers of the electric company (except for customers served under the electric company's residential aid discount or a succeeding discount program) for its recovery of an amount equal to the aggregate of the DDOT Underground Electric Company Infrastructure Improvement Charges.".

(19) Paragraph (43) is repealed.

(b) Section 102 (D.C. Official Code § 34-1311.02) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "users of electricity." and inserting the phrase "users of electricity, and has otherwise adversely affected the general welfare of the public." in its place.

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

(A) Strike the phrase "resiliency, reliability," and insert the phrase "resiliency," in its place.

(B) Strike the phrase "impacts on the District's electricity users caused by repeated power outages." and insert the phrase "impacts caused by repeated power outages on the District's residents, businesses, workers, and visitors." in its place.

(3) Paragraphs (3) and (4) are repealed.

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

"(5) Electric system modernization will require an unprecedented investment in the electric distribution infrastructure in the District.".

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

(A) Strike the phrase "recovered through" and insert the phrase "paid by the District from" in its place.

(B) Strike the phrase "Charge or the Underground" and insert the phrase "Charge or recovered by the electric company through the Underground" in its place.

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

(A) Strike the phrase "and June 30th thereafter until December 31, 2027, or the sooner" and insert the phrase "thereafter until the" in its place.

(B) Strike the phrase "award construction contract" and insert the phrase "to award construction contracts" in its place.

(c) Title II (D.C. Official Code §§ 34-1312.01 through 34-1312.12) is repealed.

(d) Sections 301, 302, and 303 (D.C. Official Code §§ 34-1313.01, 34-1313.02, and 34-1313.03) are amended to read as follows:

"Sec. 301. Commission authorizations.

"(a) The Commission is authorized to issue financing orders upon application by the electric company. The Commission may include its financing order as part of its order issued with respect to a biennial Underground Infrastructure Improvement Projects Plan. All financing orders, among their other provisions, shall:

"(1) Describe the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the DDOT Underground Electric Company Infrastructure Improvement Charge for the next 2-year period;

"(2)(A) Assess the DDOT Underground Electric Company Infrastructure Improvement Charge on the electric company for the next 2-year period sufficient to fully satisfy the DDOT Underground Electric Company Infrastructure Annual Revenue Requirement to enable DDOT Underground Electric Company Infrastructure Improvement Activity to be undertaken in the next 2-year period plus an amount necessary to recover any DDOT Underground Electric Company Infrastructure Improvement Costs incurred by DDOT but not reimbursed through prior collections of the DDOT Underground Electric Company Infrastructure Improvement Charge; provided, that the DDOT Underground Electric Company Infrastructure Charges approved by the Commission under this act shall not exceed $187.5 million in the aggregate; provided further, that any amounts collected with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge and not expended for DDOT Underground Electric Company Infrastructure Improvement Costs as contemplated by this act shall be refunded to the electric company and thereafter credited to customers as the Commission may direct; and

"(B) By the 10th day of each month during the applicable 2-year period, the electric company shall remit a payment equal to 1/24 of the DDOT Underground Electric Company Infrastructure Improvement Charges approved for the applicable 2-year period pursuant to the financing order to the DDOT Underground Electric Company Infrastructure Improvement Fund established pursuant to section 303a;

"(3) Assess the Underground Rider for the next 2-year period among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the electric company's most recently decided base rate case in an amount sufficient for the electric company to recover the DDOT Underground Electric Company Infrastructure Charge; provided, that no such charges shall be assessed against the electric company's residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class; provided further, that the Underground Rider shall be billed to customers by the electric company on a volumetric basis;

"(4) Describe the true-up mechanism as provided in section 312 to reconcile actual collections of the Underground Rider with forecasted collection on at least an annual basis to ensure that the collections of the Underground Rider are adequate for the electric company to recover an amount equal to the aggregate amount of the DDOT Electric Company Infrastructure Improvement Charges;

"(5) Prescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Rider; and

"(6) Consistent with this act, contain such other findings, determinations, and authorizations as the Commission considers necessary or appropriate.

"(b) All financing orders shall be operative and in full force and effect from the time fixed for them to become effective by the Commission.

"(c) The financing order shall provide that except to implement any true-up mechanism as required by section 312, the Commission may not reduce, impair, postpone, terminate, or otherwise adjust the Underground Rider approved in the financing order unless it has similarly adjusted the DDOT Underground Electric Company Infrastructure Improvement Charges by an equal amount.

"(d) The electric company shall have no liability or obligation with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge except for the 2-year period that is the subject of the financing order then in effect.

"Sec. 302. Application for financing order.

"(a) The electric company may include its application for a financing order as part of its application for approval of a biennial Underground Infrastructure Improvement Projects Plan.

"(b)(1) Concurrently with each application filed for approval of a biennial Underground Infrastructure Improvement Projects Plan, the electric company shall file for the Commission's consideration and decision an application for a financing order for the 2-year period corresponding to the biennial Underground Infrastructure Improvement Projects Plan.

"(2) The financing order application and all subsequent applications by the electric company for a financing order shall contain:

"(A) The DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period;

"(B) A calculation by the electric company of the Underground Rider by distribution service customer class estimated to be sufficient to generate an amount equal to the DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period; and

"(C) A proposed form of public notice of the application suitable for publication by the Commission, which notice may be combined with the form of public notice for the application for approval of the biennial Underground Infrastructure Improvement Projects Plan.

"Sec. 303. Consideration of applications for a financing order.

"(a)(1)(A) The Commission shall publish notice to the public of an application for a financing order before deciding upon the application for a financing order and provide for a period of no less than 60 days after publication of the notice for public comment and 14 days after publication of the notice for filing of motions to intervene.

"(B) The electric company shall provide notice of the application as provided in section 8 of the Public Utilities Commission Act (D.C. Official Code § 34-909), as that section reads as of the effective date of this act, or as amended or superseded.

"(2) The District, OPC, and DDOT shall each be a party to the Commission proceeding on the application, as a matter of right.

"(3)(A) Any other person desiring to be heard on the application shall file a motion to intervene with the Commission requesting to be made a party to the proceeding.

"(B) The applicant and any party to the proceeding may file an answer or

oppose the granting of the motion.

"(C) The Commission shall, by order, approve or deny the motion at its reasonable discretion.

"(b)(1) The Commission shall decide upon an application for a financing order based upon the pleadings in the matter and, if no protest or objection is filed in response to the Commission's public notice of the application, at its discretion, without a hearing.

"(2) A formal evidentiary hearing shall be required only if contested issues of material fact are present and those issues cannot be resolved by the Commission based on the pleadings and discovery responses filed, if any, in the matter. Except as provided in paragraph (3) of this subsection, the Commission may approve, approve with condition, modify, or reject the application in whole or in part, as it considers necessary and appropriate.

"(3) The Commission may not approve the DDOT Underground Electric Company Infrastructure Improvement Charges unless it shall have also approved the Underground Rider in an amount reasonably expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(c) The Commission is authorized to issue a financing order if the Commission finds that the projected DDOT Underground Electric Company Infrastructure Improvement Costs to be funded by the DDOT Underground Electric Company Infrastructure Improvement Charges are prudent and that the amount of the DDOT Underground Electric Company Infrastructure Improvement Charges is reasonable and that the Underground Rider reasonably can be expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(d)(1) The Commission shall expedite its consideration of applications for financing orders.

"(2) The Commission shall issue its decision on the electric company's application no later than 60 days following the closing of the period for public comment upon the application; provided, that if a protest or objection to the application that can be resolved without an evidentiary hearing is timely filed with the Commission, the period for the Commission's decision shall be extended by an additional 15 days; provided further, that the time may be tolled at the Commission's reasonable discretion for periods in which it determines the electric company's application is deficient.

"(3) If an evidentiary hearing is required, the Commission shall issue a decision no more than 60 days following the close of the hearing record.

"(e)(1) The Commission is authorized to retain the services of a financial advisor to assist it in its consideration of an application for a financing order, and in the formulation and administration of a financing order.

"(2) Notwithstanding section 8(a)(3) of the Public Utilities Commission Act (D.C. Official Code § 34-912(a)(3)), the Commission shall pay the financial advisor amounts due from the Public Service Commission Agency Fund pursuant to section 8 of the Public Utilities Commission Act (D.C. Official Code § 34-912), with any subsequent amounts due to the financial advisor paid in accordance with this act.".

(e) A new section 303a is added to read as follows:

"Sec. 303a. DDOT Underground Electric Company Infrastructure Improvement Fund.

"(a) There is established as a special fund the DDOT Underground Electric Company Infrastructure Improvement Fund ("Fund"), which shall be administered by the Director of DDOT in accordance with subsection (c) of this section.

"(b) All payments from the electric company of the DDOT Underground Electric Company Infrastructure Improvement Charges shall be deposited in the Fund.

"(c) The Fund shall be used solely to pay for DDOT Underground Electric Company Infrastructure Improvement Costs.

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

"(e) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.".

(f) Sections 304, 305, and 306 (D.C. Official Code §§ 34-1313.04, 34-1313.05, and 34-1313.06) are repealed.

(g) A new section 306a is added to read as follows:

"Sec. 306a. Commission's authority to terminate.

"Notwithstanding any other provision of law, the Commission shall have the authority to terminate any financing order issued in Formal Case No. 1121 before the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184); provided, that no bonds have been issued pursuant to such financing order.".

(h) Section 307 (D.C. Official Code § 34-1313.07) is amended as follows:

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

"(a) Within 45 days after the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184), and, except as provided in subsection (d) of this section, every 2 years thereafter, the electric company and DDOT shall jointly file with the Commission and concurrently serve upon OPC an application for approval of their biennial Underground Infrastructure Improvement Projects Plan.".

(2) Subsection (b) is amended by striking the word "triennial" both times it appears and inserting the word "biennial" in its place.

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

(A) Strike the word "triennial' and insert the word "biennial" in its place.

(B) Strike the phrase "Plan." and insert the phrase "Plan; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program." in its place.

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

"(d) The Commission, on its own motion or upon motion of the electric company, the District, OPC, or DDOT, or other person made a party pursuant to section 303(a)(3), may hold in abeyance or waive the obligation to file an application for approval of a biennial Underground

ENROLLED ORIGINAL

Infrastructure Improvement Projects Plan and an application for a financing order for the corresponding period upon a finding of good cause as necessary or desirable:

"(1) To protect public safety;

"(2) To avoid or minimize unreasonable project costs;

"(3) Because additional DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity is unnecessary to meet the purposes of this act;

"(4) Because the electric company's liability with respect to the DDOT Underground Electric Company Infrastructure Improvement Charges can reasonably be demonstrated to contribute materially to an adverse credit action by a rating agency, including a down grade or placement on credit watch; or

"(5) To otherwise promote the public interest.".

(i) Section 308 (D.C. Official Code § 34-1313.08) is amended as follows:

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

(A) The lead-in text is amended by striking the word "triennial" and inserting the word "biennial" in its place.

(B) Paragraph (1)(A) is amended by striking the phrase "District over the preceding 3 years" and inserting the phrase "District since January 1, 2010 through the most recently completed calendar year" in its place.

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

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

(I) Strike the phrase "interruptions (inclusive" and insert the phrase "interruptions that affect the public welfare (inclusive" in its place.

(II) Strike the phrase "District, the most recent 3 calendar years average of the following," and insert the phrase "District since January 1, 2010 through the most recently completed calendar year, averaged using the following data," in its place.

(ii) Subparagraph (C) is amended by striking the phrase "interruption on" and inserting the phrase "interruption per cost of undergrounding on" in its place.

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

(i) The lead-in text is amended by striking the phrase "company as follows:" and inserting the phrase "company or DDOT, as applicable, as follows:" in its place.

(ii) Subparagraph (E) is amended by striking the phrase "funded by DDOT" and inserting the phrase "funded by the Underground Project Charge and DDOT" in its place.

(iii) Subparagraph (G) is amended by striking the word "and".

(iv) Subparagraph (H) is amended by striking the period and inserting the phrase "; and" in its place.

(v) A new subparagraph (I) is added to read as follows:

"(I) A status report and an explanation of the reasons why DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity associated with projects contained in a biennial

Underground Infrastructure Projects Plan previously approved by the Commission have not been completed and the dates upon which the projects are expected to be completed.".

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

(A) The lead-in text is amended by striking the phrase "after the Underground" and inserting the phrase "after the biennial Underground" in its place.

(B) Paragraph (2) is amended by striking the word "and" at the end.

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

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

"(4) The ability to complete and place in service the feeder circuits to be undergrounded pursuant to the biennial Underground Infrastructure Improvement Projects Plan from funding generated by the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Project Charge for the corresponding plan period.".

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

(A) The lead-in text is amended by striking the phrase "for the Underground" and inserting the phrase "for the biennial Underground" in its place.

(B) Paragraph (1) is amended by striking the phrase "costs shown" and inserting the phrase "costs that correspond with an itemized list of the Electric Company Infrastructure Investment Activity shown" in its place.

(C) Paragraph (2) is amended by striking the phrase "Costs;" and inserting the phrase "Costs that correspond with an itemized list of the DDOT Underground Electric Company Infrastructure Improvement Activity;" in its place.

(D) Paragraph (4) is amended by striking the word "annual" and inserting the word "biennial" in its place.

(E) Paragraph (6)(A)(iv) is amended as follows:

(i) Strike the phrase "requirement, rate of" and insert the phrase "requirement, including the rate of" in its place.

(ii) Strike the phrase "rate base" and insert the phrase "base rate" in its place.

(4) Subsection (d) is amended by striking the word "customer".

(j) Section 309 (D.C. Official Code § 34-1313.09) is amended as follows:

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

(A) Strike the sentence "Before deciding upon an application for an order approving the triennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days for public comment and filing of motions to intervene." and insert the sentence "Before deciding upon an application for an order approving the biennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days after publication of the notice for public comment and 14 days after publication of the notice for filing of motions to intervene." in its place.

(B) Strike the phrase "to its customers in the District".

(2) Subsections (b), (c), and (d) are amended by striking the word "triennial" wherever it appears and inserting the word "biennial" in its place.

(k) Section 310 (D.C. Official Code § 34-1313.10) is amended as follows:

(1) Subsection (a) is amended by striking the word "triennial" both times it appears and inserting the word "biennial' in its place.

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

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

(i) Strike the phrase "Charges to customers" and insert the phrase "Charges to distribution service customers" in its place.

(ii) Strike the phrase "surcharge;" and insert the phrase "surcharge; provided, that no such charges shall be assessed against customers served under the electric company's residential aid discount or a succeeding discount program;" in its place.

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

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

(A) Strike the phrase "$500 million" and insert the phrase "$250 million" in its place.

(B) Strike the phrase "Commission, included" and insert the phrase "Commission in the most recently decided base rate case, included" in its place.

(l) Section 311 (D.C. Official Code § 34-1313.11) is amended by adding a new subsection (c) to read as follows:

"(c) The transfer of real and personal property between the electric company and the District, including DDOT or any other District agency or instrumentality, pursuant to subsection (a) of this section or which is included in, or forms a part of, the DDOT Underground Electric Company Infrastructure Improvements shall be exempt from all taxes imposed by the District that relate to the transfer of real or personal property, including, as any may be amended from time to time, the:

"(1) Transfer tax imposed under D.C. Official Code § 47-903;

"(2) Recordation tax imposed under section 303 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C. Official Code § 42-1103);

"(3) Sales tax imposed under D.C. Official Code § 47-2002; and

"(4) Use tax imposed under D.C. Official Code § 47-2202.".

(m) Section 312 (D.C. Official Code § 34-1313.12) is amended as follows:

(1) The heading is amended by striking the phrase "Plan." and inserting the phrase "Plan and financing order." in its place.

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

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

"(b) In addition to the requirements of subsection (a) of this section, an application to amend an existing Underground Infrastructure Improvement Projects Plan shall request any amendment to the Commission's financing order for the corresponding period such that the work, surcharges and riders, and other contents of the financing order, as amended, are coordinated with the Underground Infrastructure Improvement Projects Plan, as amended.".

ENROLLED ORIGINAL

(n) Section 313 (D.C. Official Code § 34-1313.13) is amended as follows:

(1) The heading is amended by striking the phrase "Charges." and inserting the phrase "Charges, financing order." in its place.

(2) The text is amended as follows:

(A) Strike the phrase "section 308(c)." and insert the phrase "section 308(c) and, with respect to the financing order for the corresponding period, shall include the information required pursuant to section 302." in its place.

(B) The second sentence is amended to read as follows:

"The application to amend shall apply only to future Underground Project Charges and the future Underground Rider. Any approval of an application to amend shall allow for recovery by the electric company through:

"(1) Underground Project Charges of any prudent and reasonable expenses or costs for any project previously approved by the Commission; and

"(2) The Underground Rider, any amounts paid with respect to DDOT Underground Electric Company Infrastructure Improvement Charges.".

(o) Section 314 (D.C. Official Code § 34-1313.14) is amended as follows:

(1) The heading is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charge" and inserting the phrase "the Underground Rider" in its place.

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

"(a) The electric company shall not file a request for approval of a schedule applying the true-up mechanism to the Underground Rider with the Commission more frequently than twice per year.".

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

(A) Paragraph (1) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and inserting the phrase "the Underground Rider" in its place.

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

"(2) Billing and collection data that show the proposed adjustment is expected to generate payments that will permit the electric company to recover an amount equal to the aggregate amount of the DDOT Underground Electric Company Infrastructure Improvement Charges adjusted for any over-collection or under-collection through the prior year under the Underground Rider;

"(3) A showing that the proposed adjustment is expected to result in neither a net over-collection nor under-collection by the electric company of an amount equal to the aggregate of the DDOT Underground Electric Company Infrastructure Improvement Charges through the Underground Rider; and".

(C) Paragraph (4) is amended by striking the phrase "and disbursements of" and inserting the phrase "of the Underground Rider and payment of" in its place.

(4) Subsection (c) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and inserting the phrase "Underground Rider" in its place.

ENROLLED ORIGINAL

(5) Subsection (d) is amended by striking the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" both times it appears and inserting the phrase "Underground Rider" in its place.

(6) Subsection (e) is amended to read as follows.

"(e) Notwithstanding any other provision of this act, if the electric company has not recovered the full amount of the aggregate DDOT Underground Electric Company Infrastructure Improvement Charges that it has paid, the Underground Rider shall continue to be collected until the electric company has recovered the full amount even if there is no current biennial Underground Infrastructure Improvement Projects Plan in effect.".

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

"(f)(1) In conducting the true-up, the recovery for the under-collection of the DDOT Underground Electric Company Infrastructure Improvement Charges through the Underground Rider shall be allocated to each customer class in the proportion to which the customer class contributed to the under-collection of the DDOT Underground Electric Company Infrastructure Improvement Charges.

"(2) Nothing in the operation of the true-up shall be deemed to violate the requirement of this act that the Underground Rider be non-bypassable.".

(p) Section 315 (D.C. Official Code § 34-1313.15) is amended as follows:

(1) Subsection (a) is amended by striking the word "triennial" and inserting the word "biennial" in its place.

(2) Subsection (b) is amended by striking the phrase "to its customers".

(3) Subsection (c)(5) is amended by striking the phrase "Commission in the" and inserting the phrase "Commission for the electric company and in the" in its place.

(q) Section 319 (D.C. Official Code § 34-1313.19) is amended as follows:

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

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

(i) The lead-in text is amended by striking the year "2019" and inserting the year "2022" in its place.

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

(I) Strike the phrase "DDOT Underground Electric Company Infrastructure Improvement Charges" and insert the phrase "Underground Rider" in its place.

(II) Add a comma after the phrase "residential customers".

(III) Strike the phrase "implications of the Underground" and insert the phrase "implications of the Underground Rider and the Underground" in its place.

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

"(C-i) Evaluates whether the impact of the DDOT Underground Electric Company Infrastructure Improvement Activity and the Electric Company Infrastructure Improvement Activity otherwise is in the public interest; and".

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

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

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

ENROLLED ORIGINAL

"(ii) Adjust the limit of the electric company's investment to be recovered through the Underground Project Charges as set forth in section 310(d);".

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

"(ii-I) Adjust the limit of the DDOT Underground Electric Company Infrastructure Charges as set forth in section 301(a)(2); or".

(B) Paragraph (2) is repealed.

(C) Paragraph (3) is amended to read as follows:

"(3) The report required by paragraph (1) of this subsection shall include any separate statements of the Mayor, Commission, OPC, or the electric company that the Mayor, Commission, OPC, or the electric company requests be included in the report.".

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

(A) Strike the word "reports" and insert the word "report" in its place.

(B) Strike the phrase "each report" and insert the phrase "the report" in its place.

Sec. 3. Conforming amendments.

(a) Section 302 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102), is amended as follows:

(1) Paragraph (33) is amended by striking the word "and".

(2) Paragraph (34) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (35) is added to read as follows:

"(35) Deeds to property transferred between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(b) Section 47-902 of the District of Columbia Official Code is amended by adding a new paragraph (27) to read as follows:

"(27) The transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(c) Section 47-2005 of the District of Columbia Official Code is amended by adding a new paragraph (40) to read as follows:

"(40) Any sales concomitant to the transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

(d) Section 47-2206 of the District of Columbia Official Code is amended as follows:

(1) Paragraph (3) is amended by striking the word "and".

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

ENROLLED ORIGINAL

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

"(5) Any sales concomitant to the transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May19,2017

ENROLLED ORIGINAL

A RESOLUTION

22-114

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CFOPD-17-C-009 with Paymentech, LLC, to provide merchant card processing services to the Office of the Chief Financial Officer on behalf of the Office of Finance and Treasury.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-17-C-009 Approval Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to approve Contract No. CFOPD-17-C-009 with Paymentech, LLC, to provide merchant card processing services to the Office of the Chief Financial Officer on behalf of the Office of Finance and Treasury.

(b) Council approval is necessary because Contract No. CFOPD-17-C-009 is a multiyear contract with a base period of performance of 3 years.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CFOPD-17-C-009 Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-115

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To approve, on an emergency basis, multiyear Contract No. CFOPD-17-C-009 with Paymentech, LLC, to provide merchant card processing services to the Office of the Chief Financial Officer on behalf of the Office of Finance and Treasury.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-17-C-009 Emergency Approval Resolution of 2017".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves Contract No. CFOPD-17-C-009 with Paymentech, LLC, to provide merchant card processing services in the amount of $15 million.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-118

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to provide certain medical marijuana cultivation center applicants with the ability to relocate to another election ward.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Medical Marijuana Cultivation Center Relocation Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Council passed the Medical Marijuana Cultivation Center Amendment Act of 2013, effective December 13, 2013 (D.C. Law 20-59; 60 DCR 15484) ("Act"), which amended the Legalization of Marijuana for Medical Treatment Initiative of 1999 to limit the number of medical marijuana cultivation centers and dispensaries that may locate in any election ward to 6.

(b) In 2015, 4 cultivation centers applied for the last available license in Ward 5, handing in their applications on the same day with the understanding that the applications would be processed, and the final registration awarded, on a first-come, first-serve basis. Instead, the Department of Health awarded the license based on other criteria.

(c) The District of Columbia Office of Administrative Hearings determined that the Department of Health's process in ascertaining which cultivation center would be awarded the final registration for Ward 5 was arbitrary, capricious, or was otherwise not in accordance with the law.

(d) Currently, applicants cannot modify the proposed cultivation center location on their applications subsequent to submission of that application. By allowing the affected applicants to modify the location listed on their pending application with the Department of Health, a new location for their cultivation center, in a different election ward, may be selected without forfeiting the "active" status of their application.

(e) This emergency legislation will permit cultivation center applicants who were unable to secure the final license in Ward 5 due to an unclear process to change the location on their application and keep their "active" status as they continue to find a suitable location within the District of Columbia.

ENROLLED ORIGINAL

(f) This legislation shall not result in the registration of more than 6 cultivation centers to operate within a single election ward established by the Council in section 4 of the Redistricting Procedure Act of 1981, effective March 16, 1982 (D.C. Law 4-87; D.C. Official Code § 1-1041.03).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Medical Marijuana Cultivation Center Relocation Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-119

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To declare the existence of an emergency with respect to the need to amend the District of Columbia Election Code of 1955 to allow members of the Board of Elections to hold employment in the federal government and to change the date of primary elections to ensure compliance with federal law; to amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to remove the redundant 8-day, pre-primary election filing date; and to amend the Prohibition on Government Employee Engagement in Political Activity Act of 2010 to clarify the definition of "employee".

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Primary Date Alteration Emergency Declaration Resolution of 2017".

Sec. 2. (a) The District's 2018 primary election is currently scheduled for September 4, 2018. The general election is scheduled for November 6, 2018.

(b) Section 102(a)(8)(A) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 52 U.S.C. § 20302(a)(8)(A)) "(Voting Act"), requires the Board of Elections ("Board") to mail absentee ballots to military and overseas voters at least 45 days before a federal election to allow those voters adequate time to fill out and return their ballots. In 2018, the deadline for the Board to comply with this law is September 22, 2018, which is only 18 days after the currently scheduled primary election.

(c) In the period between the primary and general elections, and before the Board mails overseas ballots, the Board must complete 2 important tasks. First, the Board must certify the primary election results, which involves tabulating all the special ballots, write-ins, challenge ballots, and checking their machines. On average, the Board takes 9 to 10 days to complete this process.

(d) After the certification process, section 11(a)(1) of An Act To regulate the election of delegates representing the District of Columbia to national political conventions, and for other purposes, approved August 12, 1955 (69 Stat. 703; D.C. Official Code § 1-1001.11(a)(1)), requires a 7-day period for candidates to request a recount of the votes. If there is a challenge, the Board must pull the ballots from the precinct in question, which takes approximately 3 to 4 days.

Only after the recount period expires can the Board begin the preparation and mailing of overseas ballots for the general election.

(e) To prepare the ballots for overseas mailing, the Board must hold a lottery for positions on the ballot, create the ballot, print the ballot, stuff and seal envelopes, and postmark the envelopes. These tasks usually take the Board about 2 weeks. With the currently scheduled primary election date, the Board would be left with less than 2 days to complete the entire preparation and mailing process.

(f) Given this timeline, the Board will be unable to comply with the Voting Act in the 2018 general election if the primary election is not moved to an earlier date. Changing the date to the 3rd Tuesday in June, June 19, 2018, will allow the Board sufficient time to certify primary results and provide for due process for any challenges, while leaving ample time for the mailing of overseas ballots within the required 45-day period under the Voting Act.

(g) Permanently changing the primary election date to the 3rd Tuesday in June provides District voters with consistency and predictability. The 3rd Tuesday in June, which falls after the end of the school year but not yet in the heart of summer, also facilitates access to the polls and voter turnout.

(h) The change in the primary election date must move expediently in order to provide all potential candidates with sufficient time to plan and prepare to run for public office and to ensure that all voters are able to fully participate at the polls. This emergency legislation provides candidates with more than a year of advance notice of the new 2018 primary election date.

(i) Identical permanent legislation, the Primary Date Alteration Amendment Act of 2017, passed on 1st reading on May 16, 2017 (Engrossed version of Bill 22-197), is pending before the Council.

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 Primary Date Alteration Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

BILLS

B22-292 Ann Hughes Hargrove Park Designation Act of 2017

Intro. 5-12-17 by Councilmember Nadeau and referred to the Committee of the Whole

B22-293 Homeless Services Reform Amendment Act of 2017

Intro. 5-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services with comments from the Committee on Housing and Neighborhood Revitalization

PROPOSED RESOLUTIONS

PR22-317 Board of Marriage and Family Therapy Jennifer Novak Confirmation Resolution of 2017

Intro. 5-11-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR22-318	District of Columbia Commission on Human Rights Eleanor Collinson Confirmation of 2017 Intro. 5-11-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
PR22-319	District of Columbia Housing Authority Board of Commissioners Jose Ortiz Gaud Confirmation Resolution of 2017 Intro. 5-11-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-320	District of Columbia Housing Authority Board of Commissioners Nakeisha Neal Jones Confirmation Resolution of 2017 Intro. 5-11-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-321	Not-For-Profit Hospital Corporation Board of Directors Brenda Donald Confirmation Resolution of 2017 Intro. 5-11-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
PR22-322	St. John's College High School Revenue Bonds Project Approval Resolution of 2017 Intro. 5-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
PR22-323	Board of Library Trustees C. Brian Williams Confirmation Resolution of 2017 Intro. 5-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
PR22-324	District of Columbia Housing Authority Board of Commissioners Neil Albert Confirmation Resolution of 2017 Intro. 5-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

PR22-325	Local Rent Supplement Program Contract No. 2015-LRSP-05A Approval Resolution of 2017 Intro. 5-16-17 by Chairman Mendelson at the request of the District of Columbia Housing Authority and Retained by the Council with comments from the Committee on Housing and Neighborhood Revitalization
PR22-326	Collective Bargaining Agreement between the District of Columbia Government Metropolitan Police Department and the Fraternal Order of Police MPD Labor Committee (Compensation Unit 3) Approval Resolution of 2017 Intro. 5-17-17 by Chairman Mendelson at the request of the Mayor and Retained by the Council with comments from the Committee on Labor and Workforce Development
PR22-327	Homeland Security Commission Philip McNamara Confirmation Resolution of 2017 Intro. 5-19-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017;
B22-019, the Personal Delivery Device Act of 2017;
B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017; and
B22-0125, the Small Business Parking Permit Act of 2017

Wednesday, June 21, 2017 at 1:00 p.m.
in Room 500 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, June 21, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017; B22-019, the Personal Delivery Device Act of 2017; B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017; and B22-0125, the Small Business Parking Permit Act of 2017. The hearing will begin at 1:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017, would
clarify which accident and traffic data the Mayor shall report to the Council and when an all-terrain vehicle or dirt bike may occupy public space in the District. The bill also specifies that the presence of workers is unnecessary for a moving violation to double. B22-019, the Personal Delivery Device Act of 2017, would authorize the use of electronically powered devices for transportation and related services (personal delivery devices) in the District on sidewalks and crosswalks, except within the central business district. B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017, would require the installation of at least 15 publically-available electric vehicle charging stations in the District by January 1, 2019. Finally, B22-0125, the Small Business Parking Permit Act of 2017, would provide for the issuance of parking permits to small businesses that are based in the District, have only one location and ten or less employees, and do not have controlled parking. The hearing will begin at 1 PM in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written

testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on July 5, 2017.

Council of the District of Columbia
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT

ANNOUNCES A PUBLIC HEARING ON

B22-0023 – LOCAL AND SMALL BUSINESS EQUITY AND DEVELOPMENT PARTICIPATION AMENDMENT ACT OF 2017

B22-0066 - OMNIBUS DISTRICT OF COLUMBIA DEPARTMENT OF FOR-HIRE VEHICLES AMENDMENT ACT OF 2017

PR22-0296 - DIRECTOR OF THE ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION FREDERICK P. MOOSALLY CONFIRMATION RESOLUTION OF 2017

Monday, June 19, 2017, 11:00 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Monday, June 19, 2017, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-0023, the "Local and Small Business Equity and Development Participation Amendment Act of 2017"; Bill 22-0066, the "Omnibus District of Columbia Department of For-Hire Vehicles Amendment Act of 2017"; and PR22-0296 "Director of the Alcoholic Beverage Regulation Administration Frederick P. Moosally Confirmation Resolution of 2017". The hearing will be held in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 11:00 a.m.

The stated purpose of B22-0023 is to require the Department of Housing and Community Development to afford priority consideration to certain developers for contracts that include equity and development participation of local, small, and certified business enterprises.

The stated purpose of B22-0066 is to transfer certain responsibilities to different offices within the Department of For-Hire Vehicles. It also expands the authority of the Department to

authorize funding and incentives to owners and operators of all vehicles-for-hire to purchase electric, fuel efficient, or wheelchair accessible vehicles, and also to serve underserved areas.

The stated purpose of PR22-0296 is to confirm the reappointment of Mr. Frederick P. Moosally as the Director of the Alcoholic Beverage Regulation Administration.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact Demetris Cheatham at (202) 297-0152, or via e-mail at DCheatham@dccouncil.us, and provide their name, telephone number, organizational affiliation, and title (if any) **by close of business, June 15, 2017.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witness should bring **15, single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically to DCheatham@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on June 20, 2017.**

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

B22-67, the Department of Motor Vehicles Drug Conviction Repeal Amendment Act of 2017;
B22-70, the Emissions Inspection Amendment Act of 2017;
B22-118, the Department of Motor Vehicles Reciprocity Amendment Act of 2017;
B22-122, the Mobile DMV Act of 2017;
B22-267, the Department of Motor Vehicles Transfer of Title Simplification Amendment Act of 2017;
B22-278, the Department of Motor Vehicles New Resident Amendment Act of 2017; and
PR22-73, the Opposition to the Revocation of the Operator Permit (Driver License) or Driving Privilege of a Person Convicted of a Drug Offense Resolution of 2017

Friday, June 16, 2017 at 11:00 AM
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, June 16, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-67, the Department of Motor Vehicles Drug Conviction Repeal Amendment Act of 2017; B22-70, the Emissions Inspection Amendment Act of 2017; B22-118, the Department of Motor Vehicles Reciprocity Amendment Act of 2017; B22-122, the Mobile DMV Act of 2017; B22-267, the Department of Motor Vehicles Transfer of Title Simplification Amendment Act of 2017; B22-278, the Department of Motor Vehicles New Resident Amendment Act of 2017; and PR22-73, the Opposition to the Revocation of the Operator Permit (Driver License) or Driving Privilege of a Person Convicted of a Drug Offense Resolution of 2017. The hearing will begin at 11 AM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-67, the Department of Motor Vehicles Drug Conviction Repeal Amendment Act of 2017, would repeal the mandatory revocation of an operator's permit or ability to operate a motor vehicle in the District for individuals convicted of a drug offense. B22-70, the Emissions Inspection Amendment Act of 2017, permits full-service stations to inspect and issue inspection stickers after completing necessary repairs to vehicles that have failed District safety and exhaust emissions inspections. B22-118, the Department of Motor Vehicles Reciprocity Amendment Act of 2017, would allow the DMV to issue replacement reciprocity stickers for a fee of $20. B22-122, the Mobile DMV Act of 2017, requires the Department of Motor Vehicles to establish a mobile customer service center program, develop and publish a schedule for the operation of such centers, and formulate a report and recommendations concerning the results of the program. B22-267, the Department of Motor Vehicles Transfer of Title Simplification Amendment Act of 2017, permits the Mayor to

transfer title to a motor vehicle or trailer if the personal representative of the estate properly applies for the transfer and includes certified copies of the small estate order or equivalent, and a letter testamentary or letter of administration or an equivalent. B22-278, the Department of Motor Vehicles New Resident Amendment Act of 2017, extends the time that a new resident has before being required to register a vehicle or obtain a driver's permit or license issued by the District. Finally, PR22-73, the Opposition to the Revocation of the Operator Permit (Driver License) or Driving Privilege of a Person Convicted of a Drug Offense Resolution of 2017, declares that the Council of the District of Columbia opposes any law that requires the District to revoke a resident's operator's permit or non-resident's driving privileges upon conviction for a drug offense.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on June 30, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HUMAN SERVICES
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON BRIANNE K. NADEAU
COMMITTEE ON HUMAN SERVICES
ANNOUNCES A PUBLIC HEARING

on

Bill 22-293, "Homeless Services Reform Amendment Act of 2017"

on

Wednesday, June 14, 2017
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Brianne K. Nadeau announces a public hearing before the Committee on Human Services on Bill 22-293, the "Homeless Services Reform Amendment Act of 2017." The public hearing will be held at 10:00 a.m. on Wednesday, June 14, 2017 in room 412 of the John A. Wilson Building.

The stated purpose of Bill 22-293 is to clarify the appointment, roles, and responsibilities of the Interagency Council on Homelessness and its members; to authorize the Mayor's presumption of safe housing in certain situations; to redetermine eligibility standards for Continuum of Care services; to clarify the proof of residency grace period for applicants seeking severe weather shelter; to provide Continuum of Care clients with the right to associate and peaceably assemble; to provide additional rights for permanent housing clients; to amend medical respite services notification of termination requirements; to clarify notice of termination requirements for providers of temporary shelter or transitional housing; and to authorize Continuum of Care providers to effect emergency tranfers and exits in certain situations.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at humanservices@dccouncil.us or at (202) 724-8170, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, June 12, 2017**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee at humanservices@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on June 28, 2017.**

Council of the District of Columbia
Committee on Health and Committee on Education
Notice of Joint Public Oversight Roundtable
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER VINCENT C. GRAY, CHAIR
COMMITTEE ON HEALTH

AND

COUNCILMEMBER DAVID GROSSO, CHAIR
COMMITTEE ON EDUCATION

ANNOUNCE A JOINT PUBLIC OVERSIGHT ROUNDTABLE ON

"THE DEPARTMENT OF BEHAVIORAL HEALTH'S PROPOSED SCHOOL-BASED BEHAVIORAL HEALTH COMPREHENSIVE PLAN"

MONDAY, JUNE 5, 2017
11:00 A.M., ROOM 500, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Vincent C. Gray, Chairman of the Committee on Health, and Councilmember David Grosso, Chairman of the Committee on Education, announce a joint public oversight roundtable on "The Department of Behavioral Health's Proposed School-Based Behavioral Health Comprehensive Plan", to be held on Monday, June 5, 2017 at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

On June 5, 2017, the Committees on Health and Education will hold a joint public oversight roundtable on the Department of Behavioral Health's proposed School-Based Behavioral Health Comprehensive Plan. This plan proposes to increase the number of schools that host a school mental health clinician by spreading them across multiple schools and requiring them to perform prevention activities rather than the direct clinical services that they currently provide. The direct services will instead be provided by community based organizations, including the Department of Behavioral Health's Core Service Agencies.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Friday, June 2, 2017. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	May 26, 2017
Protest Petition Deadline:	July 10, 2017
Roll Call Hearing Date:	July 24, 2017
Protest Hearing Date:	September 20, 2017

License No.:	ABRA-106428
Licensee:	Mana, Inc.
Trade Name:	Benito's Place
License Class:	Retailer's Class "C" Restaurant
Address:	1437 11th Street, N.W.
Contact:	Ana De Leon: (202) 246-7601

WARD 2 ANC 2F SMD 2F04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 24, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **September 20, 2017 at 1:30 p.m.**

NATURE OF OPERATION
New Class "C" Restaurant serving Spanish food with a Total Occupancy Load of 28 seats. Applicant has also applied for a Sidewalk Café.

HOURS OF OPERATION ON PREMISE
Sunday through Thursday 7 am – 2 am, Friday and Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE
Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

HOURS OF OPERATION FOR SIDEWALK CAFE
Sunday through Thursday 7 am – 10 pm, Friday and Saturday 7 am – 11 pm

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 10 am – 10 pm, Friday and Saturday 10 am – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	May 19, 2017
Protest Petition Deadline:	July 3, 2017
Roll Call Hearing Date:	July 17, 2017

License No.:	ABRA-084379
Licensee:	Big Bear Café, LLC
Trade Name:	Big Bear Café
License Class:	Retailer's Class "C" Restaurant
Address:	1700 First Street, N.W.
Contact:	Risa Hirao: (202) 544-2200

WARD 5 ANC 5E SMD 5E06

Notice is hereby given that this licensee has requested Substantial Changes to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 17, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGES

Applicant requests a **Rooftop Summer Garden Endorsement with 68 seats. Applicant also requests an expansion to the second floor with **65 seats and occupancy of 85. New Total Occupancy Load of 202 for the entire premises.

CURRENT HOURS OF OPERATION FOR PREMISES

Sunday through Thursday 6 am – 12 am, Friday and Saturday 6:00 am – 12:30 am

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

Sunday 10 am - 12 am, Monday through Thursday 8 am - 12 am, Friday and Saturday 8 am - 12:30 am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN

Sunday through Thursday 6 am – 12 am, Friday and Saturday 6:00 am – 12:30 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN

Sunday 10 am - 12 am, Monday through Thursday 8 am - 12 am, Friday and Saturday 8 am - 12:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	May 19, 2017
Protest Petition Deadline:	July 3, 2017
Roll Call Hearing Date:	July 17, 2017

License No.:	ABRA-084379
Licensee:	Big Bear Café, LLC
Trade Name:	Big Bear Café
License Class:	Retailer's Class "C" Restaurant
Address:	1700 First Street, N.W.
Contact:	Risa Hirao: (202) 544-2200

WARD 5 ANC 5E SMD 5E06

Notice is hereby given that this licensee has requested Substantial Changes to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 17, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

****NATURE OF SUBSTANTIAL CHANGES**

Applicant requests a Summer Garden Endorsement with 68 seats. Applicant also requests an expansion to the second floor, adding 60 seats for a Total Occupancy Load of 202 for the entire premises.

CURRENT HOURS OF OPERATION FOR PREMISES

Sunday through Thursday 6 am – 12 am, Friday and Saturday 6:00 am – 12:30 am

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

Sunday 10 am - 12 am, Monday through Thursday 8 am - 12 am, Friday and Saturday 8 am - 12:30 am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN

Sunday through Thursday 6 am – 12 am, Friday and Saturday 6:00 am – 12:30 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN

Sunday 10 am - 12 am, Monday through Thursday 8 am - 12 am, Friday and Saturday 8 am - 12:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	May 26, 2017
Protest Petition Deadline:	July 10, 2017
Roll Call Hearing Date:	July 24, 2017
Protest Hearing Date:	September 20, 2017

License No.:	ABRA-106108
Licensee:	EMB International, LLC
Trade Name:	Café Georgetown
License Class:	Retailer's Class "D" Restaurant
Address:	3141 N Street, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 24, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **September 20, 2017 at 1:30 p.m.**

NATURE OF OPERATION
A Retailer "D" Restaurant serving pastries, non-alcoholic beverages and alcoholic beverages with a Total Occupancy Load of 15. Requesting an Entertainment Endorsement.

HOURS OF OPERATION
Sunday through Saturday 6:00 am – 12:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 8:00 am – 12:00 am

HOURS OF LIVE ENTERTAINMENT
Sunday through Saturday 8:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	May 26, 2017
Protest Petition Deadline:	July 10, 2017
Roll Call Hearing Date:	July 24 2017
Protest Hearing Date:	September 20, 2017

License No.:	ABRA-106319
Licensee:	Karma Healthy Foods, LLC
Trade Name:	Karma Modern Indian
License Class:	Retailer's Class "C" Restaurant
Address:	611 I Street, N.W.
Contact:	Hardeep Grover: 703-362-4886

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 24, 2017at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **September 20, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Restaurant that will offer Indian cuisine, primarily modern renditions of North Indian cuisine. Total Occupancy Load of 200 and a Summer Garden with seating for 30.

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT****

Placard Posting Date:	**May 26, 2017
Protest Petition Deadline:	**July 10, 2017
Roll Call Hearing Date:	**July 24, 2017
Protest Hearing Date:	**September 20, 2017

License No.:	ABRA-106265
Licensee:	Prequel, LLC
Trade Name:	Prequel
License Class:	Retailer's Class "C" Tavern
Address:	919 19th Street, N.W.
Contact:	Johann Moonesinghe: (202) 510-9917

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on **July 24, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on ****September 20, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Class C Tavern with 231 seats and a Total Occupancy Load of 351. Applicant has also requested a Sidewalk Café with 85 seats.

HOURS OF OPERATION FOR PREMISES
Sunday through Thursday 8:00 am – 2:00 am, Friday and Saturday 8:00 am – 3:00 am

****HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES**
Sunday through Thursday 8:00 am – 1:30 am, Friday and Saturday 8:00 am – 2:30 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 8:00 am – 11:00 pm, Friday and Saturday 8:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND****

Placard Posting Date:	**May 12, 2017
Protest Petition Deadline:	**June 26, 2017
Roll Call Hearing Date:	**July 10, 2017
Protest Hearing Date:	**August 16, 2017

License No.:	ABRA-106265
Licensee:	Prequel, LLC
Trade Name:	Prequel
License Class:	Retailer's Class "C" Tavern
Address:	919 19th Street, N.W.
Contact:	Johann Moonesinghe: (202) 510-9917

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on **July 10, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on ****August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Class C Tavern with 231 seats and a Total Occupancy Load of 351. Applicant has also requested a Sidewalk Café with 85 seats.

HOURS OF OPERATION FOR PREMISES
Sunday through Thursday 8:00 am – 2:00 am, Friday and Saturday 8:00 am – 3:00 am

****HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES**
Sunday through Tuesday 8:00 am – 11:00 pm, Wednesday and Thursday 8:00 am – 12:00 am, Friday and Saturday 8:00 am – 1:00 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 8:00 am – 11:00 pm, Friday and Saturday 8:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	May 5, 2017
Protest Petition Deadline:	June 19, 2017
Roll Call Hearing Date:	July 3 2017
Protest Hearing Date:	August 16, 2017
License No.:	ABRA-106176
Licensee:	ReqWharf LLC
Trade Name:	Requin
License Class:	Retailer's Class "C" Restaurant
Address:	100 District Square, S.W.
Contact:	Jeff Jackson: **(202) 251-1566

WARD 6 ANC 6D SMD 6D04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3 2017at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Restaurant serving American and French cuisine. Total Occupancy Load of 300. Summer Garden with 60 Seats.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES
Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 8 am – 11 pm, Friday and Saturday 8 am –1 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11 am – 11 pm, Friday and Saturday 11 am –1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	May 5, 2017
Protest Petition Deadline:	June 19, 2017
Roll Call Hearing Date:	July 3 2017
Protest Hearing Date:	August 16, 2017

License No.:	ABRA-106176
Licensee:	ReqWharf LLC
Trade Name:	Requin
License Class:	Retailer's Class "C" Restaurant
Address:	100 District Square, S.W.
Contact:	Jeff Jackson: **(301) 251-1566

WARD 6 ANC 6D SMD 6D04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 3 2017at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **August 16, 2017 at 4:30 p.m.**

NATURE OF OPERATION
New Restaurant serving American and French cuisine. Total Occupancy Load of 300. Summer Garden with 60 Seats.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES
Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 8 am – 11 pm, Friday and Saturday 8 am –1 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11 am – 11 pm, Friday and Saturday 11 am –1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	May 26, 2017
Protest Petition Deadline:	July 10, 2017
Roll Call Hearing Date:	July 24, 2017
Protest Hearing Date:	September 20, 2017

License No.:	ABRA-106409
Licensee:	Tasting Table Budapest, LLC
Trade Name:	Tasting Table Budapest
License Class:	Retailer's Class "B" (Internet Only)
Address:	1850 New York Avenue, N.E., Unit 3091
Contact:	Paul Pascal, Esq.: 202-544-2200

WARD 5 ANC 5C SMD 5C04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on July 24, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **September 20, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A new Retailer Class B License for Online Sales Only on Commercial Premises.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/26/2017

Notice is hereby given that:

License Number: ABRA-089141 **License Class/Type: C Tavern**

Applicant: Stadium Sports LLC

Trade Name: Willie's Sports Brew & Que

ANC: 6D07

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

300 Tingey ST SE, #110, WASHINGTON, DC 20003

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

7/10/2017

A HEARING WILL BE HELD ON:

7/24/2017

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

ENDORSEMENT(S): Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8am - 2am	8am - 2am	12pm - 11pm
Monday:	8am - 2am	8am - 2am	12pm - 11pm
Tuesday:	8am - 2am	8am - 2am	12pm - 11pm
Wednesday:	8am - 2am	8am - 2am	12pm - 11pm
Thursday:	8am - 2am	8am - 2am	12pm - 11pm
Friday:	8am - 3am	8am - 3am	12pm - 1am
Saturday:	8am - 3am	8am - 3am	12pm - 1am

	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	12pm - 11pm	12pm - 11pm
Monday:	12pm - 11pm	12pm - 11pm
Tuesday:	12pm - 11pm	12pm - 11pm
Wednesday:	12pm - 11pm	12pm - 11pm
Thursday:	12pm - 11pm	12pm - 11pm
Friday:	12pm - 1am	12pm - 1am
Saturday:	12pm - 1am	12pm - 1am

FOR FURTHER INFORMATION CALL: (202) 442-4423

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JULY 12, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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 FIVE

THIS CASE WAS POSTPONED FROM DECEMBER 7, 2016 TO THE PUBLIC HEARING OF FEBRUARY 1, 2017 AT THE APPLICANT'S REQUEST, THEN ADMINISTRATIVELY RESCHEDULED TO MARCH 1, 2017. POSTPONED FROM MARCH 1, 2017 TO APRIL 5, 2017 AT APPLICANT'S REQUEST, THEN CONTINUED TO JULY 12, 2017:

19385 ANC-5C — **Application of Shahid Q. Qureshi**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-use requirements of Subtitle U § 203.1(j), to operate a parking lot in the R-1-B Zone at premises 2200 Channing Street N.E. (Square 4255, Lot 28).

