

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Resolution 21-732, Fiscal Year 2018 Budget Submission Requirements Resolution of 2016
- D.C. Council passes Resolution 21-752, Downtown Business Improvement District Emergency Declaration Resolution of 2016
- D.C. Council passes Resolution 21-753, Stun Gun Regulation Emergency Declaration Resolution of 2016
- D.C. Council schedules a public roundtable on the State of School Discipline: 2015-2016 School Year
- Department of Consumer and Regulatory Affairs updates the fee schedule for business licenses
- Department of Employment Services solicits grant applications for creating innovative youth workforce solutions
- Executive Office of the Mayor sets the fees for special licenses and permits for the inaugural period

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 §§2-501 *et seq.* (2012 Repl.).

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

A RESOLUTION

21-650

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 15, 2016

To confirm the appointment of Mr. Peter Shapiro to the Zoning Commission for the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Zoning Commission for the District of Columbia Peter Shapiro Confirmation Resolution of 2016”.

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

Mr. Peter Shapiro
3765 Northampton Street, N.W.
Washington, D.C. 20015
(Ward 3)

as a member of the Zoning Commission for the District of Columbia, established by section 1 of An Act To regulate the height, area, and use of buildings in the District of Columbia and to create a Zoning Commission, and for other purposes, approved March 1, 1920 (41 Stat. 500; D.C. Official Code § 6-621.01), replacing Marcie Cohen, for a term to end February 3, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-708

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Richard Beverly to the Public Service Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Public Service Commission Richard Beverly Confirmation Resolution of 2016”.

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

Mr. Richard Beverly
3353 18th Street, N.W.
Washington, D.C. 20010
(Ward 1)

as a member of the Public Service Commission, established by section 8(97) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 995; D.C. Official Code § 34-801), replacing Ms. Joanne Doddy Fort, for a term to end June 30, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-709

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Antwan Wilson as Chancellor of the District of Columbia Public Schools.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA That this resolution may be cited as the “Chancellor of the District of Columbia Public Schools Antwan Wilson Confirmation Resolution of 2016”.

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

Mr. Antwan Wilson
3815 Sunrose Road
San Ramon, CA 94582

as the Chancellor of the District of Columbia Public Schools, established by section 102 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171), in accordance with section 2(a) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-710

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Timothy Thomas to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Timothy Thomas Confirmation Resolution of 2016".

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

Mr. Timothy Thomas
4716 Eastern Avenue, N.E.
Washington, D.C. 20017
(Ward 5)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-711

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Mark Herzog to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Mark Herzog Confirmation Resolution of 2016".

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

Mr. Mark Herzog
4535 Alton Place, N.W.
Washington, D.C. 20016
(Ward 3)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-712

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Dianne Hampton to the Domestic Violence Fatality Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Domestic Violence Fatality Review Board Dianne Hampton Confirmation Resolution of 2016".

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

Ms. Dianne Hampton
3358 Blaine Street, N.E.
Washington, D.C. 20019
(Ward 7)

as a community representative member of the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052, for a 3-year term to end July 20, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-713

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Laurie Kohn to the Domestic Violence Fatality Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Domestic Violence Fatality Review Board Laurie Kohn Confirmation Resolution of 2016".

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

Ms. Laurie Kohn
3216 McKinley Street, N.W.
Washington, D.C. 20015
(Ward 4)

as a community representative member of the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052, for a 3-year term to end July 20, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-714

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Sharlene Kranz to the Domestic Violence Fatality Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Domestic Violence Fatality Review Board Sharlene Kranz Confirmation Resolution of 2016".

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

Ms. Sharlene Kranz
3114 Wisconsin Avenue, N.W., #403
Washington, D.C. 20016
(Ward 3)

as a community representative member of the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052, for a 3-year term to end July 20, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-715

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Varina Winder to the Domestic Violence Fatality Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Domestic Violence Fatality Review Board Varina Winder Confirmation Resolution of 2016".

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

Ms. Varina Winder
1931 17th Street, N.W., #201
Washington, D.C. 20009
(Ward 2)

as a community representative member of the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052, for a 3-year term to end July 20, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-716

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare that the District-owned real property bounded by South Dakota Avenue, N.E., Riggs Road, N.E., and Lot 22 in Square 3760, and known for tax and assessment purposes as a portion of Parcel 125-30, is no longer required for public purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “South Dakota Avenue and Riggs Road Surplus Property Declaration Resolution of 2016”.

Sec. 2. Findings.

(a) The District is the owner of the real property bounded by South Dakota Avenue, N.E., Riggs Road, N.E., and Lot 22 in Square 3760, known for tax and assessment purposes as a portion of Parcel 125-30 (“Property”). The Property is triangular in shape, consists of approximately 97,473 square feet of land, and is currently vacant.

(b) The Property is no longer required for public purposes because the Property’s condition cannot viably accommodate a District agency use or other public use without cost prohibitive new construction. The most pragmatic solution for activating this site is to declare the Property surplus and dispose of the Property for development.

(c) The District has satisfied the public hearing requirements of section 1(a-1)(4) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(a-1)(4)) (“Act”), by holding a public hearing on June 10, 2014, at Riggs LaSalle Recreation Center, located at 501 Riggs Road, N.E.

Sec. 3. Pursuant to section 1(a-1) of the Act, the Council finds that the Property is no longer required for public purposes.

Sec. 4. Transmittal.

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

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-718

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare that the District-owned real property located at 113 H Street, N.W., and known for tax and assessment purposes as Lots 0002, 0003, 0004, 0005, 0006, 0800, 0801, 0802, 0803, 0804, and 0805 in Square 0563N, is no longer required for public purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Capitol Vista Surplus Property Declaration Resolution of 2016”.

Sec. 2. Findings.

(a) The District is the owner of the real property located at 113 H Street, N.W., known for tax and assessment purposes as Lots 0002, 0003, 0004, 0005, 0006, 0800, 0801, 0802, 0803, 0804, and 0805 in Square 0563N (the “Property”). The Property consists of an approximately 9,653 square foot vacant parcel that is triangular in shape and has frontage on 2nd Street, N.W., New Jersey Avenue, N.W., and H Street, N.W. The Property is currently used for temporary parking.

(b) The Property is no longer required for public purposes because the Property’s condition cannot viably accommodate a District agency use or other public use without cost-prohibitive new construction. The most pragmatic solution for activating this site is to declare the Property surplus and dispose of the Property for development.

(c) The District has satisfied the public hearing requirements of section 1(a-1) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(a-1)(4)) (“Act”), by holding a public hearing on July 28, 2016, at R.H. Terrell Recreation Center, located at 155 L Street, N.W.

Sec. 3. Pursuant to section 1(a-1) of the Act, the Council finds that the Property is no longer required for public purposes.

Sec. 4. Transmittal.

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

ENROLLED ORIGINAL

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-720

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare that the District-owned real property located at 3012 Georgia Avenue, N.W., and known for tax and assessment purposes as Lot 0849 in Square 2890, is no longer required for public purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Bruce Monroe Surplus Property Declaration Resolution of 2016”.

Sec. 2. Findings.

(a) The District is the owner of real property located at 3012 Georgia Avenue, N.W., known for tax and assessment purposes as Lot 0849 in Square 2890 (“Bruce Monroe”), which consists of approximately 121,825 square feet of land, which is comprised of approximately 44,404 square feet of land that will be reserved by the District for parks and other public uses, as determined by the Mayor, and the remaining approximately 77,421 square feet of land (“Property”). The Bruce Monroe site currently consists of:

- (1) An interim use public park, improved with recreational amenities; and
- (2) Surface parking spaces in the northwest corner.

(b) The Property is no longer required for public purposes because the Property’s condition cannot viably accommodate a District agency use or other public use without cost-prohibitive new construction. The most pragmatic solution for reactivating the Property is to declare the Property surplus and dispose of the Property for redevelopment.

(c) The District has satisfied the public hearing requirements of section 1(a-1)(4) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(a-1)(4)) (“Act”), by holding a public hearing on March 21, 2016, at Bruce Monroe Elementary at Park View, located at 3560 Warder Street, N.W.

Sec. 3. Pursuant to section 1(a-1) of the Act, the Council finds that the Property is no longer required for public purposes.

Sec. 4. Transmittal.

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

ENROLLED ORIGINAL

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-722

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Anthony Giancola to the District of Columbia Water and Sewer Authority Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Water and Sewer Authority Board of Directors Anthony Giancola Confirmation Resolution of 2016”.

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

Mr. Anthony Giancola
528 Cedar Street, N.W.
Washington, D.C. 20012
(Ward 4)

as an alternate member of the Board of Directors of the District of Columbia Water and Sewer Authority, in accordance with section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.04), replacing Terry Bellamy, for a term to end September 12, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-723

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Emile Thompson to the District of Columbia Water and Sewer Authority Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Water and Sewer Authority Board of Directors Emile Thompson Confirmation Resolution of 2016”.

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

Mr. Emile Thompson
1627 Montello Avenue, N.E.
Washington, D.C. 20002
(Ward 5)

as a member of the Board of Directors of the District of Columbia Water and Sewer Authority, in accordance with section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.04), replacing Obiora Menkiti, for a term to end September 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-724

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Ellen Boardman to the District of Columbia Water and Sewer Authority Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Water and Sewer Authority Board of Directors Ellen Boardman Confirmation Resolution of 2016”.

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

Ms. Ellen Boardman
1723 Shepherd Street, N.W.
Washington, D.C. 20011
(Ward 4)

as a member of the Board of Directors of the District of Columbia Water and Sewer Authority, in accordance with section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.04), for a term to end September 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-725

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Mr. Tommy Wells to the District of Columbia Water and Sewer Authority Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Water and Sewer Authority Board of Directors Tommy Wells Confirmation Resolution of 2016”.

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

Mr. Tommy Wells
311 4th Street, S.E.
Washington, D.C. 20003
(Ward 6)

as a member of the Board of Directors of the District of Columbia Water and Sewer Authority, in accordance with section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.04), replacing Robert Mallett, for a term to end September 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-726

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the appointment of Ms. Shawntelle Nesmith to the Board of Long-Term Care Administration.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Long-Term Care Administration Shawntelle Nesmith Confirmation Resolution of 2016”.

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

Ms. Shawntelle Nesmith
4119 Beck St., N.E.
Washington, D.C. 20019
(Ward 7)

to the Board of Long-Term Care Administration, as a health professional licensed in the District who has experience in long-term care, established by section 205 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202.05), for a term to end July 21, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-727

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$65 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist District of Columbia International School in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia International School Revenue Bonds Project Approval Resolution of 2016”.

Sec. 2. Definitions.

For the purposes of this resolution, the term:

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

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

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

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

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

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(6) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

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

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

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

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

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

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

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

(A) The acquisition of a leasehold interest in, renovation and equipping of an existing approximately 135,000 square foot building and the construction of a new approximately 35,000 square foot addition, that will be used as a public charter school campus, located on the former site of the Walter Reed Army Medical Center, which fronts Fern Street, N.W., Washington, D.C. 20012, on the north, Georgia Avenue, N.W., on the east, Aspen Street, NW, on the south and 16th Street, N.W. on the west ("Facility"), including the refinancing of certain existing debt relating to the acquisition of a leasehold interest in, renovation, construction, and equipping of the Facility;

(B) The purchase of equipment and furnishings, together with other property, real and personal, functionally related and subordinate thereto;

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- (C) Funding certain working capital costs directly related to the Facility, to the extent financeable;
- (D) Funding any credit enhancement costs, liquidity costs, or debt service reserve fund; and
- (E) Paying Issuance Costs and other related costs to the extent permissible.

Sec. 3. Findings.

The Council finds that:

- (1) Section 490 of the Home Rule Act provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse costs, and to assist in the financing, refinancing, or reimbursing of, the costs of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.
- (2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series pursuant to a plan of finance, in an aggregate principal amount not to exceed \$65 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.
- (3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.
- (4) The Project is an undertaking in the area of elementary and secondary school facilities, within the meaning of section 490 of the Home Rule Act.
- (5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

- (a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:
 - (1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$65 million; and
 - (2) The making of the Loan.
- (b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

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

Sec. 5. Bond details.

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

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

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the

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District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

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

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

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

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

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

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available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

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

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

Sec. 8. Financing and Closing Documents.

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

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

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

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

Sec. 11. District officials.

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

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

ENROLLED ORIGINAL**Sec. 12. Maintenance of documents.**

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

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

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

Sec. 15. Expiration.

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

Sec. 16. Severability.

If any particular provision of this resolution or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such

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

Sec. 17. Compliance with public approval requirement.

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

Sec. 18. Transmittal.

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

Sec. 19. Fiscal impact statement.

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

Sec. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-728

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$2.741 million of District of Columbia qualified zone academy revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist District of Columbia International School in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia International School Qualified Zone Academy Revenue Bonds Project Approval Resolution of 2016”.

Sec. 2. Definitions.

For the purposes of this resolution, the term:

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

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

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

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

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

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(6) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

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

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

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

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

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

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

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

(A) The renovation and equipping of an existing 135,000 square foot building that will be used a public charter school campus, located on the former site of the Walter Reed Army Medical Center, which fronts Fern Street, N.W., Washington, D.C. 20012, on the north, Georgia Avenue, N.W., on the east, Aspen Street, NW, on the south and 16th Street, N.W. on the west ("Facility"), including the refinancing of certain existing debt relating to the renovation and equipping of the Facility;

(B) The purchase of equipment for the Facility;

(C) Developing course materials for education at the Facility;

(D) Funding certain working capital costs directly related to the Facility, to the extent financeable;

(E) Training teachers and other school personnel at the Facility;

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(F) Paying Issuance Costs and other related costs to the extent permissible.

Sec. 3. Findings.

The Council finds that:

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

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series pursuant to a plan of finance, in an aggregate principal amount not to exceed \$2.741 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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

(4) The Project is an undertaking in the area of elementary and secondary school facilities, within the meaning of section 490 of the Home Rule Act.

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

(6) The Project is an undertaking whose proceeds shall be used for the repair or rehabilitation of a qualified zone academy within the meaning of section 54E of the Internal Revenue Code of 1986, approved October 3, 2008 (122 Stat. 3869; 26 U.S. C. § 54E).

Sec. 4. Bond authorization.

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

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$2.741 million; and

(2) The making of the Loan.

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

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the

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issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction, and assisting in the redemption, repurchase, and remarketing of the Bonds.

(d) The Mayor is authorized to designate the Bonds as qualified zone academy bonds within the meaning of Section 54E of the Internal Revenue Code of 1986, approved October 3, 2008 (122 Stat. 3869; 26 U.S. C. § 54E).

Sec. 5. Bond details.

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

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

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the

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District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

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

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

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

Sec. 6. Sale of the Bonds.

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

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

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

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and the eligibility of the Bonds to be qualified zone academy bonds with the meaning of Section 54E of the Internal Revenue Code of 1986, approved October 3, 2008 (122 Stat. 3869; 26 U.S. C. § 54E).

Sec. 7. Payment and security.

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

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available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

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

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

Sec. 8. Financing and Closing Documents.

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

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve the faith and credit or the taxing power of, the District, shall not constitute a

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debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

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

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

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

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

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is included in gross income for federal income tax purposes under Section 54E of the Internal Revenue Code of 1986, approved October 3, 2008 (122 Stat. 3869; 26 U.S. C. § 54E), will be reserved or will be available at the time of the proposed issuance of the Bonds.

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

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

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applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Transmittal.

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

Sec. 18. Fiscal impact statement.

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

Sec. 19. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

21-729

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To approve the designation of Powell Elementary School as a Qualifying School and its rehabilitation project as an Eligible Project pursuant to the Qualified Zone Academy Revenue Bond Project Forward Commitment Approval Act of 2005.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as "Qualified Zone Academy Bond Designation Approval Resolution of 2016".

Sec. 2. Pursuant to the Qualified Zone Academy Revenue Bond Project Forward Commitment Approval Act of 2005, effective October 18, 2005 (D.C. Law 16-28; D.C. Official Code § 2-1217.101 *et seq.*) ("Act"), the Council approves the designation of Powell Elementary School, located at 1350 Upshur Street, N.W., Washington, D.C. 20011 ("Powell Elementary"), as a Qualifying School, as defined in section 2(14) of the Act, and the designation of the rehabilitation project of Powell Elementary as an Eligible Project, as defined in section 2(7) of the Act.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

21-730

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$20.5 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Eagle Academy Public Charter School in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Eagle Academy Public Charter School Revenue Bonds Project Approval Resolution of 2016”.

Sec. 2. Definitions.

For the purpose of this resolution, the term:

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

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

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

(4) “Borrower” means the owner, operator, manager, and user of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be Eagle Academy Public Charter School, a nonprofit corporation organized under the laws of the District of Columbia, and exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3).

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

(6) “Closing Documents” means all documents and agreements other than Financing Documents that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan contemplated thereby, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

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

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

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

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

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

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

(A) Constructing and renovating leasehold improvements to the Borrower's educational facilities located at 3400 Wheeler Road, S.E., Washington, D.C. 20032;

(B) Acquiring and renovating the Borrower's educational facilities located at 2403 Naylor Road, S.E., Washington, D.C. 20020;

(C) Demolishing the existing improvements and constructing new improvements at 2345 Naylor Road, S.E., Washington, D.C. 20020;

(D) Acquiring and renovating the Borrower's educational facilities located at 2407 Naylor Road, S.E., Washington, D.C. 20020;

(E) Funding a debt service reserve fund with respect to the Bonds, if deemed necessary in connection with the sale of the Bonds; and

(F) Paying allowable Issuance Costs.

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may by resolution authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated in section

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490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$20.5 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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

(4) The Project is an undertaking in the area of elementary, secondary and college and university facilities within the meaning of section 490 of the Home Rule Act.

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

Sec. 4. Bond authorization.

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

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$20.5 million; and

(2) The making of the Loan.

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

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

Sec. 5. Bond details.

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

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

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(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and

(11) The terms and types of credit enhancement under which the Bonds may be secured.

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

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

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

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

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

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Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

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

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

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

Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower.

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

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

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents (including the public official approval required by section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. § 147(f)), to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

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

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees, or agents to perform any covenant, undertaking, or

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obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

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

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the

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Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds.

Sec. 18. Transmittal.

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

Sec. 19. Fiscal impact statement.

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

Sec. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-731

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Erin Larkin to the Domestic Violence Fatality Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Domestic Violence Fatality Review Board Erin Larkin Confirmation Resolution of 2016".

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

Ms. Erin Larkin
3301 Cummings Lane
Chevy Chase, MD 20815

as a community representative member of the Domestic Violence Fatality Review Board, established by D.C. Official Code § 16-1052, for a 3-year term to end July 20, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-732

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To establish the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2018, to identify information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2018, and to require the Mayor to submit performance plans and accountability reports pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fiscal Year 2018 Budget Submission Requirements Resolution of 2016”.

Sec. 2. Pursuant to section 442(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.42(a)) (“Home Rule Act”), the Mayor shall submit to the Council, and make available to the public, not later than April 4, 2017, the proposed budget for the District government and related budget documents required by sections 442, 443, and 444 of the Home Rule Act (D.C. Official Code §§ 1-204.42, 1-204.43, and 1-204.44), for the fiscal year ending September 30, 2018.

Sec. 3. The proposed budget shall contain:

(1) Required budget documents as follows:

(A) For the entire District government, including all subordinate agencies, independent agencies, independent instrumentalities, and independent authorities (“agency”), the proposed budget shall contain a summary statement or table showing the following:

(i) The revenues by source (local, dedicated tax, special purpose, federal, and private);

(ii) Expenditures by Comptroller Source Group; and

(iii) Projections for revenues and expenditures for the Fiscal Year 2017 approved budget and for the Fiscal Year 2018 proposed budget;

(B) For each agency or separate Organizational Level I line item in the District’s annual budget, summary statements or tables showing all sources of funding by source

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(local, dedicated tax, special purpose, federal, private, and intra-district) for Fiscal Years 2015 and 2016;

(C) For each agency or separate Organizational Level I line item in the District's annual budget, a summary statement or table showing projections of all sources of funding by source (local, dedicated tax, special purpose, federal, private, and intra-district), for the Fiscal Year 2017 approved budget and for the Fiscal Year 2018 proposed budget;

(D) For each agency or separate Organizational Level I line item in the District's annual budget, summary statements or tables showing expenditures by Comptroller Source Group and by Program (Organizational Level II), delineated by Activity (Organizational Level III), by source of funding for Fiscal Years 2015 and 2016, as well as projections for the Fiscal Year 2017 approved budget and for the Fiscal Year 2018 proposed budget;

(E) For each Program (Organizational Level II), a delineation by Comptroller Source Group;

(F) A narrative description of each program and activity that explains the purpose and services to be provided; and

(G) A summary statement or table showing, by Comptroller Source Group and by Program, delineated by Activity, authorized full-time equivalents ("FTEs") by revenue source (local, dedicated tax, special purpose, federal, private, intra-district, and capital).

(2) School-related budget documents as follows:

(A) A summary statement or table showing the number of full-time and part-time school-based personnel in the District of Columbia Public Schools, by school level (e.g., elementary, middle, junior high, pre-kindergarten through 8th grade, senior high school) and school, including school-based personnel funded by other District agencies, federal funds, or private funds;

(B) A summary statement or table showing the number of special-education students served by school level (e.g., elementary, junior high), including the number of students who are eligible for Medicaid services; and

(C) For each District of Columbia public school, a summary statement or table of the local-funds budget, including the methodology used to determine each school's local funding.

(3) Agency budgets shall be structured to ensure accessibility and transparency for how taxpayer dollars will be disbursed. Agency budget structures should align with current or proposed agency organizational structures and programs and clearly indicate the source and amount of funding needed for each individual program, facility, or venue identified on the agency's website. Agency program and activity titles shall be specific and descriptive and reflect the programs and activities within the agency. The following shall be eliminated:

(A) Program titles that reiterate the agency name;

(B) Duplicate program and activity titles within an agency; and

(C) Discretionary budget that is not clearly identified and explained.

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(4) A Capital Improvements Plan (“CIP”) for Fiscal Years 2018 through 2023 that is based on the current approved CIP and the current schedule of investment in existing capital assets that is needed to attain and maintain a state of good repair. The proposed CIP shall include all capital projects (inclusive of subprojects) as defined in section 103(8) of the Home Rule Act. The proposed CIP shall be presented separately in one volume and shall include the following information:

(A) A detailed description for each project with planned allotment in Fiscal Years 2018 through 2023. The projects shall be organized alphabetically by title, summarized by owner agency, and listed in a table of contents. Each project description shall include the following:

- (i) A specific scope consistent with the project title;
- (ii) The purpose;
- (iii) The current status;
- (iv) The location (address and ward, if applicable);
- (v) A facility name or identifier, if applicable;
- (vi) Appropriate maps or other graphics;
- (vii) The estimated useful life;
- (viii) The current estimated full-funded cost;
- (ix) Proposed sources of funding;
- (x) Current allotments, expenditures, and encumbrances;
- (xi) Proposed allotments by fiscal year;
- (xii) For each pool project, a Fiscal Year 2018 spending plan that identifies the specific District assets that will be improved with the proposed budget;
- (xiii) The change in budget authority request from the prior year;
- (xiv) The number of FTE positions and the amount of Personnel Services budget to be funded with the project, as a percentage of the proposed allotment; and
- (xv) The estimated impact that the project will have on the annual operating budget;

(B) A chart identifying the estimated funding gaps for capital maintenance projects and new capital projects in each fiscal year of the current approved and proposed CIPs and an explanation of the progress being made in closing those gaps. The explanation shall address projects being funded through public-private partnerships (“P3s”) and identify the impact that the proposed P3s will have on the financial plan and debt-cap analysis.

(C) The proposed Highway Trust Fund budget and the projected local Highway Trust Fund cash flow for Fiscal Years 2017 through 2023, with actual expenditures for Fiscal Year 2016;

(D) A capital budget pro forma setting forth the sources and uses of new allotments by fund detail and owner agency;

(E) An explanation of the debt-cap analysis used to formulate the capital budget and a table summarizing the analysis by fiscal year, which shall include total borrowing,

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total debt service, total expenditures, the ratio of debt service to expenditures, and the balance of debt-service capacity for each fiscal year included in the capital improvement plan; and

(F) An analysis, prepared by the Mayor, of whether the proposed CIP is consistent with the Comprehensive Plan, Transportation Improvement Program, Washington Metropolitan Area Transit Authority capital budget, and other relevant planning programs, proposals, or elements developed by the Mayor as the central planning agency for the District. The Mayor's analysis shall highlight and explain any differences between the proposed CIP and other programs and plans on a project-by-project basis.

(5) Additional documents as follows:

(A) Copies of all documents referenced in and supportive of the budget justification for Fiscal Year 2018, including the proposed Fiscal Year 2018 Local Budget Act of 2017, proposed Fiscal Year 2018 Federal Portion Budget Request Act of 2017, and any other legislation that is necessary for implementation of the proposed budget for the District for Fiscal Year 2018;

(B) A list, by agency, of all special-purpose-revenue-fund balances, each fund-balance use, carryover of funds from prior fiscal years, a narrative description of each fund, and the revenue source for each special-purpose-revenue fund, which shall include the:

- (i) Actual amounts for Fiscal Year 2016;
- (ii) Approved amounts for Fiscal Year 2017; and
- (iii) Proposed amounts for Fiscal Year 2018;

(C) A table of all intra-district funds included in the Fiscal Year 2018 budget, including the receiving and transmitting agency, and whether there is a signed Memorandum of Understanding for each intra-district funding arrangement;

(D) A table showing all tax-supported debt issued and authorized within and above the debt cap and spending authority remaining within the cap;

(E) A summary table, which shall include a list of all intra-agency and inter-agency changes of funding, with a narrative description of each change sufficient to provide an understanding of the change in funds and its impact on services;

(F) A crosswalk, for any agency that has undergone a budget restructuring in Fiscal Year 2017 or which would undergo a proposed budget restructuring in Fiscal Year 2018, that shows the agency's allocations prior to the restructuring under the new or proposed structure;

(G) A table showing each agency's actual fringe rate and amount for Fiscal Years 2015 and 2016, the approved rate and amount for Fiscal Year 2017, and the proposed rate and amount for Fiscal Year 2018;

(H) A spreadsheet detailing each revenue source by line item including the actual amount received for that revenue line item in the prior 2 fiscal years and the amount projected to be received for that revenue line item in the proposed budget; and

(I)(i) A master schedule of fees collected by all agencies that shall:

(I) Identify each fee collected by a District agency;

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online;

authorizing the fee; and

finer and other charges.

- (II) Include the amount collected from each fee;
- (III) Identify the agency collecting the fee;
- (IV) Include information on whether the fee can be paid
- (V) Identify the legislation, statute, or regulation
- (VI) Be published online in a spreadsheet format.

(ii) For the purposes of this subparagraph, the term “fee” includes

Sec. 4. Pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective May 16, 1995 (D.C. Law 11-16; D.C. Official Code § 1-614.11 *et seq.*), the Mayor shall submit to each Councilmember and the Council Officers, and make available to the public, not later than January 31, 2017, all performance accountability reports for Fiscal Year 2016 that cover all publicly funded activities of each District government agency.

Sec. 5. Pursuant to section 446 of the Home Rule Act, the Council’s budget-review period shall begin after the date that all materials required to be submitted by sections 2 through 4, except for section 3(5)(H), have been submitted in accordance with this resolution and the Council’s rules.

Sec. 6. The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 7. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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A RESOLUTION

21-733

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To approve an agreement to enter into a long term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2015-LRSP-01A with Sarah's Circle Renewal, LLC, for units at Sarah's Circle, located at 2551 17th Street, N.W., Washington, D.C. 20009.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2015-LRSP-01A Approval Resolution of 2016".

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

(b) In 2015, DCHA participated in a Request for Proposals issued by the District of Columbia Department of Housing and Community Development. Of the total proposals received, 8 developers were chosen to work with DCHA and other District agencies to develop affordable housing and permanent supportive housing units for extremely low-income families making 0% to 30% of the area's median income, as well as the chronically homeless and individuals with mental or physical disabilities. Upon approval of the agreement to enter into a long-term contract ("ALTSC") by the Council, DCHA will execute the agreement with the selected housing provider under the LRSP.

(c) There exists an immediate need to approve the ALTSC with Sarah's Circle Renewal, LLC, in order to provide long-term affordable housing units for extremely low-income households in the District for units located at 2551 17th Street, N.W.

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(d) The Council's approval authorizes the ALTSC between DCHA and Sarah's Circle Renewal, LLC, with respect to the payment of rental subsidy, and allows the owner to lease the rehabilitated units at Sarah's Circle and house District extremely low-income households with incomes at 30% or less of the area median income.

Sec. 3. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with Sarah's Circle Renewal, LLC, to provide an operating subsidy in support of 49 affordable housing units in an initial amount not to exceed \$913,644 annually.

Sec. 4. Transmittal.

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

Sec. 5. 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. 6. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

21-734

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To approve an agreement to enter into a long term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2015-LRSP-02A with Spring Road, LLC, for units at Spring Road, located at 1433-1435 Spring Road, N.W., Washington, D.C. 20010.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2015-LRSP-02A Approval Resolution of 2016".

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

(b) In 2015, DCHA participated in a Request for Proposals issued by the District of Columbia Department of Housing and Community Development. Of the total proposals received, 8 developers were chosen to work with DCHA and other District agencies to develop affordable housing and permanent supportive housing units for extremely low-income families making 0% to 30% of the area's median income, as well as the chronically homeless and individuals with mental or physical disabilities. Upon approval of the agreement to enter into a long-term contract ("ALTSC") by the Council, DCHA will execute the agreement with the selected housing provider under the LRSP.

(c) There exists an immediate need to approve the ALTSC with Spring Road, LLC, in order to provide long-term affordable housing units for extremely low-income households in the District for units located at 1433-1435 Spring Road, N.W.

(d) The Council's approval authorizes the ALTSC between DCHA and Spring Road, LLC, with respect to the payment of rental subsidy, and allows the owner to lease the rehabilitated units at Spring Road and house District extremely low-income households with incomes at 30% or less of the area median income.

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Sec. 3. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with Spring Road, LLC, to provide an operating subsidy in support of 36 affordable housing units in an initial amount not to exceed \$956,880 annually.

Sec. 4. Transmittal.

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

Sec. 5. 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. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-735

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to authorize the disposition of District-owned real property located at 4470 Q Street, N.W. (also known as 4470 Foxhall Road, N.W.), most commonly known as the Hardy School and more specifically designated for tax and assessment purposes as Lot 0980 in Square 1363.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Hardy School Disposition and Lease Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The Lab School of Washington (the “LSW”) has been providing a rigorous, best-in-class, college-preparatory education for students with learning differences in the District of Columbia for 50 years. Nearly 90% of LSW graduates attend a college or a university after graduating.

(b) The LSW is a national and international model for the dissemination of information about learning disabilities and the development of effective strategies for educating children with learning disabilities. The United States Department of State routinely sponsors delegations of international educators to visit the LSW and learn from the school’s educators. Recent delegations have visited from England, Germany, Australia, France, Switzerland, and Saudi Arabia. The LSW is also an active participant in an initiative of the U.S. Congressional Dyslexia Caucus to raise awareness of learning disabilities.

(c) Despite its international reputation, the LSW has always been dedicated to the District and its families. The school is an irreplaceable component of the District’s public special education system. It is certified by the Office of the State Superintendent of Education as a non-public school that can serve District public school students who meet the criteria of need. In fact, nearly a quarter of all LSW students, including 97 this academic year, are District of Columbia Public Schools (“DCPS”) children.

(d) Over the years, despite recent efforts, the District’s traditional public school system has struggled to provide adequate services to students with learning differences. As a result, many District families have turned to the LSW, and its innovative arts-infused curriculum, to help their children overcome difficulties in reading, spelling, writing, and math and to prepare them for rewarding college and career choices. A 2013 analysis performed by the Mayor found

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that the traditional public school system would not otherwise be capable of serving the students of the LSW.

(e) In response to the LSW's efforts to meet the needs of more children, it acquired the ground lease of the Hardy School building ("Hardy School"), located at 4470 Q Street, N.W., in 2007.

(f) The Hardy School currently serves 80 students in the LSW's elementary program. The LSW's lease of the Hardy School is indispensable to its ability to educate students with learning differences in small class settings, and provides needed separation for children in grades 1-4 and those in grades 5-12. The lease on the Hardy School will expire in December 2023, which does not provide sufficient long-term security for the LSW to make critical renovations to the facility.

(g) While the Hardy School is well-suited for the LSW's unique needs, like all real estate, it needs continued investment. Immediate investment needs include replacing the school's HVAC system, original windows, and making the building ADA compliant. The estimated cost of these renovations is \$2 million.

(h) The LSW would like to make these and other upgrades to the facility, at its own expense, but cannot without the guarantee of a long-term presence at the location. The issues associated with the LSW's inability to invest in these upgrades grow more significant with each passing year.

(i) In addition, the uncertainty surrounding its future at the Hardy School has stymied long-planned improvements at the LSW's main campus on 4759 Reservoir Road, N.W. That campus currently lacks the space to accommodate additional programmatic opportunities for older students, such as additional theatre and performance space. Thus, in order to invest additional funds in the entire school and to expand student amenities for all students, the LSW will need to shift certain student facilities to the Hardy School location. This is not feasible without the ability to lease the school over a longer term.