WARD FIVE

THIS CASE WAS RESCHEDULED BY THE BOARD FROM SEPTEMBER 20, 2016 TO DECEMBER 7, 2016, THEN POSTPONED FROM DECEMBER 7, 2016 TO THE PUBLIC HEARING OF FEBRUARY 1, 2017 AT THE APPLICANT'S REQUEST, THEN ADMINISTRATIVELY RESCHEDULED TO MARCH 1, 2017. POSTPONED FROM MARCH 1, 2017 TO APRIL 5, 2017 AT APPELLANT'S REQUEST, THEN CONTINUED TO JULY 12, 2017:

19334 ANC-5C — **Appeal of Shahid Q. Qureshi**, pursuant to 11 DCMR §§ 3100 and 3101, from an April 19, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to revoke Certificate of Occupancy No. CO0901692, granted to permit a parking lot in the R-1-B District at premises 2200 Channing Street N.E. (Square 4255, Lot 28).

WARD EIGHT

19519 ANC 8C — **Application of Events DC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the maximum lot occupancy requirements of Subtitle K § 604.1, to construct a sports arena and practice facility in the STE-9 and STE-12 zones at premises 1100 Alabama Avenue S.E. (Square 5868, Lots 815 & 819).

WARD FOUR

19520
ANC 4A

Application of Ethel Taylor, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the home occupation requirements under U § 251.6, or pursuant to Subtitle X, Chapter 10, for a variance from the home occupation requirements of U § 251.5, to permit the use of a portion of a one-family dwelling as a dog grooming business in the R-1-A at premises 2130 Sudbury Place N.W. (Square 2754, Lot 802).

WARD TWO

19522
ANC 2E

Application of Ladurée Washington, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the rooftop mechanical equipment screening requirements of Subtitle C § 1500.6, to install rooftop mechanical equipment without screening in the MU-4 Zone at premises 3060 M Street N.W. (Square 1198, Lot 808).

WARD TWO

19523
ANC 2B

Application of Villa Park I, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the maximum floor area ratio requirements of Subtitle F § 602.1, to convert an existing four-story building into a four-unit apartment house in the RA-8 zone at premises 1902 R Street N.W. (Square 111, Lot 81).

WARD SIX

19527
ANC 6B

Application of Eric Goetz, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201.1 from the rear yard requirements of Subtitle E §205.4, under Subtitle E § 206.2 from the roof top architectural element requirements of Subtitle E § 206.1, and under Subtitle E § 5203 from the height limitations of Subtitle E § 303.1, to construct a rear and third story addition to an existing two-story one-family dwelling in the RF-1 Zone at premises 119 7th Street S.E. (Square 870, Lot 858)

WARD SIX

19529
ANC 6B

Application of William Flens, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear and side addition to an existing one-family dwelling in the RF-1 Zone at premises 1108 South Carolina Avenue S.E. (Square 990S, Lot 8).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.
Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**.* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

Do you need assistance to participate?

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይምየ ቋንቋ እርዳታ አገልግሎቶች (ትርጉምወይምማሸተርጎም)
ካስፈለገዎት እባክዎን ከስብሰባውአምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይምበኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese
您需要有人帮助参加活动吗？

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean
참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish
¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF FINAL RULEMAKING

The Interim Executive Director of the Office of Lottery and Charitable Games, pursuant to the authority set forth in Section 424a of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790, Pub. L. 93-198; D.C. Official Code § 1-204.24(a) (2016 Repl.)), as amended by the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. No. 109-356, § 201, 120 Stat. 2019; D.C. Official Code §§ 1-204.24a(c)(6) (2016 Repl.)); Section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306(a), 3-1322, 3-1324, and 3-1327 (2016 Repl.)); and Office of the Chief Financial Officer Financial Management Control Order No. 15-11, issued April 14, 2015 (appointing Tracey Cohen Interim Executive Director), hereby gives notice of the adoption of the following amendments to Chapter 12 (Bingo, Raffle, Monte Carlo Night Party and Suppliers' Licenses) of Title 30 (Lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking decreases the required bond amounts for bingo and Monte Carlo Night Party Suppliers licenses and creates a combined bond amount for licensees that provide both bingo and Monte Carlo Night party supplies.

A Notice of Proposed Rulemaking was published on April 14, 2017 at 64 DCR 3542. No comments were received, and no changes have been made from the proposed rulemaking.

This rulemaking was adopted as final on May 17, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 12, BINGO, RAFFLE, MONTE CARLO NIGHT PARTY AND SUPPLIERS' LICENSES, of Title 30 DCMR, LOTTERY AND CHARITABLE GAMES, is amended as follows:

Subsection 1208.8 of Section 1208, SUPPLIERS' LICENSES, is amended to read as follows:

1208.8 The Agency shall require a bond from a surety company licensed to do business in the District from each applicant for a suppliers' license at the time the application is made and shall guarantee that all goods or services are delivered to the licensed organizations. The following is the suppliers' license bond schedule:

(a) A Monte Carlo Night Party suppliers bond shall be seven thousand five hundred dollars ($7,500.00)

(b) A bingo suppliers bond shall be two thousand five hundred dollars ($2,500.00).

(c) A combined Monte Carlo Night and bingo suppliers bond shall be ten thousand dollars ($10,000.00), provided that each activity is listed on the bond.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM01-2017-01, IN THE MATTER OF THE COMMISSION'S REVISION OF RULES GOVERNING ITS PAPER FILING REQUIREMENTS

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to Sections 2-505, and 34-802 of the D.C. Official Code (2016 Repl.), hereby gives notice of its final rulemaking action adopting amendments to Chapter 1 (Public Service Commission Rules of Practice and Procedure) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), effective upon the publication of this Notice of Final Rulemaking ("NOFR") in the *D.C. Register*.

2. On February 3, 2017, a Notice of Proposed Rulemaking ("NOPR") was published in the *D.C. Register*.[1] In the NOPR, the Commission stated its belief that "the rules contained in the NOPR will be transitional while the Commission and parties work to increase utilization of electronic documents for utility regulatory filings in the District of Columbia" and that "[t]he Commission plans to reassess our filing rules (12) months after finalizing these rules."[2] On March 10, 2017, the Commission extended the comment period on the NOPR.[3]

3. On March 31, April 3, and April 4, 2017, Office of the People's Counsel, Apartment and Office Building Association of Metropolitan Washington, and Washington Gas Light Company, respectively, filed comments on the NOPR.[4] On April 12, 2017, WGL filed reply comments.[5]

4. After fully considering the comments and reply comments filed, the Commission, by Order issued on May 10, 2017, adopted the revised version of the rules as final, and directed that the rule will become effective upon publication of this notice in the *D.C. Register*.[6]

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1 64 *D.C. Reg.* 1216 (February 3, 2017).

2 64 *D.C. Reg.* 1216 (February 3, 2017).

3 64 *D.C. Reg.* 2535 (March 10, 2017).

4 *RM01-2017-01, In the Matter of the Commission's Revision of Rules Governing its Paper Filing Requirements* ("*RM01-2017-01*"), Initial Comments of the Office of the People's Counsel for the District of Columbia, filed March 31, 2017 ("OPC's Comments"); *RM01-2017-01*, Comments of the Apartment and Office Building Association of Metropolitan Washington, filed April 3, 2017 ("AOBA's Comments"); and *RM01-2017-01*, Washington Gas Light Company's Comments, filed April 4, 2017 ("WGL's Comments").

5 *RM01-2017-01*, Washington Gas Light Company's Reply Comments, filed April 12, 2017 ("WGL's Reply Comments").

6 *RM01-2017-01*, Order No. 18769, ¶¶ 15-16, rel. May 11, 2017.

Chapter 1, PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 100, DOCKETS AND FILINGS, is amended as follows:

Subsection 100.11 is amended in its entirety to read as follows:

100.11 Unless otherwise required by the Commission, there shall be filed with the Commission an original and thirteen (13) conformed written copies of all testimony and exhibits as well as other documents over one hundred (100) pages; however:

(a) For non-testimony, and other documents under 100 pages, and filed publicly the appropriate number of written copies to be filed is an original and one (1) conformed written copy; and

(b) For non-testimony, and other documents under 100 pages, and filed confidentially the appropriate number of written copies to be filed is an original and six (6) conformed written copies.

Section 113, FORM OF FORMAL PLEADINGS, is amended as follows:

Subsection 113.4 is amended in its entirety to read as follows:

113.4 All testimony and exhibits, as well as other documents over one hundred (100) pages shall be three (3)-hole punched on the left-hand side and shall have inside margins of not less than one and one-half inches (1 $^{1}/_{2}$ in.). Non-testimony, and other documents under 100 pages shall be bound or stapled on the left-hand side and shall have inside margins of not less than one and one-half inches (1 $^{1}/_{2}$ in.).

Section 133, EXHIBITS, is amended in its entirety to read as follows:

133 EXHIBITS

133.1 All direct and rebuttal testimony shall be prepared in the form of written exhibits.

133.2 All revisions and corrections to case-in-chief and rebuttal exhibits shall be presented by way of replacement pages and submitted no later than five (5) business days prior to the beginning of hearings. Only the correction of minor typographical errors shall be allowed after this period. Each replacement page shall be identified in the heading as such and identify the date it was submitted.

133.3 The title of each exhibit shall state concisely what the exhibit contains.

133.4 Exhibits containing prepared written testimony shall contain line numbers on each page in the left-hand margin. All such testimony shall be authenticated by an appropriate affidavit of the witness. An exhibit containing rebuttal testimony

shall also include the exhibit, page and line numbers of the evidence that it purports to rebut.

133.5 Case-in-Chief exhibits and rebuttal exhibits shall be served on each party, and thirteen (13) written copies shall be filed with the Secretary for use by the Commission and its staff. In addition, one (1) written copy shall be served on each Commission agent and consultant previously identified by the Commission's Secretary or General Counsel.

133.6 Narrative testimony and exhibits shall be marked with a tab in the filed written version and a bookmark in the electronic PDF version required under Sections 118 and 119 of this chapter and be identified prior to filing as follows:

(a) The name of the party shall be set forth on each exhibit in the form of an acronym or initials (*e.g.*, OPC, PEPCO, WGL, VZ-DC, DCG, PSC, GSA, AOBA);

(b) When the document to be filed is the testimony of a witness, each set of the testimony shall, following the party's initials, bear a letter (in upper case); thus, the first witness of the Company shall have his or her testimony identified, for example, as PEPCO (A); the second witness, PEPCO (B), and so on. Each witness shall retain the same letter; however, the first witness' second set of testimony shall be lettered (2A) and so on;

(c) If there is an exhibit attached on the testimony of the witness, that exhibit shall bear an Arabic number. Thus, the first exhibit of the first witness would be marked, for example, PEPCO (A)-1. His or her second exhibit shall be marked, for example, PEPCO (A)-2, and so on. Any exhibit attached to the second set of testimony of a witness would be marked, for example, PEPCO (2A)-1; and

(d) If there is no testimony submitted with the exhibit, then the exhibit shall merely bear the capitalized initials of the party and be numbered sequentially with Arabic numbers (*e.g.*, PEPCO-1).

133.7 The Commission may, at the hearing, sequentially number all exhibits by the insertion of a prefix number before the letters of the party.

133.8 Not later than 9:30 a.m. of the morning of a hearing, there shall be provided to all parties, Commissioners and agents, a list of all cross-examination exhibits that the party proposes to introduce on the record. This list shall be accompanied by copies of those exhibits in electronic and written versions. Each exhibit shall be marked with a tab in the filed written version and a bookmark in the electronic PDF version and otherwise comply with Section 119 of this chapter.

133.9 As subsequent filings are made, the list of cross-examination exhibits shall be cumulatively updated. Any party proposing to use a document in examination of

a witness shall have it marked for identification and shall distribute copies to the Commission, for the record, and to the parties by 10:00 a.m. the day of the hearing.

133.10 The list of cross-examination exhibits shall contain the following information:

(a) The caption and docket number of the case;

(b) A title showing the party proponent of the list and the date of the list and the date of the list it supersedes, if any;

(c) The designation of the document in letters and numbers as the first column; and

(d) A description of the document in the second column.

133.11 Documents, including, cross-examination exhibits, containing allegedly confidential or proprietary information shall be identified with a title which is not confidential or proprietary, thus permitting reference to the document in a manner which does not raise confidentiality issues. Only the confidential pages should be filed confidentially and they should be identified in the heading as "confidential" versions of the "public" pages they reproduce in full.

133.12 Each party shall, for the formal record, submit within two business days of the close of the hearing in each case an original and two fully corrected sets of its case-in-chief, supplemental and/or rebuttal testimony and exhibits ("conformed testimony") in a single document, as well as a final list of all cross-examination exhibits introduced on the record accompanied by copies of those exhibits in a single document.

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), pursuant to the authority set forth in Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub.L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)); and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000; hereby gives notice of this final action to amend Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR) by adding a new Chapter 44 (Bulk Sales).

The addition of Chapter 44 (Bulk Sales) provides guidance as to the types of taxes subject to bulk sale notice requirements.

The rules were published as a proposed rulemaking in the *D.C. Register* on April 14, 2017 at 64 DCR 003544. No comments were received concerning the proposed rulemaking, and this final rulemaking is identical to the published text of the proposed rulemaking. OTR adopted these rules as final on May 15, 2017. The rules shall become effective upon publication of this notice in the *D.C. Register*.

A new Chapter 44, BULK SALES, is added to Title 9 DCMR, TAXATION AND ASSESSMENTS, to read as follows:

CHAPTER 44 BULK SALES

4400 BULK SALES

4400.1 The term "assets" as used in D.C. Official Code § 47-4463 means without limitation, all assets, whether real or personal, tangible or intangible, including rights to property, of a business, that transfer to a purchaser, transferee or assignee in a single transaction or series of related transactions other than in the ordinary course of business.

Example 1: The sale of a hotel where the hotel owns the real estate being conveyed.
Assets shall include, without limitation, the real property, any licenses held by the hotel (such as a liquor license, franchise license, etc.), inventory, furnishings, equipment, materials or supplies, and flag or trademark.

Example 2: The sale of a restaurant where the restaurant leases the space it occupies.
Assets shall include, without limitation, any licenses held by the restaurant (such as a liquor license, franchise license, trademark, etc.), the leasehold or license interest (including renewals), inventory, furnishings, equipment, materials or supplies.

4400.2 For any tax determined to be due from the seller to the District of Columbia, failure to provide the notice as required pursuant to D.C. Official Code § 47-4461, or comply with the provisions of D.C. Official Code § 47-4462 and remit payment of taxes owed to the Office of Tax and Revenue (OTR), shall make the purchaser personally liable for payment to the District of Columbia of the taxes determined to be due from the seller to the extent of the fair market value of the assets transferred.

4400.3 Taxes that are subject to the notice required under D.C. Official Code § 47-4461 shall include all taxes or fees imposed by the District determined to be due from the seller, including, without limitation, sales, personal property, franchise, income, possessory interest, employment taxes and ballpark fees.

4400.4 Compliance with the provisions of D.C. Official Code §§ 47-4461 or 47-4462 shall not affect liability for taxes or assessments imposed on the real property of the seller, since such taxes or assessments are a lien against the real property under D.C. Official Code § 47-1331. OTR shall not be required to inform a purchaser of possible liabilities for any such real property taxes or assessments, or for taxes which are not administered by OTR. Real property taxes or assessments (if applicable) shall be stated on a Certificate of Taxes, issued pursuant to a proper request therefor, under D.C. Official Code § 47-405.

4400.5 The notice of bulk sale required pursuant to D.C. Official Code § 47-4461 shall be sent by registered or certified mail to Chief, Collection Division, Compliance Administration, OTR.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

GT96-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISIION, FOR THE AUTHORITY TO ESTABLISH A NEW RATE SCHEDULE NO. 1A;

RM47-2017-01-G, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF NATURAL GAS SUPPLIERS AND NATURAL GAS CONSUMER PROTECTION STANDARDS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to its authority under the Retail Natural Gas Licensing and Consumer Protection Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code §§ 34-1671.01 *et seq*. (2012 Repl.)) of its intent to adopt a new Chapter 47 (Licensure of Natural Gas Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking (Notice or NOPR) in the *D.C. Register*. Chapter 47 establishes the rules governing the licensure and bonding of Natural Gas Suppliers and implementation of consumer protection standards relating to consumers transactions with Natural Gas Suppliers in the District of Columbia. Currently, the requirements for licensing Natural Gas Suppliers are set forth in GT 96-3, Order No. 12709, rel. April 25, 2003, and GT 96-3, Order No. 12903, rel. September 5, 2003. Bonding requirements for Natural Gas Suppliers are set forth in GT 96-3, Order No. 12709.

2. The Natural Gas Consumer Protection Standards (NGCPS) was established in Order No. 12709 in order to provide uniform standards for billing, security deposits, disconnections and reconnections of service, resolution of complaints of residential natural gas customers, enrollment procedures, advertising by Natural Gas Suppliers, termination of contracts with Natural Gas Suppliers, and switching Natural Gas Suppliers. These standards apply to service provided to residential customers by Natural Gas Suppliers who have entered into a Natural Gas Supplier Application Agreement with the Natural Gas Company (Company) and/or have received a license to provide natural gas in the District of Columbia. The standards discussed in this chapter are not applicable to WGL unless otherwise specified. Henceforth, these NGCPS provisions are detailed in Title 15 DCMR, Chapter 3 (Consumer Rights and Responsibilities).

3. This Rulemaking proposes to put the licensing requirements and bonding requirements in a single chapter. This Notice of Proposed Rulemaking (NOPR) also includes the following attachments: (A) Supplier Application; (B) Form of Customer Payments Bond-Surety Bond; (C) Form of Integrity Bond for Natural Gas Suppliers other than Aggregators and Brokers-Surety Bond; and (D) Form of Integrity Bond for Aggregators and Brokers-Surety Bond.

4. The Commission notes that these proposed rules may be amended in the future depending on actions taken in Formal Case 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS proceeding).

A new Chapter 47 of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, will read as follows:

CHAPTER 47 LICENSURE OF NATURAL GAS SUPPLIERS

4700 APPLICABILITY

4700.1 **Application.** These rules apply to a Person who engages in the business of a Natural Gas Supplier in the District of Columbia. Natural Gas Suppliers include marketers, brokers, aggregators, any entities selling natural gas at retail and any entities selling competitive billing services. Natural Gas Suppliers do not include natural gas companies to the extent that the natural gas company provides natural gas sales or delivery service at rates regulated by the Commission.

4700.2 **Purpose.** These rules provide uniform requirements for obtaining any form of a Natural Gas Supplier License in the District of Columbia, describe the administrative procedures available to the Applicants and Licensees, outline the grounds for Commission action regarding a Licensee, and describe the sanctions that may be imposed by the Commission.

4700.3 **Restrictions.** No Person shall present itself as a licensed retail Natural Gas Supplier, perform the duties of a Natural Gas Supplier, accept Deposits or prepayments from retail customers, contract with retail customers or arrange for contracts for retail customers, prior to receipt of a license from the Commission.

4701 LICENSING REQUIREMENTS

4701.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of a Natural Gas Supplier in the District of Columbia shall hold a Natural Gas Supplier License issued by the Commission.

4701.2 **Application Information Requirements for Natural Gas Suppliers.** An Application for a Natural Gas Supplier License and an Application for renewal of a Natural Gas Supplier License shall include the following information, in a manner and form specified by the Commission:

(a) Proof of technical and managerial competence;

(b) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Natural Gas Transmission or Pipeline Company to be used by the Applicant;

(c) A sworn verification that the Applicant is currently in compliance with, and will comply with all, applicable federal and District of Columbia environmental laws and regulations;

(d) Proof of compliance with the Bonding Requirements set forth in §§ 4705 and 4706;

(e) Proof that the Applicant has registered with the Department of Consumer and Regulatory Affairs and the Department of Finance and Revenue to do business in the District of Columbia;

(f) A sworn verification that the Applicant is currently in compliance with, and will comply with, all applicable taxes;

(g) A sworn verification that the Applicant is currently in compliance with, and will comply with all of the requirements of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 (Act) and all orders and regulations of the Commission issued under the Act;

(h) If the Applicant was a previously licensed supplier in the District but has surrendered that license under a former name or in this current applicant's name, the Applicant must:

(1) Submit a sworn verification that it has paid all previously outstanding Commission and Office of the People's Counsel imposed assessments and penalties;

(2) If prior assessments and penalties remain unpaid, submit a date certain when those assessments and any penalties will be paid; and

(3) If the Applicant fails to comply with either directive, its application will not be considered;

(i) Applicant's web-site address;

(j) A sample copy each of the Natural Gas Supplier's natural gas supply Customer contracts (*e.g.*, fixed, variable) and a sample bill;

(k) The name and contact information for the Natural Gas Supplier's designated contact Person for Customer and consumer complaints;

(l) The Trade name(s) or d/b/a (doing business as name(s)) if the Applicant will be using either while doing business as a Natural Gas Supplier in the District of Columbia; and

(m) Any other information required by the Commission.

4702 COMMISSION ASSESSMENT AND FEES

4702.1 The Licensee or the Natural Gas Supplier shall pay an assessment for the costs and expenses of the Commission and the Office of the People's Counsel as required by D.C. Official Code §§ 34-912 (b) and 34-1671.11.

4702.2 The Licensee or the Natural Gas Supplier shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders. Renewal Applications may not be approved if the Licensee or Natural Gas Supplier owes any outstanding assessment to the Commission, the Office of the People's Counsel, or both.

4703 LICENSING PROCEDURES

4703.1 **Scope.** These procedures apply to an Application for a Natural Gas Supplier License before the Commission and the renewal of a Natural Gas Supplier License.

4703.2 **Form.** An Application for a Natural Gas Supplier License shall be made to the Commission in writing on the applicable form provided by the Commission (See the form set out in Attachment A); be verified by oath or affirmation; and be accompanied by an Application fee of four hundred dollars ($400.00).

4703.3 **Number of copies; Service.** Each Applicant shall file a signed and verified original and an electronic version of their application and attachments.

4703.4 **Change in Application Information.** The Applicant shall immediately inform the Commission of any change in the information provided in the Application during the pendency of the Application process.

4703.5 **Notice of Incomplete Application (Deficiency Letter).** The Commission shall review the submitted Application for completeness within fifteen (15) days of receipt of the Application and inform the Applicant if the Application is either complete or incomplete. If the Application is complete, the Commission shall notify the Applicant in writing that the Application has been accepted for filing. If the Application is incomplete, the Commission shall notify the Applicant in writing of the deficiencies in the Application. The Applicant shall have ten (10) days, or such additional time as the Commission may designate if it extends the time period for good cause shown, to provide the information requested in the deficiency letter. Once the deficiency has been cured by the Applicant, the Commission will notify the Applicant in writing that the Application is now complete and has been accepted for filing. If the Applicant does not provide the information to the Commission within ten (10) days or within the alternative time period set by the Commission, the Application shall be deemed dismissed without prejudice. An Applicant may submit a new Application at any time.

4703.6 **Comments and Objections Regarding Filed Application.** All persons interested in filing an objection or a comment regarding the filed Application or the licensure of an Applicant may submit written comments or objections to the Commission Secretary and to the Applicant no later than twenty (20) days after the Application has been posted on the Commission's website. An Applicant may file reply comments no later than ten (10) days after objections or comments are filed with the Commission Secretary. The Commission may waive this filing deadline at its discretion.

4703.7 **Review of Complete Application.** Upon determining that an Application is complete, the Commission shall conduct an appropriate investigation of the information provided by the Applicant in the complete Application and of any

objections or comments received on the Application. Within fifteen (15) days after the comment period has expired, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application if no objections or comments are filed. If an objection to licensure or comments is filed, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a License to an Applicant, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission determination shall also be served on the Applicant and the Office of the People's Counsel.

4703.8 **Licensee's Update Information.** A licensed Natural Gas Supplier shall comply with any information update requirements or supplemental information requirements pursuant to Subsections 4708.1 and 4708.2 and in Order No. 12709, Attachment C.

4703.9 **Term of Natural Gas Supplier License.** A Natural Gas Supplier License is valid until the expiration date of five (5) years after issuance, or until revoked by the Commission or surrendered by the licensed Natural Gas Supplier. Within sixty (60) days prior to the expiration of the five (5) year period, a Natural Gas Supplier must renew its license pursuant to the licensing requirements and procedures set forth in Sections 4701 and 4702, respectively. Currently licensed Natural Gas Suppliers shall renew their licenses, pursuant to the licensing requirements and procedures set forth in Sections 4701 and 4702, respectively, within five (5) years from the effective date of this chapter.

4703.10 **Transfer of Natural Gas Supplier License.** A Natural Gas Supplier License is not transferable without the prior approval of the Commission. To obtain the approval of the Commission, a Licensee shall file a Transfer Application in a format similar to an application for a natural gas supplier license (see Attachment A) with the Commission Secretary. After receiving the Transfer Application, the Commission shall give public notice by posting the Transfer Application on its website. All Persons interested in filing an objection or a comment regarding the filed Transfer Application may submit written comments or objections to the Commission's Secretary no later than thirty (30) days after the posting of the Transfer Application on the Commission's website. The Licensee may file reply comments no later than seven (7) days after objections or comments are filed. The Commission may waive this filing deadline at its discretion. Within thirty (30) days after the comment period has expired, the Commission shall issue an order approving or denying the Transfer Application if no objections or comments are filed. If an objection to a Transfer Application or a comment is filed, the Commission shall conclude its investigation and issue an order approving or denying the Transfer Application within sixty (60) days after the comments or

objection period has expired. In the event that the Commission denies a Transfer Application, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission's determination shall also be served on the Licensee and on the Office of the People's Counsel.

4703.11 **Solicitation of Customers.** A Licensee who has not initially started serving customers shall notify the Commission within seven (7) days the Licensee begins soliciting or marketing to Customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting District consumers. The notice shall include the name of the licensed Natural Gas Supplier's designated contact person for pricing information if the Licensee is serving Residential Customers and small commercial Customers and the URL address of the Natural Gas Supplier's website. The Licensee shall provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing material at the time of notification. Also, each sales representative and marketing agent or representative conducting door to door solicitations shall be required to present a company photo identification to Customers as part of the solicitation process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the District, including the company photo identification, and make it available upon request to the Commission. When a Licensee contracts with an independent contractor or vendor to perform marketing or sales activities on the Licensee's behalf, the Licensee shall confirm that all of the sales and marketing personnel of the contractor or vendor have also read the relevant provisions of Chapters 3 and 47 of Title 15 DCMR before they may begin soliciting customers in the District of Columbia.

4703.12 **Electronic Solicitation**. For the purpose of monitoring compliance with 15 DCMR Subsections 327.26, 327.27, 327.30, 327.31, 327.32, 327.33, 327.34 and 327.48 regarding electronic solicitation on the Licensee's website, each Licensee who contracts electronically with customers shall provide the Commission with the electronic accessibility necessary to monitor the Licensee's compliance with previous sections.

4703.13 **Serving Customers.** A Licensee shall do the following before it begins to serve customers in the District of Columbia: (a) notify the Commission within sixty (60) days of the date when it will begin to serve customers in the District of Columbia; and (b) file an affidavit attesting that all sales and marketing and regulatory personnel have read the relevant provisions of Chapters 3 and 47 of Title 15 DCMR before they begin soliciting customers in the District of Columbia.

4703.14 **Cessation of Business in the District of Columbia or Cessation of Business to a Customer Class.** A Licensee shall provide to the Commission at least sixty (60) days prior written notice of the Licensee's intention to cease providing natural gas (a) to all Customers in the District of Columbia; or (b) to all Customers within a specified Customer class. Upon receipt of such notice, the Commission may order the Licensee to provide such further notice to Customers or to the public as the Commission deems necessary, and/or take such other action that the Commission deems appropriate.

4703.15 **Natural Gas Company and Licensee Responsibilities in the Event of Default.** In the event of a default, the Licensee and the Natural Gas Company (Company) shall abide by the Firm Delivery Service Gas Supplier Agreement-Rate Schedule No. 5 Tariff. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Natural Gas Company with information necessary to allow the Natural Gas Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred. The Defaulted Licensee using consolidated billing services is prohibited from issuing bills to persons who were Customers at the time of the default unless specifically authorized by the Commission. A request to authorize a Defaulted Licensee to bill directly may be made to the Commission by the Defaulted Licensee or the Natural Gas Company. In order that a Defaulted Licensee's charges may be included in Natural Gas Company consolidated billing services, a Defaulted Licensee and the Natural Gas Company shall abide by the Firm Delivery Service Gas Supplier Agreement-Rate Schedule No. 5 Tariff.

4703.16 **Required Notices Upon Default.** Upon default, a Licensee shall immediately notify its Customers of its default by electronic mail, if possible, or by telephonic communication followed by written notice and send written notice by electronic mail to the Natural Gas Company and Commission notifying them of its default. Upon receipt of notice of a Licensee's default from the defaulting Licensee, the Natural Gas Company shall immediately provide the defaulting Licensee's Customers Default Service in accordance with the Firm Delivery Service Gas Supplier Agreement-Rate Schedule No. 5 Tariff, unless or until a Customer notifies the Natural Gas Company that the Customer has selected a new Natural Gas Supplier.

4703.17 **Accuracy of Information.** Any Applicant who knowingly or in reckless disregard submits misleading, incomplete, or inaccurate information to the Commission during the Application Process may have its Application rejected, its Natural Gas Supplier License suspended or revoked or be otherwise penalized in accordance with applicable law and the provisions of the Commission's rules in Section 4709.

4703.18 **Proprietary and Confidential Information.** In its Application, the Applicant may designate as confidential information documents provided in response to Sections 4d and 14 of the Application related to the ownership of the Applicant (to the extent such information is not already public) and financial information. If an interested person requests the release of this information, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through a written motion filed with the Commission prior to the Commission's determination on the request. The Commission may order the release of information if an Applicant does not meet its burden of proving that the information is confidential pursuant to the requirements with regard to the handling of confidential information in 15 DCMR §§ 150 *et seq*.

4704 NATURAL GAS SUPPLIER EDUCATION WORKSHOP

4704.1 **Natural Gas Supplier Education Workshop.** Within one hundred eighty (180) days of approval of a License Application or within one year of the effective date of this chapter, whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Natural Gas Supplier Education Workshop sponsored by the Commission. Successful completion of the workshop by the Licensee shall be evidenced by a certificate issued by the Commission. Thereafter, each Licensee shall certify annually that its Regulatory Contact or representative responsible for the Licensee's compliance with the Commission's rules has completed the Natural Gas Supplier Education Workshop sponsored by the Commission or is otherwise knowledgeable with respect to the Commission's Natural Gas Supplier rules.

4705 BOND REQUIREMENTS FOR NATURAL GAS SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")

4705. 1 **Applicability.** Any Natural Gas Supplier that states on its Application that it intends to charge Deposits or collect Prepayments or that does in fact require a Deposit or collects a Prepayment, shall post a Customer Payments Bond with the Commission, in addition to any Integrity Bond that may be required or submitted and shall submit the certification described in this section. Any Natural Gas Supplier that states on its Application that it does not intend to charge Deposits or collect Prepayments and that does not in fact require a Deposit or collect any Prepayment will not be required to post a Customer Payments Bond or provide the certification described below. Any Licensee that actually charges a Deposit or collects a Prepayment without posting the required Customer Payments Bond may be subject to suspension, revocation,

or other action against its license, as well as be held liable for restitution to any Customers who paid such Deposits or Prepayments. Any Licensee requiring, charging, collecting or holding Deposits, or Prepayments may not request return of a current Customer Payments Bond (as defined in this chapter) or waiver of the requirements for a future Customer Payments Bond, unless and until the Licensee returns the Deposits or Prepayments to its Customers or provides the services to which the Deposit or Prepayments applied.

4705.2 **Procedure for Determining Amount of a Customer Payments Bond:**

(a) **Initial Bond:** Before accepting any Deposits or Prepayments, a Licensee shall post an initial Customer Payments Bond of fifty thousand dollars ($50,000) in the form as set out in Attachment C (Form of Customer Payments Bond-Surety Bond).

(b) **Six Month Certification:** Within six (6) months after the initial Customer Payments Bond is posted, the Licensee shall provide to the Commission, with any appropriate confidentiality designations: (1) a certification, subject to review by the Commission, of the amount of the Deposits and Prepayments held by the Licensee, and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

(c) **Annual Certification:** Annually thereafter, coinciding with the annual update requirements of the Commission's rules pursuant to Subsections 4708.1 and 4708.2, the Licensee shall provide to the Commission (with appropriate confidentiality designations): (1) certification of the amount of the Deposits and Prepayments held by the Licensee and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

4705.3 Form of the Bond. Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, the bond form shall:

(a) Designate the Commission as the sole beneficiary of the bond;

(b) Be continuous in nature. If a Licensee seeks to cease providing the bond it must seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;

(c) Cover payment of all District of Columbia Deposits and Prepayments of the Licensee that occurred while the bond was in force; as identified by the Commission under these standards; and

(d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission. See Attachment C (Form of Customer Payments Bond-Surety Bond).

4705.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in Subsection 4705.2 of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission will verify the year to date collections and balances of Prepayments and Deposits as of a specific date and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.

4705.5 **Compliance Investigations.** The Commission may initiate appropriate investigations if it determines a Natural Gas Supplier or a Licensee may be collecting Prepayments and/or Deposits from Customers without appropriate Customer Payments Bond coverage. The Commission may utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for appropriate Customer Payments Bond coverage.

4705.6 **Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to ensure the fair and lawful treatment of the District of Columbia's Residential Customers by a Licensee, to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be paid. In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual and direct damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4706 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY ("INTEGRITY BOND")

4706.1 **Exclusion.**

(a) A Natural Gas Supplier or Licensee that cannot provide evidence to the satisfaction of the Commission that it meets the standards listed in Subsection 4706.2 below will be required to submit an initial Integrity Bond of fifty thousand dollars ($50,000), unless that Natural Gas Supplier or Licensee is applying to provide service as an Aggregator who does not take title to natural gas or as a Broker, in which case a ten thousand dollar ($10,000) Integrity Bond will be required. However, a Natural Gas Supplier or Licensee that meets the standards listed in Subsection 4705.2 below may still be required to provide a bond to demonstrate financial integrity for the Application on a case-by-case basis. This initial Integrity Bond shall be updated in accordance with the requirements set forth in Subsection 4706.3, except that Aggregators who do not take title and Brokers will not be required to update the initial $10,000 Integrity Bond.

(b) After continuously providing service in the District for two (2) years, any Licensee that has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee's demonstrated record of continuous and uninterrupted service in the District, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of the Licensee at a later date if circumstances change, or if the Commission otherwise deems the requirement of an Integrity Bond to be necessary and appropriate.

4706.2 **Applicability.** Any Natural Gas Supplier or Licensee that can provide credible evidence that it meets the following standards is not required to post an Integrity Bond in the District of Columbia:

(a) A current credit rating of BBB- or higher from a nationally-recognized credit rating service;

(b) A current commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's or similar rating by another nationally-recognized rating service;

(c) An unused line of bank credit or parent guarantees deemed adequate by the Commission; or

(d) Any other evidence of financial integrity that the Commission may deem appropriate.

4706.3 Procedure for Determining Amount of a Financial Integrity Bond

(a) **Initial Integrity Bond:** Any Natural Gas Supplier that cannot meet the above criteria for financial integrity, and that is not applying to provide service as an Aggregator that does not take title to natural gas or a Broker, shall post an initial Integrity Bond of fifty thousand dollars ($50,000). If the Natural Gas Supplier is applying to provide service as an Aggregator that does not take title to natural gas or as a Broker, the initial required Integrity Bond amount is ten thousand dollars ($10,000).

(b) **Future Updates:** The Commission, in its sole discretion, may determine whether or not to reevaluate the amount of the Integrity Bond in light of any changing conditions in the natural gas market at the time that a Licensee submits updated information, taking into consideration the Licensee's previous and ongoing relationship with its customers and its historical compliance with Commission rules and requirements. The Commission may request such information from the Licensee as may be necessary to make its evaluation.

4706.4 Form of the Bond. Any Natural Gas Supplier or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, this form shall:

(a) Designate the District of Columbia, or the Commission, as the sole beneficiary of the bond;

(b) Be continuous in nature. If any Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;

(c) Cover payment of all of the Licensee's District of Columbia Deposits and Prepayments that occurred while the bond was in force as identified by the Commission under these standards;

(d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission; and

(e) Be in the format set out in Attachment D (Form of Integrity Bond for Natural Gas Suppliers and Marketers-Surety Bond, or Attachment E (Form of Integrity Bond for Aggregators and Brokers-Surety Bond).

4706.5 **Commission Verification**. Each Licensee shall provide appropriate verification, at the intervals discussed in Subsection 4705.2 of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission will verify the year to date collections and balances of Prepayments and Deposits as of a specific date and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.

4706.6 **Compliance Investigations.** The Commission can initiate appropriate investigations if it has reason to believe that any Licensee may be providing service without appropriate Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for an appropriate Integrity Bond.

4706.7 **Bond Foreclosure.** The Commission's foreclosure of an Integrity Bond shall be limited to those instances where damages to the Customers by the Licensee are "actual and direct". In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual and direct damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Act and any orders, regulations, rules or standards promulgated thereto.

4707 PRIVACY PROTECTION POLICY

4707.1 All Applicants and current Licensees shall submit to the Commission Secretary a copy of their Privacy Protection Policy that demonstrates compliance with 15 DCMR § 308 (Use of Customer Information) and 15 DCMR § 309 (Privacy Protection Policy) within ninety (90) days of the effective date of this chapter, or within sixty (60) days of approval of their Natural Gas Supplier License Application, whichever date is later. The Privacy Protection Policy shall protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of natural gas.

4708 COMMISSION REPORTING REQUIREMENTS

4708.1 **Updates to an Approved Application.** After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. An Applicant or a Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings.

(a) If a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission within thirty (30) days prior to when the Licensee starts using the new material to solicit Customers; and

(b) If a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change.

4708.2 **Annual Reporting Requirements.** The Licensee shall annually review its Application and submit updated information as needed. Annual updates shall be filed with the Commission Secretary within one hundred twenty (120) days after the anniversary of the grant of the License. The Licensee shall, if it is serving Residential Customers and Small Commercial Customers, also submit the name of its Regulatory Contact, website address, the contact for pricing information, copies of its flyers, scripts, pamphlets and other marketing materials. The Licensee shall recertify annually that it has complied with Subsection 4704.2(c) of this chapter. A Licensee shall provide any information required by any other Commission order or regulation. The Licensee shall also annually file a copy of its Privacy Protection Policy with the Commission Secretary.

4709 COMMISSION ACTION REGARDING A LICENSEE

4709.1 **Commission Investigation.** The Commission may initiate an investigation of a Licensee upon its own motion or upon the complaint of the Office of the People's Counsel, the D.C. Office of the Attorney General, or any aggrieved person. The Commission shall provide written notice of the investigation to the Licensee, and shall provide the Licensee an opportunity for a hearing in accordance with District of Columbia law and Commission regulations.

4709.2 **Grounds for Commission Action.** The Commission may take action regarding a Licensee for just cause as determined by the Commission. "Just cause" includes, but is not limited to, the following:

(a) Knowingly or with reckless disregard, providing false or misleading information to the Commission;

(b) Switching, or causing to be switched, the natural gas supply for a Customer without first obtaining the Customer's permission, a practice commonly known as slamming;

(c) Disclosing information about a Customer supplied to the Licensee by the Customer or using information about a Customer for any purpose other than the purpose for which the information was originally acquired, without the Customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes or is required by law or an order of the Commission;

(d) Adding services or new charges to a Customer's existing retail natural gas service options without the Customer's consent, a practice commonly known as cramming;

(e) Failure to provide adequate and accurate information to each Customer about the Licensee's available services and charges;

(f) Discriminating against any Customer based wholly or in part on the race, color, creed, national origin, sex, or sexual orientation of the Customer or for any arbitrary, capricious, or unfairly discriminatory reason;

(g) Refusing to provide natural gas or related service to a Customer unless the refusal is based on standards reasonably related to the Licensee's economic and business purposes;

(h) Failure to post on the Internet adequate and accurate information about its services and rates for Small Commercial Customers and Residential Customers;

(i) Failure to provide natural gas for its Customers when the failure is attributable to the actions of the Natural Gas Supplier;

(j) Committing fraud or engaging in sales, marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive such as engaging in any solicitation that leads the Customer to believe that the Licensee is soliciting on behalf of, or is an agent of, the District of Columbia Natural Gas Company when no such relationship exists;

(k) Failure to maintain financial integrity;

(l) Violating a Commission regulation or order including, but not limited to engaging in direct Solicitation to Customers without complying with the Commission's solicitation rules as provided in the Consumer Protection Standards Applicable to Energy Suppliers (15 DCMR § 327);

(m) Failure to pay, collect, remit, or accurately calculate applicable taxes;

(n) Violating an applicable provision of the D.C. Official Code or any other applicable consumer protection law;

(o) Conviction of the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers of offices of the Licensee) for any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);

(p) Imposition of a civil, criminal, or regulatory sanction(s) or penalties against the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;

(q) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business;

(r) Filing of involuntary bankruptcy/insolvency proceedings against the Licensee or filing of voluntary bankruptcy/insolvency proceedings by the Licensee;

(s) Suspension or revocation of a license by any state or federal authority, including, but not limited to, suspension or revocation of a license to be a power marketer issued by the Federal Energy Regulatory Commission;

(t) Imposition of any enforcement action by any Independent System Operators or Regional Transmission Organization used by the Licensee;

(u) Failure to provide annually an updated Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) and 15 DCMR § 309 (Privacy Protection Policy);

(v) Failure of a Licensee, who has not initially started serving customers in the District, to notify the Commission as soon as the Licensee begins

soliciting or marketing to customers directly or through an authorized representative per Subsection 4702.11. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting District consumers;

(w) Failure of the Licensee or Natural Gas Supplier to pay its assessment for the costs and expenses of the Commission and the Office of the People's Counsel as required by D.C. Official Code § 34-912(b) and impose the penalties prescribed by § 34-1671.11; and

(x) Failure to comply with any Commission regulation or order.

4710 SANCTIONS AND ENFORCEMENT

4710.1 **Sanctions.** Natural Gas Suppliers and Licensees are subject to sanctions for violations of the District of Columbia Code, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

(a) **Civil Penalty.** The Commission may impose a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:

(1) The number of previous violations on the part of the Licensee;

(2) The gravity and duration of the current violation; and

(3) The good faith of the Licensee in attempting to achieve compliance after the Commission provides notice of the violation.

(b) **Customer Refund or Credit**. The Commission may order a Licensee or and Natural Gas Supplier to issue a full refund for all charges billed or collected by the Licensee or Natural Gas Supplier or a credit to the Customer's account. Specifically,

(1) If slamming occurred, the Licensee or the Natural Gas Supplier shall refund to the Customer all monies paid to the Licensee or the Natural Gas Supplier; and

(2) If cramming occurred, the Licensee or the Natural Gas Supplier shall refund to the Customer three times the amount of the

unauthorized charges paid to the Licensee or the Natural Gas Supplier.

(c) **Cease and Desist Order.** The Commission may order the Licensee or the Natural Gas Supplier to (1) cease adding or soliciting additional customers; (2) cease serving customers in the District of Columbia; and (3) cease any action found to be in violation of District of Columbia law, or Commission rules and regulations.

(d) Cancellation of a contract or part of a contract between a Customer and a Licensee or a Natural Gas Supplier;

(e) Suspension of a Licensee's License; and

(f) Revocation of a Licensee's License.

4710.2 **Commission Access to Records.** As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the Licensee or the Natural Gas Supplier that the Commission considers necessary in order to resolve the matter under investigation.

4710.3 **Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that Customers or the reliability of natural gas supply in the District of Columbia is or will be harmed by the actions of a Licensee or a Natural Gas Supplier.

4799 DEFINITIONS

4799.1 For the Purposes of these rules, the following terms have their meanings indicated.

Act - The Retail Natural Gas Supplier Licensing and Consumer Protection of Act of 2004, effective March 16, 2005 (D.C. Law 15-227; D.C. Official Code §§ 34-1671.01 *et seq*. (2012 Repl.)).

Affiliate - A Person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

Aggregator - A Person that acts on behalf of customers to purchase natural gas.

Applicant - A Person who applies for a Natural Gas Supplier License required by the Act.

Application: The written request by a Person for a Natural Gas Supplier License in a form specified by the Commission. The Application form for a Natural Gas Supplier License in the District of Columbia is attached to these rules (See Attachment A).