(j) The issue of the LSW's lease of the Hardy School is not new. Between 2011 and 2013, the District invested significant time and resources in negotiating a new, 50-year lease of the property with the LSW. This lengthy process required the District and the LSW to dedicate enormous time, effort, and financial resources to securing a new lease.

(k) A brief history of efforts undertaken during that negotiation include:

(1) On April 25, 2012, the Department of General Services ("DGS") commissioned an independent appraisal of the Hardy School pursuant to section 1(b-1)(3) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(b-1)(3)) ("Act").

(2) On March 28, 2013, the District notified Advisory Neighborhood Commission ("ANC") 3D that the Hardy School had been declared surplus and informed the ANC of the time and date of the community meeting to discuss this surplus designation.

(3) On April 5, 2013, the District published notice of its public meeting to receive comments on the proposed surplus of the Hardy School in the D.C. Register.

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(4) On April 30, 2013, DGS conducted the public meeting. According to DGS's public testimony from October 2013, "Thirty-two residents attended, and the majority of comments were in support of Lab and the educational services they provide."

(5) Subsequent to the hearing, the District performed a surplus analysis pursuant to section 1(a-1)(2) of the Act (D.C. Official Code § 10-801(a-1)(2)), which concluded: "The most viable option and reasonable future use of the Property is continued use as an educational facility for the LSW. . . . Because of the small size and footprint the Property is not well suited for a DCPS site. Moreover, the students that are currently being served by the LSW cannot be transferred to a traditional public school and will be displaced This is the best use of the property."

(6) Pursuant to section 1(b-1)(1) of the Act (D.C. Official Code § 10-801(b-1)(1)), the District also performed an analysis of economic factors considered in the disposition of the Hardy School, concluding that, "the specific economic and social benefits of the lease outweigh the benefits of retaining this property in the District's inventory."

(7) In June 2013, the District and the LSW executed a Letter of Intent ("LOI") to "propose the terms and conditions under which the District of Columbia would enter into a lease for the Premises." The terms of the new lease specified in the LOI include a ground-lease of the property for an initial term of 25 years with one 25-year option. The base rent is specified as \$16.50 per rentable square foot with an annual rent increase of 2%. Due to the LSW's unique requirement of small class sizes, however, the District included a landlord's concession for operation expenses of \$10 per rentable square foot during the first term of the lease.

(8) On September 27, 2013, the Mayor transmitted PR20-475, the Hardy School Surplus Declaration Resolution of 2013, and PR20-476, the Hardy School Lease Approval Resolution of 2013, to the Council.

(9) On October 22, 2013, the Committee on Government Operations and the Committee on Economic Development held a Joint Public Roundtable on PR20-475 and PR20-476.

(10) On October 29, 2013, the Committee on Economic Development marked up and unanimously voted to approve PR20-476.

(11) On October 30, 2013, the Committee on Government Operations marked up and unanimously voted to approve PR20-475.

(12) On November 21, 2013, DGS commissioned a second independent appraisal of the Hardy School pursuant to section 1(b-1)(3) of the Act (D.C. Official Code § 10-80(b-1)(3)).

(13) On December 16, 2013, the Mayor withdrew PR20-475 and PR20-476.

(l) In August 2014, the District completed the first revision to its public school boundaries in more than 40 years. The process, which took 10 months and was overseen by a 22-member Advisory Committee on Student Assignment, included an exhaustive analysis of future public school facility needs. The final recommendations presented to the Mayor did not propose reopening the Hardy School as a DCPS school in the future.

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(m) On June 21, 2014, the Comprehensive Planning and Utilization of School Facilities Act of 2013 (D.C. Law 20-114; D.C. Official Code § 38-1802.09) became effective. This law added requirements and procedures for the disposition of public school properties in addition to the existing requirements outlined in section 1 of the Act (D.C. Official Code § 10-801).

(n) Requiring the District and the LSW to repeat the entire disposition process again in order to execute a new lease of the Hardy School would constitute an unnecessary expenditure of both the District's and the LSW's resources and time.

(o) The leasing of this property to the LSW has been closely scrutinized by the community, the Mayor, and the Council in the past. As a result, it is in the best interests of the District to authorize the disposition of the Hardy School through a new, long-term ground-lease with the LSW in order to accelerate the long-needed physical improvements to the school for the benefit of current and future students.

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 Hardy School Disposition and Lease Authorization Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-736

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to urge the Federal Aviation Administration and the National Weather Service to designate a location within the boundaries of the District of Columbia as the official measurement site of snowfall for the District.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council on the Official Snowfall Measurement Site for the District of Columbia Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The Federal Aviation Administration and the National Weather Service take official snowfall measurements for the District of Columbia at a snow plot located at the Ronald Reagan Washington National Airport (“National Airport”), which is located in Arlington, Virginia.

(b) The Capital Weather Gang, a team of forecasters and writers who cover local weather for the Washington Post and are widely considered the area experts regarding District weather, has written many times about the discrepancies between measurements at National Airport and measurements within the District of Columbia.

(c) The conditions at National Airport, which has a relatively warm micro-climate that, according to the Capital Weather Gang, does not favor heavy snow accumulations, skew the accuracy of snow data for the District.

(d) The inaccuracy of the snow data can negatively impact the District’s applications for federal disaster aid and the efficacy of its weather preparedness and response.

(e) It is vital that the Sense of the Council on the Official Snowfall Measurement Site for the District of Columbia Emergency Resolution of 2016 be transmitted to the Federal Aviation Administration and the National Weather Service in advance of the first snow event.

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 Sense of the Council on the Official Snowfall Measurement Site for the District of Columbia Emergency Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-738

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to amend the Fiscal Year 2017 Budget Support Act of 2016 to extend the deadline for the submission of a report by the Youth Services Coordination Task Force and the sunset date from March 1, 2017, to October 1, 2017.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Youth Services Coordination Task Force Emergency Declaration Resolution of 2016”.

Sec. 2. (a) In the Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775), the Council created the Youth Services Coordination Task Force within the Office of the Deputy Mayor for Health and Human Services.

(b) The task force is charged with studying the establishment of a single network of service providers for District youth that can provide family counseling, family support services, vocational training, subsidized work experiences, substance abuse counseling and recovery assistance, mentoring, tutoring, GED preparation, community service opportunities, and recreational activities to youth pursuant to individualized success plans developed by each agency.

(c) The task force is required to submit a report to the Mayor, the Council, and the public of its findings and recommendations by March 1, 2017.

(d) As the task force has not yet been created, the Office of the Deputy Mayor for Health and Human Services has requested an extension of the deadline for the report to October 1, 2017.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Youth Services Coordination Task Force Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-739

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve proposed rules submitted to the Council pursuant to the Emergency Medical Services Act of 2008 to provide for termination of resuscitation in the field by paramedics and remote pronouncement of death by certain medical doctors following termination of resuscitation by a certified 911 paramedic.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Emergency Medical Services Regulations Approval Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On September 23, 2016, the Department of Health provided notice in the District of Columbia Register of its intent to adopt a proposed rulemaking in not fewer than 30 days after publication to provide for termination of resuscitation in the field by paramedics and remote pronouncement of death by certain medical doctors following termination of resuscitation by a certified 911 paramedic.

(b) Pursuant to section 24(b) of the Emergency Medical Services Act of 2008, effective March 25, 2009 (D.C. Law 17-357; D.C. Official Code § 7-2341.23(b)), the final rulemaking was submitted to the Council on November 22, 2016, as the Emergency Medical Services Regulations Amendment Approval Resolution of 2016, Proposed Resolution 21-1037, and referred to the Committee on the Judiciary on December 6, 2016.

(c) Currently, the inability of paramedics to terminate resuscitation in the field and remotely pronounce death leads to delays in the receipt of remains by a funeral home or medical examiner and delays in inputting the time of death in the Vital Records database. The District’s existing procedures are also duplicative, requiring hospital emergency rooms to pronounce the death of persons already determined to be deceased. This change will eliminate the costs and resources associated with transporting, receiving, and coding patients, particularly in cases where recoupment of those costs are unlikely.

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 Emergency Medical Services Regulations Emergency Approval Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-741

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to amend the Omnibus Public Safety and Justice Amendment Act of 2009 to make it unlawful to tamper with a detection device required by any custodial or supervision entity with authority over an individual subject to monitoring.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Tampering with a Detection Device Emergency Declaration Resolution of 2016”.

Sec. 2. (a) In the 2014 case of *Jeffrey Hunt v. United States*, 109 A.3d 620 (D.C. 2014), the District of Columbia Court of Appeals (“Court”) was presented with the issue of whether an individual required to wear a Global Positioning System (“GPS”) device as a sanction from the Court Services and Offender Supervision Agency (“CSOSA”) was guilty of the criminal offense of removing or tampering with a detection device in violation of D.C. Official Code § 22-1211(a)(1)(A).

(b) The Court held that the trial court erred in interpreting D.C. Official Code § 22-1211 to include monitoring requirements imposed by CSOSA as sanctions and not only those imposed by the United States Parole Commission or the Superior Court of the District of Columbia as conditions of release.

(c) As a result of the *Hunt* decision, criminal sanctions may only be imposed under District law if the GPS device was ordered as a condition of a protection order, pretrial, presentence, or predisposition release, probation, supervised release, parole, or commitment, or if an individual was required to wear a GPS device while incarcerated.

(d) Permanent legislation, which is substantively identical to the emergency legislation, the Omnibus Public Safety and Justice Amendment Act of 2016, passed on 2nd reading on December 6, 2016 (Enrolled version of Bill 21-724), will shortly be transmitted to the Mayor for review. The bill will be subject to a 60-day period of congressional review and will likely not take effect before late April or May.

(e) This emergency legislation is necessary to immediately close the loophole in the law, illuminated by the *Hunt* decision, that limits the ability of custodial or supervision agencies from holding supervisees accountable for tampering with or removing a GPS device.

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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 Tampering with a Detection Device Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-742

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to amend the District of Columbia Health Occupations Revision Act of 1985 to clarify that the exemption from licensure requirements for individuals engaged in the practice of pharmaceutical detailing applies to those practicing for less than 30 days per calendar year.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Pharmaceutical Detailing Licensure Exemption Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The SafeRx Amendment Act of 2008, effective March 26, 2008 (D.C. Law 17-131; 55 DCR 1659), established licensure requirements for a broad number of pharmaceutical employees and representatives engaged in interactions with healthcare professionals in the District. The purpose of this legislation was to regulate the practice of pharmaceutical detailing.

(b) The broadly written SafeRx Amendment Act of 2008 requires scientists and medical doctors employed by pharmaceutical companies to register with the District before interacting with registered physicians, even if they are giving a speech or attending a medical conference, meeting, or convention in the District.

(c) The Council attempted to address this concern through the enactment of the Pharmaceutical Detailing Licensure Exemption Amendment Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), by creating an exemption from licensure requirements for individuals engaged in the practice of pharmaceutical detailing for less than 30 consecutive days. Since the enactment of this legislation, ambiguity exists in how to interpret and implement the phrase “30 consecutive days” to determine which individuals need to seek licensure as a pharmaceutical detailer.

(d) Removing the term “consecutive” would resolve any ambiguity from the original exemption and would align the exemption with the interpretation of the legislation by the Board of Pharmacy. Permitting an exemption from licensure for individuals engaged in the practice of pharmaceutical detailing for a period of 30 days per calendar year will allow scientists and medical doctors employed by pharmaceutical companies to give speeches or attend medical conferences, meetings, or conventions in the District without undue burden. This legislation is necessary to address the ambiguity that currently exists in District law.

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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 Pharmaceutical Detailing Licensure Exemption Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-743

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-151 between the Not-for-Profit Hospital Corporation and the Wisconsin Avenue Psychiatric Center dba Psychiatric Institute of Washington to provide behavioral health services to the Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$1,992,385.23 for the good and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-151 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-151 between the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Wisconsin Avenue Psychiatric Center dba Psychiatric Institute of Washington (“PIW”), to provide behavioral health services to the Hospital and to authorize payment for the services received and to be received under the contract.

(b) The base year of the contract began on December 1, 2016, in the amount of \$1,992,385.23.

(c) Under the new consultant, NFPHC continues to undergo operational and fiscal analysis for improved performance and efficiency. Quite often, such analysis results in contracting and procurement adjustments.

(d) In addition, the Hospital has experienced personal transitions that may have caused delays with respect to negotiations, preparation of the Council package, or transmittal.

(e) This contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(f) Emergency approval of this contract for a total value of \$1,992,385.23 is necessary to prevent any impact to the hospital’s behavioral health program.

(g) Without this approval, PIW cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

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

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Contract No. NFPHC-151 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-744

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-121 between the Not-for-Profit Hospital Corporation and Washington Imaging Associates of Maryland dba Progressive Radiology to provide radiology services to the H Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$1,104,900 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-121 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-121 between the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Washington Imaging Associates of Maryland dba Progressive Radiology, to provide radiology services to the Hospital, and to authorize payment in the not-to-exceed amount of \$1,104,900 for the goods and services received and to be received under the contract.

(b) The base year of the contract began on December 1, 2016, in the amount of \$1,104,900.

(c) Under the new consultant, NFPHC continues to undergo operational and fiscal analysis for improved performance and efficiency. Quite often, such analysis results in contracting and procurement adjustments.

(d) In addition, the Hospital has experienced personal transitions that may have caused delays with respect to negotiations, preparation of the Council package, or transmittal.

(e) This contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(f) Emergency approval of this contract for a total value of \$1,104,900 is necessary to prevent any impact to the hospital’s provision of radiology services.

(g) Without this approval, Progressive Radiology cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

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

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Contract No. NFPHC-121 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-745

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 1 and 2 to Contract No. NFPHC-238 between the Not-for-Profit Hospital Corporation and Emergency Medicine Associates to provide emergency department services to the Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$1,761,653 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification Nos. 1 and 2 to Contract No. NFPHC-238 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Modification Nos. 1 and 2 to Contract No. NFPHC-238 between the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Emergency Medicine Associates (“EMA”) to provide emergency department services to the Hospital, and to authorize payment in the not-to-exceed amount of \$1,761,653 for the goods and services received and to be received under the contract.

(b) The base year of the contract was approved by the Council on May 4, 2106, and contained 2 option years. (CA21-0051.)

(c) Modification 1 seeks to exercise the first option year, which began on May 5, 2016.

(d) Modification 2 seeks to revise the scope due to increased emergency department volumes. This proposed change reflects successful discussions and will yield a cost savings of \$368,347 annually.

(e) Under the new consultant, NFPHC continues to undergo operational and fiscal analysis for improved performance and efficiency. Quite often, such analysis results in contract amendments seeking to achieve cost savings.

(f) In addition, the Hospital has experienced personal transitions that may have caused delays with respect to negotiations, preparation of the Council package, or transmittal.

(g) The contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(h) Emergency approval of the contract for a total value of \$1,761,653.00 is necessary to prevent any impact to the hospital’s provision of emergency department services.

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(i) Without this approval, EMA cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 1 and 2 to Contract No. NFPHC-238 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-746

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-207 between the Not-for-Profit Hospital Corporation and Hiscox, Inc., to provide insurance coverage to the Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$1,748,795 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-207 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-207 with the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Hiscox, Inc. (“Hiscox”), to provide insurance coverage to the Hospital, and to authorize payment for the services received and to be received under the contract.

(b) This is a one-year contract for \$1,748,795 with a period that began on November 23, 2016.

(c) Under the new consultant, NFPHC continues to undergo operational and fiscal analysis for improved performance and efficiency. Quite often, such analysis results in contracting and procurement adjustments.

(d) In addition, the Hospital has experienced personal transitions that may have caused delays with respect to negotiations, preparation of the Council package, or transmittal.

(e) The contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(f) Emergency approval of the contract for a total value of \$1,748,795.00 is necessary so that the Hospital’s general liability, professional entity liability, professional physician liability, and excess insurance coverages are not impacted.

(g) Without this approval, Hiscox cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

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. NFPHC-207 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-747

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-344 between the Not-for-Profit Hospital Corporation and Kaiser Foundation Health Plan of the Mid-Atlantic, Inc., to provide employee health benefits to the Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$5,332,090 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-344 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-344 with the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Kaiser Foundation Health Plan of the Mid-Atlantic, Inc., to provide employee health benefits to the Hospital, and to authorize payment in the not-to-exceed amount of \$5,332,090 for the goods and services received and to be received under the contract.

(b) This is a one-year contract that was competitively bid by the Hospital’s brokers.

(c) The contract has a term of January 1, 2017, through December 31, 2017, and a cost of \$5,332,090.

(d) In an effort to avoid any lapse in coverage, the hospital requests emergency Council approval.

(e) This contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(f) Emergency approval of this contract for a total value of \$5,332,090 is necessary to prevent any impact to the hospital’s provision of employee health benefits.

(g) Without this approval, Kaiser cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

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. NFPHC-344 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-748

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. 2 to Contract No. NFPHC-8-1 between the Not-for-Profit Hospital Corporation and Morrison Management Specialists, Inc., to provide nutritional services the Not-for-Profit Hospital Corporation, and to authorize payment in the not-to-exceed amount of \$2,634,513 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification No. 2 to Contract No. NFPHC-8-1 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modification No. 2 to Contract No. NFPHC-8-1 with the Not-for-Profit Hospital Corporation ("Hospital") and Morrison Management Specialists, Inc. ("Morrison"), to provide nutritional services to the Hospital, and to authorize payment in the not-to-exceed amount of \$2,634,513 for the goods and services received and to be received under the contract.

(b) The base year of this Contract was approved by the Council (CA20-432) on July 17, 2016, in the amount of \$2,295,192.00.

(c) Modification 1 exercising option year 1 in the amount of \$2,314,305.00 was approved by the Council on July 12, 2015. (CA21-0151).

(d) Modification 2 seeks to exercise option year 2 in the amount of \$2,634,513.00.

(e) Under the new consultant, the Hospital continues to undergo operational and fiscal analysis for improved performance and efficiency. Quite often, such analysis results in contract amendments seeking to achieve cost savings.

(f) In addition, the Hospital has experienced personal transitions that unfortunately may have caused delays with respect to negotiations, preparation of the Council package, or transmittal.

(g) The contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(h) Emergency approval of the contract for a total value of \$2,634,513 is necessary to prevent any impact to the Hospital's provision of nutritional services.

(i) Without this approval, Morrison cannot be paid for these critical services provided and to be provided in excess of \$999,999.99.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. 2 to Contract No. NFPHC-8-1 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-749

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. 3 to Contract No. CFOPD-15-C-001 with Revenue Solutions, Inc. to continue to provide information technology technical support personnel and Electronic Taxpayer Service Center hosting in support of the Integrated Tax System to the Office of the Chief Financial Officer on behalf of the Office of Tax and Revenue, and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification No. 3 to Contract No. CFOPD-15-C-001 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of Option Year Two of Contract No. CFOPD-15-C-001 with Revenue Solutions, Inc. to continue to provide information technology technical support personnel and Electronic Taxpayer Service Center hosting to the Office of the Chief Financial Officer on behalf of the Office of Tax and Revenue, and to authorize payment for the services received and to be received under the contract.

(b) On October 19, 2016, the Office of the Chief Financial Officer executed Modification No. 2 to Contract No. CFOPD-15-C-001, which partially exercised the option period from October 20, 2016, through December 19, 2016, in the amount of \$670,000.

(c) Proposed Modification No. 3 will exercise the remaining 9 months of the option period, from December 20, 2016, through October 19, 2017, in the amount of \$3.33 million.

(d) Council approval is necessary because proposed Modification No. 3 exercises an option in excess of \$1 million, and it increases the overall expenditures under Contract No. CFOPD-15-C-001 to more than \$1 million during a 12-month period. Council approval is further necessary to allow the continuation of these vital services and to allow Revenue Solutions, Inc. to continue performance under the contract.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. 3 to Contract No. CFOPD-15-C-001 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-751

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to authorize the Mayor to enter into an agreement with a Business Improvement District, DC Main Streets program, or Clean Team grantee for snow and ice removal from sidewalks, curb cuts, and crosswalks in their designated areas during a declared snow emergency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Snow Removal Agreement Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) Safe sidewalks, curb cuts, and crosswalks are critical to keeping our neighborhoods safe and passable during major snow events. Safe and passable sidewalks mean our residents can get to work and to the grocery store, children can walk safely to school and to caregivers, and our businesses can be open and ready to serve customers.

(b) Last winter, the District received record snowfall that impacted our residents, businesses, and commuters alike. In response to the January blizzard alone, the District spent \$55 million, exceeding the total snow removal budget for the last several years combined.

(c) While the District’s snow team focused on clearing the streets, Business Improvement Districts (“BIDs”) and DC Main Streets programs, along with the men and women of our Clean Teams, took it upon themselves to remove snow and ice from the sidewalks, curb cuts, and crosswalks, clearing the pathways to transit and businesses so that our residents and workers could continue on with their lives, despite the snow.

(d) Our BIDs, DC Main Streets programs, and Clean Teams voluntarily helped make the District more passable; however, they were not compensated for their hours of snow shoveling. Instead, millions of dollars were paid to contractors from outside the District, with little to none of the snow removal funds going to sidewalk clearing.

(e) The emergency bill will authorize the Mayor to enter into an agreement with a BID, DC Main Streets program, or Clean Team grantee for snow and ice removal from sidewalks, curb cuts, and crosswalks in their designated areas during a declared snow emergency.

(f) The emergency bill mirrors the language in the Snow Removal Agreement Authorization Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-921) (“permanent legislation”).

ENROLLED ORIGINAL

(g) Due to the pending end of the congressional session, transmission of the permanent legislation for congressional review will be delayed until after the new year. As a result, the permanent legislation will not become law in time for the impending winter season.

(h) It is vital that the provisions of the permanent legislation be in effect as soon as possible to provide the authority to the Mayor to enter into agreements for snow and ice removal for this winter.

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 Snow Removal Agreement Authorization Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-752

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to amend the Business Improvement Districts Act of 1996 to provide that a board of directors of a condominium association within the geographical area of the Downtown Business Improvement District may petition to join the Downtown Business Improvement District, and to establish the residential tax rate for the Downtown Business Improvement District.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Downtown Business Improvement District Emergency Declaration Resolution of 2016".

Sec. 2. (a) The Downtown Business Improvement District Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-905) ("permanent legislation") amends the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.01 *et seq.*), to provide that a board of directors of a condominium association may petition to join the Downtown Business Improvement District ("Downtown Bid").

(b) In addition, the permanent legislation establishes the rate of Business Improvement District taxes within the Downtown BID for residential properties. Tax bills will be mailed in February, with payment due in March.

(c) The permanent legislation must complete the District's legislative process and then be transmitted to Congress for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)). The permanent legislation will not become law before the February mailing.

(d) It is important that the residential tax rate established in the permanent legislation, which is mirrored in the proposed emergency legislation, be in effect for, and reflected in, the upcoming billing cycle.

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 Downtown Business Improvement District Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-753

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare an emergency with respect to the need to amend the Firearms Control Regulations Act of 1975 to permit and regulate the possession and sale of stun guns, to repeal the age requirement for the possession and use of self-defense sprays, and to repeal the registration requirement for self-defense sprays; to amend An Act To prohibit the introduction of contraband into the District of Columbia penal institutions to conform the definition of stun gun; to amend An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes to provide for an enhanced penalty for committing a crime while armed with a stun gun; and to amend section 47-2851.03 to require vendors to obtain an endorsement to the basic business license to sell stun guns.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Stun Gun Regulation Emergency Declaration Resolution of 2016”.

Sec. 2. (a) District law currently prohibits the private possession of stun guns. In August, the District’s categorical ban on the private possession of stun guns was challenged in the U.S. District Court case of *Wright v. District of Columbia*, Civil Action No. 1:16-1556. There, the plaintiffs cite to a recent U.S. Supreme Court decision, *Caetano v. Massachusetts*, 136 S.Ct. 1027 (2016), that calls into question the constitutionality of a categorical ban on stun gun possession.

(b) A motion for preliminary injunction to enjoin the enforcement of the District’s stun gun laws is pending before the court in *Wright*. The parties have filed status reports advising the court that the Council has been considering amendments to the District’s stun gun laws.

(c) The Council has acted to adopt permanent revisions to the law in the Stun Gun Regulation Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-886).

(d) This emergency is necessary to effect changes to the law sooner than otherwise possible with a 60-day congressional review period.

ENROLLED ORIGINAL

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-758

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to authorize the salary and benefits for the Chancellor of the District of Columbia Public Schools.

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

Sec. 2. (a) There exists an immediate need to authorize the salary and benefits for the Chancellor of the District of Columbia Public Schools (“DCPS”) before Mr. Antwan Wilson's start of employment on February 1, 2017.

(b) The Mayor nominated Mr. Antwan Wilson as the Chancellor of DCPS on November 22, 2016, pursuant to the Chancellor of the District of Columbia Antwan Wilson Confirmation Resolution of 2016, PR21-1040.

(c) Mr. Wilson has over 10 years of leadership experience in education, serving in positions ranging from teacher to superintendent. He currently leads one of the most diverse school districts in the country, Oakland Unified School District, as superintendent. His tenure has been marked by improving graduation rates, decreasing out-of-school discipline issues, a decade-high investment in teachers’ pay, newfound fiscal stability, and creating a pathway for long-term academic improvement. His appointment will further the District’s progress in closing the achievement gap and delivering quality education to all District students.

(d) The Council’s Committee on Education held 3 public hearings on Mr. Wilson’s nomination on November 30, 2016, December 5, 2016, and December 8, 2016. The Committee on Education voted unanimously to confirm Mr. Wilson on Tuesday, December 13, 2016.

(e) The salary adjustment that the accompanying legislation would authorize is necessary to set the salary of the Chancellor position above the current salary available for subordinate agency heads on the Executive Service Salary Schedule.

(f) The Chancellor position historically has not been paid on the same schedule as subordinate agency heads due to the nature of the work. The salary being requested is within the average salary range of a chancellor position, which is usually between \$213,506 and - \$316,946, based on the salaries of chancellors of other major city school districts and based on the salaries of the previous Chancellors of DCPS.

(g) The accompanying legislation would approve the annual salary of the Chancellor of the DCPS in the amount of \$280,000, which is less than the amount approved for this position by

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the Council in the Executive Service Pay Schedule Amendment Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775).

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-759

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of Option Year 2 via Modification No. 2 to the Contract No. DCAM-14-NC-0133D with W.L. Gary Company, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133D Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133D (“Contract”) with W.L. Gary Company, Inc. for HVAC capital improvement services, and authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

(b) The Contract with W.L. Gary Company, Inc. was initially approved by the Council (CA20-0499) with an established not-to-exceed value of \$3 million and 2 one-year options to extend the Contract term. In Fiscal Year 2015, all work under the Contract was awarded and released through individual project task orders, based on a competitive bidding process, as set forth in section 1.2 of the Contract. Task orders could be issued up to the maximum not-to-exceed amount of \$3 million.

(c) The base year of the Contract ended on September 30, 2015. In Fiscal Year 2016, the Department of General Services partially exercised Option Year 1, bilaterally, with no change in the not-to-exceed amount. The partial exercise of Option Year 1 expired on December 31, 2015. The remainder of Option Year 1 was bilaterally exercised via Change Order No. 4 with active Council approval (A21-0457) and no change to the not-to-exceed amount. At the expiration of Option Year 1, the parties executed Modification No. 1 for the partial exercise of Option Year 2 on September 30, 2016, with a not-to-exceed amount of \$975,000. For the full exercise of Option Year 2, proposed Modification No. 2 now requires Council approval 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). The terms and conditions of the Contract have not changed.

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The not-to-exceed value of Option Year 2 would be increased to \$8 million. The full exercise of Option Year 2 is bilateral.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133D Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-760

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133C with RSC Electrical & Mechanical Contractors, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133C Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133C (“Contract”) with RSC Electrical & Mechanical, Inc. for HVAC capital improvement services, and authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

(b) The Contract with RSC Electrical & Mechanical Contractors was initially deemed approved by the Council (CA20-0497) with an established not-to-exceed amount of \$3 million and 2 one-year options to extend the Contract term. In Fiscal Year 2015, all work under the Contract was awarded and released through individual project task orders, based on a competitive bidding process, as set forth in section 1.2 of the Contract. Task orders could be issued up to the maximum not-to-exceed amount of \$3 million.

(c) The base year of the Contract ended September 30, 2015. In Fiscal Year 2016, the Department of General Services partially executed Option Year 1, effective through December 31, 2015, with a not-to-exceed amount of \$975,000. The partial option period was extended by Change Order No. 2 through February 15, 2016, with no increase in the not-to-exceed amount. The partial option period was extended again by Change Order No. 3 through April 15, 2016, with no increase in the not-to-exceed amount. The partial option period was extended again by Change Order No. 3.5 through June 15, 2016, with no increase in the not-to-exceed amount. The partial option period was extended again by Change Order No. 4 through July 25, 2016, with no increase in the not-to-exceed amount. In Change Order No. 5, the remainder of Option Year 1 was exercised with Council approval (A21-0457), extending the period of performance through September 30, 2016, with a not-to-exceed amount of \$5 million. Option Year 2 was partially

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exercised via Modification No. 1, which extended performance through December 31, 2016, with a not-to-exceed amount of \$950,000 during the option period. For the full exercise of Option Year 2, Modification No. 2 now requires Council approval 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). The terms and conditions of the Contract have not changed. The not-to-exceed value of Option Year 2 would be increased to \$8 million. The full exercise of Option Year 2 is bilateral.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133C Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-761

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133A with Adrian L. Merton, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133A Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133A (“Contract”) with Adrian L. Merton, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

(b) The Contract with Adrian L. Merton, Inc. was initially approved by the Council (CA20-0496) with an established not-to-exceed value of \$3 million and 2 one-year options to extend the term of the Contract. In Fiscal year 2015, all work under the Contract was awarded and released through individual project task orders, based on a competitive bidding process, as set forth in section 1.2 of the Contract. Task orders could be issued up to the maximum not-to-exceed amount of \$3 million.

(c) The base year of the contract ended on September 30, 2015. In Fiscal Year 2016, the full exercise of Option Year 1 was approved by the Council, via Change Order No. 5, with a not-to-exceed amount of \$5 million. Option Year 1 ended on September 30, 2016. On September 30, 2016, the Department of General Services partially exercised Option Year 2, bilaterally, with a not-to-exceed amount of \$950,000. The partial exercise of Option Year 2 via Modification No. 1 expires on December 31, 2016. Council approval is now required for the full exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133A to extend the term of the Contract through September 30, 2017, 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). The terms and conditions of the Contract have not changed, and the not-to-exceed value of Option Year 2 would be increased to \$8 million. The full exercise of Option Year 2 is bilateral.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133A Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-762

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve the exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133B with R&R Mechanical, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133B Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the full exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133B (“Contract”) with R&R Mechanical, Inc. for HVAC capital improvement services, and to authorize payment in the not-to-exceed amount of \$8 million for the goods and services received and to be received under the contract.

(b) The Contract with R&R Mechanical, Inc. was initially approved by the Council (CA20-0500) with an established not-to-exceed value of \$3 million and 2 one-year options to extend the term of the Contract. In Fiscal year 2015, all work under the Contract was awarded and released through individual project task orders, based on a competitive bidding process, as set forth in section 1.2 of the Contract. Task orders could be issued up to the maximum not-to-exceed amount of \$3 million.

(c) The base year of the Contract ended on September 30, 2015. In Fiscal Year 2016, the full exercise of Option Year 1 was approved by the Council (PR21-0827 and B21-0799), via Change Order No. 5, with a not-to-exceed amount of \$5 million. Option Year 1 ended on September 30, 2016. On September 30, 2016, the Department of General Services partially exercised Option Year 2, bilaterally, with a not-to-exceed amount of \$950,000. The partial exercise of Option Year 2 via Modification No. 1 expires on December 31, 2016. Council approval is now required for the full exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133B to extend the term of the Contract through September 30,

ENROLLED ORIGINAL

2017, 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). The terms and conditions of the Contract have not changed, and the not-to-exceed value of Option Year 2 would be increased to \$8 million. The full exercise of Option Year 2 is bilateral.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Exercise of Option Year 2 via Modification No. 2 to Contract No. DCAM-14-NC-0133B Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-763

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Change Order Nos. 1 and 2 to Contract No. DCAM-16-CS-0074 with W.M. Schlosser Company, Inc. for infrastructure work in connection with the future DC United soccer stadium, and to authorize payment in the aggregate amount of \$1,630,088 for the goods and services received and to be received under the change orders.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Change Order Nos. 1 and 2 to Contract No. DCAM-16-CS-0074 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Change Order Nos. 1 and 2 to Contract No. DCAM-16-CS-0074 with W.M. Schlosser Company, Inc. for infrastructure work in connection with the future DC United soccer stadium, and authorize payment in the aggregate amount of \$1,630,088 for the goods and services received and to be received under the change orders.

(b) The underlying contract was approved by the Council on May 27, 2016 (CA21-0385). The Department of General Services then issued Change Order No. 1 (\$992,429), with an aggregate value of less than \$1 million, which did not require Council approval.

(c) Change Order No. 2 will cause the aggregate value of the change orders issued, after Council's last approval of the underlying contract, to exceed the \$1 million threshold, thus requiring Council approval 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).

(d) Approval of Change Order Nos. 1 and 2 in the aggregate amount of \$1,630,088 is necessary to compensate W.M. Schlosser Company, Inc. for work completed and to be completed pursuant to Change Order No. 2 to Contract No. DCAM-16-CS-0074 for infrastructure work in connection with the future DC United soccer stadium.