Broker - A person who acts as an agent or intermediary in the sale and purchase of natural gas but who does not take title to natural gas.

Competitive Billing - The right of a customer to receive a single bill from the Company, a single bill from the Natural Gas Supplier, or separate bills from the Company and the Natural Gas Supplier.

Commission - The Public Service Commission of the District of Columbia.

Consolidator - Any owner of, or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or natural gas service provider for natural gas services for those properties, and who: (A) Does not take title to natural gas; (B) Does not sell natural gas to or purchase natural gas for buildings not owned or managed by such owner or property manager; (C) Does not offer aggregation of natural gas services to other, unrelated end-users; and (D) Arranges for the purchase of natural gas services only from duly licensed Natural Gas Suppliers or Aggregators.

Customer Consent Form - Means by which a customer can enroll with a Natural Gas Supplier. The Customer Consent Form must be executed by a residential customer, and received by a Natural Gas Supplier, for an enrollment transaction to be valid. Natural Gas Suppliers are required to maintain the customer consent forms for the duration of the contract. Upon request by the Company or the Commission, the Natural Gas Supplier is required to provide a copy of the consent form. If the supplier cannot provide a copy of the consent form, then the customer will be returned to sales service or back to their alternative Natural Gas Supplier. The Commission has the authority to institute, at any time, *a* requirement that the Natural Gas Supplier continuously provide the Commission with copies of each of its consent forms. The Commission will make such a determination on a case-by-case basis, if it finds just cause and if it determines that such a requirement is in the best interest of consumers.

Consumer/Customer - A purchaser of natural gas for their own end use in the District of Columbia. The term excludes the nonresidential occupant or tenant of a nonresidential Rental Unit of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies natural gas solely to occupants of the building for use by the occupants.

Cramming - The unauthorized addition of services or charges to a customer's existing service options.

Customer Payments Bond - A bond or other form of acceptable financial instrument such as a line of credit, sworn letter of guarantee, bank loan approval documents, recent bank statements, vendor financing agreements or underwriting agreements in an amount at least equal to the total amount of Deposits or Prepayments specified in this section.

Deposit - Any payment made by a residential consumer to a Natural Gas Supplier to secure the Natural Gas Supplier against the consumer's nonpayment or default.

Defaulted Licensee - A Licensee is in default and is unable to deliver natural gas because: (1) the Commission revokes or suspends the Natural Gas Supplier's retail Natural Gas Supplier License; or (2) the Licensee is unable to transact sales through the Natural Gas Transmission or Pipeline Company designated for the District of Columbia by the Federal Energy Regulatory Commission.

Disconnection - Physical disconnection of a natural gas service by the Company. This is distinguished from termination of a contract by a Natural Gas Supplier.

Electronic Data Interchange Trading Partner Agreement - The agreement between the Natural Gas Company and the Natural Gas Supplier that sets out the terms and conditions between the parties governing Electronic Data Interchange (EDI)

Enrollment - The process in which the Company receives and processes the notification from the Natural Gas Supplier that a customer has entered into a contract for the supply of natural gas with that Natural Gas Supplier.

Firm Delivery Service Gas Supplier Agreement-Rate Schedule No. 5 Tariff - The document that sets forth the basic requirements for interaction and coordination between the Natural Gas Company and each Natural Gas

Supplier necessary for ensuring the delivery of competitive natural gas supply from Natural Gas Suppliers to their customers via the Company's delivery system.

Initiating Service in the District - The earliest calendar date on which a licensed Natural Gas Supplier is contractually obligated to provide natural gas service to any District of Columbia Customer or Consumer.

Integrity Bond - A bond that is required of a Natural Gas Supplier who cannot provide credible evidence that it meets the standards listed in section 4705.2 of this chapter.

Licensee - A Natural Gas Supplier who has been granted a valid Natural Gas Supplier License by the Commission.

Marketer - A person who purchases and takes title to gas as an intermediary for sale to customers.

Market participant - Any Natural Gas Supplier (including an affiliate of the natural gas company) or any person providing billing services or services declared by the Commission to be potentially competitive services, notwithstanding whether or not the supplier or person has been licensed by the Commission.

Natural Gas Company (or Company) - Every corporation, company, association, joint-stock company or association, partnership, or Person doing business in the District of Columbia, their lessees, trustees, or receivers appointed by any court whatsoever, physically transmitting or distributing natural gas in the District of Columbia to retail natural gas customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies natural gas and other natural gas related services solely to the occupants of the building for use by the occupants. The term also excludes a Person or entity that does not sell or distribute natural gas.

Natural Gas Supplier - A licensed person, broker, or marketer, who generates natural gas; sells natural gas; or purchases, brokers, arranges or markets natural gas for sale to customers.

Natural Gas Supplier License - The authority granted by the Commission to a Person to do business as a Natural Gas Supplier in the District of Columbia.

Nontraditional Marketers - A community-based organization, civic, fraternal or business association that works with a licensed Natural Gas Supplier as agent to market natural gas to its members or constituents. A Nontraditional Marketer: (i) conducts its transactions through a licensed Natural Gas Supplier; (ii) does not collect revenue directly from retail customers; (iii) does not require its members or constituents to obtain its natural gas through the Nontraditional Marketer or a specific licensed Natural Gas Supplier; and (iv) is not responsible for the payment of the costs of the natural gas to its suppliers or producers.

OPC - The Office of the People's Counsel of the District of Columbia.

Person - Any individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

Prepayments - All payments other than a Deposit made by a residential consumer to a Natural Gas Supplier for services that have not been rendered at the time of payment.

Regulatory Contact - The staff contact for the licensed Natural Gas Supplier that handles regulatory matters for that company or entity.

Residential Customer - Any customer served under the Natural Gas Company subject to any revisions made to those tariff sheets and ordered by the District of Columbia Public Service Commission.

Slamming - The unauthorized switching of a customer's Natural Gas Supplier account.

Solicitation - A communication in any medium that includes an opportunity to contract for receipt of natural gas from a Natural Gas Supplier.

Default Service - Customer receives natural gas supply from the Company. Default Service is available to customers who contract for natural gas with a Natural Gas Supplier, but who fail to receive delivery of natural gas under such contracts and to customers who do not choose a Natural Gas Supplier.

Termination of Contract - Cessation of the contract for the supply of natural gas between a Natural Gas Supplier and the customer. Upon termination of the contract with the Natural Gas Supplier, the customer will receive their natural gas supply under Sales Service as provided by the Company, or from another Natural Gas Supplier.

Transfer Application - The formal submission by a licensed Natural Gas Supplier to the Commission to transfer its Natural Gas Supplier License to another licensed Natural Gas Supplier in the District.

"Utility Consumer Bill of Rights" - Refers to the Public Service Commission's *Consumer Bill of Rights,* adopted as regulations by the Commission in Title 15, Chapter 3 of the District of Columbia Municipal Regulations.

5. All persons interested in commenting on the subject matter of this NOPR and Attachments may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after the publication of this Notice in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission's website at www.dcpsc.org. Persons with questions concerning this Notice should call 202-626-5150.

ATTACHMENT A

APPLICATION FOR LICENSE TO SUPPLY NATURAL GAS OR NATURAL GAS SUPPLY SERVICES TO TO THE PUBLIC IN THE DISTRICT OF COLUMBIA

You may use the attached form to submit your application. (Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form, then you can create an attachment to this application. You may also attach exhibits. All attachments/exhibits must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding "confidential" information) which must be converted to the Portable Document Format ("PDF") before filing.

To file an application with the District of Columbia Public Service Commission ("Commission"), file a signed and verified original and an electronic version of your application and attachments, and a nonrefundable license fee of four hundred dollars ($400.00) (payable to "D.C. Public Service Commission") with the Commission Secretary in Washington, D.C.:

Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Questions pertaining to the completion of this application may be directed to the Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Commission electronically at www.websupport@psc.dc.gov

If your answer to any of the Application questions changes during the pendency of your Application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. After an Application has been approved a Licensee must inform the Commission of changes to all parts of the Application and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al*. must be updated. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, a Licensee/Natural Gas Supplier must provide annual updates of all items that have changed in the Application. The annual update should be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the license. A Licensee/Natural Gas Supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia sixty (60) days prior to ceasing operations.

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Commission to the extent permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as "CONFIDENTIAL." Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

If you are applying to provide service as an Aggregator or as a Broker (as defined in Commission regulations), who does not take title to natural gas as a part of providing that service, you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of Natural Gas Suppliers and the provision of natural gas supply and natural gas supply services are addressed in detail in the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004," and in Commission orders and regulations.

Statements made in this Application are made under penalty of perjury (D.C. Code Section 22-2402), false swearing (D.C. Code Section 22-2404), and false statements (D.C. Code Section 22-2405). Perjury is punishable by a fine of up to $5,000 or imprisonment for up to 10 years, or both. False statements are punishable by a fine not more than one thousand dollars ($1,000) or imprisonment for not more than one hundred eighty (180) days, or both. Further amendments to these Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of this Application. Any Applicant in violation of these regulations is subject to the penalties found in the "Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004," Section 34-1671.11.

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application Docket No. _____

Application of _____, d/b/a ("doing business as")

_____

for approval to offer, render, furnish, or supply natural gas services as a(n)_____, [specified in item 10 below] to the public in the District of Columbia

To the District of Columbia Public Service Commission:

BUSINESS INFORMATION

1. IDENTITY OF THE APPLICANT:

a. Legal Name_____

Current Mailing Address:_____

_____

_____

Street Address (if different): _____

Telephone Number: _____

Website URL:_____

Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of electricity or natural gas and the names under which the Applicant is engaged or has been engaged in such business(es) Applicant may limit response to the last five (5) years:

Name:_____

Business Address:_____

_____

License # State of Issuance:_____

Other states in which the Applicant has applied to provide retail electric or natural gas service but has been rejected. Applicant may limit response to the last three (3) years:

State(s):_____

Date of Application: _____

Attach additional sheets to the application if necessary.

b. Trade name (If Applicant will not be using a trade name, skip to question no. 2.a.):

Trade Name:_____

c. The District of Columbia and other states, in which the Applicant has provided retail electric or natural gas service under the current Applicant name or in a different name but has voluntarily or involuntarily surrendered its license. Describe reasons for license surrender. With regard to a voluntary or involuntary license surrender in the District of Columbia only, state whether any previously outstanding assessments and/or penalties imposed by the Commission and the Office of the People's Counsel have been paid. If any previous assessments and/or penalties are unpaid, provide a date certain when those assessments and/or penalties will be paid. Applicant may limit response to the last five (5) years:

State(s):_____

Date of License Surrender and Reasons for License Surrender:

_____

In the District of Columbia, Amount of Paid Assessments and Unpaid Assessments/Penalties Following License Surrender and to Whom Owed (If Applicable)

_____
_____
_____

Attach additional sheets to the application if necessary.

2. a. **CONTACT PERSON-REGULATORY CONTACT:**

Name and Title:_____

Address:_____
_____
_____

Telephone: ( )_____
Fax: ( )_____
E-mail _____

b. **CONTACT PERSON-CUSTOMER SERVICE and CONSUMER COMPLAINTS (not required for Aggregators who do not take title and/or Brokers):**

Name and Title:_____

Address:_____

Telephone: ( )_____
Fax: ( )_____
e-mail _____

3. RESIDENT AGENT:

Name and Title:_____

Address:_____

Telephone: ( )_____
Fax: ( )_____
E-mail _____

4. PRIMARY COMPANY OFFICIALS

President/General Partners:
Name(s)_____

Business Address:_____

_____

_____

CEO/Managing Partner:
Name_____

Business Address:_____

_____

_____

Secretary Name: _____

Business Address:_____

_____

_____

Treasurer Name: _____

Business Address:_____

_____

_____

a. **APPLICANT'S BUSINESS FORM: (select and complete appropriate statement)**

□ Proprietorship
□ Corporation
□ Partnership
□ Limited Partnership
□ Limited Liability Company
□ Limited Liability Partnership
□ Other:_____

b. **STATE OF FORMATION: Applicant's business is formed under the laws of the State of _____**

c. **STATUS: Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.**

If formed under the laws of other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is registered or qualified, to do business in the District of Columbia and is currently in good standing with DCRA and with the District Department of Finance and Revenue.

d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more in the Applicant's voting securities, or who otherwise have the power to control ten percent (10%) or more of the Applicant.

5. AFFILIATES, OR PRECEDECESSOR(S), ENGAGED IN THE SALE OR TRANSPORTATION/TRANSMISSION OF ELECTRICITY OR NATURAL GAS AT WHOLESALE OR RETAIL OR THE PROVISION OF RETAIL TELEPHONE OR CABLE SERVICES TO THE PUBLIC: (select and complete appropriate statement) (Applicant may limit responses to the last five (5) years)

The Applicant has no such Affiliate(s) or Predecessors(s)

Applicant is an Affiliate of a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland. Please provide regulated utility's Name and the jurisdictions in which it operates:

_____

Affiliate(s), or Predecessor(s), other than a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland that provides, or provided, sale or transportation/transmission of electricity or natural gas at wholesale or retail to the public:

Name:_____

Business Address:_____

_____

_____

License #, State of Issuance:_____

Location of Operations (Utility Service Territory):_____

Name:_____

Business Address:_____

_____

_____

License #, State of Issuance:_____

Location of Operations (Utility Service Territory:_____

Attach additional sheets to the application if necessary.

6. ACTIONS AGAINST LICENSEES: Provide the following information for the Applicant, any Predecessor(s), and any unregulated Affiliate that engages in or engaged in the sale or transportation/transmission of electricity or natural gas at wholesale or retail or the provision of retail telephone or cable services to the public. (Applicant may limit responses to the last five (5) years).

□ Identify all actions against the Licensee, Predecessor or any regulated or unregulated affiliate(s) such as Suspensions/Revocations/Limitations/ Reprimands/Fines and describe the action in an attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal Investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of license are identified below:

State(s):_____
Name(s):_____
License Number(s) (or other applicable identification):

□ No such action has been taken.

7. RELIABILITY AND ENVIRONMENTAL OFFICIAL ACTIONS AGAINST APPLICANTS/AFFILIATES: Provide the following information for Official Actions that have been taken against the Applicant, any Predecessor(s), and any unregulated Affiliate (if available to the Applicant) that engages in the retail or wholesale sale of natural gas for matters relating to environmental or reliability status for the past five years.

□ Official Actions such as Suspensions/Revocations/Limitations/Reprimands/ Fines/Regulatory Investigations (state agencies, FERG, EPA, or other federal agencies) have been taken against the Applicant, any Predecessor(s) or unregulated affiliate(s), and are described in the attached statement, including docket numbers, offense dates, and case numbers, if applicable.

State(s): _____
Name(s): _____

□ No such action has been taken

OPERATIONAL CAPABILITY

8. TECHNICAL FITNESS: Provide sufficient information to demonstrate technical fitness to provide the service proposed in this Application. Examples of such information which may be submitted include the following:

□ A general description of Applicant's retail natural gas supply activities in District of Columbia, if any, including other service territories in which Applicant has provided service and the time period.

□ A copy of each agreement (if applicable) entered into with District of Columbia natural gas distribution companies.

□ Biographies, including titles, of relevant experienced personnel in key technical positions.

□ Other.

9. SOURCE OF SUPPLY: (Check all that apply) This is for informational purposes only. No update required.

□ Not applicable. Applicant will not be supplying retail natural gas.
□ Applicant owns natural gas supply.
□ Applicant contracts for natural gas.
□ Applicant obtains natural gas on the spot market

□ Other. Applicant must attach s statement detailing its source of natural gas supply.
□ Aggregator or Broker only

SCOPE OF OPERATIONS

(Check all that apply)

10. APPLICANT'S PROPOSED OPERATIONS: The Applicant proposes to operate as a:

□ Natural Gas Supplier/Marketer of natural gas.
□ Aggregator acting on behalf of customers to purchase natural gas and does not take title to natural gas.
□ Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of natural gas and who does not take title to natural gas.

Which natural gas supply related service(s) does the Applicant offer?

□ Billing
□ Other (Please specify the nature of such other services in an attached statement.)

Does Applicant intend to offer competitive billing services?:_____

Is the Applicant proposing to offer any other services?_____
If so, please provide information regarding the proposed service in an attached statement.

11. AREA OF OPERATION: If the Applicant does not intend to offer services throughout the Washington Gas Light Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Natural Gas Company's service territory in which Applicant's services will be offered.

□ Applicant intends to offer service throughout the Washington Gas Light Company territory in the District of Columbia.

□ Applicant intends to offer services in only a portion of Washington Gas Light Company's service territory in the District of Columbia. Please see attached statement.

12. CUSTOMERS: Applicant proposes to initially provide services to (check all that apply):

□ Residential Customers

□ Commercial Customers

□ Industrial Customers

□ Other (Describe in attachment)

Also, Applicant proposes:

□ Restrictions upon the number of end use customers (Describe in attachment)

□ No restrictions on the number of end use customers.

□ Restrictions upon the size of end use customers (Describe in attachment).

□ No restrictions regarding the size of the end use customers (Describe in attachment).

□ Other restrictions regarding customers (Describe in attachment).

13. START DATE: The Applicant proposes to begin delivering services:

□ Upon approval of the Application and receipt of License.

□ Other approximate date of commencement.

FINANCIAL INTEGRITY

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:

Check that the documents listed below are attached to the Application.

The Applicant shall provide the most recent versions of the following documents to the extent they are available:

□ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.

□ Balance sheets, income statements and statements of cash flow for the two (2) most recent twelve (12) month periods for which information is available. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any financial statements subsequent to the most recent annual financial statements.

- □ In the event that a parent or other company, person or entity has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such entity's balance sheet, income statement and statement of cash flow, together with documentation of such guarantee to insure the financial integrity of the Applicant. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any available quarterly financial statements subsequent to the most recent annual financial statements.

- □ If the Applicant, parent, or guarantor entity has not been in existence for at least two 12-month periods, it must provide balance sheets, income statements and statements of cash flow for the life of the business. Audited financial statements must be provided if they exist.

- □ Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if any .

- □ Evidence of general liability insurance.

- □ If the Applicant has engaged in the retail supply of natural gas services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing in those jurisdictions.

- □ A current long-term bond rating, or other senior debt rating.

- □ Any other evidence of financial integrity such as an unused line of bank credit or parent guarantees.

15. BONDING REQUIREMENTS (Note: Underlining below is provided to highlight differences between Integrity Bond and Customer Payments Bond requirements.)

Integrity Bond

An Applicant who cannot provide credible evidence that it meets the financial integrity standards listed in Section 4705 of Chapter 47 of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR) must submit a bond on the form attached to this Application ("Integrity Bond"). The Applicant, if licensed by the Commission as a natural gas supplier, may be required to update/revise this initial Integrity Bond, by revising the initial Integrity Bond or posting an additional Integrity Bond, as set forth in Section 4706.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4705 will not be required to submit an Integrity Bond. (The Applicant may still be required to submit a separate Customer Payments Bond, as discussed below.)

Customer Payments Bond

A separate bond on the appropriate form attached to this Application is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial customers ("Customer Payments Bond"). Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits, as such terms are defined in the Bonding Requirements Addendum attached to this Application:

□ Applicant will not accept prepayments or deposits from residential and small commercial customers.

□ Applicant intends to accept prepayments or deposits and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payment Bond.

Further details regarding the District of Columbia's bonding requirements are included in Sections 4704 and 4705 of Chapter 47 of Title 15 DCMR.

16. NOTICE OF REQUIRED COMPLIANCE: The Applicant is hereby notified that it is required to comply with the following:

(a) The Applicant may be required to submit bond(s), as applicable as described in Section 15 herein.

(b) The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes or an error or inaccuracy is noted during the pendency of the Application. After an Application has been approved, a Licensee must inform the Commission of changes to all parts of the application and the averment regarding any civil, criminal, or regulatory penalties, etc. imposed on applicant, *et al.* within thirty days of the change or an error or inaccuracy is noted. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings.

(c) If the Applicant receives a License from the Commission, Licensee/Supplier must provide annual updates of all items that have changed in the application. The annual update must be provided to the Commission within one hundred twenty (120) days after the anniversary of the grant of the License.

(d) Supplement this application in the event the Commission modifies the licensing requirements, or request further information.

(e) Agree that it will not present itself as a licensed retail supplier of natural gas in the District of Columbia, sell or market services, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

(f) Pay all fees imposed by the Commission and any applicable taxes.

(g) Ensure that a copy of each service agreement entered into with Washington Gas Light Company is provided to the Commission.

(h) Agree to not transfer its license to sell natural gas and natural gas supply services without the prior approval of the District of Columbia Public Service Commission.

(i) Attend a Natural Gas Suppliers Education Workshop sponsored by the Commission.

(j) If certified, submit a Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) and § 309 (Privacy Protection Policy) within ninety (90) days of the adoption of Chapter 47 of Title 15 DCMR or within sixty (60) days of receiving its Natural Gas Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of service.

(k) Abide by 15 DCMR § 308 and not disclose information about a Customer or the Customer's use of natural gas or natural gas services without the Customer's written consent.

(l) Agrees to comply with 15 DCMR § 4702.15 Natural Gas Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Natural Gas Supplier Coordination Tariff.

17. **AFFIDAVITS REQUIRED**. The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia laws.

18. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

19. FEE: The Applicant has enclosed the required fee of $400.00.

Applicant:_____

By:_____

Printed Name:_____

Title:_____

AFFIDAVIT TAX COMPLIANCE

State of_____ :
: ss
County of_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the_____(office of Affiant) of _____(Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant:

That _____, the Applicant herein, certifies to the Public Service Commission of the District of Columbia ("Commission") that it is subject to, will pay, and in the past has paid, the full amount of taxes imposed by applicable statutes and ordinances, as may be amended from time to time. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of the District of Columbia, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and revenues from retail sales in the District, for the previous year or as otherwise required by the Commission.

As provided by applicable Law, Applicant, by filing of this application waives confidentiality with respect to its tax information in the possession of the (appropriate taxing authority), regardless of the source of the information, and shall consent to the (appropriate taxing authority) providing that information to the Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Commission.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____,_____.

_____
Signature of official administering oath

My commission expires_____.

AFFIDAVIT OF GENERAL COMPLIANCE

State of _____ _____:
: ss
County of_____:

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____(Officer/Affiant) of_____(Name of Applicant).

That he/she is authorized to and does make this affidavit for said Applicant.

That the Applicant herein certifies to the Public Service Commission of the District of Columbia ("Commission") that:

The Applicant agrees to comply with the terms and conditions of Washington Gas Light Company's tariff and agreements.

The Applicant is in compliance with and agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commissions regulations, fees, assessments, order and requirements.

If certified, the Applicant agrees to submit a Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) and § 309 (Privacy Protection Policy) within ninety (90) days of the adoption of Chapter 47 of Title 15 District of Columbia Municipal Regulations (DCMR) or within sixty (60) days of receiving its Natural Gas Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of service.

The Applicant also agrees to abide by 15 DCMR § 308 and not Disclose information about a Customer or a Customer's use of service without the Customer's written consent.

Applicant agrees, upon request by the Commission, to provide copies to the Commission, of its consumer forms and/or contracts, its marketing or advertising materials (flyers and solicitation scripts), consumer pamphlets and its consumer education materials.

Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

Applicant agrees to provide proposed notice of the filing of its Application to the Commission so that it may forward the notice to the District of Columbia Register for publication.

The Applicant has obtained all the licenses and permits required to operate the proposed business in the District of Columbia.

The Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

The Applicant agrees that it shall neither disclose nor resell individual residential customer data provided to the Applicant by Washington Gas Light Company. Disclosure or resale of individual non-residential customer data provided to the Applicant by a District of Columbia natural gas company will be governed by customer contract.

The Applicant agrees, if the Commission approves its Application, to post an appropriate bond or other form of financial guarantee as required by the Commission and its regulations.

If the Applicant is certified, but later defaults, the licensee/Supplier agrees to comply with 15 DCMR § 4702.15, Natural Gas Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Natural Gas Supplier Coordination Tariff.

The Applicant, including any of its Predecessor(s) and/or affiliate that engages in or engaged in the sale or transportation/transmission of electricity or natural gas at wholesale or retail or the provision of retail telephone or cable services to the public, the general partners, company officials corporate officers or directors, or limited liability company managers or officers of the Applicant, its predecessor(s) or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or Penalties imposed against it within the previous five (5) years pursuant to any state or federal consumer protection law or regulations, has not been convicted of any fraud-related crime (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud) within the last five (5) years; and has not ever been convicted of a felony; or alternatively.

2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering

any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and

2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debt generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That Applicant possesses the requisite managerial and financial fitness to provide service at retail in the District of Columbia.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

_____
Signature of Affiant

Sworn and subscribed before me this _____day of_____, _____.

_____
Signature of official administering oath

My commission expires_____.

VERIFICATION

State of_____ :
: ss
County of_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the_____ (Officer/Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of a false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Public Service Commission of the District of Columbia ("Commission") modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of natural gas in the District of Columbia, sell or market natural gas, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred without prior approval by the Commission.

That the Applicant agrees to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

_____
Signature of Affiant

Sworn and subscribed before me this _____ day of_____, 20__.

_____
Signature of official administering oath

My commission expires_____.

APPLICANT'S GENERAL AUTHORIZATION FOR VERIFICATION OF FINANCIAL INFORMATION, ETC.

TO WHOM IT MAY CONCERN:

I/We have applied to the District of Columbia Public Service Commission (the "Commission") for a license to be a Natural Gas Supplier, or to provide certain Natural Gas Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

> MY COMPANY OR BUSINESS AND ITS HISTORY, PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS, FINANCIAL CONDITION, INCLUDING BANK ACCOUNT TRANSACTIONS AND BALANCES, PAYMENT HISTORY WITH SUPPLIERS AND OTHER CREDITORS, VERIFICATION OF NET WORTH AND OTHER INFORMATION AND RECORDS WHICH THE COMMISSION REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING MY/OUR FINANCIAL INTEGRITY AND THE INFORMATION CONTAINED IN MY/OUR LICENSE APPLICATION OR OTHER INFORMATION PROVIDED BY ME/US TO THE COMMISSION OR, STAFF OF THE COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

_____

APPLICANT (please print)

_____ _____

APPLICANT'S SIGNATURE **DATE**

_____

TITLE

PREPAYMENT AND DEPOSIT BONDING REQUIREMENTS ADDENDUM

1. DEFINITION AND EXCLUSION

a. Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dekatherms per month.

b. "Deposits" include all payments made by a consumer to a natural gas supplier to secure the natural gas supplier against the consumer's nonpayment or default.

c. "Prepayments" include all payments made by a consumer to a natural gas supplier for services that have not been rendered at the time of payment.

1. Where a natural gas supplier charges for services based on a quantity of natural gas, such as a price per therm, then prepayments include any payments for any quantity that has not been delivered to the consumer at the time of payment.

2. Where a natural gas supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then prepayments include the amount of the total charges collected by the natural gas supplier for the period of time less the prorated value of the period of time for which services have been rendered.

3. Where a natural gas supplier charges for services based on a measure other than quantity of natural gas delivered or a period of time, the PSC shall determine, on a case by case basis, whether the charges involve a prepayment and the appropriate method of calculating the required bond.

4. Prepayments do not include any funds received in advance of the services being rendered as a result of the consumer's voluntary participation in a budget billing or level billing plan by which the

consumer's anticipated natural gas costs are averaged over a period of time.

2. WHO MUST POST BOND

Any natural gas supplier or aggregator or broker who charges or collects deposits or prepayments shall maintain a bond in an amount at least equal to the total amount of such deposits and prepayments as specified in this section. Prepayments and/or deposits from non-residential customers whose metered use during any month of the previous twelve month period was in excess of 625 dekatherms per month are exempt from the calculation of the bond requirement For new non-residential customers, the exemption will apply if the sales to that customer are expected to be in excess of 625 dth per month.

3. PROCEDURE FOR DETERMINING AMOUNT OF BOND

a. INITIAL BOND: Before accepting any deposits or prepayments, or for active suppliers prior to who have deposits or prepayments from current customers, a natural gas supplier must (1) notify the PSC on its license Application, within thirty (30) days of the change for an existing license holder, or by separate communication that it intends to begin charging deposits or prepayments, and (2) post an initial bond of fifty thousand dollars ($50,000). If a bond is required of an aggregator or broker the amount shall be ten thousand dollars ($10,000).

b. SIX MONTH CERTIFICATION: Within six months after the initial bond is posted, (1) the natural gas supplier shall provide to the PSC, an audited certification conducted by either an independent certified accountant ("CPA") or the PSC Accounting Division (see below) of the amount of the deposits and prepayments and (2) a bond in the amount certified by either an independent CPA or by the PSC Accounting Division.

c. ANNUAL CERTIFICATION: Annually thereafter, coinciding with the annual update requirements of the PSC license application, the natural gas supplier shall provide to the PSC (1) a statement of the amount of the deposits and prepayments conducted by either an independent CPA or the PSC Accounting Division and (2) a bond in that amount.

d. QUARTERLY UPDATES: Following submittal of the first annual update, the natural gas supplier must provide to the PSC (1) a quarterly management report stating the amount of deposits and prepayments collected and (2) an adjustment to the bond in that amount.

4. CPA/PSC ACCOUNTING DIVISION AUDIT REPORT. The natural gas supplier shall provide appropriate certification at the intervals discussed in the above paragraphs, on funds collected by a Supplier for prepayments or deposits. The Supplier will have the option of certifying funds through an audit conducted by independent certified public accountant or by the PSC Accounting Division. The audit will verify collections and balances of prepayments and deposits as of a specific date and whether the Supplier has appropriate bond coverage.

5. BOND FORM: BENEFICIARY, CLAIMS, DISTRIBUTION. The natural gas supplier shall provide a bond on the form required by the PSC.

6. COMPLIANCE INVESTIGATIONS. The PSC has the right to initiate appropriate investigations if it determines a Supplier is collecting prepayments and/or deposits from customers without appropriate bond coverage. The PSC will utilize appropriate legal remedies both to investigate and/or enforce actions necessary to ensure suppliers have appropriate bonds.

ATTACHMENT B

FORM OF CUSTOMER PAYMENTS BOND

SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND NO/100 ($50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004 , the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product

contract or third party supplier agreement for service in the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are defined in) (Sections 4704 and 4705 of Chapter 47 of Title 15 DCMR) by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may continue for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on _____, the Public Service Commission of the District of Columbia determined that_____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual and direct damages or loss of a deposit or prepayment (as such terms defined in Sections 4704 and 4705 of Chapter 47 of Title 15 DCMR) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this_____ day of _____

Principal _____

By:_____
(Signatory)

Surety _____

Address of Surety:

_____

_____

_____

_____

By:_____
(Signatory)

Notary Seal

ATTACHMENT C

FORM OF INTEGRITY BOND
FOR NATURAL GAS SUPPLIERS AND MARKETERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND 00/100 ($50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually and directly damaged or suffers any actual or direct loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may be continued for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on_____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual and direct damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety:_____

Address of Surety: _____

_____

_____

_____

By: _____
(Signatory)

Notary Seal

ATTACHMENT D

FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of TEN THOUSAND 00/100 ($10,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide natural gas service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Natural Gas Licensing and Consumer Protection Act of 2004, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail natural gas service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail natural gas services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named

Principal is actually and directly damaged or suffers any actual or direct loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____and terminating _____, and may be continued for an annual period by Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service Commission of the District of Columbia determined that_____ has not satisfactorily performed its obligations a person or entity; who has suffered actual and direct damages or loss a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Natural Gas Licensing and Consumer Protection Act of 2004 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

_____

_____

_____

By: _____
(Signatory)

Notary Seal

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-126
May 19, 2017

SUBJECT: Delegation of Rulemaking Authority – Foster Parent Statements of Rights and Responsibilities Amendment Act of 2016

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) (2016 Repl.), and section 385 of the Prevention of Child Abuse and Neglect Act of 1977, as amended by section 2 of the Foster Parent Statements of Rights and Responsibilities Amendment Act of 2016, effective February 18, 2017, D.C. Law 21-217; 63 DCR 16009 (December 30, 2016) ("**Act**"), it is hereby **ORDERED** that:

1. The Director of the Child and Family Services Agency is delegated the authority of the Mayor to issue rules pursuant to section 2 of the Act.

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

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-127
May 19, 2017

SUBJECT: Amendment to Mayor's Order 2017-076, dated March 20, 2017: Designation – Special Event Areas – Beat the Streets

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. 792, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. Section 1 of Mayor's Order 2017-076, dated March 20, 2017, is amended as follows:

   a. By striking **"S.E."** in subsection "c" and inserting **"N.E."** in its place.

   b. By adding new subsection "h." to read: "On Saturday, September 16, 2017, commencing at 9:00 a.m. and continuing until 5:00 p.m., the 100 block of O Street, N.W., shall be closed to vehicular traffic.

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

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-128
May 19, 2017

SUBJECT: Appointments— Commission on Persons with Disabilities

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and Mayor's Order 2009-165, dated September 25, 2009, it is hereby **ORDERED** that:

1. **VENCER COTTON** is appointed as a public member of the Commission on Persons with Disabilities ("**Commission**"), replacing Oliver Washington, Jr., for a term ending September 30, 2019.

2. **CHERI MALLORY** is appointed as a Developmental Disabilities State Planning Council member of the Commission, filling a vacant seat, for a term ending September 30, 2020.

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 2017-129
May 19, 2017

SUBJECT: Appointments — Citizen Review Panel for Child Abuse and Neglect

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with sections 351 and 352 of the Prevention of Child Abuse and Neglect Act of 1977, effective April 12, 2005, D.C. Law 15-341; D.C. Official Code §§ 4-1303.51 and 4-1303.52 (2012 Repl.), it is hereby **ORDERED** that:

1. The following persons are appointed as members of the Citizen Review Panel for Child Abuse and Neglect for a term to end September 24, 2018:

   a. **MEGAN CONWAY** replacing Gwendolyn Brooks.

   b. **KATRINA FOSTER** replacing Damon King.

   c. **MAURA GASWIRTH** replacing Betty Nyangoni.

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

MURIEL BOWSER
MAYOR

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

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Interpretation Devices

Carlos Rosario is looking to purchase a new Assisted Listening System that includes 300 Portable Assisted Listening Receivers and between 6 - 10 Portable Assisted Listening Transmitters. The devices must be multi-channel programmable devices ideal for working in auditoriums and public halls. For further information please contact Gus Viteri at gviteri@carlosrosario.org. All quotes must be submitted no later than May 31, 2017.

CENTER CITY PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

A Partner to Establish a Full-time Dance Enrichment Program

To obtain copies of full RFPs, please visit our website: www.centercitypcs.org/contact/request-for-proposal. The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person

Nikki Alston
nalston@centercitypcs.org

CESAR CHAVEZ PUBLIC CHARTER SCHOOL DC

REQUEST FOR PROPOSALS

Financial/Accounting Services

May 18, 2017

Cesar Chavez Public Charter Schools for Public Policy (Chavez Schools) is in need of the following financial/accounting services for the schools daily operations.

Financial:

- Provide guidance with existing financial processes for the school.
- Review forms and templates currently in use for finance/accounting process and suggest improvements/provide alternative suggestions when needed.
- Review school's existing financial policy manuals, and suggest changes were needed.
- Provide training and reports to School's Board of Directors and Leaders to provide financial overview and tips for reviewing statements.

Budgeting:

- Using budget tools, work with the school to create a detailed accrual-based budget for the upcoming school year as well as on-going monitoring for the current working budget.
- Revise budgets, within reason during the year to reflect changing circumstances at the School or in funding levels.

Accounting and Monthly Close:

- Prepare and records journal entries and maintain general ledgers according to the accepted accounting standards.
- Reconcile primary bank, investment accounts to the general ledger monthly or upon receipt of statements. Revolving and petty cash accounts are quarterly or as designated by School's leadership.
- Reconcile charge accounts and/or credit card accounts to the general ledger monthly or upon receipt.
- Record capitalized assets as provided by the School and records related depreciation and amortization in general ledger.
- Verify all expenditures, grants and all streams of revenue to ensure School is receiving the correct amount of funding.
- Train appropriate staff in all accounting procedures and practices designed for record keeping.

Financial Statements and Board Support

- Prepare monthly YTD income statement compared to budget and accompanying balance sheets in time for board meetings and PCSB submissions.
- Generate departmental reports to track and support spending.
- Generate reports upon request for School.

- Review budget for actuals expenditures and updates the budget forecast on a monthly basis
- Produce cash flow forecast showing anticipated cash balances by month through end of the fiscal year to assist with School cash flow management.
- Perform reasonable financial analysis that the staff or board requests.
- Work with School leaders to provide options for and identify any shortfalls in funding or cash flow.
- Attend monthly board meetings or financial committee meetings when requested to provide support or reports to leaders.

Audit and 990 Support

- Perform an internal audit before the close of School's financial year or at the request of School leaders.
- Prepare all financial schedules from the auditor and provide support during audits with any needed assistance.
- Provide face-to-face assistance requested by auditor during fieldwork and conduct follow up work responding to auditor's financial request or audit findings.
- Support the School and auditor in preparing Form 990 tax-exempt organization annual filing.

Payroll Coordination

- Serve as primary interface with the School's payroll processing firm, communicating new hire information, time for hourly employees, payroll changes and leave usage.
- Complete any type of forms for 401-K, 403-B, W-2 or any contribution using information provided by school.
- Coordinate the preparation of Form W-2's with payroll processor.

Accounts Payable

- Review/Provide School staff coding of invoices in the schools online accounting payable system.
- Serve as schools primary interface between the School and the online accounts payable platform provider, manage issues that arises within the system.
- Record in detail all transactions into the accounting software package.
- Oversee the migration of check and invoice data from the online accounts payable system to the School's accounting software.
- Prepare all needed forms for vendors, contractors, employees to be paid through accounting systems and payroll systems.

Federal Grant Management

- Assist with the financial portion of the initial application.
- Prepare and draw requests for grant funds reimbursement for the School's review and final approval.
- Prepare grant budget revisions and reallocations as requested by School.
- Set-up separate budget lines in online accounting system to track expenditures.

Services may be extended upon the completion of a successful first year of contract. If the school is satisfied and the vendor is satisfied the contract will be renewed up to four years, after successfully completing each year. However, either party the school or vendor has the right to end this agreement by providing a 30 day notice in writing to the School designated leader.

Submission

Please submit an electronic version of the proposal by Friday June 9th 2017 at 5:00pm EST to keon.toyer@chavezschools.org.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Security Camera and Access Systems

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to E.L. Haynes Public Charter School is accepting proposals to provide upgraded security camera and monitoring systems at all three of our schools and an upgrade of the access control system at our middle school. We are only accepting bids that propose to complete all required work.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, June 2, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

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

OFFICE OF THE DEPUTY MAYOR FOR EDUCATION

NOTICE OF PUBLIC MEETING

CROSS-SECTOR COLLABORATION TASK FORCE MEETING

Deputy Mayor for Education Jennifer Niles announces the scheduling of a Cross-Sector Collaboration Task Force meeting. During the meeting, the two Task Force working groups will continue clarifying the problems they want to solve and begin identifying possible policy solutions and/or recommendations. The date, time and location shall be as follows:

Date: May 30, 2017

Time: 6:00 p.m. – 8:00 p.m.

Location: For Hire Vehicles Hearing Room
2235 Shannon Place, SE Suite 2032
Washington, DC

Contact: Ramin Tahri
Deputy Mayor for Education
202.727.4036 or ramin.taheri@dc.gov

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there are vacancies in three (3) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3D07, 7B03 and 7F07

Petition Circulation Period: **Tuesday, May 30, 2017 thru Monday, June 19, 2017**
Petition Challenge Period: **Thursday, June 22, 2017 thru Wednesday, June 28, 2017**

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

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

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

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 (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#7061) to Caliber Bodyworks of DC, Inc. dba Caliber Collision – DC – Georgia Ave NW to operate one automotive paint spray booth at the facility located at 6250 Chillum Place NW, Washington DC 20011. The contact person for the facility is Shelford Henry at (202) 722-5000.

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the automotive paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]

b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:

1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:

A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;

B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or

C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;

2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;

3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or

4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.

d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and

2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

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 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, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after June 26, 2017 will be accepted.

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

KIPP DC PUBLIC CHARTER SCHOOLS

INVITATION FOR BID

Food Service Management Services

KIPP DC is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on 5/26/17 from Lazette Wells at 202-903-3608 or lazette.wells@kippdc.org:

Proposals will be accepted at 2600 Virginia Ave. NW, Ste. 900 Washington, DC 20037 on 6/20/17, not later than 3pm.

All bids not addressing all areas as outlined in the IFB will not be considered.

REQUEST FOR PROPOSALS

Mobile Phone Billing Management Services

KIPP DC is soliciting proposals from qualified general contracting firms for billing management services related to wireless and mobile internet data connectivity. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on June 6, 2017. Questions can be addressed to adam.roberts@kippdc.org.

MAYA ANGELOU PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Heating, Ventilation & Air Conditioning (HVAC), and Plumbing

1. **Overview of Facility:**
   Maya Angelou Public Charter School (MAPCS) is located at 5600 East Capitol Street NE, Washington DC 20019. Our mission is to create learning communities in lower income urban areas where all students, particularly those who have not succeeded in traditional schools, can succeed academically and socially.
2. **Intent and Definitions:**
   a. Heating, Ventilation & Air Conditioning is hereafter referred to as HVAC. Preventative Maintenance is hereafter referred to as PM.
   b. The intent of this solicitation is to secure proposals for Preventative Maintenance, fixed-pricing for time and materials service calls related to HVAC and plumbing at MAPCS, as well as an optional facilities upgrade of the gym HVAC system.
3. **Goals of this RFP:**
   To provide a comfortable environment for our students and staff while protecting our assets, the aims of this proposal are to:
      i. Ensure optimal operations of newer equipment through a robust PM program of all HVAC equipment
      ii. Develop a PM schedule to address known potential plumbing issues
      iii. Establish a plan to address HVAC and plumbing issues as the need arises
      iv. Obtain a quote to install new HVAC system utilizing the existing ductwork for the gym
4. **General Practices:**
   A licensed, union service technician will provide all services. All work will be scheduled with MAPCS' Operations Manager. Contractor must be familiar with the control system (Siemens/Desigo CC) and have the software tools to service the system.
5. **Scope of Work:**
   a. HVAC PM - Preventative maintenance labor to include:
      i. Quarterly (4) operating inspections
      ii. Annual preventative maintenance (including biennial boiler inspections coordinated with the city as facilitated by MAPCS)
      iii. Semi-annual (2) replacement of all air filters and belts
      iv. Annual (1) chemically cleaning of condenser coils and necessary labor, etc.
   b. Plumbing PM
      i. On a quarterly basis, jet approximately 80 feet of pipes for the cafeteria restrooms. Access point is through the toilet.
   c. Non-PM HVAC and plumbing services
      i. Provide a fixed rate for service calls, hourly rate, over time to address plumbing and HVAC issues as they arise.
   d. Upgrade HVAC for gym (optional)
      i. Obtain all necessary permits.

ii. Tie in new system into existing ducting.
iii. Clean existing ducting.

6. **Evaluation Criteria:**
The following criteria will be used to evaluate each proposal:
iv. Cost
v. Function
vi. Experience
vii. Quality
viii. References

7. **Contractor Expectations:**
a. All bidders are expected to inspect the site at 5600 East Capitol Street NE, Washington DC 20019 prior to bid submittal. Failure to make such an investigation shall not relieve the successful contractor from the obligation to comply, in every detail, with all provisions and requirements of this RFP nor shall it be the basis for any claim whatsoever for alteration of the terms or payment required by the Agreement.
b. Appointments can be scheduled by contacting Heather Hesslink at (202) 792-5655 ext. 1106 or at hhesslink@seeforever.org. All inquiries regarding technical specifications can be emailed to Heather Hesslink at hhesslink@seeforever.org.

8. **Bid Proposal Acceptance and Information:**
a. All bid proposals will be accepted until 5:00 PM on June 26, 2017.
b. Interested vendors will respond to the advertised Notice of RFP via upload to SmartSheet link at https://app.smartsheet.com/b/form?EQBCT=6d532f773029472a98e13c69f58a8d87 . Complete RFP details can be found at www.seeforever.org/requestforproposals.
c. Any proposal received after 5:01 PM on June 26, 2017 is deemed non-responsive and will not be considered. Proposals will not be accepted by oral communications, telephone, electronic mail, telegraphic transmission, or fax.
d. All proposals will remain valid for a minimal period of 45 days subsequent to the RFP closing date.

9. **Award:**
a. The successful contractor shall enter into a contract for the performance of the work proposed and the contract shall incorporate all applicable provisions of this RFP.
b. The installation of the gym HVAC is optional work and will be performed at the sole discretion of MAPCS.
c. MAPCS reserves the right, in its sole discretion, to award the contract to another contractor if contract negotiations do not appear successful.

ROCKETSHIP DC PUBLIC CHARTER SCHOOLS

Rocketship Education DC Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **May 26, 2017** from **Larisa Yarmolovich at (860) 235-4459 or lyarmolovich@rsed.org**:

Proposals will be accepted at 2335 Raynolds Place, SE Washington DC, 20020 on **June 20, 2017** not later than **4:00 PM**

All bids not addressing all areas as outlined in the IFB will not be considered.

ROCKETSHIP DC PUBLIC CHARTER SCHOOLS

Rocketship DC Public Charter Schools will be entering into a sole source contract with BELL (Building Educated Leaders for Life) to provide Summer Educational Services to 130 students at Rocketship RISE Academy (2335 Raynolds Place, SE).

We believe BELL is a sole source contract for the following reasons:

- **Compatibility:** BELL's mission is aligned with Rocketship's ; both partner with students and parents to transform the academic achievements, self-confidence, and life trajectories of those we serve.
- **Program Content:** Rocketship expects the following summer programming which BELL provides: academics, enrichment classes, guest speakers, field trips and community service projects. English language arts and mathematics lesson plans, linked to state and national standards, will be provided four days per week, Monday through Thursday. Enrichment courses will be offered four days per week, Monday through Thursday. Every Friday, students will participate in one or more of the following enrichment activities: field trips, guest speakers, cultural celebrations, field days, and/or community service projects.

If you have any questions or need more information please reach out to Larisa Yarmolovich (lyarmolovich@rsed.org).