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 Change Order Nos. 1 and 2 to Contract No. DCAM-16-CS-0074 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-764

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. 1 to Contract No. CW46876 with United Rental, Inc. to provide rental snow equipment for the Department of Public Works, and to authorize payment in the amount of \$2,937,542.52 for the goods received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification No. 1 to Contract No. CW46876 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Modification No. 1 to Contract No. CW46876 with United Rental, Inc. to provide rental snow equipment for the Department of Public Works ("DPW"), and to authorize payment in the amount of \$2,937,542.52 for the goods received and to be received under the contract.

(b) The Office of Contracting and Procurement ("OCP"), on behalf of DPW, entered into Contract No. CW46876, in the amount of \$2,937,542.52 for the period from October 26, 2016, through March 31, 2017.

(c) OCP now proposes Modification No. 1 to Contract No. CW46876 to definitize Contract No. CW46876 in the amount of \$2,937,542.52.

(c) Council approval is necessary because the expenditures under the contract are in excess of \$1 million during a 12-month period.

(d) Approval is necessary to allow the rental of these goods. Without this approval, United Rental, Inc. cannot be paid for additional goods provided in excess of \$1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. 1 to Contract No. CW46876 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-765

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. 2 and 3 to Contract No. CW40855 with Cellco Partnership dba Verizon Wireless to provide District-wide telecommunications products and services, and to authorize payment in the not-to-exceed amount of \$7,084,015 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification Nos. 2 and 3 to Contract No. CW40855 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists a need to approve Modification Nos. 2 and 3 to Contract No. CW40855 with Cellco Partnership dba Verizon Wireless to provide District-wide telecommunications products and services to District agencies, and to authorize payment in the not-to-exceed amount of \$7,084,015 for the services to be received under Modification No. 2 and proposed Modification No. 3.

(b) On November 17, 2016, by Modification No. 2, the Office of Contracting and Procurement (“OCP”), on behalf of the Office of the Chief Technology Officer, exercised a partial option of option year one of Contract CW40855 to provide telecommunication products and services to District agencies for the period from December 1, 2016, through January 7, 2017, in a minimum amount of \$7.99 and a maximum amount of \$999,999.

(c) Modification No. 3 is now necessary to exercise the remainder of option year one in the amount of \$6,084,016, which will result in a total maximum amount of \$7,084,015 for option year one.

(d) Council approval is necessary since these modifications increase the contract by more than \$1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Cellco Partnership dba Verizon Wireless cannot be paid for services provided in excess of \$1 million for the contract period December 1, 2016, through November 30, 2017.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 2 and 3 to Contract No. CW 40855 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-766

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Task Order Agreement No. CW46793 against GSA Contract No. GS-25F-0062L with Xerox Corporation to provide copier lease and maintenance services for multiple District agencies, and to authorize payment in the not-to-exceed amount of \$25,000,000 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Task Order Agreement No. CW46793 against GSA Contract No. GS-25F-0062L Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Task Order Agreement No. CW46793 against General Services Administration ("GSA") Federal Supply Schedule Contract No. GS-25F-0062L with Xerox Corporation to provide copier lease and maintenance services for multiple District agencies and to authorize payment in the not-to-exceed amount of \$25,000,000 for the goods and services received and to be received under the contract.

(b) On October 1, 2016, the District of Columbia ("District") Office of Contracting and Procurement ("OCP"), on behalf of the Office of the Chief Technology Officer, awarded to Xerox Corporation ("Xerox") Indefinite Delivery/Indefinite Quantity Letter Contract No. CW46703 ("Letter Contract") to provide lease copiers, associated maintenance services, and applicable accessories for multiple District agencies pursuant to GSA Federal Supply Schedule Contract No. GS-25F-0062L ("FSS Contract"). The total minimum contract amount is \$1,000 and the maximum contract amount for the Letter Contract is \$1,000,000.

(c) OCP now intends to make definite the Letter Contract through Task Order Agreement No. CW46793 pursuant to GSA FSS Contract No. GS-25F-0062L for a period of 5 years, from October 1, 2016, through September 30, 2021, in the total minimum contract amount of \$1,000 and maximum contract amount of \$25,000,000.

(d) Council approval is necessary because the value of Task Order Agreement No. CW46793 is more than \$1 million during a 12-month period.

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

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Task Order Agreement No. CW46793 against GSA Contract No. GS-25F-0062L Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-767

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. M0002 to District of Columbia Supply Schedule Contract No. CW46486 to provide Mission Oriented Business Integrated Services, and to authorize payment in the not-to-exceed amount of \$10,000,000 for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification No. M0002 to Contract No. CW46486 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Modification No. M0002 to Contract No. CW46486 with Tandem Conglomerate, LLC, to continue to provide Mission Oriented Business Integrated Services.

(b) Modification No. M0002 to Contract No. CW46486 modifies the contract by increasing the not-to-exceed amount from \$950,000 to \$10,000,000 for the base period and all 4 option periods.

(c) Council approval is necessary because this modification increases the contract to more than \$1 million during a 12-month period, as required by section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)).

(d) Approval is necessary to allow the continuation of these vital services. Without this approval, Tandem Conglomerate, LLC, cannot be paid for services provided and to be provided in excess of \$1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification No. M0002 to Contract No. CW46486 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF 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**

- | | |
|--------|--|
| B22-50 | Child Development Facilities Regulations Amendment Act of 2017

Intro. 1-10-17 by Councilmember Grosso and referred to the Committee on Education |
| B22-51 | Comprehensive Campaign Finance Reform Amendment Act of 2017

Intro. 1-10-17 by Councilmembers Gray and T. White and referred to the Committee on Judiciary and Public Safety |
| B22-52 | Temporary Assistance for Needy Families Assistance Level Increase Amendment Act of 2017

Intro. 1-10-17 by Councilmembers Gray, Evans, and Bonds and referred to the Committee on Human Services |
-

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE**

on the

State of School Discipline: 2015-2016 School Year

on

**Thursday, February 2, 2017
1:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on the State of School Discipline: 2015-2016 School Year. The roundtable will be held at 1:00 p.m. on Thursday, February 2, 2017 in Hearing Room 412 of the John A. Wilson Building.

Earlier this month, the Office of the State Superintendent of Education released [a report](#) on the state of suspensions and expulsions in the District based on data from the preceding school year submitted by local education agencies and community-based organizations. The purpose of this roundtable is to review the findings of that report and discuss recommendations for how D.C. public and public charter schools can continue to reduce the instances and disparities with regard to school discipline in the District of Columbia.

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Tuesday, January 31. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on February 16, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 22 - 03: Request to reprogram \$1,687,420 of Fiscal Year 2017 Capital funds budget authority and allotment from the Office of the Chief Financial Officer (OCFO) to the Office of the Chief Technology Officer (OCTO) was filed in the Office of the Secretary on January 13, 2017. This reprogramming is necessary for OCTO to provide technical services for the implementation of the a-Invoicing module in PASS, the District's procurement system.

RECEIVED: 14 day review begins January 17, 2017

Reprog. 22 - 04: Request to reprogram \$700,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) was filed in the Office of the Secretary on January 13, 2017. This reprogramming ensures that DDOT provides a local contribution to complete an Environmental Impact Statement on the Long Bridge, a rail bridge connecting Virginia to the District of Columbia.

RECEIVED: 14 day review begins January 17, 2017

Reprog. 22 - 05: Request to reprogram \$600,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the Department of Energy and Environment (DOEE) to the Department of Housing and Community Development (DHCD) was filed in the Office of the Secretary on January 13, 2017. This reprogramming ensures that DHCD will be able to execute a Memorandum of Understanding with D.C. Office on Aging to administer the "Safe at Home" program, which offers assistance to District residents for the purpose of reducing the risk of falls and barriers that limit mobility for persons 60 years and older and persons 18 years or older who are living with a disability.

RECEIVED: 14 day review begins January 17, 2017

Reprog. 22 - 06: Request to reprogram \$300,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on January 13, 2017. This reprogramming ensures that DDOT can provide a local contribution to complete an Environmental Impact Statement on the Long Bridge, a rail bridge connecting Virginia to the District of Columbia.

RECEIVED: 14 day review begins January 17, 2017

Reprog. 22 - 07: Request to reprogram \$300,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on January 13, 2017. This reprogramming ensures that DDOT can provide a local contribution to complete an Environmental Impact Statement on the Long Bridge, a rail bridge connecting Virginia to the District of Columbia.

RECEIVED: 14 day review begins January 17, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 20, 2017
Protest Petition Deadline: March 6, 2017
Roll Call Hearing Date: March 20, 2017
Protest Hearing Date: May 17, 2017

License No.: ABRA-105172
Licensee: 1654 Columbia Road NW, LLC
Trade Name: Federalist Pig
License Class: Retailer's Class "D" Restaurant
Address: 1654 Columbia Road, N.W.
Contact: Paul Pascal: (202) 544-2200

WARD 1 ANC 1C SMD 1C06

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 March 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on May 17, 2017 at 1:30 p.m.

NATURE OF OPERATION

A Retailer's Class "D" Restaurant that will be serving barbeque and offering beer and wine only. Total Occupancy Load of 50 inside premises. Sidewalk Café with seating for 12 patrons.

HOURS OF OPERATION FOR PREMISES AND SIDEWALK CAFE

Sunday through Thursday 7:00 am – 2:00 am, Friday and Saturday 7:00 am – 3:00 am

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

Sunday through Thursday 8:00 am – 2:00 am, Friday and Saturday 8:00 am – 3:00 am

HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 6:00 pm – 2:00 am, Friday and Saturday 6:00 pm – 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 20, 2017
Protest Petition Deadline: March 6, 2017
Roll Call Hearing Date: March 20, 2017
Protest Hearing Date: May 17, 2017

License No.: ABRA-104694
Licensee: Union Kitchen, LLC
Trade Name: Union Kitchen Grocery
License Class: Retailer's Class "B" Full-Service Grocery
Address: 1251 9th Street, N.W.
Contact: Courtland Wilson: (301) 256-4741

WARD 2

ANC 2F

SMD 2F06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on March 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on May 17, 2017 at 4:30 p.m.

NATURE OF OPERATION

New full-service grocery store with a Tasting Permit.

HOURS OF OPERATION

Sunday 8:30 am – 11 pm, Monday through Friday 7:30 – 10 pm and Saturday 8:30 am – 11 pm

HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday 8:30 am – 11 pm, Monday through Friday 8:30 – 10 pm and Saturday 8:30 am – 11 pm

DEPARTMENT OF HEALTH**STATE HEALTH PLANNING AND DEVELOPMENT AGENCY****NOTICE OF PUBLIC HEARING**

On May 31, 2013, the D.C. State Health Planning and Development Agency (SHPDA) denied District Hospital Partners, LP's (DHP) application for a certificate of need to establish kidney and pancreas transplant services at George Washington University Hospital. On August 8, 2013, DHP filed a Notice of Appeal with the Office of Administrative Hearings (OAH) appealing the denial of the application. On January 27, 2014, the OAH reversed SHPDA's decision and ordered SHPDA to issue a CON to DHP. After the CON was issued, MedStar Health, Inc. (MedStar) filed a petition with the D.C. Court of Appeals challenging OAH's decision. On September 15, 2016, the Court of Appeals reversed OAH's decision and the matter has been remanded to the SHPDA.

The SHPDA will now hold a public hearing to receive testimony from all interested/affected parties before making a determination on "whether to modify or retract the certificate of need that it issued to DHP".

The hearing will be held on Monday, February 6, 2017, at 10:00 a.m., at 899 North Capitol Street, N.E., 4th Floor, Room 407, Washington, D.C. 20002.

At this public hearing, DHP and MedStar will be given a period of up to one hour each in which to make their presentations. Each public commentator, whether scheduled or unscheduled, will have up to five minutes to present his or her testimony. The time limit will be enforced by the Hearing Officer. Written statements may also be submitted to the SHPDA before the record closes at 4:45 p.m. on Monday, February 13, 2017.

Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Friday, February 3, 2017. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes.

**HISTORIC PRESERVATION REVIEW BOARD
NOTICE OF PUBLIC HEARING**

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

**Case No. 16-20: Perna Brothers Chesapeake Street Houses
4112, 4114, 4116 and 4118 Chesapeake Street NW
Square 1732, Lots 40-43
Applicant: Tenleytown Historical Society
Affected Advisory Neighborhood Commission: 3E**

The hearing will take place at **9:00 a.m. on Thursday, February 23, 2017**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

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

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

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects

affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

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

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

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

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, MARCH 15, 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 SIX

THIS CASE HAS BEEN RESCHEDULED FROM DECEMBER 7, 2016, DECEMBER 14, 2016, AND FEBRUARY 1, 2017 AT THE APPLICANT’S REQUEST:

19355 **Application of Stacey Selenfriend and Christopher Pharr**, pursuant to
ANC-6A 11 DCMR Subtitle X, Chapter 10, for variances from the non-conforming
structure requirements of Subtitle C § 202.2, the lot occupancy requirements of
Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to permit
the location of multiple decks over an existing rear-attached garage in the RF-1
Zone at premises 600 9th Street N.E. (Square 913, Lot 800).

WARD ONE

19434 **Application of Nathaniel Robb and Patricia Kilby-Robb**, pursuant to 11
ANC-1A DCMR Subtitle X, Chapters 9 and 10, for a special exception under Subtitle E §
5201, from the lot occupancy requirements of Subtitle E § 304.1, and the rear
yard requirements of Subtitle E § 306.1, and a special exception from the RF-use
requirements of Subtitle U § 320.2, and a variance from the maximum number of
dwelling unit requirements of Subtitle E § 302, to construct a rear deck addition
and convert a flat to an apartment house in the RF-1 Zone at premises 1361 Oak
Street N.W. (Square 2835, Lot 73).

WARD SIX

19438 **Application of Alice Bellis**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a
ANC-6B special exception under Subtitle E § 5201, from the lot occupancy requirements
of Subtitle E § 304.1, to construct a two-story rear addition to an existing flat in
the RF-1 Zone at premises 1415 Potomac Avenue S.E. (Square 1065NE, Lot 21).

BZA PUBLIC HEARING NOTICE

MARCH 15, 2017

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WARD FIVE

19444
ANC-5E **Application of Daniel A Vega**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the lot occupancy requirements of Subtitle E § 304, to construct a rear deck addition to an existing one-family dwelling in the R-3 Zone at premises 2335 3rd Street N.E. (Square 3558, Lot 49).

WARD SIX

19445
ANC-6E **Application of 1827 Wiltberger LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, and Subtitle K § 805.5, for a special exception under the rear yard requirements of Subtitle K § 805.1, to permit the conversion of, and addition to, an existing historic building into a mixed-use retail, office, and residential building in the ARTS-2 Zone at premises 1827 Wiltberger Street N.W. (Square 441, Lots 849 and 853).

WARD TWO

19448
ANC-2C **Application of MR H Street Capital LLC and MR 617 H Street 2 Capital LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the loading requirements of Subtitle C § 901.1, and the rear yard requirements of Subtitle I § 205.1, to construct a new mixed-use office and retail building in the D-5-R Zone at premises 613-617 H Street N.W. (Square 453, Lots 43, 804 and 805).

WARD ONE

19449
ANC-1B **Application of Joseph Haughton and Melinda Merinsky**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a rear two-story plus basement addition to an existing one-family dwelling in the RF-1 Zone at premises 716 Fairmont Street N.W. (Square 2884, Lot 130).

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

BZA PUBLIC HEARING NOTICE

MARCH 15, 2017

PAGE NO. 3

testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

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

Do you need assistance to participate?

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)

ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ 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?

BZA PUBLIC HEARING NOTICE

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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

Quý vị có cần trợ giúp gì để tham gia không?

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

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

FREDERICK L. HILL, CHAIRPERSON
ANITA BUTANI D'SOUZA, VICE CHAIRPERSON
CARLTON HART, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

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

TIME AND PLACE: Monday, March 6, 2017 @ 6:30 p.m.
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 05-28P (Parkside Residential, LLC – First-Stage PUD Modification and Second-Stage PUD @ Square 5056, Lot 811 – Parkside Parcel J)

THIS CASE IS OF INTEREST TO ANC 7E

On September 30, 2016 the Office of Zoning received an application from Parkside Residential, LLC (“Applicant”). The Applicant is requesting review and approval of a second-stage planned unit development and modification of the first-stage order in Z.C. Case No. 05-28P pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 for the construction of a multi-family building containing approximately 191 residential units.

The property that is the subject of this application consists of approximately 35,562 square feet, and is formally designated as Square 5056, Lot 811 (“Parcel J”). Parcel J is currently vacant and is generally bound by Kenilworth Terrace, N.E. to the south, Hayes Street, N.E. to the east, Cassell Place, N.E. to the west, and Parkside Place, N.E. to the north.