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 July 1, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on May 26, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: July 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 2**

Acheampong	Eva	TD Bank 1030 15th Street, NW	20005
Aguilar	Juan	Regan Zambri & Long, PLLC 1919 M Street, NW, Suite 350	20036
Andrews	LaShonda	Foundation for Food and Agriculture Research 401 9th Street, NW, Suite 630	20004
Armistead	Kimberly A.	Community Title Network, LLC 1425 K Street, NW, Suite 350	20005
Badran	Anysa M.	Center for Civilians in Conflict 1850 M Street, NW	20001
Barnes	Anne M.	NESA Center 300 5th Avenue, SW	20319
Bellamy	Sherrell E.	Eversheds Sutherland (US), LLP 700 Sixth Street, NW, Suite 700	20001
Blazosky	Kiersten K.	Hills and Company International Consultants 1850 M Street, NW, Suite 600	20036
Caccamo	Patrick	Pension Benefit Guaranty Corporation 1200 K Street, NW	20005
Cameron	Randal	The Jefferson Hotel 1200 16th Street, NW	20036
Cepko	Nanette J.	Theological College at Catholic University 401 Michigan Avenue, NE	20017
Chen	Heather	International Food Policy Research Institute 2033 K Street, NW	20006
Cottone	Joseph F.	Chapman and Cutler, LLP 1717 Rhode Island Avenue, NW, Suite 800	20036
Delphia	Cristna M.	Federal Practice Group 1750 K Street, NW, Suite 900	20006
Diaz Jr.	Hernan P.	WPVS Visa Service, Inc 2318 18th Street, NW, Suite 200	20009

D.C. Office of the Secretary **Effective: July 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 3**

Ealey	Janie L.	New Grove Baptist Church 4242 Benning Road, NE	20019
Etse	Adelaide N. A.	Ofori & Associates, PC 1900 L Street, NW, Suite 609	20036
Frazier	Thomasina R.	Alignstaffing 111 K Street, NE, Floor 4	20002
Gardiner	Joan	Enlisted Association of the National Guard of the United States (EANGUS) 1 Massachusetts Avenue, NW, Suite 880	20001
Goetschius	Lindsey Ellen	Compass 660 Pennsylvania Avenue, SE, Suite 300	20003
Gorham	Allison Renne	Bowman Consulting Group DC PC 888 17th Street, NW	20006
Grabill	Jessica Hurwitz	American Chemical Society 1155 15th Street, NW	20036
Harmon	Sharon	Great Dwellings 1215 31st Street, NW, #25814	20027
Henderson	Sandra O.	District Department of Transportation 55 M Street, SE, 7th Floor	20003
Henry	Deborah S.	Freshfields Bruckhaus Deringer US, LLP 700 13th Street, NW, 10th Floor	20005
Henshaw	John R.	Office Doctor, Inc. 1629 K Street, NW, Suite 300	20006
High	Shonta'	Self 615 Morton Street, NW, Apartment 21	20010
Hilton	Judy M.	Troutman Sanders, LLP 401 9th Street, NW, Suite 1000	20004
Hoffman	Geoffrey Alan	Capstone Title, LLC 1010 Wisconsin Avenue, NW, Suite 600	20007
Hudson	Erin	ProAssurance 1250 23rd Street, NW, Suite 250	20037

D.C. Office of the Secretary **Effective: July 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 4**

James	Tiffani	Marriott Vacation Club 1130 Connecticut Avenue, NW	20036
Kassim	Jamil P.	Capital One Bank 1700 K Street, NW	20006
Liddell	Brenda	Self 1211 50th Place, NE	20019
Martin	Vickie L.	US Department of the Interior 1849 C Street, NW	20240
Miller	Patrice	Self 4124 Ames Street, NE, Apartment 14	20019
Mitchell	Giselle	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Morris	Warren	SunTrust Bank 1369 Connecticut Avenue, NW	20036
Munoz-Santos	Ruben S.	T D Bank 1030 15th Street, NW	20005
Muse	David A.	Department of Labor Federal Credit Union 200 Constitution Avenue, NW, Room S-3220	20210
Nguyen	Hanh T.	American Institutes for Research 1000 Thomas Jefferson Street, NW	20007
Pacifico	Nicholas	Project on Government Oversight 1100 G Street, NW, Suite 500	20005
Patenaude	Jay	Brawner Company 888 17th Street, NW, Suite 205	20006
Peters	Nikki	U.S. House of Representatives 1718 Longworth HOB, 15 Independence Avenue, SE	20515
Prince	Sara	Venn Strategies, LLC 1341 G Street, NW, 6th Floor	20005

D.C. Office of the Secretary **Effective: July 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 5**

Rollison	Isabel	Self (Dual) 3849 Beecher Street, NW	20007
Shaat	Sondos S.	APVI 1990 K Street, NW, Suite 450	20006
Smith	Deborah	The Employment Law Group 888 17th Street, NW, Suite 900	20006
Straughter	Cynthia	America's Promise - The Alliance for Youth 1110 Vermont Avenue, NW, Suite 900	20005
Suber	Jennifer	Citibank, NA 3917 Minnesota Avenue, NE	20019
Tell	Regina	U.S. House of Representatives 1718 Longworth HOB, 15 Independence Avenue, SE	20515
Torregrossa	Jennifer L.	Pew Charitable Trusts 901 E Street, NW	20004
Walcott	Carille	HS Solutions, LLC 4201 Connecticut Avenue, NW, #650	20008
Walker	Justin	TD Bank 605 14th Street, NW	20005
Washington	Warren	Self 2006A 38th Street, SE	20020
Wheatley Mejia	Nora	Self 4013 20th Street, NE	20018
Williams McLendon	Ellen	Industrial Bank 4907 Georgia Avenue, NW	20011
Wilson	Claire N.	Alignstaffing 111 K Street, NE, Floor 4	20002
Worrell	Melissa	American Chemical Society 1155 15th Street, NW	20036

D.C. Office of the Secretary **Effective: July 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 6**

Yuill	John Peter	Cuneo Gilbert & LaDuca, LLP 4725 Wisconsin Avenue, NW, Suite 200	20016

DISTRICT OF COLUMBIA SENTENCING COMMISSION

NOTICE OF PUBLIC MEETING

The Commission meeting will be held on Tuesday, May 23, 2017 at 5:00 p.m. The meeting will be held at 441 4th Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at http://sentencing.dc.gov

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

Meeting Agenda

1. Review and Approval of the Minutes from Meting of March 28, 2017 – Action Item, Judge Weisberg

2. Introduction of new staff: Mehmet Ergun, Statistician, and Taylor Tarnalicki, Research Analyst – Informational Item, Barb Tombs-Souvey

3. Proposed Modifications to the Sentencing Guideline Manual, Action Item, Linden Fry

4. Discussion on approach to address Evaluation Study Recommendations – Informational Item, Barb Tombs-Souvey

5. Schedule Next Meeting

6. Adjourn

SOMERSET PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Somerset 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 the following service:

- Instructional and Leadership Coaching

Please send an email to sspdc_bids@somersetprepdc.org to receive a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 pm, Monday, June 5, 2017.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
sspdc_bids@somersetprepdc.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Special Education Services). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

THE CHILDREN'S GUILD DC PUBLIC CHARTER SCHOOL

INVITATION FOR BID

Food Service Management Services

The Children's Guild District of Columbia Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **May 26, 2017** from **Thomas Rivard-Willis at 410.444.3800 x1235 or willist@childrensguild.org** :

Proposals will be accepted at The Children's Guild, 6802 McClean Blvd., Baltimore, Maryland 21234 on **June 20, 2017** not later than **1:00 pm (EST).**

All bids not addressing all areas as outlined in the IFB will not be considered.

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Education Staffing Services

Two Rivers Public Charter School is seeking a company or companies to provide the recruitment and placement of temporary, part-time educators, school administrators, and support staff for daily and long-term positions. For complete RFP email Mary Gornick at procurement@tworiverspcs.org. Proposals are due June 9, 2017.

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Comprehensive Assessments and Interventions

Two Rivers Public Charter School is seeking companies to provide comprehensive psychological assessments and therapeutic interventions for students. Providers must be able to complete evaluations and provide written assessments within 30-40 calendar days. Two Rivers may choose to work with one or more companies. Individuals are welcome to apply as independent contractors. For a copy of the RFP, please email Mary Gornick at procurement@tworiverspcs.org.

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL

INVITATION FOR BID

Food Service Management Services

Washington Leadership Academy PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **(5/26/17)** from **Natalie Gould at 612-867-3829 or ngould@wlapcs.org**:

Proposals will be accepted at 3015 4th Street NE, Washington DC on **(6/19/17)**, not later than **4:00pm.**

All bids not addressing all areas as outlined in the IFB will not be considered.

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS
School Furniture

Washington Leadership Academy Public Charter School, an approved 501(c)3 organization, requests proposals for the following furniture:

Item	Quantity
HON SmartLink Seating 18" 4L Chair with Wheels	120
HON Student Desk Lam Top/SecurEdge Adj Leg Assembled-set	30
Vicro Sigma Series Desk 20" x 26" Top With 27" Fixed Height	60
Vicro Zuma Series Cantilever 2-Student Desk 22"D x 60"W x 29"H	15
White, locking, classroom storage options, preferably on wheels (roughly 30W x 60H)	10
Freight and installation	Installation should occur on August 1, 2017

Washington Leadership Academy Public Charter School is seeking qualified professionals for the above services. Applications must include references, resumes exhibiting experience in said field, and estimated fees. Please email proposals to ngould@wlapcs.org.

We request proposals by May 30, 2017.

WASHINGTON YU YING PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Enhance Organizational Capacity

RFP to Enhance Organizational Capacity
Washington Yu Ying PCS invites all interested parties to submit proposals to work with Yu Ying as it enhances its organizational capacity. Scope of work includes:

- Culture and values: Identify Yu Ying's culture and values and recommend ways to embed its culture and values structurally in all aspects of operations
- Performance management: Build a strong internal performance management system
- Leadership training program: Design and implement a training program to develop Yu Ying's leaders

Proposals should include proposed structure of work, description of work, timeline, and summary of fees.

Deadline for submissions is close of business June 12, 2017. Please e-mail proposals and supporting documents to rfp@washingtonyuying.org.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, June 1, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

1.	**Call to Order**	Board Chairman
2.	**Roll Call**	Board Secretary
3.	**Approval of May 4, 2017 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18715-A of Maret School, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the private school requirements of Subtitle U § 203.1(l) and Subtitle X § 104, to continue a private school use in the R-1-B and R-3 Districts at premises 3000 Cathedral Avenue, N.W. (Square 2113, Lot 843).

HEARING DATE: May 10, 2017[2]
DECISION DATE: May 10, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 4 (original) and 37 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 17, 2017, at which a quorum was present, the ANC voted by a voice vote to support the application with conditions. The ANC supported the elimination of the term limit and reporting requirement, as requested. (Exhibit 33.) The Single Member District commissioner testified in support of the application at the hearing as well.

The Office of Planning ("OP") submitted a report dated April 28, 2017, in support of the application with conditions. In its report OP indicated its support for the elimination of the approval term and reporting requirement and the addition of a new condition requiring the school to advertise and host annual community meeting(s). (Exhibit 35.)

[1] The Applicant amended the application to add special exception relief under Subtitle U § 203.1 based on conversations with the Office of Planning. (Exhibit 37.) The request is to continue a private school use that was previously approved in 2014 with no changes to the number of students or faculty proposed. However, the application proposes the elimination of the approval term and reporting requirement from the previous order. (See, Exhibit 9.)

[2] The case was administratively rescheduled from the public hearing of April 26, 2017 to May 10, 2017.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application subject to the retention of the annual reporting and performance monitoring requirement. (Exhibit 36.) The Board was persuaded by the Applicant, OP, and the ANC's evidence and testimony to remove the reporting requirement from the conditions.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the private school requirements of Subtitle U § 203.1(l) and Subtitle X § 104, to continue a private school use in the R-1-B and R-3 Districts. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle U § 203.1(l), and Subtitle X § 104, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 AND WITH THE FOLLOWING CONDITIONS:**

1. The maximum number of students shall not exceed 650 and the number of faculty and staff shall not exceed 135 employed for any one period of the day.

2. The Applicant shall provide a total of 141 parking spaces onsite, of which a minimum of 10 shall be dedicated to visitor parking.

3. The Applicant will prohibit vehicles from making a left-hand turn onto the campus from Cathedral Avenue during school drop-off and pick-up times.

4. The Applicant will instruct parents not to park on or queue on Cathedral Avenue to wait for their children at school drop-off and pick-up times.

5. The Applicant will continue to provide traffic control personnel at both ends of its driveway during school drop-off and pick-up times to facilitate on-campus traffic flow and enforce drop-off and pick-up procedures.

6. The Applicant will distribute a policy manual to all families prior to the start of the academic year that explains all relevant policies and procedures regarding its transportation management measures including, but not limited to, carpooling, parking, pick-up, drop-off, and penalties for noncompliance. This information shall be posted on the school's website.

7. Beginning with the 2017-18 school year, at least once per school year, Maret shall advertise and host a community meeting to discuss any concerns about Maret's operations that affect the neighboring residential community. In addition, Maret's website shall include directions for the community members wishing to raise concerns or offer feedback to the school.

VOTE: **4-0-1** (Anthony J. Hood, Lesylleé M. White, Frederick L. Hill, and Carlton E. Hart, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 16, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19471 of William and Kate Fralin, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the front setback requirements of Subtitle D § 305.1, to construct an unenclosed[1] front porch addition to an existing one-family dwelling in the R-1-B Zone at premises 3816 49th Street, N.W. (Square 1476, Lot 33).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: May 3, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board's 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") 3D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on April 5, 2017, at which a quorum was in attendance, ANC 3D voted 7-2-0 to support the application with one condition, i.e. that the porch remains unenclosed. (Exhibit 72.) The Board did not adopt the ANC's condition, noting that the Applicant had agreed to the condition as the ANC's request for an unenclosed porch is shown on the approved plans. (Exhibit 9C.)

The Office of Planning ("OP") submitted a timely report, dated April 21, 2017, in support of the application. (Exhibit 75.) The District Department of Transportation ("DDOT") submitted a

[1] The caption is revised to clarify that the porch is unenclosed as reflected in the approved plans.

timely report, dated April 20, 2017, expressing no objection to the approval of the application. (Exhibit 74.)

Forty-two letters in support of the application by neighbors were submitted to the record. (Exhibits 15-38, 51-58, 60-66, 68-70.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201, from the front setback requirements of Subtitle D § 305.1, to construct an unenclosed front porch addition to an existing one-family dwelling in the R-1-B Zone. 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 and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR, Subtitle X § 901.2, and Subtitle D §§ 5201 and 305.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR, Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9C – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** **(**Carlton E. Hart, Michael G. Turnbull, and Lesylleé M.White to APPROVE; Frederick L. Hill, not present or participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 16, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19479 of Douglas and Diane Menorca, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the parking requirements of Subtitle C § 704, the penthouse setback requirements of Subtitle C § 1502, the height requirement of Subtitle E § 5102, the pervious surface requirement of Subtitle E § 5107, the rear yard requirement of Subtitle E § 5104, the side yard requirement of Subtitle E § 5105, and pursuant to Subtitle E § 205.5, relief from Subtitle E § 205.4,[1] the limitation on the rear wall of an addition extending more than ten feet past the rear wall of the adjacent building, and pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot area and width requirements of Subtitle E § 201, to construct a one-story rear addition to an existing one-family row dwelling in the RF-3 Zone at premises 1 Library Court, S.E. (Square 788, Lot 826).

HEARING DATE: May 3, 2017
DECISION DATE: May 3**,** 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5 (original); Exhibit 14 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report dated April 14, 2017 recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 12, 2017, at which a quorum was present, the ANC voted 7-0-1 to support the application. (Exhibits 32 and 33.)

[1] When this application was filed on February 17, 2017, Subtitle E §§ 205.4 and 205.5 were not in effect, but were pending as part of Zoning Commission Case No. 14-11B. However, the provisions went into effect on April 28, 2017 (64 DCR 4055), prior to the Board's decision on this application, and special exception relief under Subtitle E § 205.5 is therefore included in this order based on testimony at the hearing of the Applicant's representative in agreement with the Office of Planning's recommendation to include the relief. (See reference to Subtitle E § 205.4 in the Applicant's revised Burden of Proof Statement - Exhibit 13, p. 2.)

The Office of Planning ("OP") submitted a request for a one-day waiver of the filing requirements to allow the late filing of its report. (Exhibit 39.) By consensus, the Board waived the rules and accepted the OP report into the record. The OP report recommended approval of the application as amended. (Exhibit 39.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 34.)

The Architect of the Capitol filed a timely report expressing its finding that the project is not inconsistent with the intent of the RF-3 Zone District. (Exhibit 38.)

Letters of support were submitted by neighbors at 3 Library Court, S.E. (Exhibit 31), 115 4th Street, S.E. (Exhibit 36), and 125 4th Street, S.E. (Exhibit 37.)

The Capitol Hill Restoration Society ("CHRS") submitted a letter dated May 2, 2017 stating that the CHRS Zoning Committee voted to oppose the application as proposed. (Exhibit 41.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the nonconforming structure requirements under Subtitle C § 202.2, and the lot area and width requirements under Subtitle E § 201, to construct a one-story rear addition to an existing one-family row dwelling in the RF-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C § 202.2, and Subtitle E § 201, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exceptions under Subtitle C § 704, the parking requirements, and § 1502, the penthouse setback requirements, and under Subtitle E § 5102, the height requirement, § 5107, the

pervious surface requirement, § 5104, the rear yard requirement, § 5105, the side yard requirement, and §§ 205.4 and 205.5, the limitation on the rear wall of an addition extending more than ten feet past the rear wall of an adjacent building. The only parties to the case were the ANC and the Applicant. 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 Subtitle X § 901.2, Subtitle C §§ 704 and 1502 and Subtitle E §§ 5102, 5107, 5104, 5105, 205.4 and 205.5, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 - ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** (Carlton E. Hart, Michael G. Turnbull, and Lesylleé M. White to APPROVE; Frederick L. Hill being necessarily absent; 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: May 12, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19481 of Stephen Dalzell, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304, to remove and replace a shed addition and adjacent pergola on an existing one-family dwelling in the RF-1 Zone at premises 1241 Independence Avenue, S.E. (Square 1015, Lot 147).

HEARING DATE: May 3, 2017
DECISION DATE: May 3, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 (original), Exhibit 26 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report dated March 16, 2017, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 14, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 24.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 31.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 27.)

[1] The Applicant amended the application by removing from the original request special exception relief from the minimum lot area and lot width requirements under Subtitle E § 201, and the minimum rear yard requirements of Subtitle E § 205. (See Revised Self-Certification, Exhibit 26.)

Letters of support were submitted by neighbors at 1243 Independence Avenue, S.E. (Exhibit 29) and 1239 Independence Avenue, S.E. (Exhibit 30). The Capitol Hill Restoration Society ("CHRS") submitted a letter dated May 2, 2017 stating that the CHRS Zoning Committee voted to support the application. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304. The only parties to the case were the ANC and the Applicant. 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 Subtitle X § 901.2 and Subtitle E §§ 5201 and 304, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** (Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull to APPROVE; Frederick L. Hill not voting, being necessarily absent; 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: May 15, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19483 of Uproar Lounge & Restaurant, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse use requirements of Subtitle C § 1500.3(c), to expand a penthouse bar and restaurant use in the PDR-3 Zone at premises 639 and 641 Florida Avenue, N.W. (Square 3078, Lots 19 and 807).

HEARING DATE: May 3, 2017[1]
DECISION DATE: May 10, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 4, 2017, at which a quorum was present, the ANC voted 11-0-0 to support the application. The ANC recommended approval of the application, but requested that the Applicant enter into a community agreement regarding noise abatement, queuing of patrons, and a security plan. (Exhibit 43.) At the public hearing the Applicant agreed to enter into an agreement with the ANC to address the comments the ANC raised in its report.

The Office of Planning ("OP") submitted a timely report dated April 21, 2017, in support of the application. (Exhibit 37.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 36.)

Five letters of support from nearby businesses, two letters in support and a petition with approximately 30 signatures from customers of the restaurant and neighbors were submitted to the record. (Exhibits 32 and 33.)

[1] This case was originally scheduled for the public hearing of April 26, 2017 and administratively rescheduled to May 3, 2017.

A letter of opposition from the resident of 621 U Street, N.W. was submitted to the record. (Exhibit 31.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the penthouse use requirements of Subtitle C § 1500.3(c), to expand a penthouse bar and restaurant use in the PDR-3 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C § 1500.3(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

VOTE: **3-0-2** (Carlton E. Hart, Lesylleé M. White, and Michael G. Turnbull, to APPROVE; Frederick L. Hill, not present or participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 16, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED

STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19484 of Charles and Allison Cleveland, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the rear yard requirement of Subtitle D § 306.1, the side yard requirement of Subtitle D § 307.5, and the pervious surface requirement of Subtitle D § 308.1, to construct a rear addition to connect an existing one-family detached dwelling to a rear garage structure in the R-1-B Zone at premises 4604 Albemarle Street, N.W. (Square 1550, Lot 815).

HEARING DATE: May 3, 2016
DECISION DATE: May 3, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 28, 2016, from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

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") 3E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. The ANC did not submit a report in this case.

The Office of Planning ("OP") submitted a timely report, dated April 21, 2017, in support of the application. (Exhibit 29.) The District Department of Transportation ("DDOT") submitted a timely report, dated April 20, 2017, expressing no objection to the approval of the application. (Exhibit 30.)

Letters of support were submitted by neighbors at 4600 and 4608 Albermarle Street, N.W. (Exhibits 26 and 27.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201, from the rear yard requirement of Subtitle D § 306.1, the side yard requirement of Subtitle D § 307.5, and the pervious surface requirement of Subtitle D § 308.1, to construct a rear addition to connect an existing one-family detached dwelling to a rear garage structure in the R-1-B Zone. No parties appeared at the public hearing

in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle D §§ 5201, 306.1, 307.5, and 308.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** (Carlton E. Hart, Michael G. Turnbull, and Lesylleé M. White to APPROVE; Frederick L. Hill, not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 18, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 04-13A
Z.C. Case No. 04-13A
Metropolitan Baptist Church
(PUD Modification of Consequence @ Square 277, Lot 50)
January 9, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 9, 2017. At that meeting, the Commission approved the application of Metropolitan Baptist Church ("Applicant" or "Church") for a modification to Z.C. Order No. 04-13 and the plans approved therein pursuant to 11-Z DCMR § 703. Section 703 permits the Commission to make minor modifications or modifications of consequence to its orders without a hearing. Although the Application characterized the modification as minor, the Commission determined that it was a modification of consequence.

FINDINGS OF FACT

1. The Commission, through Z.C. Order No. 04-13, approved an application filed by Logan Phase II, LLC for consolidated review and approval of a planned unit development ("PUD") and related map amendment for property located at 1210 R Street, N.W. (Square 277, Lot 50). The application was filed on behalf of, and with the consent of, the owner Metropolitan Baptist Church.

2. The approved PUD, now built, is a four-story condominium building consisting of approximately 62,996 square feet of gross floor area. The building contains 63 units, of which five are devoted to affordable housing. The project includes a church community room consisting of approximately 3,600 square feet of space. The PUD provides 89 parking spaces, of which 20 are required be sold to the community. Six of the remaining 69 spaces were allocated to Metropolitan Baptist Church for the church community room.

3. The community room was required by Condition No. 4 of the Order. Condition No. 5 required that the requirements of Condition No. 4 be included in the condominium documents and Condition No. 6 stated that:

> Any proposed change of uses in the community room shall require approval by the Zoning Commission as a modification to the PUD.

4. In a letter dated October 12, 2016, and through its statement in support, the Metropolitan Baptist Church sought what it characterized as a minor modification to the approved PUD pursuant to 11 DCMR § 3030. (Exhibit ["Ex."] No. 1, 2.) That provision permitted the Commission to make modifications to orders without a hearing if the modification was "of little or no importance or consequence." However, § 3030 no longer existed as of the date of the Applicant's letter, having been replaced by 11-Z DCMR § 703 effective September 6, 2016. That new provision expanded the Commission's ability to make modifications without hearings in the section described as a modification of consequence.

5. The "minor" modification sought was to convert the community room into three apartment units, one of which would qualify as a "universal design" unit. That same unit would also be reserved for households with a maximum annual income of 80% of the adjusted median income pursuant to eligibility requirements and enforcement mechanisms that have been developed with the Department of Housing and Community Development. The concrete area outside the community room would be converted to a pervious grass lawn and/or flower space. Finally, two of the six parking spaces dedicated to the community room would be added to the 20 spaces required to be sold to residents within a two-block radius of the PUD.

6. The Church has filed for bankruptcy protection and as a result is no longer able to continue to provide and maintain the community room.

7. As the debtor in possession, the Church applied for and was granted the right to sell the asset of the community room and parking spaces. The sale is dependent upon the conversion of the community room into the three residential units proposed. The proceeds from the sale are integral of the ability of the Church to once again become solvent.

8. In a report dated November 4, 2016, the Office of Planning ("OP") stated that although it was not opposed to the conversion of this space to residential use, the application did not meet the requirement for being considered a "minor modification." Rather, OP recommended the application be reviewed as a "Modification of Significance," for which a hearing is required. OP noted that a change to an amenity is one of the examples given by the rules of a modification of significance.

9. As to the merits, OP indicated that it supported the addition of an affordable accessible unit also suitable for occupancy by senior citizens, and the addition of two family-size units to the building, as positive improvements to the building. OP further noted that the addition of two off-street parking spaces that would be available to the community would benefit the neighborhood. Further, the additional green space along the Vermont Avenue frontage would improve the residential appearance of the building.

10. At its regularly scheduled meeting held November 14, 2016, the Commission determined that the request could properly be reviewed as a modification of consequence and therefore set a timeframe for Advisory Neighborhood Commission ("ANC") 2F, as the only party in the original case, to respond and scheduled December 12th for its continued deliberations.

11. Through a written report dated November 25, 2016, the Chairman of ANC 2F advised the Commission that on November 2, 2016 (*i.e.* 12 days prior to the Zoning Commission's November meeting), the ANC had voted to oppose the proposed modification until such time that it had an opportunity to fully consider the matter at its December 7, 2016 public meeting.

12. However, ANC 2F did not submit a report prior to the Commission's December 12, 2016 meeting. Nevertheless, the Commission on that date decided to defer consideration of the

modification request until January 9, 2017. The Office of Zoning informed the ANC of this determination through an email dated December 21, 2016. (Ex. 10.) Again, no ANC report was submitted, and the Commission at its January 9, 2017 public meeting continued its deliberation and granted the application.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "minor modifications" or "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) One example of a modification of significance given by § 703.6 is a "change to proffered public benefits and amenities," which is exactly what was requested here. It was therefore understandable that OP should recommend that this request be handled in that manner. However, the Commission considers these standards to be flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing. In this instance, the request is straightforward and seemingly contemplated by the Commission when it gave its original approval. Since this modification could not be plausibly characterized as minor, the Commission determined it was a modification of consequence.

2. As to the merits, it is clear that the Church, as the principal beneficiary of the community room amenity, can no longer use it and desperately needs the proceeds from the asset's sale to move from being bankrupt to solvent. The question then is whether the replacement amenity would retain the balance of public benefits and development incentives achieved in the original PUD. The Commission concludes that it would.

3. The Commission agrees with the assessment of OP that converting the space to residential use and having one of the new units being both affordable and universally accessible would be positive improvements to the building. Further, as OP noted, the addition of two off-street parking spaces that would be available to the community would benefit the neighborhood. Finally, the Commission concurs with OP that additional green space along the Vermont Avenue frontage would improve the residential appearance of the building. Thus, the loss of the community room is offset by the benefits resulting from the replacement amenity and therefore the application for a modification of consequence may be granted.

4. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns of contained in the written report of an affected ANC, which in this instance is ANC 2F. As noted in the Findings of Fact, ANC 2F voted to oppose the application because it needed more time to review it. The Commission found that issue and concern to be persuasive and granted more time for the ANC to submit a further written report, but none was filed.

5. The Commission is also 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. For the reasons stated above, the Commission disagreed with OP that the application should be treated as a modification of significance, but agreed with its assessment that the modification would result in an improvement to the building and a benefit to the public.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a Modification of Consequence to Z.C. Order No. 04-13 and the plans approved therein as follows:

1. Z.C. Order No. 04-13 is amended as follows (additions are shown in **bold** underlined text and deletions are shown in ~~strikethrough~~ text):

A. Condition No. 1 is amended to read as follows:

1. The PUD shall be developed in accordance with the plans prepared by Eric Colbert and Associates dated April 27, 2004, August 21, 2004, October 5, 2004, and December 14, 2004. and marked as Exhibits 3, 14, 24, and 35 in the record, **as modified by Exhibit 2D in the record of Z.C. Case No. 04-13A and as further** modified by the guidelines, conditions and standards herein.

B. Condition No. 3 is amended to read as follows

3. The project shall:

(a) Provide a minimum of ~~66~~ **69** residential units, of which ~~six~~ **seven** will be available for sale as affordable housing to persons with maximum annual incomes of 80 percent of the adjusted median income pursuant to eligibility requirements and enforcement mechanisms ~~to be~~ developed in accordance with D.C. Department of Housing and Community Development recommendations. The units reserved as affordable housing in are as follows:

Unit #3, lower **level**	2BR, 2BA	1,169 sf
Unit # 14, lower **level**	1 BR + den, 1BA	811 sf
Unit #10, first **level**	2BR, 2BA	1,136 sf
Unit #11, first **level**	2BR, 2BA	1,136 sf
Unit #1, second **level**	2BR, 2BA	1,041 sf
Unit #B08, basement level	**1 BR, 1 BA**	**451 sf**
TOTAL		**5,744** ~~5,293~~ sf (net)

(b) **Unit #B08 shall be developed under standards so as to qualify it as a "universal designed unit" as those standards are generally described and illustrated in Sheet A.05 of Exhibit 2D in the record of Zoning Commission Case No. 04-13A.**

C. Conditions Nos. 4 through 6 are deleted:

D. Condition No. 7 is modified to read as follows:

7. The PUD shall include a minimum of 89 parking spaces~~, of which six shall be dedicated for use by the community room. Twenty of the remaining 83 spaces~~ **22 of which** shall be offered for sale to residents in the community. Each parking space shall be created as a separate unit within the condominium regime. The condominium documents shall restrict sale of the **22** community spaces to residents within a two-block radius of the project, and shall provide enforcement mechanisms to ensure the **22** spaces are used only by eligible residents.

E. No other modifications to Z.C. Order No. 04-13 are made.

2. The Commission's approval of this Modification of Consequence is subject to the following Condition:

The Applicant shall remove the concrete area outside the community room and replace it with a pervious grass lawn and/or flower space.

On January 9, 2017, upon the motion of Commissioner Miller as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Commissioner Shapiro not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on May 26, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33G
Z.C. Case No. 08-33G
MIRV Holdings, LLC
(Time Extension – First-Stage PUD @ Parcel 121/31)
January 30, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 30, 2017. At that meeting, the Commission approved the request of MIRV Holdings, LLC ("Applicant") for a time extension of the approval of the first-stage planned unit development ("PUD"), approved by Zoning Commission Order Nos. 08-33 and 08-33B and 08-33E, until December 31, 2018. The property (Parcel 121/31) that is the subject of this request is located at the intersection of Irving Street, N.E. and Michigan Avenue, N.E. ("Property"). The time extension request was made pursuant to § 705.2 of the Zoning Commission's Rules of Practice and Procedure as set forth in Subtitle Z of Title 11 DCMR.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The first-stage PUD approval included two nine-story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that will be no taller than 90 feet as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking spaces is also included in the first-stage PUD approval. The first-stage PUD approval was effective until December 25, 2014.

2. On December 23, 2013, the Applicant requested a one-year time extension of the first-stage PUD approval, so that the first-stage PUD approval would be extended until December 25, 2015. Pursuant to Z.C. Order No. 08-33B, the Commission determined that the Applicant had met the relevant requirements of § 2408.10 of the Zoning Regulations and extended the time period in which the Applicant was required to file a second-stage PUD application until December 25, 2015.

3. The Applicant noted that jurisdiction of the Property was transferred to the District of Columbia in 1959. In the late 1980's, the District of Columbia sought a development partner to develop a conference center facility on the Property. In order to do this, the District of Columbia sought assurances from the General Services Administration ("GSA") that as long as the Property was used for such a purpose, GSA would not seek to revoke the transfer of jurisdiction or take any other action to prohibit construction of the conference center facility. (Exhibit ["Ex."]1, p. 1.)

4. On March 7, 1990, the District of Columbia and GSA entered into a Statement of Non-Disturbance which provided the District of Columbia with assurances that "as long as the aforementioned parcel is used as a conference, training and/or exhibit center, overnight

accommodations facility and ancillary uses, such as a restaurant, recreational facilities and/or gift shop, and/or compatible use and such use is consented to by the District, GSA will not seek to revoke the transfer of jurisdiction of this parcel to the District, nor will it take other action to prohibit construction, development, maintenance, operation, restoration and/or repair of the facility." During the review of Z.C. Case No. 08-33, the National Capital Planning Commission concluded that the first-stage PUD approval would have an adverse effect on an identified federal interest because the proposed inclusion of dwelling units is inconsistent with the acceptable uses stipulated in the Statement of Non-Disturbance. (Ex. 1, p. 2.)

5. On December 22, 2015, the Applicant filed a request requesting a one-year time extension of the approval of the first-stage PUD approval. The Applicant stated that it had diligently attempted to negotiate with the District of Columbia Government and the GSA in order to amend the Statement of Non-Disturbance to allow residential uses on the Property. In Z.C. Order No. 08-33E, the Commission noted the actions taken by the Applicant with GSA and the District of Columbia Government to amend the Statement of Non-Disturbance to allow other compatible uses, including residential uses, and the Commission granted the Applicant's request to extend the period of first-stage PUD approval until December 31, 2016.

6. On December 22, 2016, the Applicant filed the present request seeking a two-year extension of the time period for approval of the first-stage PUD. The Applicant also requested a waiver of § 705.5 of Subtitle Z of Title 11 DCMR, which limits the number of time extensions to no more than two extensions and the second extension may be approved for no more than one year.

7. In its written statement in this request, the Applicant noted that the GSA's interpretation of the Statement of Non-Disturbance creates a "condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order." Since the last time extension request was filed, the Applicant has: (i) diligently attempted to negotiate with the District of Columbia Government and the GSA in order to amend the Statement of Non-Disturbance to allow residential uses on the Property, or to purchase the Property, which would result in the GSA's no longer being involved in decisions regarding the uses on the Property; and (ii) continued to meet with the major institutions in the neighborhood, including holding focus groups with MedStar's Washington Hospital Center and National Rehabilitation Hospital, and with Children's National Medical Center, and continuing discussions with Catholic University, Trinity University, The Basilica of the Shrine of the Immaculate Conception, and the Saint John Paul II National Shrine, in order to assess each institution's hotel and conference needs as well as determine other needs and synergistic uses that could be included in the second phase of development on the Property. (Ex. 1, p. 4.)

8. The Applicant stated that having the ability to include residential uses in the second phase of development is very important to the success of the entire project. The Applicant has concluded that residential uses will not be possible on the Property unless one of the following occurs: (i) GSA accepts DMPED's and the Applicant's interpretation of

compatible uses under the existing Statement of Non-Disturbance to include residential and other uses consented to by the District; (ii) GSA agrees to the modification of the Statement of Non-Disturbance to specifically state GSA will not object to residential and other uses consented to by the District; or (iii) GSA sells the Property to the District and the District then sells the Property to the Applicant, thereby removing any restrictions imposed by the Statement of Non-Disturbance on uses of the Property. The Applicant noted that so long as GSA still has a role in the oversight of the Property and they dispute the ability to develop residential units on the Property based on their understanding of the Statement of Non-Disturbance, the Applicant will be unable to obtain clear title on the Property and therefore will be unable to obtain financing for the first-stage PUD. (Ex. 1, p. 4.)

9. The Applicant provided written statements regarding the considerable effort it exerted in bringing DMPED and GSA together to address the pertinent issues related to the three means of allowing residential and other uses on the Property. This has included weekly meetings or conference calls with DMPED for most of the last 18 months, DMPED negotiating with GSA, with the Applicant's input, for the sale of the Property based on an agreed upon scope of appraisal, and on appraisals then contracted by each of GSA and DMPED. The Applicant determined that the GSA representatives that they have dealt with are not able to act on behalf of GSA to determine that residential uses are compatible with the uses identified in the Statement of Non-Disturbance, and those GSA representatives are not willing to revise the existing Statement of Non-Disturbance. Based on the appraisals provided by GSA, MIRV Holdings, LLC has concluded that a mutually agreeable purchase price for the Property is not achievable at this time. (Ex. 1, pp. 4-5)

10. The Applicant stated that it continued to explore and refine the right mix of uses in the second phase of development of the Property, and the different configurations of the site that those uses will entail. The additional time requested will also allow the Applicant to incorporate community feedback into the uses and design of the second phase of development, and will help the Applicant's design team create a better overall project that continues to receive the support of the surrounding property owners and institutions. (Ex. 1, p. 5.)

11. The Applicant noted that it is still hopeful that all parties may be able to agree on a process that will allow for residential uses to occur on the Property. However, in the absence of such agreement, legal action may be required for the Applicant to prevail in asserting the Applicant's and DMPED's interpretation of the Statement of Non-Disturbance. The process of resolving these issues will take additional time to complete. It is the Applicant's belief that it will take as long as 18 months-two years to resolve these issues. (Ex. 1, p. 5.)

12. In its January 23, 2017 report to the Commission, the Office of Planning ("OP") did not oppose the PUD time extension request. (Ex. 5.)

13. The Deputy Mayor for Planning and Economic Development submitted a letter in support of the time extension request. (Ex. 6.)

Advisory Neighborhood Commission ("ANC") 5A, the property in which the PUD is located, submitted a written report stating that it continued to believe that having residential and retail uses included in the overall PUD project will be beneficial for the project and the neighborhood as a whole. Therefore, the ANC supported the Applicant's endeavors to have GSA agree to allow residential and retail uses on the property and agreed that the two-year time extension will give the Applicant the opportunity to return to the Commission with a PUD project that truly benefits our community. (Ex. 7.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in Z.C. Case No. 08-33 was ANC 5C. Due to the redistricting of the ANCs in accordance with the results of the 2010 Census, the Property is now located in ANC 5A. ANC 5A was properly served with this time extension request and ANC 5A adopted a resolution in support of this request and submitted that resolution into the record of this case. The boundaries of ANC 5E are located within 200 feet of the property and ANC 5E was properly served with this request. ANC 5E did not participate in this request.

11-Z DCMR § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the first-stage PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original first-stage PUD application. The Commission agrees with the Applicant that given the new development that has occurred in the area near the Property, such as the construction and occupation of townhouses in the Chancellor's Row project, the construction of a number of the approved buildings in the Monroe Street Market project, and the approval of the PUD application for the mixed-use project at the McMillan Water Treatment facility, it is appropriate for the Applicant to pursue a mix of uses on the Property which reflect the current market demand for residential, hotel, conference center, and/or office uses.

11-Z DCMR § 705.2(c) requires that the Applicant demonstrate with substantial evidence one or more of the following criteria:

(a) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a second-stage PUD application for the remainder of the Property. The Commission recognizes the significant actions taken by the Applicant with GSA and the District of Columbia Government to amend the Statement of Non-Disturbance to allow other compatible uses, including residential uses, or to purchase the Property. The Commission also acknowledges the Applicant's discussions with the surrounding property owners to seek their input on compatible uses that could be included in the remainder of the project. The Commission also notes that this time extension request is supported by the Deputy Mayor for Planning and Economic Development. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c) regarding the first-stage PUD application.

In regards to the Applicant's request for a waiver from 11-Z DCMR § 705.5, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. (See 11-Z DCMR § 101.9.) The Commission acknowledges that it does not grant such a waiver lightly, but such a waiver is appropriate in this case as this is a large project that faces unique circumstances given the ownership of the property (Federal ownership with a transfer of jurisdiction to the District). Granting this additional time extension, given all of the significant work and expense that the Applicant has engaged in with DMPED and GSA regarding the Statement of Non-Disturbance and potential sale of the Property, is entirely appropriate and consistent with the goals of the Commission to make sure that projects are moving forward in an appropriate time frame and are not being unduly delayed by inactivity by an applicant.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 5A stating that it continued to believe that having residential and retail uses included in the overall PUD project will be beneficial for the project and the neighborhood as a whole. Therefore, the ANC supported the Applicant's endeavors to have GSA agree to allow residential and retail uses on the property and agreed that the two-year time extension will give the Applicant the opportunity to return to the Commission with a PUD project that truly benefits our community. The Commission finds that ANC's position to be persuasive.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP did not oppose this time extension request.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the first-stage PUD application approved in Z.C. Order Nos. 08-33, 08-33B, and 08-

33E. The first-stage PUD approved by the Commission shall be valid until December 31, 2018, within which time the Applicant will be required to file a second-stage PUD application with the Commission for all of development encompassed within the approved first-stage PUD.

On January 30, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on May 26, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-30
Z.C. Case No. 16-30
Trinity Washington University (2017-2027 Campus Plan)
March 2, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on March 2, 2017 to consider an application by Trinity Washington University ("University") for approval of the 2017–2027 Campus Plan ("2017 Campus Plan") pursuant to Subtitle X § 101.8 of Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations of 2016"). The 2017 Campus Plan is for the University's Campus, which is bounded by Lincoln Road, N.E. on the southeast; Franklin Street, N.E. on the southwest, Michigan Avenue, N.E. on the northwest, the Oblates campus on the northeast, and 4th Street, N.E. on the east.

The Commission considered the application for the 2017 Campus Plan pursuant to Subtitles X and Z of Title 11 DCMR. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. As discussed below, no party, person, or entity appeared in opposition to the application at the public hearing. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to Subtitle Z § 604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby approves the application.

Application, Parties, and Hearing

1. The property that is the subject of the 2017 Campus Plan consists of Lot 2 in Square 3548, Parcel 120/33, and Parcel 120/34 ("Property").

2. The Property is currently subject to the 2007–2017 Campus Plan ("2007 Campus Plan"), which was approved by the Commission in Z.C. Order No. 06-42, as amended.

3. On December 28, 2016, the University filed an application for approval of the 2017 Campus Plan. (Exhibit ["Ex."] 1.)

4. Prior to filing the 2017 Plan, on July 15, 2016, the University mailed a notice of intent to file the campus plan to all property owners within 200 feet of the campus as well as to Advisory Neighborhood Commissions ("ANC") 5E and 5A. The University also presented the 2017 Plan to ANC 5E after mailing the notice and prior to filing of the plan. Accordingly, the University satisfied the notice requirements of Subtitle Z §§ 302.6 and 302.8 with respect to ANC 5E. (Ex. 1D.)

5. The University failed to present to ANC 5A prior to filing the plan and failed to send a service copy to ANC 5A upon filing the plan. The University requested a waiver of the notice requirements of Subtitle Z §§ 302.8 and 302.11(b). (Ex. 9.) The University did present to ANC 5A prior to the hearing, and ANC 5A supported the request for the waiver. (Ex. 17.) The Commission granted the University's waiver request.

6. In addition to the formal notice requirements, the University also solicited comments from the community regarding the Campus Plan. (Ex. 1D, 17.)

7. The 2017 Campus Plan satisfied the filing requirements of Subtitle X, Chapter 1 and Subtitle Z, Chapter 3. (Ex. 1F.)

8. Notice of the public hearing was provided in accordance with the requirements of Subtitle Z, Chapter 4. (Ex. 4, 5, 6, 7, 16.)

9. On January 30, 2017, the University filed a Comprehensive Transportation Review ("CTR") for the 2017 Campus Plan in the record of the case. The CTR was also submitted to the District Department of Transportation ("DDOT") for review. (Ex. 10, 11.)

10. On February 9, 2017, the University filed a supplemental prehearing submission that detailed the Applicant's planned presentation for the public hearing. (Ex. 13.)

11. The Property is located entirely within ANC 5E, while ANC 5A is across Michigan Avenue, N.E. from the Property. Accordingly, ANC 5E and ANC 5A were both automatically parties to the case, and each ANC submitted a report in support of the 2017 Campus Plan that expressed no issues or concerns. (Ex. 2, 17.)

12. On March 2, 2017, the Commission held a public hearing in accordance with Subtitle Z § 408. Representatives of the University provided testimony and evidence in support of the 2017 Campus Plan. (Ex. 18.) No person, party, or entity appeared in support or opposition to the application.

13. The Office of Planning ("OP") and DDOT each submitted reports and testified in support of the 2017 Campus Plan, based on the proposed conditions of approval included in the Campus Plan. (Ex. 14, 15.) DDOT's report also recommended potential additional mitigation measures. The University agreed to a number of these additional measures and submitted revised conditions of approval reflecting these additional measures. (Ex. 18.) The Commission agreed with the University that the additional measures proposed by DDOT but not agreed to by the University were unnecessary.

14. Pursuant to Subtitle Z § 506.5, at the close of the hearing, the Commission voted to approve the application.

As directed by Subtitle Z § 408.8, the Commission has required the University to satisfy the burden of proving the elements that are necessary to establish the case for approval of a campus plan pursuant to Subtitle X § 101. The University has agreed to a series of conditions of approval, endorsed by the ANCs, OP, and DDOT, that will address the potential impacts of the University. (Ex. 1, 18.) As discussed above, these proposed conditions were updated during the course of the proceedings. (Ex. 18.)

As required by law, the Commission must give "great weight" to the recommendations of OP and to any issues and concerns expressed ANC 5E and ANC 5A as the affected ANCs. As to the OP report, the Commission finds its recommendation of approval to be persuasive. As to the reports of the affected ANCs, neither expressed any issues and concerns and therefore there is nothing to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016).) (The ANC Act does not require an agency "to give 'great weight' to the ANC's recommendation but requires the [the agency] to give great weight to any issues and concerns raised by the ANC in reaching its decision.")

Based upon the record before the Commission, the Commission concludes that the University has met the burden of proof, pursuant to Subtitle X § 101.14, and that the 2017 Campus Plan may be approved. The 2017 Campus Plan is in harmony with the general purpose and intent of the Zoning Regulations and Map, and it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. Pursuant to Subtitle X § 101.11, the Commission concludes that the 2017 Campus Plan will further multiple policies of the District Elements of the Comprehensive Plan, as detailed in the Plan and in the OP Report.

DECISION

It is therefore **ORDERED** that the application for approval of the 2017–2027 Trinity Washington University Campus Plan be **GRANTED** subject to the following conditions.

Term

1. The Campus Plan is approved for the period of ten years beginning on the effective date of this Order.

Built Campus

2. The total existing and proposed gross floor area for the campus shall be no more than 612,782 square feet.

3. The total floor area ratio for the campus shall be a maximum of 0.64.

4. There shall be a minimum of 421 parking spaces located on campus.

Maximum Total Enrollment

5. For the duration of the Campus Plan, the University student headcount shall not exceed 3,000 students.

Comprehensive Transportation Plan

6. The University shall continue to implement its existing Transportation Demand Management ("TDM") Plan, as proposed in the CTR:

a. *Student TDM Elements*

1. Provide free shuttle service from Brookland-CUA Metro Station to Campus. The shuttle service shall run Monday through Thursday, 7:00 a.m. to 12:00 a.m. at 20 minute headways; Friday and Saturday, 7:00 a.m. to 12:30 a.m. at 20 minute headways; Sunday and Holidays, 8:00 a.m. to 12:00 a.m. at 30 minute headways;
2. Provide information regarding the free shuttle on the University's website; and
3. Provide Metro SmartTrip cards to low-income students containing fares that are determined on a case-by-case basis depending on the student's financial situation; and

b. *Faculty and Staff TDM Elements*

1. Provide free shuttle service from Brookland-CUA Metro Station to Campus. The shuttle service shall run Monday through Thursday, 7:00 a.m. to 12:00 a.m. at 20 minute headways; Friday and Saturday, 7:00 a.m. to 12:30 a.m. at 20 minute headways; Sunday and Holidays, 8:00 a.m. to 12:00 a.m. at 30 minute headways;
2. Provide information regarding the free shuttle on the University's website;
3. Allow employees to contribute up to $255 per month in pre-tax transit benefits (or amount as may be allowed under Federal law);
4. Implement a flextime policy that allows employees to work condensed four-day work week or expanded six-day work week; and
5. Implement a flextime policy that allows employees to stagger their start/end times.

7. The University shall implement the following additional TDM elements:

a. Assign a staff member the role of Transportation Management Coordinator ("TMC") to implement the TDM Plan;

b. Provide promotional materials to students when they consider enrolling and after enrolling with information on non-automotive options for traveling to campus;

c. Provide promotional materials to faculty and staff with information on non-automotive options for traveling to campus;

d. Make promotional materials with information on non-automotive options for traveling to campus available at all times in the student common area;

e. Provide links to transportation websites on publicly accessible computers on campus; and

f. Provide additional bicycle racks when necessary to satisfy demand of its constituency.

Further Processing Applications

8. The University shall include ANC 5E and ANC 5A on all lists of property owners within 200 feet related to any campus plan amendment or further processing application under this Campus Plan.

Human Rights Act

9. The University 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 section 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, 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 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 March 2, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on May 26, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 17-10
(The Warrenton Group – Consolidated PUD and Related Map Amendment @ Square 5196, Lots 19, 37, 805, and 814)
May 12, 2017

THIS CASE IS OF INTEREST TO ANC 7C

On May 5, 2017, the Office of Zoning received an application from The Warrenton Group (the "Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 19, 37, 805, and 814, plus a portion of a public alley to be closed, in Square 5196 in northeast Washington, D.C. (Ward 7), on property located in the 5119-5123 and 5127 Nannie Helen Burroughs Avenue, N.E. and 612 Division Avenue, N.E. The property is currently zoned MU-3. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to the MU-5-A zone.

The PUD site is currently improved with a carry-out restaurant and vacant buildings, one of which is the historic Strand Theater, which the Applicant proposes to renovate in connection with the PUD. The Applicant proposes to redevelop the property with a mixed-use building that includes 86 residential units, all of which will be reserved for households not exceeding 60% of the area median income ("AMI"), and ground-floor retail and community space. The height of the proposed building will be approximately 68 feet and the maximum density will be 4.61 floor area ratio ("FAR"). The project will include a ground-level parking garage with 17 parking spaces, and it will meet the requirements of the Enterprise Green Communities standard for residential buildings.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 849E
Z.C. Case No. 97-16D
Lowell School
(Time Extension for Planned Unit Development @ Square 2745F)
January 9, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on January 9, 2017. At that meeting, the Commission approved the request of Lowell School ("Applicant") for a time extension in which to file a building permit application for the planned unit development ("PUD"), approved by Z.C. Order No. 849B, as amended by Z.C. Order No. 849C, until November 26, 2017. The property that is the subject of this application is located in Lots 815 and 817 in Square 2745F ("Property"). The time extension request was made pursuant to 11-Z DCMR § 705.2 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. On November 26, 2010, the Commission issued Z.C. Order No. 849B, which approved a modification to the Lowell PUD initially approved in Z.C. Order No. 849. The modification consisted of five components: (a) expand the program of the School to include seventh and eighth grades; (b) increase the cap on the number of faculty and staff from 60 individuals to 100 individuals; (c) construct an addition to an existing building, known as Parkside; (d) raze an existing building known as Fraser, which may be replaced with a structure comprised of an underground parking garage topped by a play area, or a surface play area and parking area; and (e) construct an addition to the existing gymnasium and pool. (Exhibit ["Ex."] 1, 2B.)

2. The Applicant completed the work described above in items (a)–(c). The Applicant also razed Fraser but did not construct the parking or play areas on the site; nor did it construct the addition to the existing gymnasium and pool. (Ex. 1,)

3. On June 28, 2016, the Applicant filed a minor modification application to modify the approved parking and play areas that were approved for the site of the Fraser building. The Commission initially approved the request and issued Z.C. Order No. 849D. The ANC, however, filed a motion for reconsideration. Upon review of the ANC's motion, the Commission vacated its approval and determined that a hearing was required to modify the approved parking and play areas. In response to comments received from the community, the Applicant decided to instead move forward with the plans approved in Z.C. Order No. 849B. (Ex. 1.)

4. Z.C. Order No. 849B, however, stipulated that an application for the final building permit for the approved work was required to be filed prior to November 26, 2016. The Applicant filed the instant extension request seeking to extend the deadline to November 26, 2017.

CURRENT REQUEST

5. The Applicant filed this time extension request on November 23, 2016, requesting that it be allowed a one-year time extension to file a building permit application for the remaining PUD work, as noted above in Paragraphs 1 and 2. (Ex. 1.)

6. The Applicant noted that the only party in the original case was Advisory Neighborhood Commission ("ANC") 4A. ANC 4A was served a copy of this request. (Ex. 1.)

7. The Applicant stated that there has been no substantial change of material facts that affect the Property since the Commission's approval of the PUD modification in 2010 per Z.C. Order 849B. (Ex. 1.)

8. Lowell stated that due to circumstances and conditions beyond its control, it required an extension of time in order to file a permit application for work proposed to the parking and play area on the site of the former Fraser building. As noted in paragraph 3 above, the Applicant initially intended to modify the proposed parking and play area and filed an application with the Commission in June 2016 for a minor modification, which was initially approved. At its September public meeting, the Commission vacated the approval upon a motion for reconsideration filed by the ANC and determined that a hearing should be held to evaluate the changes being made to the parking and play areas. The Applicant instead determined it would no longer pursue an application to modify the approved plans; however, given the timing of the procedural actions, the Applicant required an extension of the approval. (Ex. 1.)

9. The Applicant has completed a significant amount of work approved in Z.C. Case No. 97-16A, including: (Ex. 1, 2C.)

   - Renovation of the Parkside building;
   - Construction of a major addition to the Parkside building;
   - Completion of campus site improvements pursuant to the PUD, except for those to be placed in the area of the demolished Frazer building; and
   - Removal of all hazardous material from the Fraser building and complete razing of the Fraser building.

10. Completing the items noted in paragraph nine took longer than initially anticipated, compounding the need for a time extension: (Ex. 1, 2C.)

    a) The addition to the Parkside building required approval from the Commission for a modest modification. The Commission approved the request in 2012, which effectively reduced the window for moving forward from six years to four years;

b) Lowell remained operational throughout these improvements; accordingly, the School had to schedule construction activity for periods when school was not in session, which further truncated the approval period; and

c) Finally, prior to demolishing the Fraser building, the School had to invest a significant amount of time and money to environmental testing for the safe removal of hazardous material. This process took much longer than anticipated; the steps required to prepare the Fraser building for demolition alone assumed nearly 20% of the time approved for constructing the entirety of the PUD.

11. The School has invested over $12 million in implementing the approval granted by the PUD. (Ex. 1, 2C.)

12. In its November 30, 2016 report to the Commission, the Office of Planning ("OP") recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of Subtitle Z § 705.2. (Ex. 7.)

13. ANC 4A, at its regularly scheduled and properly noticed public meeting on December 6, 2016, with a quorum present, voted 5-0-0 to support the request amid expressed no issues or concerns. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Subsection 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in the original case was ANC 4A. ANC 4A submitted a letter in support of this application.

11-Z DCMR § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the Lowell School PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

11-Z DCMR § 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

(a) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the remainder of the work approved in Z.C. Order No. 849B. The Commission concludes that the Applicant has diligently pursued effectuating the approval granted in Z.C. Order No. 849B but has not been able to complete the entirety of the work due to circumstances beyond its control, including the timing of the removal of hazardous materials in the Fraser building. The Commission agrees with the statements of the Applicant, OP, and ANC 4A that this request is reasonable. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c)(1).

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give "great weight" to the issues and concerns contained in the written report of an affected ANC. However, "that body's recommendation in favor of a project does not provide any substantial support to justify [a] decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) Because the ANC expressed no issues or concerns there is nothing for the Zoning Commission to give great weight to. (*Id.*)

The Commission is required to give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). OP recommended approval of the time extension request and granting the waiver from § 705.5, the Commission concurs in its recommendation. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a time extension of the PUD application approved in Z.C. Order No. 849B, as modified by Z.C. Order No. 849C. The PUD modification approved by the Commission shall be valid until November 26, 2017, within which time the Applicant will be required to file a building permit application to construct any remaining work approved in Z.C. Order No. 849B. Construction of such work must start no later than November 26, 2018.

On January 9, 2017, upon motion by Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** this Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 this Order shall become final and effective upon publication in the *D.C. Register* on May 26, 2017.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
University of the District of Columbia Faculty Association,	)	
Petitioner,	)	PERB Case No. 16-N-01
	)	Opinion No. 1617
v.	)	
University of the District of Columbia,	)	
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

On February 23, 2016, the University of the District of Columbia Faculty Association ("the Association") filed this Negotiability Appeal. The Association and the University of the District of Columbia ("the University" or "UDC") are negotiating their Eighth Master Agreement. In accordance with D.C. Official Code § 1-617.16(a), they are negotiating both compensation and noncompensation issues.

The Association transmitted to the University a proposed Eighth Master Agreement on December 12, 2015. On February 11, 2016, counsel for the University sent the Association a letter stating:

> [T]he University declares that it is exercising its management right not to negotiate the following subjects contained in the Seventh Master Agreement and in your proposal as those subjects are nonnegotiable. I have referenced the Seventh Master Agreement simply to put you on notice that even to the extent the Union would withdraw any of its new language, the University would alternatively contend that any similar language in the Seventh Master Agreement is nonnegotiable.[1]

[1] Negotiability Appeal, Attach. 1.

The letter then discusses fifteen subjects dealt with in the Eighth Master Agreement. With regard to each of the fifteen subjects, the letter states that language in the Association's proposal, the existing agreement, or both is nonnegotiable.

The Association timely filed the instant Negotiability Appeal, asserting that all fifteen subjects were negotiable. The Association argued that the Board should either find that the fifteen subjects are mandatory subjects of bargaining or direct the parties to file briefs. The University filed an Answer reasserting the nonnegotiability of the subjects and responding to arguments made by the Association in its Negotiability Appeal.

Pursuant to Rules 532.5(a), 532.6, and 532.7(b), the Executive Director instructed the parties to file briefs within fourteen days. Motions of the parties to extend the time for filing briefs, to increase the page limit, and to allow the filing of reply briefs were granted. Each party filed an original brief and a reply brief. In its original brief, the Association amended three of its proposals.

II. Discussion

A. General Principles

There are three categories of collective bargaining subjects: (1) mandatory subjects over which parties must bargain, (2) permissive subjects over which the parties may bargain, and (3) illegal subjects over which the parties may not legally bargain.[2] A permissive subject of bargaining is nonnegotiable if either party declines to bargain on the subject.

Management rights are permissive subjects of bargaining.[3] Management rights are set forth in D.C. Official Code § 1-617.08(a) and in certain other provisions of chapter 6 of title 1 of the D.C. Official Code, the Comprehensive Merit Personnel Act ("CMPA"). Section 1-617.08(a) provides that management "shall retain the sole right" to undertake the actions and make the determinations listed in that section.

Matters that do not contravene section 1-617.08(a) or another provision of the CMPA are negotiable. Section 1-617.08(b) provides, "All matters shall be deemed negotiable except those that are proscribed by this subchapter." Section 1-605.02(5) of the D.C. Official Code empowers the Board to "[m]ake a determination in disputed cases as to whether a matter is within the scope of collective bargaining." Accordingly, in this Decision and Order, the Board will separately determine the negotiability of each of the matters that is in dispute, as has been its longstanding practice.[4] To the extent that they are inconsistent with this approach, we overrule those portions

[2] *D.C. Nurses Ass'n v. D.C. Dep't of Pub. Health*, 59 D.C. Reg. 10,776, Slip Op. No. 1285 at p. 4, PERB Case No. 12-N-01 (2012) (citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1975)).
[3] *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs.* , 61 D.C. Reg. 5632, Slip Op. No. 1466 at 5, PERB Case No. 13-N-04 (2014).
[4] *See NAGE, Local R3-08 v. D.C. Homeland Security & Emergency Mgmt. Agency*, Slip Op. No. 1468 at 5-6, PERB Case No. 14-N-02 (2014); *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 60 D.C. Reg. 16462, Slip Op. No. 1435 at 9, PERB Case No. 13-N-05 (2013); *AFGE, Local and D.C. Office of the Corporate Counsel*, Slip Op. No. 709 at

of two of our prior cases in which we stated that "[t]he Board considers each proposal as a whole, unless the Union has requested that only a particular portion of a proposal be considered."[5]

Certain matters discussed by the Association are not ripe for determination by the Board, however. In several instances the Association suggests what it will propose as an alternative if the Board were to accept the University's interpretation and find a proposal nonnegotiable. Those contingent alternatives have neither been proposed by the Association nor rejected by the University. Thus, they do not present "disputed cases" and no issue has arisen concerning their negotiability.[6] Rendering an advisory opinion on the negotiability of the alternatives is not within the Board's authority under section 1-605.02(5) to make a determination in disputed cases.[7] Accordingly, this opinion will not discuss the alternatives that the Union mentions in its briefs.

B. Proposals Alleged by the University to be Nonnegotiable

The Association's amendment to a proposal resolved the parties' dispute over one of the fifteen subjects. In light of the D.C. Court of Appeals' recent decision that the University's educational employees are subject to the Abolishment Act,[8] the Association presented in its original brief an amended proposal on reductions in force.[9] The University replied that "[t]his revision effectively removes this issue from the list of non-negotiable issues."[10] As a result, there remain fourteen subjects concerning which the Association has allegedly made nonnegotiable proposals.

Those fourteen subjects, which are discussed below, are (1) Executive Sessions of the Board of Trustees, (2) Access to Offices and Laboratories, (3) Polling, (4) Discipline for Cause, (5) Peer Assessment and Evaluation, (6) Academic Rank and Promotions, (7) Tenure, (8) Workload, (9) Intellectual Property, (10) Annual Notice to Faculty Members, (11) Sabbatical Leave, (12) Transfers, (13) Support Systems, and (14) Faculty Handbook.

Beneath the title of each subject, the pertinent text of the Association's proposed Eighth Master Agreement is quoted. Underlined text is new language proposed by the Association for the Eighth Master Agreement and ~~strikethrough~~ text represents deleted text. The remainder of the text is existing language from the Seventh Master Agreement that the Association proposes

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6, PERB Case No. 03-N-02 (July 25, 2003); *Teamsters Local Union No. 639 and DCPS*, 38 D.C. Reg. 6693, Slip Op. No. 263 at 12, 25-26, Case No. 90-N-02 (1990).

[5] *F.O.P./Protective Servs. Police Dep't Labor Comm. and Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at 2, PERB Case No. 15-N-04 (2015); *SEIU, Local 500 and Univ. of D.C.*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 3, PERB Case No. 15-N-01 (2015).

[6] Board Rule 532.1 provides, "If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board."

[7] *D.C. Fire Dep't and AFGE, Local 3721*, 35 D.C. Reg. 6361, PERB Case No. 188, PERB Case No. 88-N-02 (1988).

[8] *Bd. of Trustees of the Univ. of D.C. v. AFSCME, Dist. Council 20, Local 2087*, 130 A.3d 355 (D.C. 2016).

[9] Union's Original Br. 3-4.

[10] University's Reply Br. 2.

to retain in the Eighth Master Agreement. In many cases, the University contends that both new and existing language is nonnegotiable.

1. Article VII(A) Executive Sessions of the Board of Trustees

Article VII(A) as proposed by the Association is as follows:

ARTICLE VII - ASSOCIATION RIGHTS

A. Rights of the Association President

1. The President of the Association or designee shall have the right to speak at the Board meeting on any issue relating to terms and conditions of employment that is pending before the Board provided a one (1) day notice is given to the Board. If the meeting is not open to the public or is an Executive Session, the Association representative shall attend only ~~be present~~ to make the presentation and answer questions~~, if any~~.
2. ~~Not less than ten (10) days prior to a scheduled meeting of the Board of Trustees, the Association may in writing, addressed to the Chair of the Board, propose for inclusion on the agenda of the forthcoming meeting, items affecting the terms and conditions of employment of members of the Bargaining Unit, and the Board will make a good faith effort to include such items on the agenda. Notwithstanding the foregoing, the parties acknowledge that the inclusion of any item on the agenda of the Board is solely at the discretion of the Board, and the failure of the Board to include any item proposed by the Association, or to take up such item at a meeting, shall not be grievable or arbitrable.~~The Faculty Association shall be placed on the agenda for every Board meeting, but may waive the right to speak.
3. The Faculty Association shall be sent two (2) copies of the agenda packet (including documents, proposed resolutions, and committee reports) of all ~~public~~ Board of Trustees meetings at the same time they are sent to Board members. One copy shall be sent to the Faculty Association office, and the other shall be sent to the office of the Association's representative to the Board of Trustees. The Faculty Association shall be sent two (2) copies of the official minutes and attachments of all ~~public~~ Board meetings and all resolutions referenced in those minutes.

a. University's Position

The University objects that the proposal to permit (or require) the Association's president to attend executive sessions of the Board of Trustees conflicts with its regulations on executive sessions of the Board of Trustees and would interfere with the University's right "[t]o maintain the efficiency of the District government operations entrusted" to it[11] and to determine "[t]he mission of the agency."[12] Executive sessions are not public fora, and the Association has no constitutional right to attend them.

[11] D.C. Official Code § 1-617.08(a)(4).
[12] D.C. Official Code § 1-617.08(a)(5)(A).

b. Association's Position

Citing *Lex Tex Ltd. v. Skillman*,[13] the Association contends that the First Amendment right "to petition the Government for a redress of grievances" includes a right to appear personally before a governmental body.[14] The Association asserts that PERB has never found a proposal to talk to management or to obtain documents available to the public to be nonnegotiable. Citing *Washington Teachers' Union v. D.C. Public Schools*,[15] the Association argues that the Board has held proposals that merely permit speech but require no action by management to be negotiable.

c. Analysis

The D.C. Court of Appeals in *Lex Tex Ltd. v. Skillman* held that the First Amendment protects a citizen's right to petition the federal government without fear of becoming subject to personal jurisdiction in the District of Columbia when the citizen's contacts with the District of Columbia are limited to exercising that constitutional right.[16] Contrary to the Association's assertion, the court did not hold that the First Amendment right to petition the government includes a right to appear personally before a governmental body. The Supreme Court has held that it does not. In *Minnesota State Board of Community Colleges v. Knight*,[17] the Court rejected the claim of faculty members to attend meetings with administrators that a Minnesota law reserved to union representatives. The Court said that the Constitution does not grant to members of the public a right to be heard by public bodies as they make decisions.[18] The Court held that the faculty members had no constitutional right to compel the government to listen to their views: "They have no such right as members of the public, as government employees, or as instructors in an institution of higher learning."[19]

While the Constitution does not require the University to accept the Association's proposal, the CMPA requires the University to negotiate over the proposal unless it infringes upon management rights under D.C. Official Code § 1-617.08(a) or is an illegal subject of bargaining.[20] A consideration of the nature of the proposal discloses that it does infringe upon management rights. The proposal does not merely give employees an unspecified opportunity to express their preferences to committees, as was the case in *Washington Teachers' Union v. D.C. Public Schools*,[21] cited by the Association, but in addition the proposal prescribes the venue: the Association can express its views at "every Board meeting" including those held in executive

[13] 579 A.2d 244, 248 (D.C. 1998).
[14] Union's Br. 7
[15] 46 D.C. Reg. 8090, Slip Op. No. 450, PERB Case No. 95-N-01 (1995).
[16] 579 A.2d at 248.
[17] 465 U.S. 271 (1984).
[18] *Id.* at 283.
[19] *Id.*
[20] *See AFGE Local 631 v. D.C. Water & Sewer Auth.*, 60 D.C. Reg. 16462, Slip Op. No. 1435 at 2, 5, PERB Case No. 13-N-05 (2013); *Washington Teachers' Union v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 13, PERB Case No. 95-N-01 (1995).
[21] Slip Op. No. 450 at 18.

session. While the Association contends that the proposal gives it little more than is available to the general public, the difference is not so little. In order for a person who is not a member of the Board of Trustees to attend or listen to an executive session, there must be a motion, a second, and approval of the Board.[22]

The Federal Labor Relations Authority ("FLRA") has held that management rights encompass not only the right to make decisions on certain matters but also the right to deliberate upon and discuss the factors involved in the decisions. A proposal requiring union participation in such discussions is substantive not procedural.[23] Accordingly, the FLRA found a proposal that a union have a representative on an agency's position management committee and professional standards boards was nonnegotiable.[24] The FLRA held that a proposal requiring union participation in a formal organizational structure established for deliberations as a part of an agency's substantive decision-making process "would have the effect of directly interfering with management's statutory right to make the decisions involved."[25]

The FLRA's reasoning is sound and applicable here. The authority of the Board of Trustees includes making decisions involving such management rights as determining the University's mission[26] and budget[27] as well as to "generally determine, control, supervise, manage, and govern all affairs of the University."[28] To require union participation in all of the executive sessions of the Board of Trustees would directly interfere with the University's statutory right to make decisions on matters set forth in section 1-617.08(a).

The University does not question the negotiability of Section A(3), and we see no grounds for questioning its negotiablity.

Article VII, Sections (A)(1) and (2) are *nonnegotiable*. Article VII, Section A(3) is *negotiable*.

2. Article VII(G) Access to Offices and Laboratories

Article VII(G) as proposed by the Association is as follows:

ARTICLE VII - ASSOCIATION RIGHTS

G. Faculty will be given ~~reasonable~~unlimited access to their offices and laboratories, but the University may close buildings or deny such access when necessary for reasons related to security such as fire, construction or criminal activity ~~and efficient operations~~. The University, after ~~consultation~~negotiation with the Association, may set non-uniform rules

[22] 8-B DCMR § 105.12(b).
[23] *AFGE, Local 3804 v. FDIC, Madison Region*, 21 F.L.R.A. 870, 875-76 (1986).
[24] *Nat'l Fed'n of Fed. Employees and Veterans Admin. Med. Center*, 9 F.L.R.A. 998, 999 (1982).
[25] *Id.* at 999.
[26] D.C. Official Code § 38-1202.06(2)(B).
[27] D.C. Official Code § 38-1202.06(4).
[28] D.C. Official Code § 38-1202.06(16).

and procedures for access to different facilities based on the particular administrative, physical, and security problems posed.

a. University's Position

The proposal restricts the University's right to maintain the efficiency of its operations and to determine its mission and internal security practices. If the University wants to make an exception to the faculty's unlimited access to offices and laboratories, it must negotiate one.

b. Association's Position

The Association asserts that "[i]t is important that faculty be allowed access to their offices and laboratories."[29] The University police operate around the clock. The proposal would not require additional staffing. The University has not opposed replacing "consultation" with "negotiation" in the second sentence of the proposal. That change must be deemed negotiable.

c. Analysis

The University merely names without elaboration the management rights it asserts in opposition to the proposed changes to the first sentence of Article VII(G). Of those management rights, the right of an agency to determine "[t]he agency's internal security practices"[30] seems relevant to this proposal. However, the University does not explain the connection between the proposed change and its internal security practices or internal security considerations. Absent a suggested link between limiting faculty's access to their offices and a security concern, we deem the proposal negotiable.[31]

Because the University does not challenge the negotiability of replacing "consultation" with "negotiation" in its briefs or its February 11, 2016 declaration of nonnegotiability, no issue has arisen as to whether that change is within the scope of bargaining[32] and there is no disputed case for the Board to decide.[33] The Board therefore takes no position on the change's negotiability. If a proposal pertains to management rights, it does not become negotiable simply because the agency did not declare it nonnegotiable.[34]

The first sentence of Article VII(G) is *negotiable*.

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[29] Union's Original Br. 9.
[30] D.C. Official Code § 1-617.08(a)(5).
[31] *See F.O.P. Lodge #1F and U.S. Dep't of Veterans' Affairs, Med. Center, Providence, R.I.,* 57 F.L.R.A. 373, 379 (2001).
[32] Board Rule 532.1 provides, "If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board."
[33] *See* D.C. Official Code § 1-605.02(5).
[34] *See AFGE, Local 631 v. D.C. Water & Sewer Auth*., 60 D.C. Reg. 16462, Slip Op. No. 1435 at 5, PERB Case No. 13-N-05 (2013). However, an agency "may waive a management right in a round of bargaining by choosing to bargain in that round over an issue where it has no duty to do so." *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs.*, 60 D.C. Reg. 17359, Slip Op. 1445 at 2-3, PERB Case No. 13-N-04 (2013).

3. Article VII(L) Polling

Article VII(L) as proposed by the Association is as follows:

ARTICLE VII - ASSOCIATION RIGHTS

. . .

L. Polling or surveying of Bargaining Unit employees will not be conducted by the Administration without prior ~~consultation~~negotiation with the Association.

a. University's Position

The Association's overbroad proposal prohibits all polling without negotiation, including polling that does not involve negotiable subjects. This absolute prohibition on communication would interfere with the University's right to direct its employees, maintain the efficiency of its operations, and to determine its mission, budget, and organization.

During the 2008 negotiation for the Seventh Master Agreement, the Association proposed the current provision that it be consulted prior to polling or surveying of employees. In a negotiability appeal involving that proposal, PERB Case No. 09-N-02, counsel for the Association argued that "[t]he current provision makes the crucial distinction between 'negotiation' and 'consultation,'" requiring consultation only. The Association fails to articulate why this distinction is no longer crucial and negotiation may now be substituted for consultation.

b. Association's Position

Polling on negotiable subjects of bargaining violates D.C. Official Code section 1-617.04(a)(1) and (5). The Association proposes negotiation over the content of polls to ensure that the University does not violate the CMPA. PERB never addressed the merits of Case No. 09-N-02.

c. Analysis

In its decision in PERB Case No. 09-N-02, the Board held that the University's declaration of nonnegotiability was untimely. The Board did not reach the merits of any proposals.[35] UDC asserts that the Association does not articulate why the distinction it made between negotiation and consultation was crucial in Case No. 09-N-02 but no longer is. However, UDC does not articulate why the distinction would ever be crucial for purposes of negotiability. Both parties' arguments regarding negotiability assume that polling of Association members is an unfair labor practice only if the polling concerns negotiable subjects of bargaining. The assumption underlying these positions is not quite correct. The Board has found the polling of employees on alternative proposals related to terms and conditions of

[35] *Univ. of D.C. Faculty Ass'n v. Univ. of D.C.*, 59 D.C. Reg. 6481, Slip Op. No. 1104, PERB Case No. 09-N-02 (2011).

employment to be an unfair labor practice in cases where the subject of the polling involved a management right that could have been implemented without bargaining.[36]

The Association can agree to allow the University to deal directly with its members on contemplated changes in conditions of employment by polling them, but absent the Association's permissive agreement on polling, such direct dealing is an unfair labor practice.[37] The proposal is a means of obtaining that agreement. With regard to polls on conditions of employment, the proposal merely asks the University to do what the CMPA requires. While polls on other subjects or polls that merely gather information may not require the Association's consent, conducting such polls is not a management right listed in section 1-617.08(a).

Article VII(L) is *negotiable*.

4. Article XI(A) Discipline for Cause

In pertinent part, Article XI(A) as proposed by the Association is as follows:

ARTICLE XI - NON-RENEWAL AND DISCIPLINARY/ADVERSE ACTION
A. PRINCIPLES

. . .

3. A faculty member may be subject to disciplinary or adverse action only for cause which for the purposes of this Article shall be defined as either professional misconduct or a pattern of dereliction of duties or responsibilities. It is the intent of the parties that cause, as defined in the contract, shall also include a conviction (including a plea of *nolo contendere*) of a felony at any time following submission of an employee's job application; a conviction (including a plea of *nolo contendere*) of another crime (regardless of punishment) at any time following submission of an employee's job application when the crime is relevant to the employee's position, job duties, or job activities; any knowing or negligent material misrepresentation on an employment application or other document to a government agency; any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law; any on-duty or employment related act or omission that interferes with the efficiency or integrity of the University operation; and any other on-duty or employment related reason of corrective or adverse action that is not arbitrary or capricious. This definition includes, without limitation, unauthorized absence, negligence, incompetence, insubordination (refusal to comply with a reasonable request), misfeasance, malfeasance, the unreasonable failure to assist a fellow University employee in performing his or her official duties, or the unreasonable failure to give assistance to a member of the public seeking service or information from the University.

[36] *AFGE Local 3721 v. D.C. Fire & Emergency Servs. Dep't*, 51 DC Reg. 5132, Slip Op. No. 706 at 3, PERB Case No. 01-U-29 (2003); *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 48 D.C. Reg. 8530, Slip Op. No. 649 at 6, PERB Case No. 99-U-27

[37] *Dep't of Health & Human Servs. and AFGE, Local 3512*, 28 F.L.R.A. 409, 431 (1987).

. . .

5. The University shall carry the burden of proof by clear and convincing evidence in all proceedings for disciplinary or adverse action under this Article.

a. University's Position

Sections A(3) and A(5) of Article XI, as they exist in the Seventh Master Agreement and as revised by the Association in its proposal, interfere with the University's right to discipline for cause provided in D.C. Official Code § 1-617.08(a)(2).

Section A(3) of Article XI is a specific standard where none existed, like the proposal held nonnegotiable in *Washington Teachers' Union, Local 6 v. D.C. Public Schools*.[38] It conditions "cause" by defining it. Limitations on the management right to discipline have been held to be nonnegotiable.[39]

Section A(5) restricts management's right to discipline for cause just like a proposal in *Washington Teachers' Union, Local 6 v. D.C. Public Schools* that would have restricted that right to instances where all remediation efforts had been exhausted. The Board held the proposal to be nonnegotiable.[40] The University asserts that, as with the remediation requirement, the requirement of clear and convincing evidence "is not simply a procedural matter but rather, again, an attempt to establish a standard where the law clearly upholds management's unfettered right to discipline for cause."[41]

b. Association's Position

The Board has never held that an employer has a unilateral nonnegotiable right to define cause or that labor and management cannot bargain about it. The CMPA included a definition of cause, but it was repealed.[42] The University's regulations incorporate the repealed definition by reference.[43] Thus, a standard does exist, contrary to the University's assertion. A proposal to incorporate an employer's regulations into a contract is negotiable.

Procedural aspects of discipline are negotiable.[44] Choice of burden of proof is a negotiable procedural matter.

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[38] 46 D.C. Reg. 8090, Slip Op. No. 450 at 5, PERB Case No. 95-N-01 (1995).
[39] University's Original Br. at 9 (citing *D.C. Fire & Emergency Med. Servs. and AFGE, Local 3721*, 54 D.C. Reg. 3167, 874 at 11, PERB Case No. 06-N-01 (2007); *Washington Teachers' Union, Local 6 v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 12, PERB Case No. 95-N-01 (1995)).
[40] Slip Op. No. 450 at 5.
[41] University's Original Br. 9.
[42] Union's Original Br. 11 (citing D.C. Code § 1-617.1(d), D.C. Law 2-139 § 1601(d); D.C. Official Code § 1-616.01(d)).
[43] Union's Original Br. 12 (citing 8-B DCMR §§ 1520.2, 1520.3).
[44] Union's Original Br. 13 (citing *Teamsters Local Unions No. 639 & 730 v. DCPS*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990)).

c. Analysis

Section A(3) defines cause as "either professional misconduct or a pattern of dereliction of duties or responsibilities." It then sets forth numerous specific acts and omissions that the definition includes.

The University is entitled to the full scope of the management right to discipline for cause. The proposed definition confines that scope, as would virtually any other definition. To give a couple of examples, misconduct other than professional misconduct as well as a serious dereliction of duties or responsibilities that is not part of a pattern are excluded from the proposed definition, yet they might be found to be cause for discipline in particular cases.

The University contends that the proposal creates a standard where none exists. That is not the proposal's flaw. A standard exists: cause. The proposal limits the existing standard of cause. For that reason, section A(3) is nonnegotiable.

A proposal that affords employees the same standard for imposing discipline as that provided by section 1-617.08(a)(2), *i.e.*, cause, is negotiable.[45] Section A(5)'s requirement that the University "carry the burden of proof by clear and convincing evidence in all proceedings for disciplinary or adverse action" does not change the standard from cause to something else; it establishes the certainty with which the University must establish cause.

The management right to discipline for cause set forth in section 1-617.08(a)(2) "is silent with the respect to the procedures utilized in the exercise of that authority."[46] Procedural matters concerning discipline are negotiable.[47] The burden of proof is a procedural matter.[48]

As was the case with the procedural matter the Board considered in *Teamsters Local Union No. 639 and D.C. Public Schools*,[49] nothing in section A(5) prevents the University from determining cause for discipline or takes away management's right to discipline for cause.

Article XI, Section A(3) is *nonnegotiable*. Article XI, Section A(5) is *negotiable.*

5. Article XIV Peer Assessment and Evaluation

The Association proposes to replace Article XIV as it presently exists with the following article.

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[45] *Washington Teachers' Union, Local 6*, Slip Op. No. 450 at 11.
[46] *Teamsters Local Unions No. 639 & 730 v. DCPS*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).
[47] *NAGE Local R3-06 v. D.C. Water & Sewer Auth.*, 60 D.C. Reg. 9194, Slip Op. No. 1389 at 5, PERB Case No. 13-N-03 (2013).
[48] *United Sec. Corp. v. Bruton*, 213 A.2d 892, 893 (D.C. 1965). *See also In re Tinney*, 518 A.2d 1009, 1019 (D.C. 1986).
[49] 38 D.C. Reg. 6693, Slip Op. No. 263 at 21, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990).

ARTICLE XIV - PEER ASSESSMENT AND EVALUATION

A. GENERAL PROVISIONS

1. The University will provide an annual peer assessment of the performance of each faculty member. This assessment is to be used by the faculty member as a basis for maintaining or improving the quality of his or her performance. The University will also provide an annual evaluation used to monitor the quality of faculty performance and as a basis for employment decisions.

2. A faculty member may be rated as "Less than Satisfactory" (which means that the faculty member failed in significant respects to meet the generally expected level of performance under the applicable criteria); "Satisfactory" (which means that the faculty member met the generally expected level of performance under the applicable criteria); "Above Average" (which means that the faculty member exceeded the generally expected level of performance under the applicable criteria); and "Excellent" (which means that the faculty member substantially exceeded the generally expected level of performance under the applicable criteria).

3. There shall be no pre-set distribution of ratings (i.e., quotas) among the aforesaid four categories in any department or University-wide. Assessment and Evaluation are individual, not a comparative processes and each faculty member shall be evaluated on his or her own merits.

4. The quality of a faculty member's performance shall be the determinative consideration. The criteria used to assess and evaluate faculty must be related to job performance.

5. The Assessment and Evaluation period shall be from January 1 through December 31. The Teaching and Job Related Responsibilities criterion for teaching faculty members shall be based on the faculty member's performance during the Spring and Fall Semesters, and activities engaged in by a faculty member during the Summer Semester shall not be considered for purposes of this criterion. Such Summer Semester activities may be considered only in connection with the Scholarship and Professional Growth, University Service, and Public Service criteria.

B. DEPARTMENTAL ASSESSMENT AND PROMOTION COMMITTEE

1. On or before September 1 of each academic year, a Departmental Assessment and Promotion Committee ("DAPC") shall be established in each Department of the University. The DAPC shall consist of 3 members in departments with 7 or less fulltime non-probationary faculty members; 5 members in departments with 8 to 15 fulltime non-probationary faculty members; and 7 members in departments with 16 or more full-time non-probationary faculty members. The members of the DAPC shall be full-time non-probationary faculty in the Department and shall be elected by a vote of full-time faculty members in said Department to serve for the academic year in question. The Department Chair shall not be a member of the DAPC, nor shall he or she vote in the election for DAPC members. When a DAPC cannot be established in the manner provided above, the Dean and the Association President shall make arrangements to establish through other appropriate means a DAPC that is designed to meet the interest of this Article. Each program within a Department shall have one

representative on the DAPC even if this requires increasing the size of the DAPC.
2. Except for the quorum requirements (which shall be 3 for a 3-member DAPC; 4 for a 5-member DAPC; and 5 for a 7-member DAPC), each DAPC shall establish its own rules of procedure, including selection of a Chair.
3. On or before October 1 of each academic year, and at such other times as may be appropriate, the DAPC shall make itself available to any individual faculty member who wishes to obtain guidance as to how the evaluation criteria shall apply to him or her during the academic year in question.

C. CRITERIA FOR EVALUATION

The criteria to be used for evaluating the performance of a faculty member, and the relative weight to be given to each criterion, are as follows. In each case, the sum of the weights must equal 100%.

1. Teaching Faculty

Criteria	Weight
Teaching and Job Related Responsibilities (including knowledge of subject matter; ability to communicate with students; quality of instructional materials, course outlines, etc.; student consultation and advising; timely submission of grades, and other required reports; attendance at department, college and University meetings, etc.)	60-75%
Scholarship and Professional Growth (including original research; publications in professional journals; creative works, shows and performances; inventions, patents and technical or vocational products; instructional materials and methods developed; professional consultantships and special activities that enhance the prestige of the University; study/work with peers and experts in the field leading to improved capabilities and credentials, etc.)	15-30%
University Service (including participation in Departmental, College and University activities, both within and outside the discipline; leadership in the University community; participation in faculty, institutional and Faculty Association governance; representing the University at appropriate functions; securing grants and contracts, and otherwise contributing to the growth and development of the University, etc.) and Public Service (including participation in community activities, organizations and functions)	10-25%

2. Clinical Faculty

Criteria	Weight
Teaching/Clinical Instruction	70% - 90% as per faculty election in keeping with institutional expectations at hire

Scholarship/Professional Activities	5% - 15% as per faculty election in keeping with institutional expectations at hire
University/Community Service	5% - 15% as per faculty election in keeping with institutional expectations at hire

3. Research Faculty

Evaluation Component	Component Weight
Research/Scholarship/Professional Activities	50% - 100% as per faculty election in keeping with institutional expectations at hire
Teaching	0% - 30% as per faculty election in keeping with institutional expectations at hire
University/Community Service	0% - 30% as per faculty election in keeping with institutional expectations at hire

4. LRD Faculty

Criteria	Weight
Job Performance (including preparation of appropriate work documents; communication with students; maintenance of appropriate duty hours, etc.)	60-75%
Scholarship and Professional Growth (including original research; publications in professional journals; creative works, shows and performances; inventions, patents and technical or vocational products; instructional materials and methods developed; professional consultantships and special activities that enhance the prestige of the University; study/work with peers and experts in the field leading to improved capabilities and credentials, etc.)	15-30%
University Service (including participation in Departmental, College and University activities, both within and outside the discipline; leadership in the University community; participation in faculty, institutional and Faculty Association governance;	10-25%

representing the University at appropriate functions; securing grants and contracts, and otherwise contributing to the growth and development of the University, etc.) and Public Service (including participation in community activities, organizations and functions)	

Each DAPC shall establish its own guidelines for the consideration of student assessments and evaluations as provided under Section D below, which guidelines will be made available to all faculty in the Department.

D. STUDENT ASSESSMENT AND EVALUATIONS

1. Recognizing the importance of effective student participation in the assessment and evaluation processes, prior to the last regularly scheduled class session in each course that a faculty member is teaching, the DAPC shall afford the students in said course an opportunity to complete a Student Course Assessment form, a copy of which is attached in Appendix B. (An appropriate explanatory cover memorandum, agreed to by the parties, shall be attached to the Student Course Assessment form.)
2. The Chair shall arrange for the statistical analysis of all Student Course Assessment forms. Upon request, the Chair shall provide the DAPC with access to the statistical analyses and the completed forms. After the submission of grades for the course in question, the Chair shall provide the faculty member with a copy of the statistical analysis for each course taught by the faculty member and, if so requested, by the faculty member, a copy of the Student Course Assessment forms for such course.

E. ASSESSMENT AND EVALUATION TIMELINE

1. The timeline for the annual assessment and evaluation process commences with discussions of academic assessment and planning. The outcomes of these discussions inform expectations for the predetermined criteria sets to be established by the institution and departments/programs/disciplines. These predetermined criteria set forth the foundation for the annual assessment and evaluation process.
2. The timeline for the annual evaluation process is set forward as follows:

• August - Opening Professional Development Day: University Provost announces broad institution expectations for annual faculty evaluation process. The University shall distribute an evaluation package including criteria, expectations, standards, and the scholar-teacher-participant model.

• Within 3-5 Working Days of Opening Professional Development Day: Department or program faculty, as appropriate, in concert with Department Chairs and/or academic program directors finalize discipline level predetermined criteria.

• Within 7 Working Days After Opening Professional Development Day or No Later Than the First Day of Classes, whichever is earlier: Colleges and Schools host information/training sessions to support faculty use of predetermined criteria in developing their individual assessment and evaluation plans and Narratives.

• First Week of September: DAPC members are selected. Department or

program faculty, as appropriate, establish preliminary guidelines for informing predetermined criteria.
• **First & Second Weeks of September**: Chairs provide prior spring student course evaluation data to faculty members.
• **Second & Third Weeks of October**: Mid-semester review - Individual faculty member meetings with Chair. Review evaluation plan and evidence collection to date. Suggest revisions, additional evidence needs and opportunities to gather.
• **Second Week in January**: Opening Professional Development Session. Case based training with examples of completed portfolios. Example portfolios will be rated and ratings will be explained.
• **Second Week of February**: Fall student course evaluation provided to faculty in individual meetings with Chairs.
• **Third Friday in February**: Faculty member submits assessment and evaluation portfolio to DAPC.
• **Second Friday in March**: DAPC Chair forwards assessment and portfolios to Department Chair.
• **Last Friday in March**: Chair and DAPC ratings are transmitted to faculty member and Dean. Faculty member has five (5) working days to rebut Chair ratings.
• **Second Friday in April**: Dean transmits ratings and rationale to faculty member and Provost. Faculty member may rebut Dean's rating within five (5) working days through an appeal to the Provost. The faculty member's appeal must contain both a mailing and e-mail address where the faculty member can be reached and which will ensure timely delivery to the faculty member.
• **Last Friday in April**: Provost transmits assessment and evaluation outcome to faculty member. The decision of the Provost is final, subject to Section (E)(6) of this Article.
• **May 15**: Assessment and evaluation reports, performance improvement recommendations, or other status are communicated to faculty member via next academic year contract.

F. EVALUATION PORTFOLIO

Each faculty member is required to submit a portfolio which includes his self-assessment and supporting documents which will enable the DAPC, the Chair, the Dean, and the Provost/VPAA to assess and evaluate the faculty member's performance during the period. See Appendix ???.

G. EVALUATION AND DECISION BY DEPARTMENT CHAIR

1. Each DAPC shall, in consultation with the Department Chair, adopt such written guidelines as it deems appropriate for assessing the faculty members in the Department on the basis of the criteria set forth in Section C above.
2. On or about the last Friday in March, the DAPC shall submit to the Department Chair for each faculty member in the Department a completed Faculty Member Assessment

Form which shall include the DAPC's recommendation as to whether the faculty member should be rated as "Less than Satisfactory", "Satisfactory", "Above Average", or "Excellent". (A sample of the Faculty Member Assessment Form is attached to this Agreement.)

3. Upon consideration of the Faculty Member Assessment Form, the criteria set forth in Section C, and such other information as the faculty member deems relevant (e.g., the statistical compilation of the Student Course Assessment forms), the Department Chair shall rate the faculty member as "Less than Satisfactory", "Satisfactory", "Above Average", or "Excellent". If the rating given by the Department Chair is less favorable to the faculty member than the recommendation made by the DAPC, the Department Chair shall attach to the Faculty Member Evaluation Form an addendum, which sets forth in specific terms the basis for his or her disagreement with the DAPC.

4. By April 15, the Department Chair shall give a copy of the Faculty Member Evaluation Form, and any addendum prepared by the Department Chair in accordance with paragraphs 2, 3, and 4 above, to the faculty member and the DAPC. The faculty member and the Department Chair shall meet promptly thereafter to discuss the faculty member's evaluation, unless both the Department Chair and the faculty member agree to waive such meeting. At the invitation of either the Department Chair or the faculty member, the Chair of the DAPC shall attend this meeting.

5. In addition to the annual evaluation provided for in paragraphs 2 , 3 and 4 above, an interim evaluation, covering only the Fall Semester, shall be conducted for each first year faculty member. This interim evaluation shall follow the aforesaid procedures, provided that the April 1 and April 15 dates shall be changed to January 15 and January 30, respectively. The purpose of the interim evaluation shall be to assist the faculty member in adjusting to his or her new position, and shall not be used by the University as the basis for employment decisions. The interim evaluation shall not be subject to appeal under Section F or G of this Article.

6. If an individual is employed as a full-time faculty member after the commencement of an academic year, he or she shall be evaluated in accordance with the procedure set forth in paragraphs 2 and 3 and/or 4 above for that portion of the year during which he or she is employed.

7. Faculty members who are on an authorized leave of absence shall be exempt from the provisions of this Article for the period of such leave.

H. APPEAL TO DEAN

1. A faculty member shall have ten (10) working days from the meeting with the Department Chair, or from the receipt of the Faculty Member Evaluation Form from the Department Chair if the meeting has been waived, to file an appeal with the Dean. If the faculty member does not appeal the decision of the Department Chair within the aforesaid ten (10) day period, said decision shall not be subject to further review under this Agreement.