This Applicant proposes to develop Parcel J with an approximately six-story multi-family residential building containing approximately 191 units with associated ground floor level amenity space and 85 below-grade parking spaces (the “Project”). The Project will have approximately 160,780 square feet of gross floor area (“GFA”), a maximum height of 81’-4”, and density of approximately 4.5 FAR. The Project seeks modification of the first-stage order with respect to height, number of units, lot occupancy, GFA, FAR, and parking. The Project will be shorter, have a lower GFA, and fewer parking spaces relative to the approval under the first-stage order. The Project will, however, include a greater number of units and occupy a greater portion of the lot relative to the first-stage order.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Commission’s Rules of Practice and Procedures, Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to

zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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

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Quý vị có cần trợ giúp gì để tham gia không? Nếu quý 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.

ለመከተል ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

TIME AND PLACE: Monday, March 20, 2017 @ 6:30 p.m.
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 16-05 (Fifth and Morse L/Cal LLC and Sixth and Morse L/Cal LLC – Consolidated Review and Approval of a Planned Unit Development)

THIS CASE IS OF INTEREST TO ANC 5D

On March 11, 2016, the Office of Zoning received an application from Fifth and Morse L/Cal LLC and Sixth and Morse L/Cal LLC (collectively, the “Applicant”) requesting approval of a consolidated Planned Unit Development (“PUD”) and zoning map amendment to facilitate the development of Square 3591, Lot 2, Parcel 129/104, and a portion of Parcel 129/106 for residential and commercial use. The Office of Planning submitted its report in support of setting the application down for a public hearing on June 3, 2016. On June 13, 2016, the Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement and related submission on January 3, 2017.

The property that is the subject of this application consists of approximately 33,565 square feet of land area. The property is located on the north side of Morse Street, N.E. between 5th and 6th Streets, N.E. The property is located in the C-M-1 Zone District and the zoning map amendment would amend such zoning to the C-3-C Zone District. The property is located in the High Density Residential, High Density Commercial, and Production, Distribution, and Repair land use categories on the Future Land Use Map of the District of Columbia Comprehensive Plan.

The Applicant proposes to develop the property with a mixed-use project including approximately 280 residential units and up to approximately 20,290 square feet of retail and commercial use. The project will have a floor area ratio of up to 8.0 and a lot occupancy of 79% on the upper floors. The maximum height of the proposed building will be 120 feet, with 160-245 parking spaces and loading facilities on the property.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Commission’s Rules of Practice and Procedure, 11 DCMR Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written

testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

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DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority under Section 101(b) of the Omnibus Regulatory Reform Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 47-2851.04(c)(1) (2015 Repl.)); and D.C. Official Code § 29-102.12(a) (2012 Repl.) and Mayor's Order 2011-178, dated October 25, 2011, hereby gives notice of the adoption of amendments to Chapter 5 (Basic Business License Schedule of Fees) and Chapter 6 (DCRA Corporations Division Schedule of Fees) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking maintains the fee charged on DCRA Permits Division, Business Licensing Division, and Corporations Division transactions since October 1, 2010 to cover the costs of enhanced technological capabilities for each division.

A Notice of Proposed Rulemaking was published on August 9, 2013 at 60 DCR 11636 and deemed approved by the D.C. Council through Resolution 20-579 on February 11, 2014.

This rulemaking was adopted as final on November 21, 2016 and will be effective upon publication in the *D.C Register*.

Chapter 5, BASIC BUSINESS LICENSE SCHEDULE OF FEES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Subsection 500.4 of Section 500, GENERAL PROVISIONS, is amended to read as follows:

500.4 The Director shall charge an additional fee of ten percent (10%) on the total cost of each basic business license issued pursuant to this chapter to cover the costs of enhanced technological capabilities of the basic business licensing system.

Chapter 6, DCRA CORPORATIONS DIVISION SCHEDULE OF FEES, is amended as follows:

Subsection 600.1 of Section 600, GENERAL PROVISIONS, is amended to read as follows:

600.1 This chapter establishes the fees and charges for filings, certifications, and reports submitted to or requested of the Corporations Division of the Department of Consumer and Regulatory Affairs. In addition to the amounts set out in this section, the Director shall charge an additional fee of ten percent (10%) on the total cost of any filing or document that is submitted to, or requested from, the Corporations Division to cover the costs of enhanced technological capabilities.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in The District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of proposed rulemaking action to adopt amendments to Chapter 5 (Voter Registration) in Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments to Section 500 is to codify the Board's current interpretation of existing law concerning the qualifications of electors who are no longer incarcerated. The proposed amendments define who the Board considers to be incarcerated and therefore ineligible to be a qualified elector. The new definition also makes an explicit exclusion of individuals who have completed a court-ordered sentence of confinement and subsequently reside in a community supervision center.

The purpose of the amendments to Section 513 is to (1) codify the Board's current practice of permitting same-day registrants to provide proof of residence documents in either paper or electronic form on voter-owned devices that are independently supplied with a wireless connection; and (2) clarify the types of documents that are permissible as valid proof of residence. The amendments provide a limited date of issuance for validity and/or require additional information, such as an employer's name and contact information.

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

Chapter 5, VOTER REGISTRATION, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 500, GENERAL REQUIREMENTS AND QUALIFICATIONS, is amended as follows:

Subsection 500.2 is amended to read as follows:

500.2 A person is a "qualified elector" if he or she:

- (a) For a primary election, is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election, or for a general or special election, is at least eighteen (18) years of age on or before the date of the general or special election;
- (b) Is a citizen of the United States;
- (c) Is not incarcerated, as defined in § 500.15, for the conviction of a crime that is a felony in the District;

- (d) Has maintained a residence in the District for at least thirty (30) days preceding the next election and does not claim voting residence or the right to vote in any state or territory; and
- (e) Has not been adjudged legally incompetent to vote by a court of competent jurisdiction.

Subsection 500.15 is newly adopted to read as follows:

500.15 For the purpose of determining whether an individual is a qualified elector, a person is considered incarcerated if he or she is confined to prison, jail or penitentiary. A person is not considered incarcerated if he or she has completed the court-ordered sentence of confinement and subsequently resides in a halfway house or other community supervision center as terms of probation or parole.

Section 513, VOTER REGISTRATION APPLICATION PROCESSING: AT THE POLLS, EARLY VOTING CENTERS, AND DURING IN-PERSON ABSENTEE VOTING, is amended as follows:

Subsection 513.2 is amended to read as follows:

513.2 Valid proof of residence is any official document showing the voter's name and a District of Columbia home address. Proof of residence shall either be presented in paper or electronic form. A proof of residence document in electronic form shall be presented on a voter-owned device. The Board shall not be responsible for providing an independent wireless connection for voters to access documents in electronic form. Acceptable forms of proof of residence include:

- (a) A copy of a current and valid government-issued photo identification;
- (b) A utility bill for water, gas, electricity, cable, internet, telephone, or cellular phone service issued within the last ninety (90) days;
- (c) A savings, checking, credit, or money market account statement from a bank or credit union issued within the last ninety (90) days;
- (d) A paycheck, stub, or earning statement that includes the employer's name, address, and telephone number and was issued within the last ninety (90) days;
- (e) A government-issued document or check from a federal or District agency, other than the Board of Elections, issued within the last ninety (90) days; or
- (f) A current residential lease or rental agreement;

- (g) An occupancy statement from a District homeless shelter issued within the last ninety (90) days;
- (h) A tuition or housing bill from a District of Columbia college or university issued for the current academic or housing term.

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 441 4th Street, N.W., Suite 270N, Washington, D.C. 20001. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboee.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF PROPOSED RULE MAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in The District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of a proposed rulemaking action to adopt amendments to Chapter 30 (Campaign Finance Operations) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments would place the Board's regulations into conformity with the Campaign Finance Reform and Transparency Act of 2013, effective February 22, 2014 (D.C. Law 20-0079; 61 DCR 153 (January 10, 2014)) (the "Act"). This rulemaking is necessary because the provisions of the aforementioned acts are currently in effect and require supporting regulations.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than 30 days from the date of publication of this notice in the *D.C. Register*.

Chapter 30, CAMPAIGN FINANCE OPERATIONS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 3011, LIMITATIONS ON CONTRIBUTIONS, is amended in its entirety, to read as follows:

3011 LIMITATIONS ON CONTRIBUTIONS

3011.1 No person, including a business contributor and its affiliated entities, may make any contribution, and no person may receive any contribution, which, when totaled with all other contributions from the same person, pertaining to an individual's campaign for nomination as a candidate or election to public office, including both the primary and general elections, or special elections, exceeds the limitations enumerated for each office set forth in § 3011.2.

3011.2 Contributions in support of either individual candidates or their authorized committees, or for the recall of an incumbent, shall be limited to the following:

- (a) Mayor, U.S. Senator, and U.S. Representative to Congress – two thousand dollars (\$2,000);
- (b) Chairman of the Council and the Attorney General – one thousand five hundred dollars (\$1,500);
- (c) At-large Member of the Council – one thousand dollars (\$1,000);
- (d) Ward Member of the Council and At-large Member of the State Board of Education – five hundred dollars (\$500);

- (e) Ward Member of the State Board of Education – two hundred dollars (\$200);
 - (f) Official of a Political Party – two hundred dollars (\$200); and
 - (g) Advisory Neighborhood Commissioner – twenty-five dollars (\$25).
- 3011.3 With the exception of special elections, no person, including a business contributor and its affiliated entities, shall make any contribution in any one primary or general election that, when totaled, exceeds five thousand dollars (\$5,000), to any one (1) political action committee.
- 3011.4 No person or business contributor and its affiliated entities shall receive or make a contribution in the form of cash or money order which exceeds one hundred dollars (\$100).
- 3011.5 For the purposes of the contribution limitations of this section, expenditures for candidates for office shall not be considered contributions or expenditures by or on behalf of a candidate when derived from:
- (a) Personal funds belonging to candidates; and
 - (b) Funds from any person, political action committee, or independent expenditure committee advocating the election or defeat of any candidate for office; provided, that the contributions it has received and the expenditures it has made were not controlled by or coordinated with any public official or candidate, anyone acting on their behalf, or by any political committee authorized by the candidate.
- 3011.6 Each loan or advance from a candidate or member of the immediate family of a candidate shall be evidenced by a written instruction that fully discloses:
- (a) The terms of the loan or advance;
 - (b) The conditions of the loan or advance;
 - (c) The parties to the loan or advance; and
 - (d) Documentation regarding the source of the funds when the loan or advance is from the candidate.
- 3011.7 The amount of each loan or advance from a member of the candidate's immediate family shall be included in computing and applying the limitations on contributions under § 3011, upon receipt by the authorized political committee of the loan or advance from an immediate family member; provided, that the

standards for repayment are consistent with the repayment policies of lending institutions in the District of Columbia.

- 3011.8 Contributions to a candidate, political committee, political action committee, or an independent expenditure committee shall be attributed to the person actually making the contribution.
- 3011.9 Contributions from minor children (under eighteen (18) years old) shall be attributed to their parents or legal guardians unless:
- (a) The decision to contribute is made knowingly and voluntarily by the minor child; and
 - (b) The funds, goods, or services contributed are owned or controlled exclusively by the minor child.
- 3011.10 A connected organization, under § 3000.8, and each committee established, financed, maintained, or controlled by the connected organization share a single contribution limitation.
- 3011.11 A Bitcoin contribution may be accepted if the value of the Bitcoin contribution at the time of transfer does not exceed the contribution limits established by § 3011.
- 3011.12 A Bitcoin contribution received during the initial transfer shall be rejected and returned to the contributor if it exceeds the contribution limits established by § 3011.
- 3011.13 A Bitcoin contribution that does not exceed the contribution limits at the time of transfer shall, within five (5) days of receipt, be liquidated and converted into US dollars on a high volume public Bitcoin exchange website that is open to transactions in the United States.
- 3011.14 Each committee that receives a Bitcoin contribution shall be responsible for verifying both the accuracy of the contributor information provided and the Bitcoin value determinations as part of the committee's recordkeeping obligations under § 3400.
- 3011.15 Each committee that accepts Bitcoin contributions shall require the contributor to affirm on forms soliciting Bitcoin contributions:
- (a) That the contributor is a United States citizen or legal permanent resident;
 - (b) That the contributor's personal funds were used to purchase the Bitcoin contributed; and
 - (c) That the contributor is the actual lawful owner of the Bitcoin contributed.

- 3011.16 No person, including a business contributor, shall make a bundled or cause to make a bundling of contributions from different donors for the purpose of making a single contribution, directly or indirectly, to a candidate or political committee.
- 3011.17 No candidate or political committee shall accept, directly or indirectly a bundling of contributions from different donors for the purpose of making a single contribution in support of a candidate for public office.
- 3011.18 Each political committee shall disclose in a separate sub-schedule of Schedule A, to be prescribed by the Director, of the R&E Report, where two (2) or more contributions are forwarded from one or more persons, by a person who is not acting with actual authority as an agent or principal of a committee, the following information:
- (a) The name, address, and employer of each person reasonably known by the committee to have bundled in excess of \$10,000 in contributions during the reporting period;
 - (b) The identity of each instance in which multiple checks or money orders dated on or around the same date were received from contributors who share the same employer; and
 - (c) For each person, the total amount of the bundling.
- 3011.19 Limitations on bundled contributions under §§ 3011.16 and 3011.17, shall not apply to hosting a fundraiser, by itself.
- 3011.20 Any business entity, as that term is defined in § 29-101.02 of the District of Columbia Official Code, may make contributions in the District of Columbia.
- 3011.21 A corporation, its affiliated entities, including its subsidiaries, and each committee established, financed, maintained, or controlled by the corporation and its affiliated entities share a single contribution limitation.
- 3011.22 Each business entity is deemed to be a separate entity; provided, that a business entity, which is established, financed, maintained, or controlled (51% or more) by another entity, or shares a controller, whether the controller is another entity or an individual, is considered, for the purposes of the contribution limitations, an affiliated entity of the other business entity.
- 3011.23 All contributions by a partnership shall be subject to each contributing partner's individual contribution limitations, under § 3011.
- 3011.24 Contributions by a partnership shall be attributed to each partner either by:

- (a) Instructions from the partnership to the committee or the candidate; or
 - (b) Agreement of the partners; provided, that the profits of non-contributing partners are not affected.
- 3011.25 No portion of any contribution under § 3011.22 shall derive from the profits of a corporation that is a partner.
- 3011.26 Each business entity, as that term is defined in § 29-101.02 of the District of Columbia Official Code, is subject to the limitations on contributions set forth in § 3011.
- 3011.27 A business contributor consists of:
 - (a) A business entity that makes a contribution; and
 - (b) Each of that business entity's affiliated entities.
- 3011.28 A business contributor shall certify on a form prescribed by the Director and submitted to the committee for each contribution that it makes that none of its affiliated entities have contributed an amount that, when aggregated with the business contributor's contribution to that committee, would exceed the limits imposed by the Campaign Finance Act.
- 3011.29 A business contributor to a political committee, political action committee, or an independent expenditure committee shall provide the committee with the identities of the contributor's affiliated entities that have also contributed to the committee, the date and amount of each contribution and expenditure made.
- 3011.30 [REPEALED].
- 3011.31 Limitations on contributions under § 3011 shall not apply to initiative or referendum measures.
- 3011.32 With the exception of contributions received to retire debt, a political committee or a candidate shall not receive or accept contributions after the election or defeat of the candidate for office, or after the candidate notifies the Office of Campaign Finance of the intent to terminate the candidacy.
- 3011.33 [REPEALED].

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 441 4th Street, N.W., Suite 270N, Washington, D.C. 20001. Please direct any

questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboee.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRM27-2017-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-401(a) of the District of Columbia Code¹ of its intent to amend Chapter 27 (Regulation of Telecommunications Service Providers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments require telecommunications service providers reporting telecommunications service outages to identify the most specific location of the service outage that the telecommunications service provider has available when the initial report is filed and the actual location of the service outage in the telecommunications service provider's network in the final report.

Chapter 27, REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2740, REPORTING REQUIREMENTS FOR SERVICE OUTAGES AND INCIDENTS RESULTING IN PERSONAL INJURY OR DEATH, is amended as follows:

Subsection 2740.4 is amended to read as follows:

2740.4 Each telephone or email communication rendered by the telecommunications service provider subsequent to a service outage shall, at a minimum, state clearly the following information:

- (a) The date and time the telecommunications service provider determines that the service outage has occurred;
- (b) The most specific location in the telecommunications service provider's network of the service outage(s), including street names(s) and block number(s) where the affected customers are located, that is available when the report is filed;
- (c) The estimated total number of customers out of service;

¹ D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2016 Repl.), D.C. Official Code § 34-2002(g) and 34-2002(n) (2012 Repl. & 2016 Supp.).

- (d) A preliminary assessment as to the cause of the service outage(s); and
- (e) The estimated repair and/or restoration time.