2. A faculty member who wishes to appeal the decision of the Department Chair shall, within the aforesaid ten (10) day period, send a Notice of Appeal, using a copy of the

form which is attached hereto, to the Dean, with a copy to the Department Chair, setting forth the specific basis for challenging the Evaluation.
3. The Dean shall take such steps as he or she deems appropriate to consider the appeal, and shall meet with the faculty member unless the faculty member waives in writing his or her right to such a meeting. Within thirty (30) days after receipt of the Notice of Appeal, the Dean shall issue his or her decision, either sustaining or modifying the decision of the Department Chair. The Dean's decision shall be in writing, and shall include the Dean's findings and conclusions. A copy of the Dean's decision shall be sent to the faculty member and to the Department Chair.

I. APPEAL TO PROVOST/VICE PRESIDENT FOR ACADEMIC AFFAIRS

1. The faculty member shall have ten (10) working days after receipt of the Dean's decision to file an appeal with the Provost/Vice President for Academic Affairs ("VPAA"). If the faculty member does not appeal the decision of the Dean within the aforesaid ten (10) day period, said decision shall not be subject to further review under this Agreement.
2. A faculty member who wishes to appeal the decision of the Dean shall, within the aforesaid ten (10) day period, send a Notice of Appeal, using a copy of the form which is attached hereto, to the VPAA, with a copy to the Dean, setting forth the specific basis for his or her challenge to said decision.
3. The VPAA shall take such steps as he or she deems appropriate to consider the appeal. Within thirty (30) days after receipt of the Notice of Appeal, the VPAA shall issue his or her decision, either sustaining or modifying the decision of the Dean. The VPAA's decision shall be in writing, and shall include the VPAA's findings and conclusions. A copy of the VPAA's decision shall be sent to the faculty member, the Dean, and the Department Chair. The decision of the VPAA shall be final and not subject to further review under this Agreement except if the evaluation results in discipline, in the imposition of a Performance Improvement Plan, or in the denial of a step increase.

J. ASSOCIATION REPRESENTATION

If requested to do so by a faculty member, the Association may, at its discretion, represent said faculty member in the appeal to the Dean provided for in Section F and/or in the appeal to the VPAA provided for in Section G. If the Association does not represent the faculty member in one or both of the aforesaid appeals, the Dean or the VPAA, as the case may be, shall notify the Association in
writing of such appeal, and make available to it upon request copies of all documents exchanged between the parties, including without limitation Notices of Appeal and decisions, as soon as said documents are available. The Association may process a grievance in the limited circumstances noted in Section G(3).

K. RESERVATION OF RIGHTS

Nothing contained in this Article shall be construed to prevent a faculty member from exercising any right that he or she may have under law to challenge any aspect of his or

her evaluation. Notwithstanding the foregoing, the parties agree that a procedural defect in the evaluation process shall be subject to the grievance and arbitration procedure set forth in Article IX of this Agreement.

L. MISCELLANEOUS

1. The revision to Article XIV will take effect on August 16 after the execution of this Agreement.
2. After the completion of each evaluation cycle, the University will submit to the Faculty Association a list of each faculty member and his/her overall rating score.

a. University's Position

Citing D.C. Official Code § 1-613.53(b) and PERB cases that interpret that provision, the University asserts that implementation of a performance management system is nonnegotiable.[50]

The University also relies upon several management rights set out in section 1-617.08(a). First, the University argues that the proposed article interferes with the University's rights to determine its mission (section 1-617.08(a)(1)) and to direct its employees (section 1-617.08(a)(5)(A)). A proposal that establishes the purposes of a performance evaluation system interferes with those rights.[51] The proposed article defines the purpose of evaluation in Section A(1) and restricts that purpose in Section G(5). The restrictions prohibit the University from disciplining a faculty member for performance reasons, thereby infringing the University's right under section 1-617.08(a)(2) as well. Sections E, G, H, and I establish the content and not merely the timing of evaluations. The proposed article establishes the criteria of evaluations in Sections A(4), A(5), C(1-4), G(3), and G(2).

Second, the proposed article interferes with the University's right under section 1-617.08(a)(4) to maintain the efficiency of its operations. Section A(5) sets an evaluation period that conflicts with the academic calendar. The proposed article establishes a Departmental Assessment and Promotion Committee ("DAPC") for each department and inefficiently requires each DAPC to establish its own set of rules. It mandates meetings and other steps that the University must take during an appeal. Section I(3) implies that only the vice president of academic affairs can impose discipline.

Finally, Sections B(1), D(2), G(1), and G(5) interfere with the University's right under section 1-617.08(a)(1) and (2) to direct employees and assign work. Section B(1) provides that full-time faculty members elect the members of the DAPC for their department. The other sections mandate various tasks to be performed by DAPCs.

b. Association's Position

[50] University's Original Br. 11; University's Reply Br. 7.
[51] University's Original Br. 11

Section 1-613.53(a) provides, "Until regulations are issued by . . . the University of the District of Columbia to implement the provisions of this subchapter for their respective employees, the performance evaluation systems in effect on June 10, 1998, shall continue in effect." UDC has not issued regulations concerning faculty evaluation since June 1998. Compliance with the CMPA would require restoration of the evaluation procedure in the Fourth Master Agreement.

The Association distinguishes between performance management and evaluation. The "performance management system" that section 1-613.53(b) makes nonnegotiable does not include an evaluation procedure. Otherwise, there would have been no reason for the City Council to subsequently adopt section 1-617.18, which makes "the evaluation process and instruments for evaluating District of Columbia Public Schools employees" nonnegotiable. In view of the distinction between the performance management system and evaluation procedures, Sections C, D, F, and G, which concern evaluation, should be negotiable even if the performance management system is not.

The Association also distinguishes between evaluation and peer assessment. The Association states, "Peer Assessment or Peer Review is the evaluation of college faculty by their peers, other faculty in their college or department who are familiar both with the subject matter and teaching ability of their co-workers."[52] Unlike peer assessments, performance evaluations can be the basis for personnel actions such as discipline, promotion, tenure, and merit pay. Consequently, a performance evaluation system is nonnegotiable[53] and evaluating employees is a managerial function that would exclude from the bargaining unit any faculty that evaluated other faculty members.[54] Sections A, B, and G involve peer assessment.

Section 1-613.53(b) does not preclude impact and effects bargaining. Procedures for evaluation are negotiable if they do not include criteria for evaluation. Procedural matters addressed by the proposed article are timeliness of evaluations (Sections E and G), frequency of evaluations (Section G), review and appeal (Sections H, I, J, and K), and the miscellaneous subjects in Section L.

c. Analysis

UDC claims that the proposed article is nonnegotiable under two statutes, section 1-613.53(b) and the management rights statute, section 1-617.08(a). Section 1-613.53, entitled "Transition Provisions," provides:

> (a) Until regulations are issued by the Mayor, the Board of Education and the Board of Trustees of the University of the District of Columbia to implement the provisions of this subchapter for their respective employees, the performance

[52] Union's Original Br. 20.
[53] *Id.*
[54] Union's Reply Br. 4-5.

> evaluation systems in effect on June 10, 1998, shall continue in effect.
> (b) Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining.

An agency relying on section 1-613.53(b) for nonnegotiability must show that it is seeking to exempt from bargaining over "the implementation of the performance management system established in this subchapter," i.e., subchapter XIII-A ("Performance Management") of the CMPA. The University has not made that showing. As the Association points out, the University has not adopted regulations concerning faculty evaluations since June 1988. Pursuant to section 1-613.53(a), the University is operating under the evaluation system in effect on June 10, 1998, rather than the one subsequently established by subchapter XIII-A of the CMPA.

However, portions of the proposed article are nonnegotiable under the management rights statute. Although the Association asserts that sections dealing with peer assessments, as distinguished from evaluations are negotiable, the proposed article has the two processes working together. Section A(1) requires the University to provide both peer assessments and annual evaluations. Only Sections B and D(2) deal with peer assessments only.

The sections dealing with evaluations or with both evaluations and peer assessments are negotiable if they do not contain any language affecting the University's right to establish the criteria or the purpose of performance evaluations.[55] Section A(1) states the purpose of annual evaluations, and Section G(5) states the purpose of interim evaluations. Hence, those sections are nonnegotiable. Sections A(2), A(3), A(4), A(5), C, G(1), and G(3) expressly concern criteria for evaluations and accordingly are nonnegotiable. Sections E, F, G(2), G(4), G(6), G(7), H, I, K, and L are negotiable as they contain no language affecting UDC's right to establish either the criteria or the purposes of the performance evaluations.[56]

Articles XIV and XV of the proposed Eighth Master Agreement replace the Department Evaluation and Promotion Committees established by the Seventh Master Agreement with Departmental Assessment and Promotion Committees ("DAPCs"). Under the Seventh Master Agreement, the University and the Association separately select members of the Department Evaluation and Promotion Committees and jointly select one member of each committee. Article XIV(B)(1) of the proposed Eighth Master Agreement proposes that each academic year a DAPC be established in each department and elected by the full-time faculty in the department.

The University contends that the election of DAPCs and the responsibilities assigned to them "would interfere with the University's right to direct employees and assign work"[57] The management rights statute does not use the words "assign work." It provides that management

[55] *SEIU, Local 500 and Univ. of D.C.*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 10-15, PERB Case No. 15-N-01 (2015).
[56] *Id.*
[57] University's Original Br. 14.

has the sole right "[t]o hire, promote, transfer, assign, and retain employees in positions within the agency." D.C. Official Code § 1-617.08(a)(2). The selection of members of DAPCs by vote of faculty members in each department, as proposed by the third sentence of Section B(1), abridges UDC's right to "assign . . . employees in positions within the agency."[58] The third sentence of Section B(1)is nonnegotiable. None of the other sections of Article XIV implicate section 1-617.08(a)(2).

The tasks Article XIV directs the DAPCs to perform—establishing their procedures and giving guidance to faculty members who request it—do not infringe the right to direct employees pursuant to section 1-617.08(a)(1). To conclude that a proposal such as this interferes with the University's right to direct employees because it requires the University to take certain actions through a committee would, as the FLRA said in a similar case, "nullify the obligation to bargain because no obligation of any kind could be placed on management through negotiations."[59]

The University's objection to certain alleged inefficiencies relate more to the merits of the proposals than to the University's right to "maintain the efficiency of the District government operations entrusted to" the University as provided in section 1-617.08(a)(4).

Section D(1) places requirements on the University regarding the nature of student evaluations. These requirements infringe UDC's right to determine its mission and educational policy. Therefore, the section is nonnegotiable.[60]

Under Section J, the Association may, at its discretion, represent a faculty member in certain appeals in the evaluation process if the faculty member requests. This is a right of the Association under section 1-617.11(a). Section J is negotiable.

In summary, the following sections of Article XIV are *nonnegotiable*: A(1)-(5), the third sentence of B(1), C, D(1), G(1), G(3), and G(5). The following sections of Article XIV are *negotiable*: B(1) except the third sentence, B(2), D(2), E, F, G(2), G(4), G(6), G(7), H, I, J, K, and L.

6. Article XV Academic Rank and Promotions

Article XV as proposed by the Association is as follows:

ARTICLE XV - <u>ACADEMIC RANK</u> AND PROMOTION PROCEDURES
A. PRINCIPLES
<u>1. Faculty may be hired at any rank provided that they have met the requirements set</u>

[58] D.C. Official Code § 1-617.08(a)(2). *See Int'l Fed'n of Prof'l & Technical Eng'rs and U.S. Dep't of the Interior Bureau of Land Reclamation Denver Office*, 43 F.L.R.A. 998, 1001 (1992).
[59] *Nat'l Fed'n of Fed. Employees Local 2099 and Dep't of the Navy, Naval Plant Representative Office*, 35 F.L.R.A. 362, 368 (1990).
[60] *Id.* at 15.

forth in Section (A)(5) prior to their employment by the University. The DAPC for the Department into which a faculty member will be hired will review the proposed rank before an offer of employment is made.

2. Individuals hired from outside the Bargaining Unit at or above the position of Dean cannot be awarded academic rank except as consistent with this Article based on employment at another university.
3. Promotion refers to the advancement from one academic rank to a higher rank. Promotion shall be the result of a selective process to identify the candidates from among the eligible regular full-time faculty. It is awarded in recognition of the professional stature achieved by an individual as assessed in relation to one's contributions to the three-fold mission of the University, namely teaching, research, and service. While the scrutiny of the scholarship and professional activity of an individual will be rigorous regardless of the academic rank for which a faculty member is being considered, the expectations will necessarily vary with the academic rank sought. Thus, the expectations for promotion to the rank of Assistant Professor will be less than those for the rank of Professor.
4. The following shall form the parameters for assessing applicants for promotion:
   a. Academic, scholarly, and service achievements;
   b. Quality of teaching and teaching-related performance (in the case of LRD faculty, quality of Job performance).
5. Assessment of promotion applications will be based on uniformly administered principles, procedures, and criteria which have been designed to ensure fair and impartial judgments. Consistent with the provisions of this Article, it shall be the responsibility of the Administration to disseminate to the faculty at the beginning of each academic year the guidelines and procedures for applying for promotion and the established criteria for promotion together with the weights and standards applicable to the criteria for the academic year. For faculty applying for the rank of Associate Professor or Professor, their promotion portfolio will include a statement from two (2) external reviewers in the appropriate discipline.
6. Faculty members applying for promotion must meet the following requirements of minimum eligibility:
   a. For the last three evaluations al [*sic*] least one Distinguished rating and none less than Outstanding or at least two Distinguished ratings one of which shall be the most recent;
   b. Met the required amount of time in lower rank by August 16 of the submitting year as shown below.
   c. Met the degree requirements by September 15 of the submitting year as shown below:

RANK	**YEARS AT LOWER RANK**	**DEGREE REQUIREMENTS**
Instructor Aviation		Bachelor of Science degree in Aviation Technology and FAA Airframe and

Technician		Powerplant certification
Instructor		Except in the Department of Aviation MaintenanceTechnology, a Masters Degree in the appropriate discipline
Assistant Professor	0 5	Appropriate terminal degree OR At least 12 graduate credits, appropriate to the discipline, beyond the Master's Degree
Associate Professor	4 8	Appropriate terminal degree OR At least 24 graduate credits, appropriate to the discipline, beyond the Master's Degree
Professor	5 10	Appropriate terminal degree OR At least 36 graduate credits, appropriate to the discipline, beyond the Master's Degree

It is understood that the foregoing represent only minimum eligibility requirements. Whether a faculty member who satisfies these eligibility requirements is promoted will be determined with reference to the degree to which he or she meets the applicable criteria as applied in accordance with this Article. Under exceptional circumstances, however, in the absence of the appropriate years of service, a faculty member may apply for promotion before the above referenced periods of consideration. The request for exception should be directed to the department chair by the individual requesting the exception. The URC will determine whether such exceptional circumstances warrant promotion for said faculty member. This request is then processed in the manner established for all recommendations for promotion. The burden of showing exceptionality of qualifications for consideration for promotion (with regard to any of the criteria) rests with the faculty member requesting the exception.

7. The University shall budget annually an amount at least equal to 1% of the salary of Bargaining Unit faculty for use in funding promotions for Bargaining Unit members.
8. The faculty member applying for promotion has the right to have his or her scholarship judged by persons who are competent to do so.
9. In the development of University promotion standards and weights, recognition shall be given to rating(s) awarded for previous application(s) for promotion.
10. An Administrator returning to the Bargaining Unit cannot retain or be awarded

faculty rank inconsistent with the standards set forth in this Article.

B. PROMOTION COMMITTEES

1. Departmental Assessment and Promotion Committee (DAPC)

See Article XIV, Peer Assessment and Evaluation Procedures, for structure.

2. College Promotion Committee (CPC)

This Committee is a group of full-time faculty members in a College, consisting of one representative from each Department in the College. The Learning Resources Division shall be considered a College within the context of this Article. Each Department shall elect its representative by the second Friday in February.

a. Not later than the first Friday in May of each year, the Provost/VPAA shall forward to each CPC the University criteria for promotion in effect for the coming academic year. It is agreed between the parties that for the duration of this Agreement, said criteria shall be the criteria presently set forth at 8 DCMR Sections 1413, 1414, and 1415.

b. Based upon such criteria, each CPC shall develop recommended standards and weights to be used in assessing applicants for promotion, which shall include a formula for giving credit to faculty reapplying for promotion whose ratings for the previous year(s) was (were) strongly recommended. Each CPC shall submit its recommendations to the applicable Dean no later than the third Friday in March. A copy of the CPC's recommendation shall be submitted to the Faculty Association, which may submit comments thereon to the Dean. The Dean shall review the CPC recommendations and any comments received from the Association and forward them, together with his or her comments, to the UPC no later than the second Friday in April.

3. University Promotion Committee (UPC)

Membership on this committee shall be limited to the chairs of the various CPCs, the academic Deans, and a representative of the faculty Senate. The Provost/VPAA shall serve as chair of the Committee. Using the various CPC recommendations and comments, and consistent with University policies and criteria applicable under this Article, the UPC shall establish University-wide promotion standards and weights, which shall remain in effect for the duration of this Agreement. Such standards and weights shall include a formula for giving credit to faculty reapplying for promotion whose rating(s) for the previous year(s) (were) "strongly recommended." In recognition of the differing missions of the several Colleges of the University, the Committee may, with the VPAA's approval, establish differential standards and weights for different Colleges.

4. University Review Committee (URC)

The Committee (URC) shall consist of one faculty member holding the rank of professor from each of the Colleges, appointed by the Faculty Senate in such fashion, as it shall deem appropriate. The URC shall (I) hear appeals of applicants who have been declared ineligible and as provided below render binding rulings

on those appeals, (ii) hear appeals from the decisions of a Dean, and (iii) advise the Provost/VPAA on appeals at that level.

C. PROCEDURES

1. An applicant for promotion shall submit his or her application with supporting documents to the Department Chair no later than the second Friday in September. The application is to be filed on Form P-l, a copy of which is annexed to this Agreement. The Department Chair shall issue a receipt to the applicant for the materials submitted.
2. The Department Chair shall promptly review the records and certify whether the applicant meets minimum eligibility requirements as outlined in Paragraph B above. The Department Chair shall send notice of eligibility to the DAPC, with a copy to the applicant, by the third Friday in September. If a faculty member disagrees with the minimum eligibility determination given, or if the Department Chair fails to send the notice of eligibility by the indicated date, the faculty member may within five (5) working days after receipt of said notice, or after the third Friday in September if said notice is not received by that date, file a written request for a determination of eligibility by the URC.
3. The URC shall notify the faculty member of its decision by the fourth Friday in October with a copy to the Department Chair, in which case the URC's decision shall be final and not subject to grievance or arbitration under this Agreement except for alleged procedural violations. No final action on promotion will be taken absent a final determination with respect to eligibility.
4. The Department Chair shall review the documents and make a recommendation no later than the fourth Friday in October as to whether or not an applicant should be promoted. The Chair shall rank the applicants separately for each academic rank. The following ratings shall be used: (I) Strongly Recommended; (ii) Recommended; (iii) Not Recommended. The Chair is required to state reasons for the given rating. This rating shall be made on Form P-2, a copy of which is annexed to this Agreement. The Chair shall promptly send a copy of this form to the CPC Chair and to the applicant and forward the original of the form and all supporting documents to the DAPC.
5. The DAPC shall review the application with all the supporting documents and make a recommendation no later than the third Friday in November as to whether or not the applicant should be promoted. The shall rank the applicants separately for each academic rank. The following ratings shall be used: (I) Strongly Recommended; (ii) Recommended; (iii) Not Recommended. The Committee is required to state reasons for the given rating. This rating shall be made on Form P-3. The Committee shall send the form along with all supporting documents to the Chair of the CPC no later than the first Friday in December, with a copy of the form to the applicant.
6. The applicant may submit to the CPC comments on the decision of the Department Chair and/or the DAPC no later than the first Friday in January.
7. The CPC shall review the materials of all the applicants along with the comments

submitted by the applicants, if any, and make a recommendation as to whether or not an applicant should be promoted. The CPC may hold such interviews or hearings as it deems necessary to make a recommendation. The Committee shall rank the applicants separately for each academic rank. The following ratings shall be used: (I) Strongly Recommended; (ii) Recommended; (iii) Not Recommended. The Committee is required to state reasons for the given rating. The Committee shall complete its reviews by the first Friday in February and shall promptly forward its recommendations, assigned rankings and all supporting materials to the Dean, with a copy of the recommendation to the faculty member.

8. The Dean shall review all the information received and shall rank the applicants separately for each academic rank giving one of the following ratings: (I) Recommended; (ii) Not Recommended. The Dean shall state reasons for the given rating. The rating shall be made on Form P-5. The Dean shall forward the recommendations for all applicants together with all the supporting materials for the college's recommended candidates to the Provost/VPAA no later than the fourth Friday in February. A copy of the rating, with reasons, and rank assigned to the promotion application, shall be simultaneously provided to each applicant.

9. The applicant may appeal the recommendation of the Dean to the Provost/VPAA within five (5) working days of receiving the Dean's recommendation. The Provost/VPAA shall convene the URC and shall submit to it all appeals and all relevant supporting documents no later than the second Friday in March. The URC shall conduct such review and make its recommendations to the Provost/VPAA no later than April 1. The Provost/VPAA shall review the recommendations of the Dean together with the recommendations of the URC and make an independent recommendation to the President no later than April 10. A copy of the Provost/VPAA's recommendation shall be sent simultaneously to the applicant and to the Association.

10. Promotion applicants not included on the listing of University candidates for promotion but who were strongly recommended for promotion by their CPC or recommended by the URC may appeal to the President within five (5) working days after receiving the listing of University candidates for promotion. The applicant shall have the right to meet with the President within two (2) weeks after the filing of said appeal. The President shall consider the recommendations and reports of the Provost/VPAA, CPC and URC, if any, and render a decision within five (5) working days after the meeting, or if no meeting is held, within ten (10) working days after the filing of the appeal. The President shall include the reasons for his decision in writing and provide a copy to the applicant as well as the Association. The decision of the President shall not be subject to Article IX (Grievance Procedure and Arbitration) of this Agreement except as to alleged procedural violations. Nothing contained in this Article shall constitute a waiver by the Association or any member of the Bargaining Unit of any right that it or he or she may have under D.C. law.

11. The faculty member's personal portfolio submitted as supporting documentation shall be returned within sixty (60) calendar days after promotions have been announced unless it is necessary to retain them for an appeal in process. It is the

> responsibility of the faculty member to retrieve this material from the Provost/VPAA's office within thirty (30) days of the above date.
>
> IMPLEMENTING FORMS for this Article appear in Appendix C.

a. University's Position

Article XV interferes with management's right to hire and promote. Criteria for promotion are for management to determine. Article XV contains nonnegotiable criteria including seniority and criteria in the University's regulations. The latter do not become negotiable merely because they are currently in the University's regulations. The University states, "UDC may act to change such regulations without negotiating with the Association. The fact that UDC's current regulations happen to mirror a proposal or part of a proposal is irrelevant. Provisions set forth in collective bargaining agreements trump regulations, including these set forth in the DCMR."[61]

The involvement of committees with bargaining unit members in promotion decisions and in reviewing the proposed rank of hires is incompatible with the University's rights to hire, direct, and promote employees.[62] Section A(7) interferes with the University's right to determine its budget. Section A(10) interferes with the University's right to retain employees.

b. Association's Position

Section A(6) incorporates the University's regulations on minimum requirements for assistant professor, associate professor, and professor. A proposal that incorporates legal requirements including regulations, which have the force of law, is negotiable.[63]

A proposal that is procedural in nature and neither requires nor prevents the promotion of an employee does not violate the management right to promote employees. By this standard, Article XV is negotiable.[64] Article XV requires seniority only to establish the minimum number of years for promotion from one academic rank.

The provision requiring the University to budget for promotions, Section A(7), can be considered negotiable as part of the Association's compensation proposal that promotions must include a wage increase. The proposal does not limit the University's right to control its budget.

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[61] University's Reply Br. 8 (citing 6-B DCMR § 1602.2(c); *Dist. Council 20, AFSCME and D.C. Pub. Sch.*, 28 D.C. Reg. 3947, Slip Op. No. 15, PERB Case Nos. 80-U-05 and 81-A-01 (1981)).
[62] University's Original Br. 16.
[63] Union's Original Br. 32.
[64] Union's Original Br. 32 (citing *D.C. Fire & Emergency Med. Servs. Dep't and AFGE Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874, PERB Case No. 06-N-01 (2007)); Union's Reply Br. 6 (citing *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs.*, 60 D.C. Reg. 17359, Slip Op. 1445 at 11, PERB Case No. 13-N-04 (2013)).

It merely asks the University to plan ahead for wage increases that will result if faculty members are promoted.[65]

c. Analysis

In *D.C. Fire and Emergency Medical Services Department and AFGE, Local 3721*,[66] the Board considered whether two proposals infringed the management right to promote employees. The first proposal specified the contents of an application for promotion and stated general principles of promotion procedure. The second proposal made employees who were not chosen for a training course but passed a required examination eligible for the next training course without re-taking the examination. The Board found that the proposals did not infringe management's right to promote employees because the proposals were procedural in nature and would neither prevent nor require the promotion of an employee.[67]

Promotion criteria would prevent the promotion of an employee who lacks one of the criteria. Just as a proposal creating criteria for an agency to consider or not consider when deciding whether to re-appoint or assign an employee is nonnegotiable,[68] so also a proposal establishing criteria for a promotion is nonnegotiable as it restricts the agency's right to promote employees.

The nonnegotiability of such criteria is unaffected by the criteria's presence in current regulations. The Association cites no authority for the proposition that a proposal is negotiable if it incorporates regulations having the force of law. An agency is free to change its own regulations concerning a management right.[69] Section B(2)(a) of Article XV would prevent the University from changing its regulations concerning the qualifications for professor, associate professor, and instructor "for the duration of this agreement" in violation of D.C. Official Code § 1-617.08(a)(2). In addition, Section A(6), as the Association states, incorporates those regulations along with other required criteria for eligibility.[70] Sections B(2)(a) and A(6) are nonnegotiable.

The generalities in the first sentence of Section A(5) do not amount to criteria that would prevent or require the promotion of an employee. The promotion portfolio required by Section A(5) is procedural and similar to the required application materials found to be a negotiable item in *D.C. Fire and Emergency Medical Services Department*. Section A(5) is negotiable. Sections A(8) and (9) are procedural and do not establish criteria that would prevent or require the promotion of an employee. Sections A(8) and (9) are negotiable.

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[65] Union's Reply Br. 8.
[66] 54 D.C. Reg. 3167, Slip Op. No. 874, PERB Case No. 06-N-01 (2007).
[67] *Id.* at 19-21. *Accord Local 36, Int'l Ass'n of Firefighters*, Slip Op. No. 1445 at 11.
[68] *SEIU, Local 500 and Univ. of D.C.*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 10, PERB Case No. 15-N-01 (2015).
[69] *See AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 51 D.C. Reg. 4163, Slip Op. No. 730, PERB Case No. 02-U-19 (2003) (Where a union alleged that an agency committed an unfair labor practice by denying its request to bargain over newly promulgated regulations concerning reductions in force, the Board held that the subject was nonnegotiable and dismissed the complaint.)
[70] Union's Original Br. 31.

Section A(2) is nonnegotiable because in proposing Section A(2) the Association seeks to negotiate terms and conditions of employment of individuals who are not in the bargaining unit.[71]

Section B(1), entitled "Departmental Assessment and Promotion Committee (DAPC)," states only, "See Article XIV, Peer Assessment and Evaluation Procedures, for structure." Section B(1) is negotiable.

Sections B(2), B(3), and B(4) establish the College Promotion Committee, the University Promotion Committee, and the University Review Committee, respectively. The University objects to the participation of bargaining unit members in the committees. The validity of that objection depends upon what the sections have the committees doing. Section B(2)(b) directs the College Promotion Committee to make recommendations only. Section B(2)(b) is negotiable. Section B(3) requires the University Promotion Committee to establish university-wide promotion standards and weights. Section B(4) authorizes the University Review Committee to "hear appeals of applicants who have been declared ineligible[,] . . . render binding rulings on those appeals" and hear appeals from the decisions of a dean. These two sections go beyond proposing procedures by which management makes appointment decisions. They require that bargaining unit members share the University's decision-making authority over a management right. For that reason, Sections B(3) and B(4) are nonnegotiable.[72]

The negotiability of the Association's proposal in the compensation article that a promotion in rank must include a wage increase[73] is undisputed. But Section A(7)'s requirement of a line in the University's budget equal to at least one percent of the salary of bargaining unit faculty in order to fund promotions implicates the University's right to determine its budget. This provision cannot subject to negotiation the University's right under section 1-617.08(a)(5)(A) to determine its budget even if it is characterized as a compensation item.[74] The Association's contention that the proposal "asks only that the University plan ahead and not be caught short financially" addresses the merits of the proposal and is irrelevant to its negotiability.[75] Section A(7) is nonnegotiable.

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[71] *AFGE, Local 1403 and D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at 10, PERB Case No. 03-N-02 (July 25, 2003).

[72] *Cf. Nat'l Fed'n of Fed. Employees, Local 1745 v. FLRA*, 828 F.2d 834, 841-42 (D.C. 1987) (affirming FLRA decision finding nonnegotiable a proposal that the union appoint a member to a panel that formulates criteria to be used in rating candidates for promotion). *Accord Am. Fed'n of Gov't Employees, Mint Council 157 and Dep't of the Treasury, Bureau of the Mint*, 19 F.L.R.A. 640, 643-44 (1985) (holding that a proposal that would require the participation of a Union representative on a promotion ranking panel interfered with management's right to make selections for appointments).

[73] Proposed Eighth Master Agreement art. XIX(A)(4) (p. 52).

[74] *See Washington Teachers' Union Local 6 v. D.C. Pub. Schs.*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p. 17, PERB Case No. 95-N-01(1995); *Teamsters Local Unions No. 639 & 730 v. DCPS, a/w Int'l Bhd. of Teamsters* , 43 D.C Reg. 3545, Slip Op. No. 377 at 4-6, 5 n.5, PERB Case No. 94-N-02 (1994).

[75] *Comm. of Interns & Residents and D.C. Gen. Hosp. Comm'n*, 41 D.C. Reg. 1602, Slip Op. No. 301 at 6, PERB Case No. 92-N-01 (1992).

In Section A(10), the Association adds a prohibition against awarding an administrator returning to the bargaining unit a rank "inconsistent with the standards set forth in this Article." With the nonnegotiable provisions removed from Article XV, this prohibition is negotiable.

In summary,Article XV, Sections A(2), A(6), A(7), B(2)(a), B(3), and B(4) are *nonnegotiable*. All other sections in Article XV, namely, Sections A(1), A(3)-(5), A(8)-(10), B(1), B(2)(b), and all of Section C are *negotiable*.[76]

7. Article XVI Tenure

Article XVI as proposed by the Association is as follows:

ARTICLE XVI - UNIVERSITY TENURE

A. GENERAL PRINCIPLES

The University, as a public land-grant institution, recognizes and supports the concept of tenure.

1. All faculty hired to begin teaching after September 30, 2006 shall be on a five-year tenure track. All faculty hired to begin teaching before September 30, 2006 have University tenure.
2. Faculty members who have not been granted tenure shall be on probation for the first three years of their employment at the University and shall be employed pursuant to a one-year individual employment agreement in each such year. During the probation period, the University, at its sole discretion, may decide for any reason not to renew a faculty member's contract, or to terminate the employment of a faculty member, and such decisions shall not be subject to the grievance and arbitration procedure.
3. Full-time faculty members who have been placed by the University in tenure track positions may apply for tenure. Such applications shall normally be submitted following the fifth year of service on the faculty. Tenure decisions shall not be subject to the grievance and arbitration procedure (except for alleged procedural violations) and shall not be considered disciplinary or adverse actions.
4. This Article shall have no effect on any "Reserved Interest Status" that may be held by any faculty member.
5. Persons who are hired into non-Bargaining Unit positions cannot be awarded University tenure except according to the provisions of this Article.

B. PROCEDURE

1. A faculty member may apply for tenure in or after the sixth year of employment with the University. A faculty member hired to begin teaching after September 30, 2006 who has not already been awarded tenure must apply for tenure in the Fall Semester after the effective date of this Agreement.
2. A faculty member cannot apply for tenure before completion of the probation period.
3. A faculty member who is denied tenure may be issued either a terminal one-year

[76] D.C. Official Code § 1-617.08(b).

contract or may be retained on a series of two-year contracts and may reapply for tenure after three years.

4. Decisions concerning tenure are based upon effective teaching as judged by peers and students, and other academic accomplishments.
5. Promotion to Professor automatically includes tenure.
6. The procedure for obtaining tenure will follow the Promotion Procedure in Article XV. However, recommendations of the Committee cannot be overturned by the Administration except for procedural grounds.

a. University's Position

Article XVI is nonnegotiable. While tenure is of limited import, it is a management prerogative.

The University contends that the proposal infringes every management right listed in section 1-617.08(a)(1) through 1-617.08(a)(5)(B) except the right of an agency to determine its own budget. In particular, Section A(5) of Article XVI interferes with the right to hire and maintain employees.[77] Section B(3) "seemingly requires a faculty member rejected for tenure to receive a one or two year contract."[78] Section B(5) directs that a promotion to professor automatically includes tenure. Section B(6) directs that recommendations regarding tenure can be overturned only on procedural grounds.

In addition, Sections A(1), B(1), B(2), and B(4) establish criteria for tenure, setting a standard where none exists.[79] The criteria include years of service. "[I]t is the University's exclusive right to retain employees and, given the relationship between tenure and retention, it is the University's decision—not the Association's decision—as to the criteria upon which tenure should be considered and whether a faculty member qualifies for tenure, regardless of number of years of service to the University."[80]

b. Association's Position

There is no relationship between tenure and retention. Tenure is not a factor in a promotion, order of separation, assignment, or reduction in force. Its one significant effect under the Seventh Master Agreement is that tenured faculty can be discharged only for just cause, like all other faculty after three years of service.[81]

Section 1-608.01a(b)(2)(A)(i) of the D.C. Official Code states, "Excluding those employees in a recognized bargaining unit, . . . a person appointed to a position within the Educational Service shall serve without job tenure." By making an exception for bargaining unit

[77] University's Original Br. 18.
[78] University's Reply Br. 9.
[79] University's Original Br. 18 (citing *Washington Teachers' Union v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 13, PERB Case No. 95-N-01 (1995)).
[80] University's Original Br. 18.
[81] Union's Original Br. 48.

members, this provision mandates bargaining over tenure. It supersedes section 1-617.08 because it was adopted later.[82]

The proposal incorporates one of the University's own regulations, 8B D.C.M.R. § 1471.2, which mandates continued employment of faculty denied tenure.[83]

c. Analysis

Both parties advise the Board that tenure is not very important at UDC. The University asserts, however, that "proposals to restrict management's ability to grant or deny tenure interfere with management rights."[84] But the University does not explain how they would interfere with management rights other than to allude to a "relationship between tenure and retention."

Determining whether there would be interference with management rights requires a consideration of what privileges, if any, tenure affords to faculty at UDC. The Association says that under the Seventh Master Agreement there is only one significant impact of tenure. The impact the Association refers to is set forth in Article XI(A)(2), which states, "For the first three years of their employment, non-tenured faculty . . . may be discharged or their contracts not renewed without recourse to the grievance and arbitration procedures; thereafter, non-renewal or discharge decisions are subject to the 'cause' provisions of the contract and may be challenged in the grievance and arbitration procedure." Thus, a tenured faculty member, despite having served less than three years, cannot be discharged without recourse to grievance and arbitration procedures for challenging whether the discharge was for cause. A proposal granting tenure on a given basis is the same as a proposal to extend to some probationary employees the standard of just cause that applies to non-probationary employees. As the latter proposal does not interfere with management rights,[85] the former does not either.

The only other effect of tenure proposed by the Eighth Master Agreement is that "[a]n award of tenure independent of promotion includes a two step increase."[86] The University does not contend in its briefs that a step increase is a management rights decision, and section 1-617.08 does not suggest that it is.

Therefore, all of Article XVI is *negotiable*—with one exception. Section A(5) is *nonnegotiable* because in proposing Section A(5) the Association seeks to negotiate terms and conditions of employment of individuals who are not in the bargaining unit.[87]

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[82] Union's Original Br. 49.
[83] Union's Reply Br. 8.
[84] University's Reply Br. 9.
[85] *Washington Teachers' Union v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 11-12, PERB Case No. 95-N-01 (1995)
[86] Eighth Master Agreement art. XIX(A)(4) (p. 52).
[87] *AFGE, Local 1403 and D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at 10, PERB Case No. 03-N-02 (July 25, 2003).

8. Article XVII Workload

Article XVII as proposed by the Association is as follows:

ARTICLE XVII – WORKLOAD

A. PREAMBLE

Faculty responsibilities fall into two distinct categories -- those specifically assigned by the Administration and those undertaken by the selective choice of the individual faculty member in the areas of scholarship and professional growth and service, either University or community. In recognition of the responsibilities expected to be undertaken in the areas of scholarly activities and service, the University limits its assigned workload so as to leave a faculty member free the equivalent of one full day per week. The University may, however, include scholarly or service activities as part of an individual 's assigned workload. In these instances, the activity will be reflected in the workload as "Authorized University Activity." (see subsection (B)(4)(g) below for valuation of such activities.)

B. TEACHING FACULTY

1. The workload of teaching faculty shall be consistent with the University mission and may consist of a combination of teaching and teaching-related activities, research, University service, and public service.
   The basis for determining the composition of faculty member's workload shall be University responsibilities and need.
   In determining a faculty member's workload, and in making any changes or adjustments thereto, there shall be no retaliation for the exercise by the faculty member of any rights afforded by this Agreement, personnel policies, or by law, nor shall decisions regarding workload be made on the basis of disciplinary considerations, or for arbitrary and capricious reasons.
   No later than the first Friday in May, the Department Chair shall, after consulting with the individual faculty member, establish the faculty member's work plan for the coming academic year. For faculty on leave and for new faculty, the deadline to complete the work plan shall be the third Friday in August. The plan shall include the anticipated number of courses to be taught and all other anticipated activities involving Professional Units ("PUs") of work. The plan shall be a flexible document which may be adjusted, after consultation with the faculty member (unless the faculty member is unavailable), as necessary to reflect changes which might be caused by new circumstances.
   If one-half (½) or more of the assigned workload is in Authorized University Activity ("AUAs"), that assignment must be endorsed by the Provost and Vice President for Academic Affairs.
2. Academic year appointments shall be from August 16 through May 15 which covers both Fall and Spring Semesters.
3. The normal workload assignment shall be a semester average of thirty two (32) Professional Units ("PUs") computed annually in the second semester. One Professional Unit is equivalent to fifteen (15) hours per semester.

4. For the determination of workload the following shall apply:
   a. Instructional Activity – One (1) PU per semester for one (1) hour of instruction (i.e., fifty minutes) per week.
   b. Pre-Class Activity
      (1) One (1) PU per semester per credit hour for preparation of the first each section of a course the faculty member has taught before.
      (2) One and one-half (1.5) PUs per credit hour for preparation of each ~~the first section~~ of a course the faculty member has not taught before.
      ~~(3) One-half (0.50) PU per credit hour for preparation of each additional section of the same course.~~
      (4) One-half (0.50) PU per lab session per course.
      (5) One (l) PU per credit hour for scholarly activity necessary to maintain currency in the discipline for teaching a graduate course.
   c. Post-Class Activity
      (1) One-half (0.50) PU per credit hour for grading and record keeping.
      (2) One (1) PU per semester for each 45 student credit hours ("SCH"), or fraction thereof, taught beyond 225 SCH per semester.
      (3) Special Rules for On-Line and Non-Classroom Courses: Class size will not exceed 25 students.
   d. Student Consultation -- One (1) PU per course taught.
   e. Graduate Thesis or Dissertation Advisement -- One (1) PU for each graduate student for whom the faculty member serves as the thesis or dissertation advisor.
   f. Independent Study -- One (1) PU per independent study topic.
   g. Authorized University Activity -- Recognizing the University's commitment to scholarship, research, public service and the professional growth of the faculty, the Chair, in consultation with the faculty member, and with the approval of the Dean, may substitute Authorized University Activity for all or a portion of the teaching workload. Authorized University Activity may include, but is not limited to, scholarly research, publication or equivalent creative activity, and/or organized University or public service. The amount of time to be spent on these activities, except for public service, shall be agreed to in writing by the faculty member, Department Chair and the Dean. The amount of time to be spent on public service shall be established by the Chair and the Dean, after consultation with the faculty member.

      One (1) PU for each fifteen (15) hours shall be awarded for Authorized University Activity.
5. Each semester schedule of classes, including Summer, will be posted for a minimum of one (1) week to permit faculty to make known to the Chair any preferences. The University will endeavor to post the list at least sixty (60) days prior to the start of the semester. Individual workload assignments shall be made by the department Chair in consultation with the individual faculty member and with the approval of the dean. The chair, with the dean's approval, and after

consulting with the individual faculty member (unless the faculty member is unavailable), shall have the right to change such assignment, for reasons related to the cancelling or adding of classes, enrollment shifts, or other appropriate reasons, provided, however, that if, less than thirty (30) days prior to the start of the semester, a faculty member who has been assigned to teach a particular course is relieved of that assignment and is required to teach another course that he or she has not taught within the previous two (2) years, the affected faculty member shall be awarded one (1) additional PU.

6. To the extent reasonable, the University will make a good faith effort to fund and support research or research-related activities.

7. Faculty shall receive overload compensation for workloads beyond the full assigned workload of sixty four (64) PUs per academic year at the rate of 1/80 of their academic year salary for each PU overload. The University may, with written consent of the faculty member, choose to level his/her workload, without overload compensation, over two (2) consecutive academic years. Faculty shall be free to accept or reject without prejudice any overload assignment in excess of 4.5 PUs per academic year.

8. Faculty shall not be required to maintain more than five (5) office hours per week during the academic year nor more than one (1) office hour per week per course or section during the Summer.

9. Changes in faculty schedules must be announced at least twenty-four (24) hours in advance and cannot be announced on Saturday or Sunday.

10. Limitations

   a. In no case shall a faculty member be required to teach more ~~than twenty-four (24) credit hours~~ sixty four (64) PUs per academic year without receiving overload compensation.

   b. Absent the consent of a faculty member in writing, no assignment shall be made which requires duty (I) beyond an eight hour span in one day; (ii) within a twelve hour span in two consecutive days; or (iii) on more than five (5) days per week.

   c. Absent the consent of the faculty member in writing assignment shall be made which requires more than (I) three different preparations or (ii) more than two (2) sections of a single course in a single semester unless additional preparations or sections are dictated by program requirements, course configuration, student demand or faculty expertise, in which case any such additional preparation(s) or section(s) shall be assigned only to the extent necessary to prevent undue interference with the program in question, and the University will consult with the Faculty Association prior to making such assignments.

[11].[88] Qualified faculty in a Department may request to be assigned one (1) course for which a part-time faculty appointment would have to be made. The University has discretion whether to grant any such request, although it may not deny such

[88] This section and the previous section are both listed as number 10 in the proposed Eighth Master Agreement. The second section B(10) will be referred to as B(11) in this opinion.

request for arbitrary and capricious reasons. The rate of pay shall be based on the part-time salary scale.

C. LRD FACULTY

1. The workload of faculty in LRD shall be consistent with the University's mission and shall consist of activities related to maintaining the library and media services, acquisition and cataloging, research, University service, and public service. The basis for determining the composition of a faculty member's workload shall be University responsibilities and need. Except during periods of approved leaves and holidays, faculty shall be available for assignment to professional activities as necessary to maintain the usual hours of operation of the unit. In determining a faculty member's workload, and in making any changes or adjustments thereto, there shall be no retaliation for the exercise by the faculty member of any rights afforded by this Agreement, personnel policies, or by law, nor shall decisions regarding workload be made on the basis of disciplinary considerations, or for arbitrary and capricious reasons.
2. Appointments for faculty on twelve (12) month contracts shall be from October 1 through September 30 and for faculty on academic year appointments shall be from August 16 through May 15.
3. Normal workload assignments shall be thirty-two (32) PUs per week. One PU is equivalent to one (1) hour of assigned duty.
4. Authorized University Activity – Recognizing the University's commitment to scholarship, research, public service and the professional growth of the faculty, the Chair, in consultation with the faculty member, and with the approval of the director, may substitute Authorized University Activity for all or a portion of the workload. Authorized University Activity may include, but is not limited to, scholarly research, publication or equivalent creative activity, and/or organized University or public service. The amount of time to be spent on these activities, except for public service, shall be agreed to in writing by the faculty member, Department Chair and the Dean. The amount of time to be spent on public service shall be established by the Chair and the Dean, after consultation with the faculty member. One (1) PU for each fifteen (15) hours shall be awarded for Authorized University Activity.
5. Each semester schedule of assignments, including Summer, will be prepared and posted for a minimum of one (1) week, four (4) weeks prior to the beginning of the semester, to permit faculty to make known to the Chair any preferences. Individual workload assignments shall be made by the Department Chair in consultation with the individual faculty member and approved by the Director. The Chair, after consultation with the faculty member (unless the faculty member is unavailable), and with the Director's approval, may modify the work assignments as required by changed circumstances.

6. Faculty will be entitled to overload compensation for working beyond the full assigned workload on the basis of 1/80 of their annual salary per PU. Faculty shall be free to accept or reject without prejudice any overload assignment in excess of 4.5 PUs per academic year.
7. In the absence of written consent of the faculty member, assignments will not be made which require duty (a) beyond an eight (8) hour span in one day; (b) within a twelve (12) hour span on two consecutive days; or (c) for more than five (5) consecutive days in any seven (7) day period.
8. To facilitate the scholarly activities of LRD faculty, a good faith effort shall be made, consistent with the efficient operation of the Division, to schedule assignments such that each faculty member shall have at least one block of at least four (4) consecutive hours each week without assigned duties.

a. University's Position

Article XVII is entirely nonnegotiable. It limits the amount and the type of work faculty members may be assigned. The Board has ruled that such limits are nonnegotiable, stating, "We have ruled that determining the number of duty days concerns a matter that has such high policy implications as to preclude a requirement that DCPS engage in collective bargaining."[89] The Board has held provisions dictating class size to be nonnegotiable.[90] All of the provisions of Article XVII regarding workload and class size "would interfere with the University's right to direct employees; to assign employees; to maintain the efficiency of its operations; to determine the mission of the University, its organization, and the number of employees; to establish a tour of duty for faculty; and to determine the number, types, and grades of positions of employees assigned to the University's organizational unit, work project, or tour of duty."[91]

b. Association's Position

In a decision regarding the parties' Third Master Agreement, *University of the District of Columbia Faculty Association/National Education Association v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982) ("Opinion No. 43"), the Board held that the parties' past negotiations on workload "accord with the statutory letter and intent" of the CMPA and that "[i]t would be a disservice to the collective bargaining process to dictate or confirm by administrative fiat a different resolution."[92] That decision controls this case in which comparable language is proposed.