Subsection 2740.11 is amended to read as follows:

2740.11 The telecommunications service provider shall file a written report concerning all service outages with the Public Service Commission and the Office of People's Counsel within five (5) days following the end of a service outage. Each written report shall, at a minimum, state clearly the following information:

- (a) A description of the service outage(s) and/or incident(s) and information as to the cause of the event(s);
- (b) The actual location of the outage(s) in the telecommunications service provider's network, including street name(s) and block number(s) where the affected customers are located;
- (c) The actual repair and restoration times of the service outage(s) and/or incident(s);
- (d) A description of the restoration effort;
- (e) The total number of customers affected by the service outage;
- (f) A self-assessment of the telecommunications service provider's restoration efforts in the District of Columbia; and
- (g) A description of the steps that the telecommunications service providers will undertake to prevent such outages in the future or improve repair times and processes.

3. Any person interested in commenting on the subject matter of this proposed rulemaking must submit comments and reply comments in writing no later than thirty (30) days and forty-five (45) days, respectively, from the date of publication of this Notice in the *D.C. Register*. Comments and reply comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. Persons with questions concerning this Notice should call 202-626-5150. After the comment period expires, the Commission will take final rulemaking action.

**DEPARTMENT OF MOTOR VEHICLES
DISTRICT DEPARTMENT OF TRANSPORTATION**

NOTICE OF SECOND PROPOSED RULEMAKING

The Directors of the Department of Motor Vehicles and the District Department of Transportation, pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2014 Repl.)); Sections 5, 6, and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04, 50-921.05, and 50-921.06 (2014 Repl.)); Sections 6, 7, and 13 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03, 50-1401.01 and 50-1403.01 (2014 Repl.)); Sections 105 and 107 of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law. 2-104; D.C. Official Code §§ 50-2301.05 and 2301.07 (2014 Repl.)); and Mayor's Order 77-127, dated August 3, 1977, hereby gives notice of the intent to adopt amendments to Chapter 3 (Cancellation, Suspension, or Revocation of Licenses), Chapter 7 (Motor Vehicle Equipment), Chapter 22 (Moving Violations), Chapter 26 (Civil Fines for Moving and Non-Moving Infractions), and Chapter 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

To help achieve the goal by the year 2024 of zero fatalities and serious injuries to travelers of the District's transportation system, and to create a safer transportation infrastructure in the District of Columbia through more effective use of data, education, enforcement, and engineering, these proposed rules amend Title 18 of the District of Columbia Municipal Regulations to establish side underride guards safety requirements for certain motor vehicles, to require motor vehicle operators to clear damaged but operational vehicles from the travel lanes, to require motor vehicle operators to move a lane over or slow down when approaching a first responder at the side of the road, to require motor vehicle operators to yield to buses merging into traffic, and to designate certain roadways as neighborhood slow zones with a maximum speed limit of 20 miles per hour.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 11, 2015 at 62 DCR 15865. In addition to supportive public feedback, public comments in opposition to the proposed rulemaking were received. In response, the second proposed rulemaking reduces the amount of fines for certain moving violations, adds increased fines or new infractions for dangerous behavior by pedestrians and cyclists, reduces the effective hours of certain safe zones, and clarifies technical language.

This rulemaking shall be submitted to the Council of the District of Columbia for a forty-five (45) day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. Pursuant to D.C. Official Code § 50-2301.05 (2012 Repl.), the rulemaking shall be deemed approved if the Council does not approve or disapprove the proposed rules by resolution within this forty-five (45) day review period.

Final rulemaking action may be taken thirty (30) days after the date of publication of this notice in the *D.C. Register*, or the completion of the forty-five (45) day Council review period for these rules, whichever is later.

The following rulemaking action is proposed:

Chapter 3, CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:

Section 303, ESTABLISHMENT OF A POINT SYSTEM , is amended as follows:

Subsection 303.2 is amended by adding new paragraphs (ff), (gg) and (hh), to read as follows:

- (ff) Failing to move over or proceed with due caution when an authorized emergency vehicle is stopped on the side of the road. 6 points
- (gg) Failure to proceed with due caution when approaching an incident in the roadway. 3 points
- (hh) Overtaking another vehicle stopped at a crosswalk or intersection for a pedestrian. 3 points

Chapter 7, MOTOR VEHICLE EQUIPMENT, is amended by adding a new Section 758, SIDE GUARDS, to read as follows:

758 SIDE GUARDS

758.1 Commercial motor vehicles registered in the District with a manufacturer's gross vehicle weight rating exceeding ten thousand pounds (10,000 lbs.) shall be equipped with a side guard. The requirement imposed by this subsection shall apply twenty-four (24) months after the effective date of this subsection.

758.2 Pursuant to US Department of Transportation Volpe Side Guard Standard (US DOT Standard DOT-VNTSC-OSTR-16-05: http://ntl.bts.gov/lib/60000/60000/60063/Volpe_USDOT_side_guard_specification_final.pdf), side guards shall allow for a maximum thirteen-point-eight inch (13.8") ground clearance, maximum thirteen-point-eight inch (13.8") top clearance; be up to four feet (4') in height; and have a minimum impact strength of four hundred and forty pounds (440 lbs.); achieve a smooth and continuous longitudinal (forward to backward) impact surface flush with the vehicle sidewall. Side guards may include rail style guards, provided that such rails shall be no less than four inches (4") tall and no more than eleven-point-eight inches (11.8") apart; and may incorporate other vehicle features such as tool boxes and ladders.

Chapter 22, MOVING VIOLATIONS, is amended as follows:

Section 2200, SPEED RESTRICTIONS, is amended as follows:

Subsection 2200.8 is amended to read as follows:

2200.8 On all roadways adjacent to school facilities and grounds serving youth, the maximum lawful speed shall be fifteen miles per hour (15 mph) at the times indicated on official signs. When no times are indicated on official signs, the maximum lawful speed shall be fifteen miles per hour (15 mph) from 7:00 AM to 11:00 PM.

Subsection 2200.9 is amended to read as follows:

2200.9 On roadways adjacent to a playground, recreational facility, pool, athletic field, or senior center designated by official signs, the maximum lawful speed shall be fifteen miles per hour (15 mph) at the times indicated on official signs. When no times are indicated on official signs, the maximum lawful speed shall be fifteen miles per hour (15 mph) from 7:00 AM to 11:00 PM.

Subsection 2200.12 is amended to read as follows:

2200.12 Any individual who shall drive a vehicle on a roadway or highway at a speed greater than thirty miles per hour (30 mph) in excess of the legal speed limit for such roadway or highway shall, upon conviction, be fined not more than the amount set forth in the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), or imprisoned not more than ninety (90) days, or both, provided that if the vehicle is detected through the use of an automated traffic enforcement system of traveling at a speed greater than thirty miles per hour (30 mph) in excess of the legal speed limit, the owner shall be liable for the fine established in Section 2600 of this title.

Section 2207, RIGHT-OF-WAY: BETWEEN INTERSECTIONS, is amended by adding a new Subsection 2207.5 to read as follows:

2207.5 Motor vehicle operators approaching from the rear or approaching from the lane adjacent to a transit bus shall yield the right-of-way to the transit bus when the transit bus signals its intention to re-enter traffic. This section does not relieve a operator of a transit bus from the duty to drive with due regard for the safety of all persons using the roadway.

Section 2210, EMERGENCY VEHICLES AND APPARATUS, is amended as follows:

The section heading is amended to read as follows:

2210 EMERGENCY VEHICLES AND APPARATUS; TRAFFIC INCIDENTS

New Subsections 2210.6 through 2210.8 are added to read as follows:

- 2210.6 Upon approaching a collision or mechanical breakdown, every operator shall proceed with due caution, reduce speed as appropriate for road conditions, and, as soon as it is safe to do so, vacate any lane wholly or partially blocked.

- 2210.7 Upon approaching a stationary authorized emergency vehicle making use of audible or visual signals, an operator who drives an approaching vehicle proceeding in the same direction as the authorized emergency vehicle shall (unless directed otherwise by an authorized official directing traffic):
 - (a) If on a roadway having at least two (2) lanes of travel in the direction of the approaching vehicle, make a lane change into a lane not adjacent to that of the authorized emergency vehicle, if the operator can do so safely and if traffic conditions permit, and in all events proceed with due caution, until safely past the authorized emergency vehicle; or
 - (b) If on a roadway with one (1) lane of travel in the direction of the approaching vehicle, proceed with due caution, maintaining a safe speed for road conditions, until safely past the authorized emergency vehicle.

- 2210.8 Notwithstanding Subsections 2210.6 and 2210.7, when at or approaching a collision, mechanical breakdown, or a stationary authorized emergency vehicle making use of audible or visual signals, every operator shall obey the directions of any authorized official directing traffic.

A new Section 2225, AVOIDANCE OF LANE BLOCKAGE – EXPEDITIOUS REMOVAL OF VEHICLES, is added to read as follows:

2225 AVOIDANCE OF LANE BLOCKAGE – EXPEDITIOUS REMOVAL OF VEHICLES

- 2225.1 No person shall stop or park a vehicle in such manner as to impede or render dangerous the use of a roadway by others, except to avoid a collision, at the direction of an authorized official, or in the case of an incident or mechanical breakdown.

- 2225.2 In the event of a collision or mechanical breakdown of a motor vehicle, the operator of the vehicle shall activate the emergency flashing lights and shall move the vehicle from the roadway as soon as it is safe to do so and only as far as is necessary to prevent obstructing the regular flow of traffic.

- 2225.3 Removal of a vehicle from the roadway in accordance with Subsection 2225.2 shall in no way affect responsibility for the collision or mechanical breakdown.

2225.4 An operator who moves a vehicle from a roadway in accordance with Subsection 2225.2 shall not be considered to have interfered with or prevented a police investigation of the collision or mechanical breakdown.

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended as follows:

Section 2600, CIVIL FINES FOR MOTOR VEHICLE MOVING INFRACTIONS, is amended as follows:

Subsection 2600.1 is amended as follows:

The following infraction and fine are added after the category “School Bus, Passing stopped bus or multi-purpose school vehicle when light flashing or stop signal arm activated” and its associated infractions and fines:

Side guard, Failure to have or maintain [§ 758.1]	\$100
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Under the header “Speeding”, strike the row:

Over 25 mph in excess of limit [§ 2200]	\$300
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and insert the following rows in its place:

Over 25 mph in excess of limit on controlled access roadways [§ 2200]	\$400
Over 25 mph in excess of limit on non-controlled access roadways [§ 2200]	\$500

The following infractions and fines are added after the row listing the infraction “Unreasonable”:

School Zones [§ 2200.8]	\$100
Playground, recreational facility, pool, athletic field, or senior center [§ 2200.9]	\$100

Strike the row:

Stop sign, Passing [§ 2208.3]	\$50
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and insert the following row in its place:

Stop sign, Passing [§ 2208.3]	\$100
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Under the header “Colliding”, strike the row:

With a person operating a bicycle [§§ 2207, 2208]	\$75
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and insert the following row in its place:

With a person operating a bicycle [§§ 2207, 2208]	\$150
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Under the header “Right-of-way”, the following infraction is added after the row listing the infraction “Failure to yield right-of-way to a person operating a bicycle”:

Failure to yield right-of-way to transit bus [§ 2207.5]	\$100
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Under the header “Lane or Course”, the following infractions are added after the row listing the infraction “Improper use of Restricted”:

Failure to yield right-of-way to transit bus [§ 2207.5]	\$100
Failure to yield right of way and proceed with due caution around a stationary authorized emergency vehicle [§ 2210.6]	\$100
Failure to proceed with caution and reduced speed when approaching an incident [§ 2210.7]	\$100
Failure to proceed with caution through an incident [§ 2210.8]	\$100

Under the header “Right Turn on Red”, strike the rows:

Failure to come to a complete stop before turning [§ 2103.7]	\$50
Failure to yield right-of-way to vehicle or pedestrian [§ 2103.7]	\$50
Violation of “No Turn on Red” sign [§ 4013]	\$50

and insert the following rows in their place:

Failure to come to a complete stop before turning [§ 2103.7]	\$100
Failure to yield right-of-way to vehicle or pedestrian [§ 2103.7]	\$100
Violation of “No Turn on Red” sign [§ 4013]	\$100

Under the header “Right-of-way”:

(1) Strike the row:

Failure to stop and give right-of-way to pedestrian in roadway [§ 2208]	\$75
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and insert the following row in its place:

Failure to stop and give right-of-way to pedestrian in roadway [§ 2208]	\$150
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(2) Strike the row labeled:

Overtaking another vehicle stopped at a crosswalk or intersection for a pedestrian [§ 2221.5]	\$250
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and insert the following row in its place:

Overtaking another vehicle stopped at a crosswalk or intersection for a pedestrian [§ 2221.5]	\$500
---	-------

(3) Strike the row labeled:

Stopping, standing, or parking a vehicle in a bicycle lane [§ 2405.1]	\$65
---	------

and insert the following row in its place:

Stopping, standing, or parking a vehicle in a bicycle lane [§ 2405.1]	\$150
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(4) Strike the row labeled:

Median strip, channelizing island or safety zone (raised with curb), driving on or over [§ 2201.8]	\$100
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and insert the following row in its place:

Median strip, channelizing island or safety zone (raised with curb), driving on or over [§ 2201.8]	\$200
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Under the header “Sidewalk”, strike the row:

Driving on or over [§ 2221.3]	\$50
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and insert the following row in its place:

Driving on or over [§ 2221.3]	\$150
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Strike the row labeled:

Opening door or permitting door to open on traffic side [§ 2214.4]	\$25
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and insert the following row in its place:

Opening door or permitting door to open on either side that poses danger to a pedestrian, bicyclist, or motor vehicle [§ 2214.4]	\$50
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Section 2602, BICYCLE INFRACTIONS, is amended as follows:

Subsection 2602.1 is amended as follows:

Strike the following row:

Carrying objects which prevent operator from keeping one hand on handle bars	\$ 25.00
--	----------

(§ 1201.6)	
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and insert the following row in its place:

Carrying objects, including handheld communication devices, which prevent operator from keeping one hand on handle bars (§ 1201.6)	\$ 50.00
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After the row listing the infraction “Carrying objects, including handheld communication devices, which prevent operator from keeping one hand on handle bars”, insert the following new rows:

Colliding with a pedestrian crossing the roadway with the right-of-way § 1201.9)	\$150
Colliding with a pedestrian while riding a bicycle on a sidewalk (§ 1201.9)	\$ 100.00

Strike the following row:

Hitching on vehicle (§ 1201.16)	\$ 25.00
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and insert the following row in its place:

Hitching on vehicle (§ 1201.16)	\$ 50.00
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After the row listing the infraction, insert the following new row:

Riding with a headset, headphones, or earplugs covering both ears (§ 1201.9)	\$ 50.00
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Strike the following row:

Right-of-way, failure to yield (§ 1201.10ff)	\$ 25.00
--	----------

and insert the following row in its place:

Right-of-way, failure to yield (§ 1201.10ff)	\$ 50.00
--	----------

Strike the following row:

Speed, excessive (§ 1201.8)	\$ 25.00
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and insert the following row in its place:

Speed, excessive (§ 1201.8)	\$ 50.00
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Section 2603, PEDESTRIAN INFRACTIONS, is amended as follows:

Subsection 2603.1 is amended as follows:

Strike the following row:

Path of a vehicle, walk suddenly into [§ 2303.2]	\$ 10.00
--	----------

and insert the following row in its place:

Path of a vehicle, without the right-of-way, walk suddenly into and collide with [§ 2303.2]	\$ 100.00
---	-----------

Under the header “Right-of-way”, strike the following row:

Fail to yield to an emergency vehicle [§ 2305.6]	\$ 10.00
--	----------

and insert the following row in its place:

Fail to yield to an emergency vehicle engaged in emergency response or patient transport using audible and/or visual emergency signals [§ 2305.6]	\$ 100.00
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Chapter 99, DEFINITIONS is amended as follows:

Section 9901, DEFINITIONS, is amended by inserting the following new definitions in alphabetical order:

Incident- a roadway emergency or collision, a natural disaster, a special event, or where authorized officials impose a temporary traffic control zone

Side guard- a device fit to the side of a large vehicle designed to prevent pedestrians and bicyclists from falling into the exposed space between the front axle and the rear axle of such vehicle.

Transit Bus- a Washington Metropolitan Area Transit Authority bus or D.C. Circulator bus.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than forty five (45) days after the publication of this notice in the *D.C. Register*, with Alice Kelly, Manager, Policy and Governmental Affairs, District Department of Transportation, 55 M Street, S.E., 7th Floor, Washington, D.C. 20003 and David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. An interested person may also send comments electronically to

publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at www.ddot.dc.gov.

OFFICE OF THE MAYOR

NOTICE OF EMERGENCY RULEMAKING

The Mayor of the District of Columbia, pursuant to Section 35(a) of the Presidential Inauguration Special Regulations and Rule of Interpretation Concerning Nonrevival of Statutes Act of 1982 (the Act), effective July 2, 1982 (D.C. Law 4-125, 29 DCR 2093 (May 21, 1982)), hereby gives notice of the adoption of the following emergency rulemaking to amend Chapter 8 (Presidential Inaugurations) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking revises the fee schedule in Section 813 (Fees) applicable during the inaugural period.