[89] *Washington Teachers' Union v. DCPS*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 16, PERB Case No. 95-N-01 (1995) (quoted in University's Original Br 19).
[90] University's Original Br. 20 (citing *SEIU, Local 500 and Univ. of D.C.*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 23, PERB Case No. 15-N-01 (2015)).
[91] University's Original Br. 20
[92] *Id*. at 7 (quoted in Union's Original Br. 40.)

c. Analysis

In Opinion No. 43, the Board was presented with the issue of the negotiability of the proposed workload article in the agreement UDC and the Association were negotiating in 1981. The Board observed, "This issue is complicated by the fact that there is no statutory language referring in specific terms to the subject matter involved, and workload has no clearly identifiable meaning."[93] That statement remains true.

However, the Board's analysis of the negotiability of the workload proposal in that case has been superseded by statute, as the Board recognized in *SEIU, Local 500 and University of the District of Columbia* (*SEIU*).[94] After Opinion No. 43 was issued, a new subsection was added to section 1-617.08 stating, "An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section." D.C. Official Code § 1-617.08(a-1). In contrast to that directive, which is now in effect, the Board in Opinion No. 43, carefully explained that it considered the parties' previous agreement to negotiate on workload to be relevant[95] and imprudent to disturb[96] and that the Board "confine[d] its determination on this issue to the area indicated by the parties' 1980 course of action."[97] The analysis and determination in the case are incompatible with section 1-617.08(a-1).

While Opinion No. 43 does not render the entire article negotiable, some of the article is made negotiable by section 1-612.01(a)(2), which provides,

> The basic workweek, hours of work, and tour of duty for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards; provided, that the basic work scheduling for all employees in recognized collective bargaining units to these established tours of duty shall be subject to collective bargaining, and collective bargaining provisions related to scheduling shall take precedence over conflicting provisions of this subchapter.

Sections B(9) and C(5) concern "basic work scheduling" within established tours of duty and are therefore negotiable.

The Board's holdings in *SEIU* establish that certain sections of Article XVII are nonnegotiable. Sections B(2) and C(2) set the length of academic appointments and in so doing infringe the management rights to assign and retain employees in positions within the University

[93] *Id.* at 6.
[94] 62 D.C. Reg. 14633, Slip Op. No. 1539 at 22, PERB Case No. 15-N-01 (2015).
[95] *Id.* at 3.
[96] *Id.* at 7.
[97] *Id.*

per section 1-617.08(a)(2).[98] Section B(4)(c)(3) imposes a limit on class size and thereby interferes with the University's right to maintain the efficiency of its operations per section 1-617.08(a)(4).[99] Section B(11) provides that the University may not deny for arbitrary and capricious reasons a faculty member's request to be assigned a course for which a part-time faculty appointment would have to be made. The Board held in *SEIU* that a proposal that requests for a teaching assistant "shall not be unreasonably denied" impermissibly required the University to hire or assign teaching assistants.[100] In similar fashion, the stipulation that the University may not deny a request for a certain assignment for arbitrary and capricious reasons removes discretion from the University over such requests in contravention of the management right to direct employees. Section B(11) is nonnegotiable.

With a variety of restrictions on assignments to faculty, Section B(10)(b) and (c) infringes management's right to direct employees per section 1-617.08(a)(1).

As noted, no specific statutory language defines workload or makes it either negotiable or nonnegotiable. Given the presumption of negotiability under section 1-617.08(b), the burden lies with the University to establish its contentions with respect to proposals it declares are nonnegotiable.[101] The University's general claim that the entire workload article is nonnegotiable for infringement of a litany of management rights is insufficient to carry that burden. Neither facts nor precedents have been submitted to establish that the remaining sections of Article XVII are nonnegotiable. The Board's holdings that teachers' duty days are nonnegotiable[102] cannot be generalized into a ruling that any limitation on the amount and type of work of employees is nonnegotiable.

With nothing more from the University, we find that the remaining sections of Article XVII are *negotiable*, namely, Sections B(1), B(3), B(4)(a), B(4)(b), B(4)(c)(1), B(4)(c)(2), B(4)(d)-(g), B(10)(a), C(1), and C(3)-(8). Sections B(2), B(4)(c)(3), B(10)(b), B(10)(c), B(11), and C(2) are *nonnegotiable*.

9. XVIII Article Intellectual Property

The Association proposes a new article, Article XVIII, on the subject of intellectual property.

ARTICLE XVIII - INTELLECTUAL PROPERTY

A. GENERAL PRINCIPLES

1. The University supports the development, production, and dissemination of

[98] Slip Op. No. 1539 at 4, proposal 1(A).
[99] *Id.* at 23, proposal 29.
[100] *Id.* at 24, proposal 30.
[101] *Teamsters Local 639 v. D.C. Public Schools*, 38 D.C. Reg. 116, Slip Op. 263 at 13, 21, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990).
[102] *See, e.g., Washington Teachers' Union, Local 6, AFL-CIO and DCPS*, 48 D.C. Reg. 6555, Slip Op. No. 144, PERB Case No. 85-U-28 (1986), *aff'd*, *PERB v. Washington Teachers' Union, Local 6*, 556 A. 2d 206 (D.C. Ct. App.) (1989).

Intellectual Property by members of the University community. The purpose of this Article is to define the relationship between the University and any Bargaining Unit member(s) who, using substantial University resources, creates or develops Intellectual Property. The public interest is best served by creating an intellectual environment where creative efforts and innovations are encouraged and rewarded while still retaining for the University and its learning communities reasonable access to, and use of, the Intellectual Property for which the University has provided substantial assistance.

2. Intellectual Property developed without using substantial University resources is owned and controlled solely by its creator(s). The University has no claim to any financial or other benefit derived from that Intellectual Property.

B. DEFINITIONS

1. **"Substantial University Resources"** means the involvement of the University support that includes the use of University funding directly related to the professional project, or University property or personnel above the level that is traditionally and commonly made available to Bargaining Unit members generally in their academic responsibilities of service, research, and teaching. For example, use of University library and computers is not considered to be substantial University resources.

2. **"Intellectual Property"** means any trademarkable, copyrightable, or patentable matter including, but not limited to textbooks or other books, articles, laboratory manuals, films, monographs, glossaries, bibliographies, study guides, syllabi, tests and work papers, lectures, musical and/or dramatic compositions, unpublished scripts, filmstrips, charts, transparencies, PowerPoint or similar productions, other visual aids, video and audio recordings, computer programs, software, courseware, web pages, live video and audio broadcasts, programmed instructional materials, Distance Education instructional materials, drawings, paintings, sculptures, photographs and other works of art, devices, inventions, techniques, useful processes and discoveries. Intellectual Property shall be deemed created whenever it is first fixed in some tangible form including but not limited to: notes, sketches, drawings, results of research or experiments, computer code or records, or any other tangible embodiment. The following definitions are based on pertinent federal statutes:

(a) **"Copyright"** shall mean that bundle of rights that protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(I) "**Works of authorship**" (including computer programs) include, but are not limited to the following: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints,

diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; software; courseware and architectural works.

(ii) **"Tangible media"** include, but are not limited to, books, periodicals, manuscripts, phonorecordings, films, tapes, and disks.

(b) "**Patent**" means that bundle of rights that protect inventions or discoveries that constitute any new and useful process, machine, device, manufacture, or composition of matter, or any new and useful sports, mutants, hybrids, and new found seedlings, other than a tuber propagated plant or plant found in an uncultivated state.

(c) **"Trademark"** means any word, name, or device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods.

3. The terms "Works for Hire" and "Special Assignment" shall mean Intellectual Property that is part of or is the result of an officially assigned project, other than a member's normal duties.

4. The term "Sponsored Research" applies to Intellectual Property that is produced with the sponsorship of one or more third parties, such as corporations, foundations, or governmental agencies.

C. OWNERSHIP: The Association and University recognize that the ownership (and its associated rights) of Intellectual Property developed or created by a Bargaining Unit member shall be as directed by this policy unless required to be otherwise by applicable law. This ownership includes title to the Intellectual Property and the sole right to negotiate sales and licenses relating to this property.

1. **Patentable Material**: Patentable materials using substantial University resources will be jointly owned by the Creator(s) and the University subject to applicable federal law and the provisions of paragraph D (Commercialization), and paragraph E (Sponsored Research).

2. **Course Materials**: The University assigns all rights of ownership of materials developed by a Bargaining Unit member using University resources, both nonsubstantial, that are used in the teaching of courses to the bargaining unit member. These materials include syllabi, notes, assignments, tests, PowerPoint presentations, and other materials associated with the development and teaching of courses. However, the University may be permitted to use such course related materials for satisfying requests of accreditation agencies for faculty authored syllabi and course descriptions. While a bargaining unit member is employed by the University, any commercial use of course materials, excluding syllabi and course descriptions, will be controlled by the unit member. Use of syllabi and course descriptions shall be controlled jointly by the University and the unit member. Revenues derived from such commercial use will be the property of the unit member. In the event that a bargaining unit member leaves the University, he or she continues to own this property except that the University shall have

irrevocable, non-exclusive, royalty free license to use these materials for the remainder of the semester in which the unit member leaves.

3. **Publishable Materials**: Publishable works (namely scholarly writings, such as books and articles; and creative works, such as poems, paintings and musical compositions) are the property of the creator, who will determine how the works are to be distributed and keep any income that they may produce. This will continue to be the policy of the University except when materials are produced as a work for hire or special assignment.

4. **Works for Hire/Special Assignments**: Traditional academic work that is copyrightable, such as lecture notes and courseware, books and articles, is not treated as special assignments or works made for hire. However, some works created by bargaining unit members do property fall within these categories, allowing the University to claim copyright ownership. The University and an individual member of the bargaining unit may enter into an agreement for the member to produce intellectual property, including copyrightable material, classroom materials or other materials, for the University's purposes and ownership. In such cases, the respective rights of individual bargaining unit members and the University concerning ownership, control, use, and compensation related to a work for hire or special assignment shall be negotiated in advance and reduced to a written agreement signed by both parties and filed with the president of the Association. Bargaining Unit members have the right to consult with a representative of the Association when negotiating such an agreement.

D. COMMERCIALIZATION: In the case that a bargaining unit member develops Intellectual Property using substantial University resources and both the University and the bargaining unit member decide to pursue the commercialization of the Intellectual Property by seeking a patent or otherwise, the royalties and other income resulting from the commercialization of the Intellectual Property will be shared by the University and the creator as described in the Allocation of Resources, section 5 of this subsection. The cost of obtaining a patent and bringing the Intellectual Property to market will be borne by the University.

1. If the Bargaining Unit member develops Intellectual Property using substantial University resources and elects not to participate in pursuing a patent or otherwise, the bargaining unit member shall promptly notify the University in writing of his/her decision and assign all rights of ownership and all resulting revenue to the University.

2. If a Bargaining Unit member develops Intellectual Property using substantial University resources and the University elects not to participate in pursuing a patent or otherwise, the University shall promptly notify the bargaining unit member in writing of its decision and assign all rights of ownership and resulting revenue to the bargaining unit member.

3. A Bargaining Unit member who develops Intellectual Property without using University resources possesses full ownership of the Intellectual Property and will

be entitled to all royalties and income resulting therefrom. In these cases, the cost of obtaining a patent and bringing the Intellectual Property to market will be borne by the bargaining unit member.

E. SPONSORED RESEARCH: When sponsorship for research is sought in the name of the University, it is important that individuals and the University work together in seeking external support for projects. When Intellectual Property is produced as described above, ownership shall be as directed by applicable law and, in the absence thereof, then in accordance with the sponsorship agreement. Distribution of revenue from such property will be in accordance with the sponsorship agreement. Absent terms in the sponsorship agreement pertaining to ownership or distribution of revenue, the provision of this policy shall apply.

F. COOPERATION: The fair and effective implementation of this agreement requires good faith cooperation, collegiality, and candor on the part of both the University and bargaining unit members. The University will advise affected bargaining unit members promptly and fully on all matters regarding Intellectual Property and will not seek to develop or implement any policy regarding Intellectual Property outside this agreement without the consent and approval of the Association. Bargaining unit members shall communicate promptly and fully with the Provost/Vice President for Academic Affairs whenever their research/work involves or may be reasonably seen to produce Intellectual Property covered by this agreement. The University will have six months to notify the unit members of its intention to share in the revenue or forfeit its rights to do so. Under some United States laws and foreign laws, public disclosure, use, or sale of Intellectual Property prior to obtaining statutory protection may prejudice, or destroy, the availability of obtaining certain legal protection. In order to protect the University's, the unit member's, or any licensee's rights in or to Intellectual Property, no contractual or other legally enforceable agreement for the sale, transfer, or use of Intellectual Property may be made by either University or any affected bargaining unit member except in accordance with this agreement. It is also essential that any affected bargaining unit member and the University consult with one another prior to making any Intellectual Property publicly known or available.

G. RESOLUTION OF EMERGING ISSUES AND DISPUTES: An Intellectual Property Rights Committee shall be created and shall be composed of three (3) faculty members appointed by the Association and three (3) University employees appointed by the University. The committee members shall elect a chair each year. At the time of initial appointment or election, each member shall be designated as serving a one or two year term so that the term of at least one Association appointee and one University appointee will expire each year with replacements being appointed or elected each year. After the first appointment, subsequent members shall serve a two-year term, commencing on August 16. The Committee shall monitor and review technological and legislative changes affecting Intellectual Property and shall report to relevant faculty and administrative bodies when such changes affect existing agreements or policies. Disputes over ownership, and its attendant rights, of Intellectual Property shall be heard by the Intellectual Property Rights Committee as follows:

1. The Committee shall make an initial determination concerning competing claims to the Intellectual Property in question. The failure of the Committee to arrive at a determination will automatically initiate an arbitration proceeding as described

below. If either the University or the creator(s) disagree with the determination of the Committee, either party may appeal to binding arbitration in accordance with the provisions of this Agreement.

2. The fees and expenses of the arbitrator shall be shared equally by the University and the Association. However, if the Executive Committee of the Association votes not to fund its share of the fees and expenses of the arbitrator, the creators(s) may continue the arbitration by agreeing to share the fees and expenses equally with the University.

a. University's Position

Article XVIII establishes an entire intellectual property policy. The policy includes definitions, a prohibition on implementation of an intellectual property policy without the Association's consent, and a committee to make decisions on disputes arising under the article. The University does not object to the Association's attempt to negotiate compensation issues related to intellectual property, but "[a]ll other issues, including what might be encompassed within an intellectual property policy, involve a management right consistent with the University's right to maintain the efficiency of its operations, to determine its mission and budget, and to determine the technology of performing the University's work."[103]

The case relied upon by the Association, *University of the District of Columbia Faculty Association/National Education Association v. University of the District of Columbia*, 60 D.C. Reg. 2528, Slip Op. No. 1349, PERB Case No. 07-U-17 (2013) ("Opinion No. 1349"), supports the negotiability of the impact and effects of a proposal made by the University, not by the Association.[104]

b. Association's Position

Article XVIII does not restrict the University in any way except to ensure that the faculty receive credit and pay for their intellectual activity. It does not require or prohibit the introduction of new technology or inhibit the University's ability to define its mission. The proposal affects the University's budget only to the extent it affects the compensation of bargaining unit employees. All forms of compensation are negotiable.[105]

The University has no basis for objecting to a grievance panel or to a requirement that a policy in the collective bargaining agreement cannot be amended without the Association's consent.[106] The University concedes that the Association has a role to play with respect to compensation issues related to intellectual property, but there would be no compensation if faculty members have no rights to their intellectual property.[107]

[103] University's Original Br. 21 (citing D.C. Official Code § 1-617.08(a)(4), 5(A), 5(C).
[104] University's Reply Br. 10.
[105] Union's Original Br. 50, 51.
[106] Union's Reply Br. 9.
[107] Union's Reply Br. 10.

The Association states that in Opinion No. 1349 "PERB first considered the impact of intellectual property and the introduction of new technologies at the University."[108] In that case, the Association alleged that the University unilaterally implemented a program of on-line courses. The Board adopted a pertinent conclusion of the hearing examiner: "While UDC 'must engage in bargaining over the impact' of the online course program it ultimately develops, 'the matter is not yet ripe for determining if a ULP has been committed.' . . . A ULP would be appropriate if UDC refuses to bargain upon request once specific proposals have been submitted."[109]

Here, the University has submitted a policy on intellectual property to the Faculty Senate for consideration.[110] The Association's counter-proposal is now "ripe" for negotiation.[111]

c. Analysis

Opinion No. 1349, cited by the Association, is not on point. It concerned the obligation of the University to engage in impact and effects bargaining on the University's decision to introduce on-line courses. It did not concern an obligation to engage in a decisional bargaining, which the Association is seeking here.[112]

Section 1-617.08(a) does not expressly give management the sole right to develop a policy on intellectual property. Consequently, the University had to show how Article XVIII or certain sections of it interferes with the management rights that are created by section 1-617.08(a). Instead of doing that, the University merely asserts that issues of what an intellectual property policy might encompass "involve a management right consistent with" a list of three management rights. As was the case with the workload article, this vague and conclusory assertion does not establish that the proposed intellectual property article is nonnegotiable.

With nothing more from the University, we find that Article XVIII is *negotiable*.

10. Article XIX Annual Notice to Faculty Members

Article XIX is the compensation article of the proposed agreement. Article XIX(Q) as proposed by the Association is as follows:

Q. ANNUAL NOTICE TO FACULTY MEMBERS
Each faculty member shall be issued an individual notice on or before May 1 of each year for the following academic year. The notice shall include the date of issuance and the faculty member's name, college and department, rank, salary and whether the faculty member has a continuing

[108] Union's Original Br. 50.
[109] *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.,* 60 D.C. Reg. 2528, Slip Op. No. 1349 at 3, PERB Case No. 07-U-17 (2013) (quoting hearing examiner's report).
[110] Union's Original Br. 51; E-mail from Jon Axelrod, counsel for the Union, to PERB (Feb. 9, 2017).
[111] Union's Original Br. 51.
[112] Further, the Board did not adopt the hearing examiner's conclusion that the matter was not ripe. It agreed with the exception filed in opposition to that conclusion. *Univ. of D.C.*, Slip Op. No. 1349 at 5.

contract. The notice shall reference this Agreement and shall be signed by an appropriate University Official. If the University does not send s [*sic*] notice by May 1, the faculty member will continue employment for the next academic year.

a. University's Position

This proposal has two effects that render it nonnegotiable. First, it mandates continuation of an employment contract.

> The University has the exclusive right to hire, assign, and retain employees, and the exclusive right to suspend, demote, discharge, or take other disciplinary action against employees for cause. D.C. Code § 1-617.08(a)(2). In addition, the University has the sole right to relieve employees of duty because of lack of work or other legitimate reasons. D.C. Code § 1-617.08(a)(3).[113]

The University should not be prevented from relieving faculty members from duty if the arbitrary deadline of May 1 is not met.[114]

Second, the proposal has wider effects beyond UDC's contractual relationship with individual faculty members. It impacts the number of faculty UDC employs in each department, college, and academic rank.

> [T]he Union's proposal would interfere with the efficiency of the University's operations, as well as the right of the University to determine its mission, organization, the number of employees and to establish the tour of duty, and the right of the University to determine the number, types and grades of positions of employees assigned to the University's organizational unit, work project or tour of duty. D.C. Code § 1-617.08(a)(4),(5)(A)-(B).[115]

These two effects distinguish this proposal from the one at issue in *Fraternal Order of Police/Metropolitan Police Department Labor Committee and Metropolitan Police Department*,[116] cited by the Association, which involved a limited remedy for a specific grievance.

In its reply brief, the University denies that it objects only to the one-year contract extension and not to the May 1 date. The University refers to its original brief in which it stated that "the University should not be prohibited from exercising its management rights if a

[113] University's Original Br. 21.
[114] University's Original Br. 21-22 (citing *SEIU, Local 500 and Univ. of D.C.*, 62 D.C. Reg. 14633, Slip Op. No. 1539 at 3-4, 9, PERB Case No. 15-N-01 (2015)).
[115] University's Original Br. 22.
[116] 54 D.C. Reg. 2895, Slip Op. No. 842, PERB Case No. 04-N-03 (2006).

decision regarding the retention or assignment of an employee cannot be made by the arbitrary May 1 deadline."[117]

b. Association's Position

The University does not assert that the May 1 requirement is nonnegotiable. It objects only to the addition of a consequence for missing that deadline.[118] The Board has long held that parties can negotiate a provision specifying the consequences for missing a deadline. In *F.O.P./Metropolitan Police Department Labor Committee and Metropolitan Police Department*,[119] the Board found negotiable a proposal mandating the remedy for an agency's failure to adhere to a time limit in the collective bargaining agreement. The deadline of May 1 is no more arbitrary than other time limits the contract provides for grievances and evaluations.

SEIU,[120] relied upon by the University, is distinguishable because it concerned adjunct faculty, who have no expectation of employment from semester to semester. In contrast, full-time non-probationary faculty members, whom the Association represents, "enjoy a presumption of employment from year to year"[121] "Most University faculty are on a nine month contract, covering the academic year from August 16 through May 16. Non-probationary employees have a reasonable expectancy that they will return the next academic year."[122]

The proposal does not impede terminations for cause or reductions in force. The proposal "merely creates a rebuttable presumption of continued employment."[123]

c. Analysis

Although the University characterizes the May 1 deadline as arbitrary, it has not objected to the negotiability of that deadline or to any of the existing language of Article XIX(Q). The University's declaration of nonnegotiability made the University's position quite clear by entitling the section on this subject as "Article XIX Section Q (new language proposed by Union)" and by stating, "The Union's proposed language interferes with the University's right to assign and retain employees" and with other management rights.[124] The heading and the opening sentence in the University's original brief are similar.[125]

The Association's Negotiability Appeal, as one would expect, appeals only from what the University declared nonnegotiable. Part 10 of the Negotiability Appeal uses the same

[117] University's Reply Br. 11 (quoting University's Original Br. 21-22).
[118] Union's Original Br. 52.
[119] 54 D.C. Reg. 2895, Slip Op. No. 842, PERB Case No. 04-N-03 (2006).
[120] 62 D.C. Reg. 14633, Slip Op. No. 1539, PERB Case No. 15-N-01 (2015).
[121] Union's Reply Br. 10.
[122] Negotiability Appeal 14; Union's Original Br. 52.
[123] Union's Original Br. 53.
[124] Declaration of Nonnegotiability 3.
[125] University's Original Br. 21.

heading as the declaration of nonnegotiability and accurately states, "The University does not assert that the May requirement is non-negotiable."[126] The University's Answer did not deny that statement.

The subjects of a negotiability appeal are determined by the petitioner, not the respondent.[127] Accordingly, the existing language of Section Q is not before the Board. Only the Association's proposed addition is.

In that regard, there is no general principle that proposals establishing consequences for breach of a contractual deadline are negotiable, and the case cited by the Association on this point, *F.O.P./Metropolitan Police Department Labor Committee and Metropolitan Police Department*,[128] does not recognize one. That case held that the consequence proposed for failure to timely provide an employee with a written decision on a disciplinary matter was negotiable because procedural matters concerning discipline are negotiable.[129]

In *SEIU*, the Board held that a proposal requiring reappointment of part-time faculty under certain circumstances was nonnegotiable.[130] In seeking to distinguish *SEIU*, the Association says that part-time faculty have no expectation of continued employment while full-time, non-probationary faculty members "enjoy a presumption of continued employment from year to year."[131] Yet the Association also states that its proposal *creates* a presumption of continued employment.[132]

Whether full-time faculty members currently have a presumption of continued employment or would gain one through the proposal, the effect of the proposal would be, as the Association stated, to "give a full-time faculty member a contract for the next academic year"[133] if the member did not receive a timely notice containing the information that Section Q states the notice "shall include." This compulsory retention would infringe management's sole rights to retain employees per section 1-617.08(a)(2) and "[t]o relieve employees of duties because of lack of work or other legitimate reasons" per section 1-617.08(a)(3).

The new language proposed by the Association for Article XIX(Q) is *nonnegotiable*.

11. Article XX(I)(2) Sabbatical Leave

Article XX, Section I(2) as proposed by the Association and amended in its original brief is as follows:

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[126] Negotiability Appeal 14.
[127] *F.O.P./Protective Servs. Police Dep't Labor Comm. and Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at 2, PERB Case No. 15-N-04 (2015).
[128] 54 D.C. Reg. 2895, Slip Op. No. 842, PERB Case No. 04-N-03 (2006).
[129] *Id.* at 5.
[130] 62 D.C. Reg. 14633, Slip Op. No. 1539 at 9, PERB Case No. 15-N-01 (2015).
[131] Union's Reply Br. 10.
[132] Union's Original Br. 53.
[133] Union's Reply Br. 11.

ARTICLE XX – PROCEDURES FOR LEAVES

I. SABBATICAL LEAVE

2. Applications for sabbatical must be filed with the department chair no later than the first Monday in November prior to the academic year during which the leave would be taken. An application approved by the University Sabbatical Leave Committee cannot be denied by the Administration for arbitrary and capricious reasons.

a. University's Position

The last sentence in this paragraph interferes with the University's right to direct its employees; to retain employees; to maintain the efficiency of its operations; to determine the University's budget, its organization, and the number, types, and grades of positions of employees assigned to the University's organizational units, work projects or tours of duty pursuant to D.C. Official Code § 1-617.08(a)(1), (2), (3), (4), (5)(A) and (B).

b. Association's Position

The Association asserts that it disagrees with the University's position.[134]

c. Analysis

The Association's proposal in its Negotiability Appeal stated: "An application by the Sabbatical Leave Committee cannot be denied by the Administration."[135] The University contends that this provision proposes the "establishment of a sabbatical committee which would have absolute and total authority for the granting of faculty sabbatical requests."[136] The Association amended the proposal to add "for arbitrary and capricious reasons" in its original brief.[137] The University contends that the amended phrase "does not cure the deficiencies with the Association's proposal since the Association's new language will still interfere with those several management rights."[138] The Board agrees with the University's contention and finds that this proposal is nonnegotiable, as it interferes with the University's right to direct its employees. Under D.C. Official Code § 1-617.08(a)(1), the CMPA reserves the right to direct employees solely to management, while subsection (a)(2) grants management the sole right "[t]o hire, promote, transfer, assign, and retain employees in positions within the agency." As amended, the proposal at issue would prevent the University from overturning an approval by the Sabbatical Leave Committee for "arbitrary or capricious" reasons. The amended proposal establishes an

[134] Negotiability Appeal 15.
[135] Negotiability Appeal 15.
[136] University's Reply Br. 2.
[137] Union's Original Br. 5.
[138] University's Reply Br. 2.

"arbitrary and capricious" standard that may still interfere with the University's right to grant or deny sabbatical leave by establishing a standard where none exists.

The new language proposed by the Association for Article XX(I)(2) is *nonnegotiable*.

12. Article XXI Transfers

Article XXI as proposed by the Association is as follows:

ARTICLE XXI – TRANSFERS

A. Definition: As discussed in this Article, a transfer shall mean the reassignment of a faculty member from a full-time faculty position in one department to a full-time faculty position in another department. All transfers shall be documented on a Form 52 and signed by the President.

B. *Voluntary Transfers*:

1. Faculty members displaced by the elimination of jobs for any reason shall be permitted [to] exercise their seniority rights to transfer to any other vacancy for which they are qualified. An employee transferred as a result of the application of this provision may be given reasonable training needed to assume the duties of the job in which he is transferred.
2. Employees desiring to transfer to other positions shall submit an application in writing to their immediate supervisor for transmittal through supervisory channels with a copy to the division director. The application shal1 state the reason for the requested transfer. Employees requesting transfers for reasons other than the elimination of jobs shall be transferred to vacancies for which they qualify on the basis of seniority; provided that such transfer shall not adversely affect the operation of the work site from which the employee is leaving. The University shall respond to the employee's transfer request within twenty (20) work days.
3. If a transfer is granted in response to an employee's request, such employee shall be ineligible to request another transfer within a one-year period.

C. Involuntary Transfers:

1. When the needs of the University necessitate the transfer of a faculty member, the following factors shall be considered in making the decision: (1) the individual's qualifications; (2) recommendations of involved departments; and (3) seniority. However, seniority shall be applied in the following manner: In case the transfer is made at the request of faculty members, more senior qualified persons will be given priority over less senior qualified persons. If the transfer is involuntary, faculty with less seniority shall be transferred before those with more seniority provided the faculty with less seniority have the required qualifications.

2. Before an involuntary transfer is initiated, the University shall inform the University faculty of the need and shall invite volunteers for the position. Faculty who volunteer shall submit the request in writing to the Provost and Vice President for Academic Affairs with copies to the involved departments and dean(s) and the Association. Qualified volunteers shall be considered before initiating involuntary transfers. Involuntary transfers shall be in reverse seniority order (i.e., junior faculty first).
3. In the case of an involuntary transfer, the affected faculty member may appeal the proposed action to the President of the University. The President shall meet and discuss with the faculty member and the Association representative before any decision is made.
4. A faculty member may grieve an involuntary transfer.

a. University's Position

This article interferes with the University's right to direct employees, to promote, transfer, assign and retain employees, and to suspend, demote, discharge or take other disciplinary action against employees for cause; to maintain the efficiency of the University's operations; to determine the mission of the University, its organization, the number of employees, and to establish the tour of duty; and to determine the number, types, and grades of positions of employees assigned to the University's organizational unit, work project, or tour of duty pursuant to D.C. Official Code § 1-617.08(a)(1), (2), (4), (5)(A), and (5)(B).

b. Association's Position

Citing to *Teamsters Local 639 v. D.C. Public Schools*,[139] the Association states that "PERB has held that the proposed Section B is negotiable."[140] Without citation, the Association also states that "PERB has also held that the right to grieve is negotiable."[141]

c. Analysis

The University does not assert that the definition of transfer in Section A is nonnegotiable. It asserts that transfer as defined in Section A is a management right.[142] The Board has held that management's decision to exercise its sole right to transfer employees is not compromised when the proposal is limited to procedures for implementing transfers, including those which are voluntary, and for handling the impacts and effects of such transfers.[143] In *Teamsters Local 639 v. D.C. Public Schools*, the Board held a provision nearly identical to Section B, Parts 1, 2, and 3 to be negotiable, finding that the proposals were limited to transfer

[139] 38 D.C. Reg. 116, Slip Op. 263, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990).
[140] Union's Original Br. 55.
[141] *Id*.
[142] University's Original Br. 23.
[143] *E.g., Washington Teachers' Union, Local 6 v. DCPS*, Slip Op. 450 at 5, PERB Case No. 95-N-01; *Teamsters Local 639 v. DCPS*, 38 D.C. Reg. 116, Slip Op. 263, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990).

procedures and accommodations for those employees transferred.[144] The Board concludes that the Association's proposals regarding voluntary transfer procedures are distinguishable from the University's ultimate decision to transfer employees, matters reserved for the University.

However, the Association's proposal in Section C(2) is similar in nature to a proposal that the Board has found nonnegotiable. In *Teamsters Local 639*, the Board held that the provision placed absolute limitations on management's sole right to transfer that were incompatible with D.C. Official Code § 1-618.8(a)(2).[145] While the proposal's limitations are not absolute, the decision to transfer employees is reserved for management and the proposal places limitations on that managerial decision. With respect to C(4), the Board finds that this provision is also nonnegotiable for the same reasons that C(2) is outside the scope of bargaining. Proposing that the "faculty member may grieve an involuntary transfer" directly contravenes the University's right under section 1-618.8(a)(2).

Sections C(2) and C(4) are *nonnegotiable*. Sections A, B, C(1), and C(3) are *negotiable*.

13. Article XXVI Support Systems

In pertinent part, Article XXVI as proposed by the Association is as follows:

ARTICLE XXVI – SUPPORT SYSTEMS

D. The University and the Association will annually assess the quality of teaching facilities, the need for repairs, and devise a plan for renovation. The Association may notify the President and Board of Trustees of deficiencies in the facilities and plans to correct those deficiencies.

a. University's Position

The Association's new proposed language interferes with the University's right to direct its employees, to maintain the efficiency of the University, and to determine the University's mission, its budget, organization and the technology employed in the performance of its work pursuant to D.C. Official Code § 1-617.08(a)(1), (4), (5)(A) and (B).

b. Association's Position

The Association's proposal does not require any action by the University, except discussion concerning maintenance of the physical plant where the bargaining unit members are employed.[146] PERB has found proposals negotiable where they require discussion, but not action by an employer.[147]

[144] *Teamsters Local 639,* Slip Op. 263 at 7.
[145] *Id.*
[146] Union's Original Br. 56.
[147] *Id*.

c. Analysis

The Board finds that these proposals are negotiable. The proposals do not direct employees or determine the mission, budget, organization, or technology of the University. Rather, they require the parties to review the condition of the facilities and formulate a plan for renovation. This matter is a negotiable term and condition of employment not proscribed by the CMPA. Further, these proposals do not require the University to implement any of the repairs or address any of the deficiencies in the facilities. In *Teamsters Local Unions No. 639 and 730 v. D.C. Public Schools*,[148] the Board found a proposal to be negotiable because it "did not require an action within management's prerogative, i.e., assigning workers."[149] This determination was based on an interpretation that the proposal required "only that DCPS afford such employees the opportunity . . . if such an opportunity arises." Consistent with this interpretation, the Board finds that the University's management rights are not infringed by this proposal, which merely facilitates discussion between the parties and does not compel action by management.

Article XXVI(D) is *negotiable*.

14. Article XXX Faculty Handbook

In pertinent part, Article XXX as proposed by the Association and amended in its original brief is as follows:

ARTICLE XXX – NEW FACULTY

The University agrees to make available to new faculty the following information:

. . .

2. Faculty Handbook. <u>The Faculty Association and the University shall jointly develop all portions of the Handbook except that those issues determined to be nonnegotiable by the Public Employee Relations Board. Issues deemed non-negotiable shall be developed solely by the University. The Handbook shall be updated every three years and shall also be placed on the University web site. The Handbook shall also be distributed to existing faculty.</u>

a. University's Position

The Association has revised its proposal requiring faculty input into a faculty handbook by modifying its original position to exclude from the joint development of the handbook "those issues determined to be non-negotiable by the [PERB]."[150] Notwithstanding the Association's

[148] *Teamsters Local Unions No. 639 & 730 v. DCPS, a/w Int'l Bhd. of Teamsters*, 43 D.C Reg. 3545, Slip Op. No. 377, PERB Case No. 94-N-02 (1994).
[149] *Id.* at 16, (*citing DCPS and Teamsters Local Unions No. 639 and 730, a/w Int'l Bhd. of Teamsters*, 38 D.C. Reg. 2483, Slip Op. 273 at 16, PERB Case No. 91-N-01 (1991); *see also* D.C. Official Code § 1-618(a)).
[150] University's Reply Br. 1. (citing Union's Original Br. 3)

recognition that it lacks authority to determine matters vested in the sole discretion of the University pursuant to the management rights statute, it fails to explicitly state how such matters are identified.[151] Presumably, under the Association's revised proposal, the University would be able to exclude an issue in the same manner as it would do regarding a subject raised by the Association in bargaining–merely by sending a letter to the Association–thereby requiring the Association to petition the PERB for a ruling.[152] Yet, the revised proposal does not set forth a procedure to remove a subject from any handbook discussions in the event that the subject being discussed is non-negotiable.[153] Due to this ambiguity, the Association's proposal, even as revised, is non-negotiable.[154]

The requirement that the handbook be updated every three years would interfere with the efficiency of the University and its mission, organization and budget. The requirements on how the handbook is distributed would interfere with the technology of performing the University's work.[155]

b. Association's Position

As amended, the entire Article XXX is negotiable.[156] It merely identifies information which must be distributed to new (and current) employees. It does not infringe upon management rights.

c. Analysis

The absence of a procedure for identifying issues determined by the Board to be nonnegotiable indicates that further negotiation may be warranted, not that the proposal is nonnegotiable.

The requirement that the handbook be available on the University's website interferes with management's right per D.C. Official Code § 1-617.08(a)(5)(C) to determine "[t]he technology of performing the agency's work." The Association's provisions impose upon the University right to determine how it uses its technological resources.

The third sentence of Article XXX(2) is *nonnegotiable*. The remainder of Article XXX(2) is *negotiable*.

[151] *Id*.
[152] *Id*. at 2.
[153] *Id*.
[154] *Id*.
[155] University's Original Br. 30-31.
[156] Union's Original Br. at 3.

ORDER

IT IS HEREBY ORDERED THAT:

1. Article VII, Sections A(1), A (2), are nonnegotiable.
2. Article VII, Sections A(3), G, and L (first sentence) are negotiable.
3. Article XI, Section A(3) is nonnegotiable.
4. Article XI, Section A(5) is negotiable.
5. Article XIV, Sections A(1)-(5), B(1) third sentence, C, D(1), G(1), G(3), and G(5) are nonnegotiable.
6. Article XIV, Sections B(1) except the third sentence, B(2), D(2), E, F, G(2), G(4), G(6), H, I, J, K, and L are negotiable.
7. Article XV, Sections A(2), A(6), A(7), B(2)(a), B(3), and B(4) are nonnegotiable.
8. Article XV, Sections A(1), A(3)-(5), A(8)-(10), B(1), B(2)(b), and C are negotiable.
9. Article XVI, Section A(5) is nonnegotiable.
10. Article XVI, Sections A(1)-(4) and B are negotiable.
11. Article XVII, Sections B(2), B(4)(c)(3), B(10)(b), B(10)(c), B(11), and C(2) are nonnegotiable.
12. Article XVII, Sections B(1), B(3), B(4)(a), B(4)(b), B(4)(c)(1), B(4)(c)(2), B(4)(d)-(g), B(10)(a), C(1), and C(3)-(8) are negotiable.
13. Article XVIII is negotiable.
14. The proposed addition to Article XIX, Section Q is nonnegotiable.
15. The proposed addition to Article XX, Section I(2) is nonnegotiable.
16. Article XXI, Sections C(2) and C(4) are nonnegotiable.
17. Article XXI, Sections A, B, C(1), and C(3) are negotiable.
18. Article XXVI, Section D is negotiable.
19. The third sentence of Article XXX(2) is nonnegotiable. The remainder of Article XXX(2) is negotiable.
20. 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 Douglas Warshof.

Washington, D.C.

March 23, 2017

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-N-01 was sent by File & ServeXpress to the following parties on this the 4th day of April, 2017.

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/s/ Sheryl Harrington
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department,	
Petitioner,	PERB Case No. 16-A-06
v.	Opinion No. 1618
Fraternal Order of Police/Metropolitan Police Department Labor Committee	
Respondent.	

DECISION AND ORDER

I. Introduction

On February 16, 2016, the District of Columbia Metropolitan Police Department ("MPD") filed an Arbitration Review Request ("Request") in this matter, seeking review of the supplemental arbitration award of attorneys' fees to the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP"). MPD contended that the arbitrator exceeded his jurisdiction by awarding attorneys' fees. The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, and concludes that the Arbitrator did not exceed his jurisdiction. Therefore, Petitioner's Request is denied.

II. Background

MPD accused Officer Christopher N. Johnson of stealing evidence and suspended him for 10 days.[1] Officer Johnson challenged the suspension. On October 29, 2015, the Arbitrator held that MPD failed to initiate disciplinary action against Officer Johnson within 90 days of its knowledge of the alleged misconduct, as required by the parties' Collective Bargaining Agreement (CBA).[2] The Arbitrator ordered the agency to rescind Officer Johnson's suspension, expunge it from his record, make him whole for wages, benefits and seniority lost as a result of MPD's actions and amend his personnel records to reflect the rescission.[3]

[1] Merits Award at 13.
[2] *Id*. at 25.
[3] *Id.* at 28.

The Arbitrator retained jurisdiction to resolve a dispute between the parties over FOP's Petition for Attorneys' Fees and Expenses.[4] On July 14, 2016, the Supplemental Award granted FOP attorneys' fees and costs in the amount of $15,680.65.

III. Arbitrator's Supplemental Award

The Arbitrator stated in the Supplemental Award that it was undisputed that he had wide discretion to fashion a remedy so long as it was not inconsistent with the parties' CBA.[5] The Arbitrator stated that attorneys' fees were an appropriate remedy and consistent with the CBA. Furthermore, he stated that case law and arbitral precedent supported such an award.[6]

The Arbitrator rejected MPD's argument that attorneys' fees violated the plain language of Article 19 of the CBA.[7] According to the Arbitrator, Article 19 provides that the parties have a right to legal assistance at the hearing at their own expense and, therefore, it does not allow FOP the right to attorneys' fees in all grievance arbitrations. The Arbitrator stated that by incorporating the payment of attorneys' fees into a remedy only under specified and appropriate circumstances, it was not a modification of the CBA.[8] The Arbitrator drew similarities between this case and a previous PERB Decision and Order, name of case, PERB Case No. 11-A-11, Slip Op. No. 1382, which stated that an arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' CBA.[9]

The Arbitrator stated that the Back Pay Act (BPA) is applicable to the parties and also supported an award of attorneys' fees to FOP. [10] The Arbitrator looked to the Merit Systems Protection Board's ("MSPB") for the standard under BPA §7701(g), to justify an award of attorneys' fees. Such fees, he wrote, must be: (1) incurred, (2) the employee must be the prevailing party, (3) the award of attorneys' fees must be in the interest of justice and (4) the attorneys' fees must be reasonable.[11] The Arbitrator concluded that FOP is entitled to attorneys' fees and costs in the amount of $15,680.65.

IV. Discussion

MPD seeks review of the Supplemental Award on the grounds that the Arbitrator exceeded his jurisdiction in "finding that attorney's fees were authorized under the parties' labor agreement."[12] As it argued before the Arbitrator, MPD asserts that Article 19, Part E, § 5(3) of the parties' collective bargaining agreement expressly provides that the legal costs are to be

[4] Supplemental Award at 1.
[5] *Id.* at 9.
[6] *Id.*
[7] *Id.* at 10.
[8] *Id*.
[9] *Id*.
[10] *Id.* at 12.
[11] *Id.* at 13-14.
[12] Request at 2.

borne by the parties at their own expense.[13] MPD also notes that the language of Article 19, Part E, § 5(3) stands in contrast to Article 19, Part E, § 5(7) of the collective bargaining agreement, which states that the arbitrator's fee and expense "shall be borne by the losing party."[14] MPD argues that the contrast in these two sections shows that the language chosen by the parties in § 5(3) was "express and deliberate," and demonstrates that the parties intended for the each side to bear their own legal expenses at arbitration.[15] MPD contends that since there is no authority for the Arbitrator to award attorneys' fees, the Supplemental Award conflicts with Article 19, Part E § 5(4), which prohibits an arbitrator from issuing an award that would modify, subtract from, or add to the collective bargaining agreement.[16]

The Board has repeatedly held that an arbitrator does not exceed his or her authority by exercising his equitable power to formulate a remedy unless the collective bargaining agreement expressly restricts his or her equitable power.[17] A collective bargaining agreement's prohibition against awards that add to, subtract from, or modify the collective bargaining agreement does not expressly limit the arbitrator's equitable power.[18] Further, the Board has held that Article 19, Part E, § 5 (7) of the parties' collective bargaining agreement, requiring the losing party to pay the arbitrator's fees, does not preclude the Arbitrator from awarding attorney's fees and that MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable powers.[19]

Contrary to MPD's allegations, the Board finds that the Arbitrator did not exceed his authority by issuing a remedy that awarded attorneys' fees to the Union.[20] The language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Arbitrator did not exceed his authority and the Board will not overturn the Award on this ground. For the Board to overturn an arbitrator's award as in excess of the arbitrator's authority, MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable power.[21] MPD's attempt to parse the language of Article 19, Part E does

[13]Request at 4. Article 19, Part E, § 5(3) states, in pertinent part: "All parties shall have the right at their own expense to legal and/or stenographic assistance at this hearing."
[14] Request at 4. Article 19, Part E, § 5(7) states, in pertinent part: "The fee and expense of the arbitrator shall be borne by the losing party, which shall be determined by the Arbitrator."
[15] *Id.* at 4-5.
[16] Request at 5. Article 19, Part E, § 5(4) states, in pertinent part: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision…"
[17] *See Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6787, Slip Op. No. 1133 at p. 8, PERB Case No. 09-A-12 (2011); *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).
[18] *Id.*
[19] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Committee*, D.C. Reg. 7193, Slip Op. No. 1382 at 3, PERB Case No. 11-A-11 (2013).
[20] In PERB Case Nos. 16-A-15 and 16-A-17 the Board likewise determined that the language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Board found the arbitrators did not exceed their authority in awarding attorneys' fees.
[21] *Metro. Police Dep't v. Fraternal Order of Police*, Slip Op. 1382 at 3, PERB Case No 11-A-11 (citing *Metro. Police Dep't, supra*, Slip Op. 1133 at p. 8).

not provide the Board with such a limitation.[22] Instead, MPD asks the Board to accept its interpretation of the collective bargaining agreement over that of the Arbitrator.[23]

The Board has long held that it will not overturn an arbitration award based simply upon the petitioning party's disagreement with the arbitrator's findings.[24] It is well settled that "[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the … evidentiary findings and conclusions upon which his decision is based."[25] Therefore, MPD's disagreement with the Arbitrator's award of attorneys' fees does not present a statutory ground for review.

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority. Accordingly, MPD's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

March 23, 2017

Washington, D.C.

[22] *Id*.
[23] *Id*.
[24] *Fraternal Order of Police/Dep't of Corrections Labor Comm. v. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).
[25] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at , PERB Case No. 00-A-04 (2000); *Metro. Police Dep't and Fraternal Order of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004); *Univ. D.C. Faculty Ass'n/NEA and Univ. D.C.*, 39 D.C. Reg. 9628 at 9629, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-06, Op. No. 1618 was sent by File and ServeXpress to the following parties on this the 10th day of April, 2017.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department,	
Petitioner,	PERB Case No. 16-A-17
	Opinion No. 1619
v.	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Introduction

On August 04, 2016, the District of Columbia Metropolitan Police Department ("MPD") filed an Arbitration Review Request ("Request") seeking review of the supplemental arbitration award ("Award") to the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") of attorneys' fees and expenses. The issue before the Board is whether the Arbitrator exceeded his authority in his supplemental award. The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, and concludes that the Arbitrator did not exceed his jurisdiction. Therefore, Petitioner's Request is denied.

II. Statement of Facts

On April 3, 2016, the Arbitrator found in his Merits Award that MPD failed to prove by a preponderance of the evidence that the 18-day suspension of Officer Durham was for cause.[1] The Arbitrator retained jurisdiction to resolve the dispute between FOP's Petition for Attorneys' Fees and Expenses and MPD's Agency's Opposition to Fee Petition.[2] The Supplemental Award was issued on July 14, 2016, finding that FOP was entitled to attorneys' fees.[3]

III. Arbitrator's Supplemental Award

[1] Request at 2.
[2] *Id*.
[3] *Id.*

The Arbitrator found that Article 19, Part E of the parties' Collective Bargaining Agreement (CBA) does not prevent FOP from seeking and recovering attorneys' fees.[4] According to the Arbitrator, Article 19, Part E, § 5 states that both parties have the right to legal assistance at hearings at their own expense, but this language does not limit the equitable powers of the Arbitrator to fashion an appropriate remedy.[5] Furthermore, the Arbitrator stated that it does not exceed the equitable power of the Arbitrator to fashion a remedy, unless expressly restricted by the CBA, and an arbitrator does not modify the CBA by awarding attorneys' fees as a remedy.[6]

According to the Arbitrator, an award of attorneys' fees is not constrained by the CBA but is subject to analysis under Back Pay Act (BPA) statutory standards established under 5 USC § 7701 (g).[7] The Arbitrator looked to the Merit Systems Protection Board's (MSBP) long-standing precedent to set out the requirements under § 7701(g)(1) that attorneys' fees must be (1) incurred, (2) the employee must be the prevailing party, (3) the award of attorneys' fees must be in the interest of justice and (4) the attorneys' fees must be reasonable.[8] Using this standard, the Arbitrator granted FOP's Petition for Attorneys' Fees and Expenses in part and denied it in part. The Arbitrator found that MPD must pay the FOP's attorneys' fees and expenses except the charges for scheduling, rescheduling and then canceling stenographic assistance, which the Arbitrator found to be unreasonable.[9]

IV. Discussion

MPD seeks review of the Supplemental Award on the grounds that the Arbitrator exceeded his jurisdiction in "finding that attorney's fees were authorized under the parties' labor agreement."[10] As it argued before the Arbitrator, MPD asserts that Article 19, Part E, § 5(3) of the parties' collective bargaining agreement expressly provides that the legal costs are to be borne by the parties at their own expense.[11] MPD also notes that the language of Article 19, Part E, § 5(3) stands in contrast to Article 19, Part E, § 5(7) of the collective bargaining agreement, which states that the arbitrator's fee and expense "shall be borne by the losing party."[12] MPD argues that the contrast in these two sections shows that the language chosen by the parties in § 5(3) was "express and deliberate," and demonstrates that the parties intended for the each side to bear their own legal expenses at arbitration.[13] MPD contends that since there is no authority for the Arbitrator to award attorneys' fees, the Supplemental Award conflicts with Article 19, Part E

[4] Supplemental Award at 9.
[5] *Id*.
[6] *Id*.
[7] *Id.*
[8] *Id* at 9-10.
[9] *Id* at 12.
[10] Request at 2.
[11] Request at 3. Article 19, Part E, § 5(3) states, in pertinent part: "All parties shall have the right at their own expense to legal and/or stenographic assistance at this hearing."
[12] Request at 4. Article 19, Part E, § 5(7) states, in pertinent part: "The fee and expense of the arbitrator shall be borne by the losing party, which shall be determined by the Arbitrator."
[13] *Id.* at 4.

§ 5(4), which prohibits an arbitrator from issuing an award that would modify, subtract from, or add to the collective bargaining agreement.[14]

The Board has repeatedly held that an arbitrator does not exceed his or her authority by exercising equitable power to formulate a remedy unless the collective bargaining agreement expressly restricts his or her equitable power.[15] A collective bargaining agreement's prohibition against awards that add to, subtract from, or modify the collective bargaining agreement does not expressly limit the arbitrator's equitable power.[16] Further, the Board has held that Article 19, Part E, § 5 (7) of the parties' collective bargaining agreement does not prevent the Arbitrator from awarding attorneys' fees a[17]

Contrary to MPD's allegations, the Board finds that the Arbitrator did not exceed his authority by issuing a remedy that awarded attorneys' fees to the Union.[18] The language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Arbitrator did not exceed his authority and the Board will not overturn the Award on this ground. For the Board to overturn an arbitrator's award as in excess of the arbitrator's authority, MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable power.[19] MPD's attempt to parse the language of Article 19, Part E does not provide the Board with such a limitation.[20] Instead, MPD asks the Board to accept its interpretation of the collective bargaining agreement over that of the Arbitrator.[21]

The Board has long held that it will not overturn an arbitration award based simply upon the petitioning party's disagreement with the arbitrator's findings.[22] It is well settled that "[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the … evidentiary findings and conclusions upon which his decision is based."[23] Therefore, MPD's disagreement with the Arbitrator's award of attorneys' fees does not present a statutory ground for review.

---

[14] Request at 4-5. Article 19, Part E, § 5(4) states, in pertinent part: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision…"
[15] *See Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6787, Slip Op. No. 1133 at p. 8, PERB Case No. 09-A-12 (2011); *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).
[16] *Id.*
[17] *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, Slip Op. No. 1382, PERB Case No. 11-A-11 (2013).
[18] In PERB Case Nos. 16-A-06 and 16-A-15 the Board likewise determined that the language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Board found the arbitrators did not exceed their authority in awarding attorneys' fees.
[19] *Metro. Police Dep't v. FOP*, Slip Op. 1382 at 3, PERB Case No 11-A-11 (citing *Metro. Police Dep't, supra,*, Slip Op. 1133 at p. 8).
[20] *Id*.
[21] *Id*.
[22] *Fraternal Order of Police/Dep't of Corrections Labor Comm. v. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).
[23] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at , PERB Case No. 00-A-04 (2000); *Metro. Police Dep't and Fraternal Order of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004);

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority. Accordingly, MPD's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied

2. Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

March 23, 2017

Washington, D.C.

Univ. D.C. Faculty Ass'n/NEA and Univ. D.C., 39 D.C. Reg. 9628 at 9629, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-17, Op. No. 1619 was sent by File and ServeXpress to the following parties on this the 10th day of April, 2017.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department	
Complainant,	PERB Case No. 16-A-15
and	Opinion No. 1620
Fraternal Order of Police/ Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Introduction

On July 18, 2016, the Metropolitan Police Department ("MPD") filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator's Supplemental Opinion and Award ("Supplemental Award") that granted attorneys' fees and expenses to Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "FOP"). MPD asserts that the Arbitrator exceeded his jurisdiction by awarding attorneys' fees.[1]

II. Arbitrator's Award

In an Arbitration Award issued on January 25, 2016, the Arbitrator found in favor of the Union on behalf of a Grievant who challenged his 15-day suspension.[2] The Arbitrator ordered MPD to rescind the disciplinary action against the Grievant and reimburse the Grievant for all lost pay and benefits.[3] The Arbitrator retained jurisdiction over the matter for the purpose of "resolving any disputes that may arise in the implementation" of the Award and on February 9,

[1] Request at 2; *See* D.C. Official Code § 1-605.02(6) (2001 ed.).
[2] Supplemental Award at 1-2.
[3] *Id*. at 2.

2016, the Union submitted a Petition for Attorneys' Fees and Expenses.[4] MPD timely filed an opposition on April 18, 2016.[5]

In the petition and the opposition, the parties asked the Arbitrator to determine if the Union had established by a preponderance of the evidence that it was entitled to an award of reasonable attorneys' fees and expenses in connection with the matter; and if so, what should be the amount of any such award.[6]

In a Supplemental Award issued on June 20, 2016, the Arbitrator found that the Union established by a preponderance of the evidence that it was entitled to an award of $18,670.00 in attorney' fees and $109.74 in costs.[7] The Arbitrator acknowledged that although the parties' collective bargaining agreement does not have a provision explicitly providing for an award of attorneys' fees to a grievant who prevails, arbitrators have granted attorney's fees to the Union in at least four previous awards dating back to 2011.[8] The Arbitrator also concluded that an award of attorneys' fees is consistent with the Back Pay Act[9] and is not prohibited by the CMPA.[10] Finally, the Arbitrator determined that the Union's request for fees was reasonable based on its hourly rates, number of hours billed, and the nature of some of the work performed.[11] Accordingly, the Arbitrator concluded that the Union was entitled to an award of its reasonable attorneys' fees and expenses in connection with this matter.[12]

III. Discussion

In accordance with D.C. Official Code § 1-605.02(6), the Board is permitted to modify or set aside an arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[13] Upon review of the Award, the pleadings of the parties, and applicable law, the Board, for the reasons that follow, denies MPD's Request.

[4] *Id*.
[5] *Id*.
[6] *Id*. at 3.
[7] *Id*. at 12.
[8] *Id*. at 8. *See Arbitration Opinion and Award* in FMCS Case No. 11-59575 at p.53 (Arbitrator Donald A. Wasserman) (February 22, 2014; *Arbitration Opinion and Award* in FMCS Case No. 10-01341 at pp. 44, 51 (Arbitrator David Paul Clark) (September 19, 2011); *Arbitration Opinion and Award* in FMCS Case No. 11-04085 at p. 28 (Arbitrator M. David Vaughn) (October 29, 2015); *Supplemental Opinion and Award of Attorneys' Fees* in FMCS Case No. 11-04085 (Arbitrator M. David Vaughn) (January 26, 2016).
[9] The Federal Back Pay Act, 5 U.S.C. § 5596(b)(1)(A)(ii) (2014).
[10] *Id*. at 9-10.
[11] *Id*.
[12] *Id*. at 12.
[13] *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 62 D.C. Reg. 12587, Slip Op. 1531, PERB Case No. 15-A-10 (2015) (*citing* D.C. Official Code § 1-605.02(6) (2001 ed.)).

MPD seeks review of the Supplemental Award on the grounds that the Arbitrator exceeded his jurisdiction in "finding that attorney's fees were authorized under the parties' labor agreement."[14] As it argued before the Arbitrator, MPD asserts that Article 19, Part E, § 5(3) of the parties' collective bargaining agreement expressly provides that the legal costs are to be borne by the parties at their own expense.[15] MPD also notes that the language of Article 19, Part E, § 5(3) stands in contrast to Article 19, Part E, § 5(7) of the collective bargaining agreement, which states that the arbitrator's fee and expense "shall be borne by the losing party."[16] MPD argues that the contrast in these two sections shows that the language chosen by the parties in § 5(3) was "express and deliberate," and demonstrates that the parties intended for the each side to bear their own legal expenses at arbitration.[17] MPD contends that since there is no authority for the Arbitrator to award attorneys' fees, the Supplemental Award conflicts with Article 19, Part E § 5(4), which prohibits an arbitrator from issuing an award that would modify, subtract from, or add to the collective bargaining agreement.[18]

The Board has repeatedly held that an arbitrator does not exceed his or her authority by exercising his equitable power to formulate a remedy unless the collective bargaining agreement expressly restricts his or her equitable power.[19] A collective bargaining agreement's prohibition against awards that add to, subtract from, or modify the collective bargaining agreement does not expressly limit the arbitrator's equitable power.[20] Further, the Board has held that Article 19, Part E, § 5(7) of the parties' collective bargaining agreement does not prevent the Arbitrator from awarding attorney's fees and that MPD must show that the collective bargaining agreement expressly limits an arbitrator's equitable powers.[21]

Contrary to MPD's allegations, the Board finds that the Arbitrator did not exceed his authority by issuing a remedy that awarded attorneys' fees to the Union.[22] The language of Article 19, Part E, §5(3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Arbitrator did not exceed his authority and the Board will not overturn the Award on this ground. For the Board to overturn an arbitrator's award as in excess of the arbitrator's authority, MPD must show that the collective bargaining agreement expressly limits

[14] Request at 2.
[15] Request at 4. Article 19, Part E, § 5(3) states, in pertinent part: "All parties shall have the right at their own expense to legal and/or stenographic assistance at this hearing."
[16] Request at 4. Article 19, Part E, § 5(7) states, in pertinent part: "The fee and expense of the arbitrator shall be borne by the losing party, which shall be determined by the Arbitrator."
[17] *Id.* at 4-5.
[18] Request at 4. Article 19, Part E, § 5(4) states, in pertinent part: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision…"
[19] *See Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6787, Slip Op. No. 1133 at p. 8, PERB Case No. 09-A-12 (2011); *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).
[20] *Id.*
[21] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't*, 60 D.C. Reg. 7193, Slip Op. 1382 at 3, PERB Case No 11-A-11 (2013).
[22] In PERB Case Nos. 16-A-06 and 16-A-17 the Board likewise determined that the language of Article 19, Part E, §5 (3) does not provide an express limitation to an arbitrator's equitable power. Accordingly, the Board found the arbitrators did not exceed their authority in awarding attorneys' fees.

the arbitrator's equitable power.[23] MPD's attempt to parse the language of Article 19, Part E does not provide the Board with such a limitation.[24] Instead, MPD asks the Board to accept its interpretation of the collective bargaining agreement over that of the Arbitrator.[25]

The Board has long held that will not overturn an arbitration award based simply upon the petitioning party's disagreement with the arbitrator's findings.[26] It is well settled that "[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator's decision, which necessarily includes the … evidentiary findings and conclusions upon which his decision is based."[27] Therefore, MPD's disagreement with the Arbitrator's award of attorneys' fees does not present a statutory ground for review.

IV. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority. Accordingly, MPD's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

2. Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

March 23, 2017

Washington, D.C.

[23] *Id*. (*citing Metro. Police Dep't, supra*, Slip Op. 1133 at p. 8).
[24] *Id*.
[25] *Id*.
[26] *Fraternal Order of Police/Dep't of Corrections Labor Comm. v. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).
[27] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at 3, PERB Case No. 00-A-04 (2000); *Metro. Police Dep't and Fraternal Order of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004); *Univ. D.C. Faculty Ass'n/NEA and Univ. D.C.*, 39 D.C. Reg. 9628 at 9629, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-15, Op. No. 1620 was sent by File and ServeXpress to the following parties on this the 10th day of April, 2017.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee	
Complainant,	PERB Case Nos. 11-U-35 and 11-U-38
v.	Opinion No. 1621
District of Columbia Metropolitan Police Department.	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

These two consolidated unfair labor practice cases concern the policy of the Metropolitan Police Department ("MPD") on the use of its e-mail system for union business. Case No. 11-U-35 was filed May 11, 2011, and Case No. 11-U-38 was filed June 8, 2011. Upon review of the record and the arguments of counsel, the Board finds that the claims are strictly contractual and thus outside the Board's jurisdiction.

FOP moved to consolidate Case Nos. 11-U-35 and 11-U-38. The Executive Director granted the motion and set the cases for hearing. On March 11, 2015, the cases came on for hearing before a hearing examiner appointed by the Executive Director.

At the opening of the hearing, the hearing examiner stated, "[I]t's my understanding that today's proceedings are limited to the dispute over a subpoena duces tecum, and then after the ruling in this matter, that the parties have agreed that the case will go straight away to the Board . . . and that you're going to have a stipulation of facts, and that's the proceeding."[1] Counsel for FOP stated that the parties' practice is to stipulate to facts that are admitted in the answer.[2] The parties stipulated at the hearing that "MPD requested IS numbers and initiated an administrative

[1] Tr. 3-4.
[2] Tr. 5.

investigation regarding the March 29, 2011, e-mail."[3] The hearing examiner resolved the subpoena dispute and closed the hearing. The parties subsequently submitted briefs to the Board.

II. Statement of Facts

In its answers, MPD admitted certain allegations of fact in the complaints. It denied FOP's characterizations of statements in e-mails that were attached to the complaints as exhibits; in most cases it stated that the exhibit speaks for itself. Both complaints attached a collective bargaining agreement as Exhibit 1. MPD has stipulated that Exhibit 1 is an authentic copy of the collective bargaining agreement between MPD and FOP ("the CBA").[4] The undisputed facts of these cases are those that are established by stipulation or by the pleadings, either in admitted allegations or in uncontested exhibits to the complaints.

The events alleged and admitted in the pleadings of Case No. 11-U-38 occurred before those of Case No. 11-U-35. The undisputed facts are set forth in chronological order below.

A. Case No. 11-U-38

On March 15, 2011, Sgt. Yvonne Tidline sent an email to FOP members on the Department's e-mail system containing the subject "Vote NO on Raising of Union Dues." The e-mail stated:

> As you have probably read or heard Chris Bauman and the Union are trying to double our union dues every pay period. This means instead of paying the $18.73 per pay period it will be $37.36. I don't have any faith our union [*sic*] and I'm asking the question "What have you done for me lately?" He states it's to continue the fight but what battles can he show that we've won? There will be a vote done by ballot that will take place from 0700-2000 hours on Tuesday, March 29, 2011 at the FOP located at 711 4th Street, NW. The vote will be to approve or disapprove the increase. PLEASE, PLEASE notify your officers and other members to respond and vote "NO" on a dues increase. Times are hard and I'm willing to admit my money is spoken for. I'm not willing to give any additional to something when I'm not getting a return on my investment. Pass this along.

[3] Tr. 12-13.
[4] E-mail from Nicole Lynch, counsel for MPD, to PERB and to Marc Wilhite, counsel for FOP, (Mar. 31, 2017, 10:37 EST).

On March 15, 2011, FOP Chairman Kristopher Baumann forwarded Sergeant Tidline's e-mail to the Acting Director of the MPD Labor and Employee Relations Unit, Mark Viehmeyer. In his e-mail to Mr. Viehmeyer, Mr. Baumann stated:

> Please see the below email chain.
>
> As you can imagine, the FOP has some serious concerns that; 1) a sergeant, acting in her official capacity, has ordered subordinates to forward an email regarding union matters; 2) that officials are engaged in email chains regarding union matters; 3) that District administrative personnel are disseminating this to all sergeants; and 4) the Department email system is being used to undermine the FOP.
>
> The FOP's understanding of the Department's email policy, as expressed by Chief Lanier under oath at a PERB hearing, would prohibit all of these actions.
>
> A couple of preliminary questions:
>
> As of right now (11:45 a.m.), have any of the officials involved (e.g., Inspector Porter) notified anyone about this behavior, requested an investigation, or taken any action? If so, is there documentation?

On or about March 15, 2011, Mr. Viehmeyer responded to Chairman Baumann's request indicating that he had no knowledge as to whether any of the officials who received the email had taken any action and had no knowledge "as to what, if any, other emails related to the FOP are currently being disseminated." Finally, Mr. Viehmeyer stated that the Department had not authorized the emails and that the incidents would be investigated.

On March 15, 2011, FOP Chairman Baumann sent an e-mail to Mark Viehmeyer, stating

> Pursuant to Article 11, Section 4 of the Collective Bargaining Agreement between the District of Columbia and the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP), the FOP is requesting to send the below email, attachments, and future updates to all sworn users on the Department system (or, if the Department has the capability, just to members of the FOP). Given the use of the email system by supervisors and officials regarding this matter, the FOP believes it is necessary to

have access to its members in order to provide them with accurate, authorized information on this matter.

Given the issues involved, I would request a response by the close of business today. Thank you.

Kristopher Baumann
Chairman
Fraternal Order of Police . . .

_____

All Fraternal Order of Police, Metropolitan Police Department Labor Committee members. Below and attached is information regarding a Special Membership Meeting. Please review the information and, if you have questions, contact your Chief Shop Steward or Executive Steward Delroy Burton. . . . Please remember that Department email is not to be used for union matters, so if you want to email, please Executive Steward Burton from a non-government email account Thank you.

LABOR COMMITTEE UPDATE
FRATERNAL ORDER OF POLICE.
METROPOLITAN POLICE DEPARTMENT LABOR COMMITTEE

NOTICE OF A SPECIAL MEMBERSHIP MEETING

0700-2000 HOURS
TUESDAY, MARCH 29, 2011
FOP LODGE #1,711 FOURTH STREET. N.W.
VOTE ON A DUES ASSESSMENT

ANNOUNCEMENT

As a result of continuing and targeted attacks on the benefits, income, retirement, and rights of police officers in Washington, D.C., the Fraternal Order of Police, Metropolitan Police Department Labor Committee (FOP) is asking its members to increase the resources available to fight this assault on police officers and their families. A Special Membership Meeting of the FOP will take place on Tuesday, March 29, 2011, for the purpose of holding a ballot vote on the approval of a dues assessment.

Pursuant to the vote of the FOP membership at the September 28, 2010, General Membership Meeting, the vote will be done by ballot and take place from 0700 to 2000 hours on Tuesday, March 29,2011, at the Fraternal Order of Police. District of Columbia Lodge # 1, located at 711 4th Street, N.W.

The vote will be to approve or disapprove a dues assessment equal to 1% of an entry level salary (an additional $18.73 per pay period at the current salary rate).

DUES ASSESSMENT PROCESS

Article 3 of the By-Laws provides that the Executive Committee of the FOP shall have the right to assess the members on an equitable basis for a stated purpose and sum, provided that any such assessment is approved by a majority vote of the general membership at a special or general membership meeting with at least 250 members voting.

Pursuant to Article 3 of the By-Laws, on January 24, 2011, the Executive Committee of the FOP voted to institute a 1% dues assessment for a period of 3 years or until the By-Laws are amended. The purpose of the dues assessment is to fund FOP legal and political costs.

On January 25, 2011, the Executive Council voted to endorse the dues assessment.

If approved by the membership on March 29, 2011, the dues assessment will become effective April 10, 2011.

INFORMATION

The FOP has produced a memorandum explaining the reasons for the assessment. Please contact your Chief Shop Steward for a copy of the memo and/or any questions you may have. Members of the Executive Council will be available over the next weeks to meet and speak with you about the assessment and answer any questions you may have.

On March 15, 2011, Mr. Viehmeyer denied Chairman Baumann's request to send an e-mail on the Department's email system. When asked to provide his basis for the denial, Mr. Viehmeyer stated, "The request was denied because the message solely concerned internal union issues."

B. Case No. 11-U-35

The above request of Chairman Baumann and the denial of the request by Mr. Viehmeyer on March 15, 2011, were again alleged and admitted. On March 16, 2011, the MPD sent an e-mail on the Department's e-mail system containing the subject "Departmental Email System for Union Business."

Attached to the email was a Labor Relations Bulletin. The text of the bulletin was as follows:

> ISSUES: The FOP has alleged that officials of the Department are utilizing the Department's email system to communicate union business in violation of Special Order 99-02.
>
> EMAIL REGARDING UNION ACTIVITIES
> Special Order 99-02 specifically prohibits the use of the Department's email system for notifications for union activities or union business.
>
> DIRECTIONS
>
> Officials shall not use the Departments email system, or allow subordinates to use the Department's email system, to comment, forward, or otherwise communicate about any union business or activities, including the upcoming vote to increase dues. If an official becomes aware of an alleged violation of SO 99-02, the official shall pull IS numbers and initiate an administrative investigation.
>
> *Note* Commanding officers who receive a request from an authorized union representative pursuant to Article 11 Section 4 (Use of Department Facilities) of the FOP/MPD labor agreement to use Departmental mailboxes, teletype, or electronic mail, shall consult with Labor Relations prior to responding.
>
> RESPONSIBILITY: Lieutenants and above

DOCUMENTS/RESOURCES RELATED TO THIS BULLETIN:

> Special Order 99-02

On March 29, 2011, Officers Terry Whitfield, Janice Olive, and Vernon Dallas sent an e-mail to FOP members and Internal Affairs Agents (employees that are not members of the Bargaining Unit or FOP) on the Department's email system containing the subject "MEMBERSHIP NEWS !!!!! (MUST READ)."

Internal Affairs Division Agents Phineas Young and William Asbury received this e-mail on or about March 29, 2011. They failed to request an investigation or to request IS numbers. MPD requested IS numbers and initiated an administrative investigation regarding the March 29, 2011 e-mail.

Exhibit 1 to the complaints is an authentic copy of the parties' CBA.

II. Discussion

To summarize the undisputed facts, Sergeant Tidline sent an e-mail on MPD's e-mail system opposing a proposed dues increase. Chairman Baumann's request that MPD allow him to use its e-mail system in response was denied because the proposed e-mail concerned internal union issues. MPD then promulgated through its e-mail system a restatement of its policy against employee use of MPD's e-mail system "for notifications for union activities and union business." Two weeks later, three officers used MPD's e-mail system to send to FOP members and Internal Affairs agents an e-mail containing the subject "MEMBERSHIP NEWS !!!!! (MUST READ)." MPD investigated that e-mail, but two Internal Affairs agents who received it did not.

A. Claims of FOP

Citing the National Labor Relations Board's decision in *Purple Communications, Inc. and Communications Workers,*[5] FOP asserts in its brief that employees have a right to use their employer's e-mail system concerning union matters on non-working time absent a showing of special circumstances that justify specific restrictions. MPD's denial of that right to Chairman Baumann specifically and to FOP members generally constitutes three unfair labor practices. First, in violation of section 1-617.04(c)(1) the denial interfered with a right protected by the Comprehensive Merit Personnel Act ("CMPA"), namely, the right "to form, join, or assist" the union[6] through communication. Second, MPD retaliated against Chairman Baumann and the FOP by denying Baumann's request. Third, in violation of section 1-617.04(a)(3) the denial interfered with the existence and administration of the union.

[5] 361 N.L.R.B. No. 126 (2014).
[6] D.C. Official Code § 1-617.06(a)(2).

B. Analysis

The second of the three claims does not state an unfair labor practice claim. An element of a claim of retaliation is an adverse employment action.[7] No adverse employment action was taken against Baumann. Simply denying an employee's request is not an adverse employment action in retaliation for making the request.[8]

MPD argues in its brief that the Board has no jurisdiction to interpret contracts and no jurisdiction over contractual disputes. It asserts that this case is a contractual dispute because the gravamen of this case, the issue of FOP's ability to use departmental e-mail, was negotiated by the parties and is governed by the contract that resulted from their negotiations. The parties agreed to a contractual provision governing these issues, article 11, section 4 of the CBA, and Baumann invoked that provision in his request to MPD. MPD contends that this provision distinguishes the present case from *Purple Communications*.

MPD's identification in the CBA of a provision addressing the subject matter of the unfair labor practice allegations in this case does not end the inquiry. "Generally, the CMPA empowers the Board to resolve statutory violations, but not contractual violations. Notwithstanding, if the record demonstrates that an allegation concerns a statutory violation of the CMPA, then even if it also concerns a violation of the parties' contract, the Board still has jurisdiction over the statutory matter and can grant relief accordingly if the allegation is proven."[9] In our opinion referring Case No. 11-U-38 to a hearing examiner, we stated:

> Assuming without deciding that FOP had a statutory right under the circumstances of this case to use MPD's e-mail system, the Board observes that the contractual provision cited by MPD does not necessarily remove the alleged violation of that statutory right from the Board's jurisdiction. The contractual provision would remove the alleged violation of the statutory right from the Board's jurisdiction only if it contains a clear and unmistakable waiver with respect to that statutory right. *See AFGE Locals 872, 1975, & 2553 v. D.C. Dep't of Pub. Works*, 49 D.C. Reg. 1145, Slip Op. No. 439 at p. 2 n.2, PERB Case No. 94-U-02 (1995). The D.C. Superior Court recognized this principle in its decision cited by MPD. The court said that "a party to a collective bargaining

[7] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't Labor Comm.*, 63 D.C. Reg. 4589, Slip Op No. 1563 at 4-5, PERB Case No. 11-U-20 (2016).

[8] *See Solomon v. Vilsack*, 845 F. Supp. 2d 61, 76 (D.D.C. 2012) ("[T]he Court is not persuaded that Solomon can make out a retaliation claim on the theory that USDA retaliated against her for making accommodation requests by denying her accommodation requests."), *aff'd in part, rev'd in part on other grounds, and remanded*, 763 F.3d 1 (D.C. Cir. 2014). Moreover, some of the facts FOP presents in support of its assertion of anti-union animus are not in the record. Br. for FOP 14, 18.

[9] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't Labor Comm.*, 62 D.C. Reg. 13348, Slip Op. No. 1534 at 7, PERB Case No. 08-U-22 (2015) (footnotes omitted).

> agreement can waive a right that its members would have under the CMPA or another statute, although it must use clear and unmistakable language to do so." *Gov't of D.C. v. D.C. Pub. Employee Relations Bd.*, No. 2012 CA 005842P, slip op. at 6 (Super. Ct. June 10, 2013).
>
> MPD has the burden of proving that FOP has clearly and unmistakably waived the asserted statutory right. *See AFGE, Local Union No. 3721 v. D.C. Fire Dep't*, 39 D.C. Reg. 8599, Slip Op. No. 287 at p. 22, PERB Case No. 90-U-11 (1991). Allowing MPD the opportunity to meet its burden of proof at an unfair labor practice hearing is consistent with the Board's practice in cases that present this issue. *See AFGE, Local 872 v. D.C. Water & Sewer Auth.*, 52 D.C. Reg. 2474, Slip Op. 702 at pp. 2-3, PERB Case No. 00-U-12 (2003); *AFGE Local Union No. 2725 v. D.C. Dep't of Pub. & Assisted Hous.*, 43 D.C. Reg. 7019, Slip Op. No. 404 at p. 2 n.4, PERB Case No. 92-U-21 (1994); *Int'l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1992).[10]

Because of the procedure that the parties chose at the hearing (notwithstanding the Board's directive), we do not have the benefit of a recommendation from the hearing examiner on the issue of waiver as we did in the cases cited in the preceding paragraph. The parties do not present arguments on that issue in their briefs either. Thus, our analysis is confined to the text of the contract. The Board has jurisdiction to determine whether a contract supersedes or waives a statutory right, but beyond that the Board lacks jurisdiction to resolve contractual disputes.[11]

Article 11 of the CBA is entitled "Use of Department Facilities." Section 4 of article 11 states, "With specific approval by the Commanding Officer, the Union may utilize Departmental mailboxes, teletype, and electronic mail."[12] That language creates its own standard for FOP's use of mailboxes, teletype, and e-mail, one that requires the approval of the Commanding Officer. Section 1 of article 11 subjects union requests for space for union meetings to the same requirement.

The parties also agreed to grievance procedures for resolving "an allegation that there has been a violation, misapplication or misinterpretation of the terms of this Agreement."[13] And the parties

[10] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 61 D.C. Reg. 9056, Slip Op. No. 1479 at 4, PERB Case No. 11-U-38 (2014).
[11] *AFGE Local Union No. 2725 v. D.C. Dep't of Pub. & Assisted Hous.*, 43 D.C. Reg. 7019, Slip Op. No. 404 at 3 n.4, PERB Case No. 92-U-21 (1994).
[12] Ex. 1 to Compls. at p. 9.
[13] Ex. 1 to Compls. at p. 20, art. 19(A).

further agreed that "arbitration is the method of resolving grievances which have not been satisfactorily resolved pursuant to the Grievance Procedure."[14]

In its agreement to the terms by which it may use departmental e-mail and to the means of resolving disputes that arise under those terms, FOP has clearly and unmistakably waived any statutory right it may have to the use of departmental e-mail. Because the parties have agreed to a contractual standard for FOP's usage of departmental e-mail, the Board expresses no opinion on the extent to which the CMPA grants employees a right to use the e-mail systems of their employers for union purposes.

As a result of the waiver, FOP's objections to the denial of the use of departmental e-mail are strictly contractual claims. The courts have held that where a contract provides that an action may be taken with the consent of a party, a claim that consent was unreasonably withheld is a claim for breach of contract.[15]

Since no statutory basis exists for the Board to consider claims that are strictly contractual,[16] the complaints in these consolidated cases are dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The complaints in PERB Case Nos. 11-U-35 and 11-U-38 are 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 Douglas Warshof.

Washington, D.C.

April 13, 2017

[14] Ex. 1 to Compls. at p. 24, art. 19(E)(1).
[15] *Campbell v. Westdahl*, 715 P.2d 288, 291-94 (Ariz. App. 1985). *See also Thompson Trading, Ltd v. Allied Breweries Ltd.*, 748 F. Supp. 936, 940-42 (D.R.I. 1990); *Muñoz HNOS, S.A. v. Editorial Televisa Int'l, S.A.*, 121 So. 3d 100, 102 (Fla. App. 2013).
[16] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 46 D.C. Reg. 7605, Slip Op. No. 384 at 3, PERB Case No. 94-U-23 (1994).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in Case Nos. 11-U-35 and 11-U-38 was sent by File & ServeXpress to the following parties on this the 13th day of April 2017.

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/s/ Najibah Almahdi
Program Analyst

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Compensation Unit 31: American Federation of Government Employees, Locals 631, 872, 2553, American Federation Of State, County and Municipal Employees Local 2091, and National Association of Government Employees R3-06,	)	PERB Case No. 17-I-01 Opinion No.: 1622 **Motion for Reconsideration**
Petitioner,	)	
and	)	
District of Columbia Water and Sewer Authority,	)	
Respondent.	)	

DECISION AND ORDER

I. Introduction

Before the Board is a Motion for Reconsideration[1] filed by the D.C. Water and Sewer Authority ("WASA" or "Petitioner"). WASA requests the Board to review the Executive Director's decisions declaring impasse and appointing an arbitrator.

[1] On March 31, 2017, WASA filed "DC Water's Petition for Leave to File an Appeal" pursuant to PERB Rule 553.1. In the petition, WASA stated that in the normal course, "DC Water could wait to obtain review of such rulings until the conclusion of the proceedings. However, with an arbitrator appointed for interest arbitration, the Executive Director has closed the case. As a result, this is the only administrative avenue to review the Executive Director's declaration of impasse and the resulting appointment of an arbitrator." Petition at 1. On April 4, 2017, the Executive Director informed the parties that there would be no interlocutory review because there is no mechanism in the PERB rules or governing statutes that allow for an interlocutory appeal at any stage in a PERB proceeding, Also, there is no corresponding petition for leave to file an appeal as WASA has filed in this matter. However, based on WASA's assertion that it seeks a review of the Executive Director's declaration of impasse, this petition will be treated as a Motion for Reconsideration that has been filed for the full Board to review.

On April 11, 2016 the parties commenced compensation negotiations. On October 14, 2016, the Union filed a pleading styled Invocation of Automatic Impasse for Compensation Negotiations Between Compensation Unit 31 and the District of Columbia Water and Sewer Authority following the failure of the parties to reach an agreement within 180 days, pursuant to D.C. Official Code § 1-617.17(f)(2).[2] On October 17, 2016, after confirming that 180 days had passed since the parties commenced bargaining and that the parties were at impasse, pursuant to D.C. Official Code § 1-617(f)(2), PERB appointed Commissioner LaTwana Williams of the Federal Mediation and Conciliation Service as mediator. On October 31, 2016, WASA filed an unfair labor practice complaint against Compensation Unit 31.

By letter dated November 2, 2016[3], WASA requested that the Board rescind the appointment of the mediator, stating that PERB Rules 526.2[4] and 526.3[5], require the Executive Director to verify that the parties are at impasse and appoint a mediator if the parties are unable to agree on their choice of mediator. WASA also alleged that Compensation Unit 31's declaration of automatic impasse violated Section X of the parties' Memorandum of Understanding ("MOU"). On November 14, 2016, PERB denied the request, noting that D.C. Official Code § 1-617.17(f)(2) required the appointment of a mediator if automatic impasse had been reached. Therefore, the mediation was properly before Commissioner Williams.

The parties failed to schedule mediation with Commissioner Williams. Following the lapse of at least 30 days, on January 26, 2017, Compensation Unit 31 requested the appointment of a Board of Arbitration. On January 27, 2017, the Executive Director appointed an impartial Board of Arbitration, pursuant to D.C. Official Code § 1-617.17(f)(3).[6] The parties were directed to select three names from the list of approved arbitrators no later than February 3, 2017. WASA failed to reply, respond, or select any names from the list by the deadline. On February 6, 2017, the Executive Director appointed Dr. Andree McKissick as the arbitrator, pursuant to PERB Rule 626.4[7] and D.C. Official Code § 1-617.17(f)(3).

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[2] D.C. Official Code § 1-617.17(f)(2) in pertinent part, states: If the parties have failed…to reach settlement on any issues 180 days after negotiations have commenced, then an automatic impasse may be declared by any party. The declaring party shall promptly notify the Executive Director…in writing of an impasse. The Executive Director shall assist in the resolution of this declared automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator.

[3] The letter was filed on November 9, 2016.

[4] PERB Rule 526.2: Upon Receipt of a notice of impasse concerning compensation negotiations, **other than an automatic impasse as prescribed under D.C. Official Code § 1-177.17(f)** (2001 ed.), the Executive Director shall verify with the other party…that the parties are at impasse. Upon verification…the Executive Director shall consult with the parties regarding their choice of mediator, if any. (Emphasis added).

[5] PERB Rule 526.3: If the parties are unable to agree upon a mediator, the Executive Director shall appoint one or request that the Federal Mediation and Conciliation Service provide one.

[6] D.C. Official Code § 1-617.17(f)(3) in pertinent part, states: If the mediator does not resolve the impasse within 30 days… the Executive Director, upon he request of any party, shall appoint an impartial Board of Arbitrators to investigate the labor-management issues involved in the dispute….

[7] PERB Rule 526.4: If mediation does not resolve an impasse within thirty (30) days or any shorter period designated by the mediator, the Executive Director shall appoint a Board od Arbitration as required by D.C. Official Code § 1-617.17 (2001 ed.); provided, however, that the appointment of a Board of Arbitration under D.C. Official Code §§ 1-617.17(f)(2) and (3), shall only be upon the request of a party.

On February 6, 2017, WASA filed a letter contending that the Executive Director's appointment of a mediator was premature because it was "contrary to the terms of the Memorandum of Understanding ('MOU') on Ground Rules between the parties," which allowed seven working days to select an arbitrator. On February 8, 2017, the Executive Director denied WASA's objections and again noted that PERB was not a party to the referenced MOU, and therefore must process this case according to PERB rules. Further, the Executive Director stated that PERB Rule 526.4 does not contain a provision that the parties have seven working days to mutually select an arbitrator.

On February 24, 2017, WASA filed a Motion for Reconsideration of the Executive Director's Appointment of Board of Arbitration. WASA again stated that PERB's appointment of an arbitrator was premature because the parties were not at impasse based on the assertion that the parties were still negotiating, and that Compensation Unit 31 did not bargain in good faith as it related to the terms of the MOU. On March 6, 2017, the Executive Director granted the motion in part and denied it in part. The Executive Director reaffirmed that the parties are at automatic impasse based on PERB's adherence to its rules and D.C. Official Code § 1-617.17. However, the Executive Director rescinded her appointment of Dr. McKissick and allowed the parties to resubmit their preferences for an arbitrator. On March 13, 2017, WASA filed D.C. Water's Statement and Continuing Objection to the Declaration of Impasse, reiterating its objections to the Executive Director's finding that the parties are at automatic impasse and submitting its choice for an arbitrator. Based on the parties' submissions, on March 16, 2017, the Executive Director appointed Lawrence Evans, Esq. as arbitrator and closed the case.

On March 31, 2017, WASA filed the instant Motion for Reconsideration. On April 4, 2017, Compensation Unit 31 filed Notice of Entry of Appearance and Response in Opposition to DC Water's Petition for Leave to File an Appeal ("Opposition"), requesting that WASA's Motion for Reconsideration be denied and dismissed.[8] Compensation Unit 31 contends that "[WASA's] continued filings of petitions and motions with the Board does not seem to be based upon any actual legal authority and appears to be an effort to avoid its obligations under the statute."[9] Compensation Unit 31 requests that the Board order WASA to comply with the order of the Executive Director to proceed with interest arbitration.[10] On April 7, 2017, WASA filed DC Water's Reply Brief in Support of Its Petition for Leave to File an Appeal ("Reply Brief"). Therein, WASA reiterates its argument that Compensation Unit 31 did not bargain in good faith as it related to the terms of the MOU.

The Petitioner's Motion for Reconsideration and Reply Brief, and Compensation Unit 31's Opposition are before the Board for consideration.

[8] Opposition at 3.
[9] *Id*. at 2.
[10] *Id*. at 3.

II. Analysis

It is well settled that a mere disagreement with the Executive Director's decision is not a valid basis for the Board to grant a motion for reconsideration.[11] Moreover, the Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.[12] The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by PERB precedent.[13]

WASA argues that the parties are not at impasse due to the unresolved negotiability appeal and unfair labor practice complaint that are currently pending before the Board.[14] Specifically, WASA argues that its unfair labor practice complaint "required PERB to determine whether the Union failed to engage in good faith bargaining, a long recognized legal prerequisite to impasse."[15] For support, WASA cites to *United Packinghouse, Food and Allied Workers International Union, AFL-CIO v. NLRB*, 416 F.2d 1126, 1130-31 (D.C. Cir. 1969). In that case, the court upheld the National Labor Relations Board's finding that the impasse caused by the company's failure to bargain in good faith constituted an unfair labor practice.[16] WASA asserts that PERB's delay in processing Compensation Unit 31's negotiability appeal and WASA's unfair labor practice complaint essentially prevented the parties from reaching an agreement within 180 days.[17]

WASA does not dispute that when the Executive Director declared automatic impasse, more than 180 days had passed since the parties' initial bargaining session.[18] Rather, WASA contends that PERB should have resolved the complaints and allegations in its related unfair labor practice complaint (filed October 31, 2016) and negotiability appeal (filed August 12, 2016) before determining whether the parties were at impasse.[19] WASA alleges that Compensation Unit 31 was engaged in surface bargaining as a strategy to reach impasse.[20] WASA contends that PERB's impasse procedures could allow a party to engage in surface bargaining until 180 days have passed in order to proceed to interest arbitration: "At that point, regardless of the parties' conduct or negotiations, automatic impasse may be declared."[21]

Finally, WASA argues that as the parties are not at impasse, the Executive Director's appointment of an arbitrator should be rescinded.[22]

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[11] *Marcus Steele v. AFGE Local 383*, 61 D.C. Reg. 12373 (2014), Slip Op. No. 1492, PERB Case No. 14-U-16 (2014).
[12] *Id*.
[13] *Id*.
[14] Motion for Reconsideration at 7.
[15] *Id*.
[16] *United Packinghouse, Food and Allied Workers International Union, AFL-CIO v. NLRB*, 416 F.2d 1126, 1130-31 (D.C. Cir. 1969).
[17] Motion for Reconsideration at 8.
[18] *Id*.
[19] *Id*. at 8-9.
[20] *Id*. at 8.
[21] *Id*. at 9.
[22] *Id*. at 10.

The Board notes that these arguments were previously considered and addressed by the Executive Director by letter of March 6, 2017. After reviewing the Motion for Reconsideration and Reply Brief, the Board finds that WASA's basis for seeking review of the Executive Director's decisions amounts to nothing more than a disagreement with the Executive Director's findings. The flaw in WASA's argument is that PERB is bound by the statute, not the parties' MOU, when automatic impasse is declared. Additionally, WASA cites no provisions of law, PERB rule, or precedent that requires the resolution of an arguably related unfair labor practice complaint or negotiability appeal prior to the processing of an impasse petition. Moreover, the Board finds that the Executive Director's decisions concerning impasse were supported by Board Rules and District of Columbia law.[23]

As PERB has repeatedly stated in correspondence with the parties, the Board's authority to appoint a mediator to resolve an impasse in a collective bargaining dispute concerning compensation is derived from D.C. Official Code § 1-617.17(f)(2), which states, in pertinent part:

> If the parties have failed… to reach settlement on any issues 180 days after negotiations have commenced, then an automatic impasse may be declared by any party. The declaring party shall promptly notify the Executive Director… in writing of an impasse. The Executive Director shall assist in the resolution of this declared automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator.

Here, it is undisputed that the parties commenced negotiations on April 11, 2016. Impasse was invoked 175 days after negotiations commenced. The parties did not reach an agreement by October 10, 2016, which is 180 days from the start of negotiations. Compensation Unit 31 invoked automatic impasse by letter filed on October 14, 2016. Pursuant to D.C. Official Code § 1-617.17(f)(2), the Board appointed Commissioner Williams of the Federal Mediation and Conciliation Service on October 17, 2016. After the Executive Director appointed Commissioner Williams, the parties failed to schedule mediation. As the mediator did not resolve the automatic impasse within 30 days, the Executive Director appointed an impartial Board of Arbitration, pursuant to D.C. Official Code § 1-617.17(f)(3). The Executive Director directed the parties to select three names from the list of approved arbitrators. On March 16, 2017, the Executive Director appointed Arbitrator Evans, pursuant to PERB Rule 526.4 and D.C. Official Code § 1-617.17(f)(3).

In view of the above, the Board finds that the parties are at automatic impasse pursuant to D.C. Official Code § 1-617.17(f)(2) and that the appointment of Arbitrator Evans is proper, pursuant to PERB Rule 526.4 and D.C. Official Code § 1-617.17(f)(3). WASA's disagreement with the Executive Director's decisions to declare automatic impasse and appoint an arbitrator is not a sufficient basis for reversing those decisions. Accordingly, the Board finds that the Motion for Reconsideration lacks merit and is denied.

[23] *See*, D.C. Official Code § 1-617.17(f)(2) and (3); *See also*, PERB Rules 526.2, 526.3, and 526.4.

As stated by the Executive Director in her letter of March 6, 2017, any further concerns should be addressed to the appointed arbitrator.

ORDER

IT IS HEREBY ORDERED THAT:

1. WASA's Motion for Reconsideration is denied.
2. Both Parties are ordered to contact Arbitrator Evans within seven (7) days of the issuance of this order to expeditiously engage in arbitration as required by D.C. Official Code § 1-617.17(f)(2) and to notify PERB of its compliance within fourteen (14) days of the issuance of this Decision and Order.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-I-01, Op. No. 1622 was sent by File and ServeXpress to the following parties on this the 18th day of April, 2017.

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/s/ Sheryl Harrington
PERB

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

NOTICE OF CHANGE IN SUBMISSION DEADLINE
FOR THE
REQUEST FOR APPLICATIONS

Grant to Promote District of Columbia
Voting Rights and Statehood

Release Date: Monday, May 1, 2017
Application Due Date: Thursday, June 15, 2017

The District of Columbia government will be closed on Monday, May 29, 2017, in observance of Memorial Day. The submission due date for the 2017 Grant to Promote District of Columbia Voting Rights and Statehood originally scheduled for Noon on May 29, 2017 has been changed to Noon on Thursday, June 15, 2017.

The new deadline reflects the change made to the Request for Applications for the Grant to Promote District of Columbia Voting Rights and Statehood that was published in the DC Register on Friday, April 28, 2017 and released on Monday, May 1, 2017.