Emergency action is needed to ensure that the fees charged for special licenses and permits for the inauguration of President-elect Donald John Trump, Sr. will accurately reflect the costs of an abbreviated review window for the District’s license and permit.

Pursuant to the Act, the Mayor may issue rules amending the special license and permits fees. This emergency rulemaking was adopted on November 21, 2016, and became effective immediately on that date. It will remain in effect for up to one hundred and twenty (120) days, unless earlier superseded by a notice of final rulemaking published in the *D.C. Register*. The rules will expire on March 21, 2017.

Chapter 8, PRESIDENTIAL INAUGURATIONS, of Title 24 DCMR, PUBLIC SPACE AND SAFETY, is amended as follows:

Section 813, FEES, is amended by deleting paragraphs (c), (d), and (e) of existing Subsection 813.1 and replacing them with the following language:

813 FEES

...

- (c) Currently District licensed vendors
 - (1) Inaugural Badge Fee \$100.00;
- (d) Non-District licensed vendors
 - (1) Inaugural Badge Fee \$200.00;
- (e) [RESERVED];

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-008
January 10, 2017

SUBJECT: Appointment — Acting Director, Child and Family Services Agency


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.), pursuant to the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001, D.C. Law 13-277, D.C. Official Code § 4-1303.02a (2012 Repl.), it is hereby **ORDERED** that:

1. **BRENDA DONALD** is appointed Acting Director, Child and Family Services Agency, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2016-166, dated October 21, 2016.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 3, 2017.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

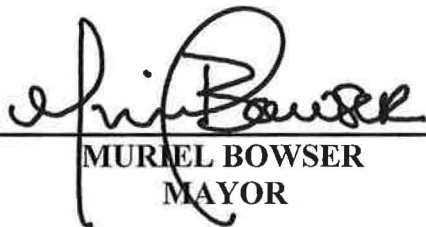
Mayor's Order 2017-009
January 10, 2017

SUBJECT: Appointment – Deputy Mayor for Health and Human Services


ORIGINATING AGENCY: Office of the Mayor

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

1. **HYESOOK CHUNG** is appointed Deputy Mayor for Health and Human Services, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-006, dated January 2, 2015
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 3, 2017.



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 2017-010
January 11, 2017

SUBJECT: Enhancing Compliance with the Disability Rights Protection Act of 2006 and the Americans with Disabilities Act

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 23, 1973 (87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.)); section 3(b)(1) of the Disability Rights Protection Act of 2006, effective March 8, 2007 (D.C. Law 16-239; D.C. Official Code § 2-1431.02(b)(1) (2016 Repl.)); in furtherance of the goals of the Americans with Disabilities Act (“ADA”), approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12101 *et seq.*); and the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; § 2-1401.01 *et seq.* (2016 Repl.)), it is hereby **ORDERED** that:

I. PURPOSE

- A. The purpose of this Order is to help ensure compliance with the ADA and other local and federal disability laws. This Order requires all District government agencies to appoint an ADA Coordinator, who must carry out certain prescribed responsibilities, and to provide the Office of Disability Rights (ODR), through a centralized database, information regarding reasonable accommodation requests and allegations involving disability discrimination. This Order also requires the ODR to carry out certain responsibilities in furtherance of the ADA and the Disability Rights Protection Act of 2006.
- B. This Order is not intended to be a comprehensive statement of the responsibilities of ODR or District government agencies under the Disability Rights Protection Act of 2006 or the ADA, and it is the responsibility of ODR and each District government agency to be aware of, and comply with, its other obligations under those acts.
- C. Pursuant to the authority set forth in sections 3(b) and 4(b) of the Disability Rights Protection Act of 2006 (D.C. Official Code § 2-1431.02(b) and § 2-1431.03(b)), this Order applies to all District agencies, including independent agencies.

II. AGENCY ADA COORDINATORS

- A. Each District agency shall appoint an ADA Coordinator, who shall be responsible for:

1. Ensuring that the agency has in place internal policies and procedures for responding to requests for reasonable accommodations for persons with disabilities;
 2. Ensuring that the agency has in place internal policies and procedures for responding to complaints regarding the accessibility of services, activities, and facilities to persons with disabilities;
 3. Participating with ODR staff in the development of the agency's annual ADA implementation plan. The implementation plan shall state actions to be taken by the agency to provide persons with disabilities with full and complete access to services, activities, and facilities of the agency;
 4. Working to ensure that agency employees, constituents, and volunteers are aware of their rights under the ADA;
 5. Completing an annual agency self-evaluation to determine the status of the agency's compliance with the ADA;
 6. Serving as the initial contact person for ADA complaints related to the agency;
 7. Conducting informal investigations of the agency's compliance with the ADA; and
 8. Maintaining records regarding complaints, requests for reasonable accommodations, the provision of disability-related information to employees, job applicants, volunteers, and constituents, and referrals of disability complaints or accommodation requests to other agencies and entities.
- B. Each ADA Coordinator shall attend an annual ADA Coordinator training provided by the ODR.
- C. Each agency shall notify the ODR of the name and contact information of its ADA Coordinator.
- D. Each agency shall notify agency employees of the name, contact information, and general responsibilities of the ADA Coordinator.

III. CENTRALIZED ADA DATABASE

- A. The ODR shall create and maintain a database that shall serve as a central repository of all ADA accommodation requests and all allegations of disability discrimination made by District government employees, job applicants, and

volunteers, and persons accessing or seeking to access District government services, activities, or facilities.

- B. Each agency ADA Coordinator shall enter each request his or her agency receives for a disability accommodation and each allegation against his or her agency of discrimination based on disability into the ODR database within three (3) business days after the request is made or the ADA coordinator becomes aware of the allegation. The information entered into the database shall include a detailed description of the request or allegation and the proposed, planned, or actual response of the agency to the request or allegation. The agency shall also update the information in the database after the request or allegation is resolved.
- C. The ODR shall review each ADA accommodation request and allegation of disability discrimination entered into the database within five (5) business days after the request or allegation is entered into the database by the agency. For each such request or allegation, ODR shall opine to the agency on appropriate ways in which to respond to the request or allegation, or ODR may concur with the agency's proposed, planned, or actual response.
- D. The ODR shall report to the Office of the City Administrator any agencies which consistently fail to timely enter disability accommodation requests or allegations of disability discrimination into the database.
- E. The ODR shall provide training and guidance to ADA coordinators on the use of the database.

IV. ADA TRAINING, TECHNICAL ASSISTANCE, AND POLICIES AND PROCEDURES

- A. The ODR shall provide annual mandatory ADA Coordinator training and periodic disability compliance training for staff, managers, and ADA Coordinators on reasonable accommodations, accessible work environments, and ancillary tools.
- B. The ODR shall provide technical assistance to District government agencies regarding compliance with the ADA.
- C. The ODR shall develop model policies and procedures that each agency may adopt, with appropriate modifications specific to the agency, for responding to requests for reasonable accommodations for persons with disabilities and responding to complaints regarding the accessibility of services, activities, and facilities to persons with disabilities.

V. INFORMAL INVESTIGATIONS AND DISPUTE RESOLUTION


At the request of an agency, constituent, or employee, the ODR may carry out an informal investigation of an allegation that an agency has failed to provide a reasonable

accommodation to a person with a disability or that the agency has discriminated against a person with a disability. The ODR may also, at the request of the agency, constituent, or employee, provide informal dispute resolution services regarding such a matter.

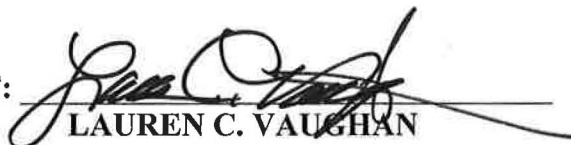
VI. ANNUAL REPORT

The ODR shall issue an annual report to the Mayor regarding compliance by District government agencies with the ADA, the Disability Rights Protection Act of 2006, the disability-related provisions of the District of Columbia Human Rights Act, and all relevant District policies and procedures regarding disability discrimination and disability accommodations.

VII. EFFECTIVE DATE: This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JANUARY 25, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Mafara Hobson, Jake Perry

Protest Hearing (Status)* **9:30 AM**
Case # 16-PRO-00123; Briceno, LLC, t/a Taqueria Rosticeria Fresca, 701 H
Street NE, License #104296, Retailer CR, ANC 6C
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00102; Shallamar Enterprises, LLC, t/a Capitol Hill Tandor and
Grill, 419 8th Street SE, License #60689, Retailer CR, ANC 6B, **Application to
Renew the License**
*This hearing is continued to January 25, 2017 at 9:30 a.m., at the request of
the parties.*

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CC-00023; Ratnakrupa, LLC, t/a Peacock Liquors, 1625 New York
Ave NE, License #96105, Retailer A, ANC 5D
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
Drinking Age**

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CC-00093; M & K, Inc., t/a ABC Grocery, 1401 6th Street NW
License #71204, Retailer A, ANC 6E
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
Drinking Age, Failed to Post Correct Name, Class and License Number on
the Front Window or Front Door, Failed to Post the License in a
Conspicuous Place, Failed to Post Pregnancy Sign, Failed to Post Legal
Drinking Age Sign**

Board's Calendar
January 25, 2017

- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-251-00207; KCC Entertainment, Inc., t/a Club 2020 Bar & Lounge
2434 18th Street NW, License #101093, Retailer CR, ANC 1C
**Operating After Board Approved Hours, Failed or Refused to Allow MPD
to Enter Without Delay, Failed to Obtain a Cover Charge Endorsement,
Permitted the Sale or Delivery of Alcohol to Intoxicated Persons**
- Fact Finding Hearing*** **9:30 AM**
2461 Corporation, t/a Mr. Henry's; 1836 Columbia Road NW, License #17006
Retailer CR, ANC 1C
Request to Extend Safekeeping
- Show Cause Hearing*** **10:00 AM**
Case # 16-CMP-00486; Schawarmji, LLC, t/a Michos, 500 H Street NE
License #94784, Retailer CR, ANC 6C
No ABC Manger on Duty
- Show Cause Hearing*** **10:00 AM**
Case # 16-CMP-00503; HRH Services, LLC, t/a The Alibi, 237 2nd Street NW
License #97969, Retailer CR, ANC 6C
Failed to Comply with Board Order
- Show Cause Hearing*** **10:00 AM**
Case # 16-CMP-00600; HRH Services, LLC, t/a The Alibi, 237 2nd Street NW
License #97969, Retailer CR, ANC 6C
Failed to Comply with Board Order
- Show Cause Hearing*** **11:00 AM**
Case # 16-CMP-00695; Sylvia & David Industries, Inc., t/a Sosnick's Liquor
2318 4th Street NE, License #72301, Retailer A, ANC 5E
Sold Go-Cups

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

- Protest Hearing*** **1:30 PM**
Case # 16-PRO-00103; Juanita's, Inc., t/a Juanita's Restaurant, 3521 14th Street
NW, License #91432, Retailer CT, ANC 1A
Application to Renew the License

Board's Calendar
January 25, 2017

Protest Hearing* **1:30 PM**
Case # 16-PRO-00101; E and K, Inc., t/a Champion Kitchen; 7730 Georgia Ave
NW, License #103055, Retailer CR, ANC 4A
Application for a New License

Show Cause Hearing* **1:30 PM**
Case # 16-CMP-00211; Restaurant Enterprises, Inc., t/a Smith Point, 1338
Wisconsin Ave NW, License #60131, Retailer CT, ANC 2E
**Provided Entertainment Without an Entertainment Endorsement (Two
Counts), Failed to Obtain a Cover Charge Endorsement**

Show Cause Hearing* **2:30 PM**
Case # 16-CMP-00322; Restaurant Enterprises, Inc., t/a Smith Point, 1338
Wisconsin Ave NW, License #60131, Retailer CT, ANC 2E
**Substantial Change in Operation Without Board Approval, Provided
Entertainment Without an Entertainment Endorsement (Two Counts)**

Protest Hearing* **4:30 PM**
Case # 16-PRO-00070; Hilltop Hospitality, LLC, t/a Mission, 1606 20th Street
NW, License #94290, Retailer CR, ANC 2B
Application to Renew the License

Protest Hearing* **4:30 PM**
Case # 16-PRO-00105; Spo-dee-o-dee, LLC, t/a The Showtime, 113 Rhode
Island Ave NW, License #89186, Retailer CT, ANC 5E
Application to Renew the License

Protest Hearing* **4:30 PM**
Case # 16-PRO-00036; 1001 H St, LLC, t/a Ben's Upstairs/Ten 01, 1001 H
Street NE, License #93103, Retailer CR, ANC 6A
Application to Renew the License

***The Board will hold a closed meeting for purposes of deliberating these
hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, JANUARY 25, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-060113 – **Columbia Wine & Liquors** – Retail – A – Liquor Store – 1151 Bladensburg Road NE
[Licensee did not request an extension of Safekeeping.]

ABRA-060338 – **Roxanne/Peyote** – Retail – C – Restaurant – 2296 Champlain Street NW
[Licensee did not request an extension of Safekeeping.]

ABRA-072780 – **Java House** – Retail – D – Restaurant – 1645 Q Street NW
[Licensee did not request an extension of Safekeeping.]

ABRA-075424 – **Eclipse Restaurant & Nightclub** – Retail – C – Nightclub – 2820 Bladensburg Road NE
[Licensee did not request an extension of Safekeeping.]

ABRA-076233 – **Show Bar** – Retail – C – Tavern – 1210 H Street NE
[Licensee did not request an extension of Safekeeping.]

ABRA-080108 – **Food Corner Kabob** – Retail – C – Restaurant – 2029 P St. NW
[Licensee did not request an extension of Safekeeping.]

ABRA-082807 – **Kennedy Street Market** – Retail – B – 701 Kennedy Street NW
[Licensee did not request an extension of Safekeeping.]

ABRA-096294 – **Staples Beer & Wine Grocery** – Retail - A – Liquor Store - 1364 Florida Avenue NE
[Licensee did not request an extension of Safekeeping.]

ABRA-096758 – **Mimosa Restaurant** - Retail – C - 1915 18th Street NW
[Licensee did not request an extension of Safekeeping.]

ABRA-103124 – **Rioja Market** – Retail – B - 1813 Columbia Road NW
[Licensee did not request an extension of Safekeeping.]

ABRA-079306 – **WA-ZO-BIA** – Retail – C – Tavern - 618 T Street NW
[Licensee did pay Safekeeping fee for 10/1/16 – 3/31/17 within 30 days of approval.]

ABRA-094178 – **Park Market** – Retail – A – Liquor Store - 3400 13th Street NW
[Licensee did pay Safekeeping fee for 10/1/16 – 3/31/17. A letter reminding the licensee of
overdue balance was sent on 11/10/16.]

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

**NOTICE OF MEETING
CEASE AND DESIST AGENDA (CLASS – C TAVERNS)**

**WEDNESDAY, JANUARY 25, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The ABC Board will be issuing Orders to Cease and Desist to the following Licensees for the reasons outlined below.

ABRA-088059 – **Hawk N’ Dove** – Retail – C – Tavern – 329 Pennsylvania Avenue SE
[Licensee did not Renew.]

ABRA-086141 – **Lola’s** – Retail – C – Tavern – 711 8th Street SE
[Licensee did not Renew.]

ABRA-089141 – **Willie’s Sports Brew & Que** – Retail – C – Tavern – 300 Tingey Street SE
[Licensee did not Renew.]

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

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, JANUARY 25, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, January 25, 2017 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case#16-251-00256, Amsterdam Lounge, 1208 U Street N.W., Retailer CT, License # ABRA-100340

2. Case# 16-CMP-00831, Cedar Hill Bar & Grill/Uniontown Bar & Grill, 2200 Martin Luther King Jr. Avenue S.E., Retailer CT, License # ABRA-091887

3. Case# 16-CC-00155, Dupont Market, 1807 18th Street N.W., Retailer B, License # ABRA-021578

4. Case# 16-CC-00156, Eleven Market, 1936 11th Street N.W., Retailer B, License # ABRA-060236

5. Case# 16-CC-00159, Brown Street Market, 3320 Brown Street N.W., Retailer B, License # ABRA-101092

6. Case# 16-CC-000158, Family Food and Delicatessen Store, 3713 New Hampshire Avenue N.W., Retailer B, License # ABRA-086078

7. Case# 16-CMP-00791, New Dodge Market, 3620 14th Street N.W., Retailer B, License # ABRA-099565

8. Case # 16-CC-00152, Argonne Market, 1629 Columbia Road N.W., Retailer B, License # ABRA-087999

9. Case# 16-CC-00154, Metro Wine & Spirits, 1726 Columbia Road N.W., Retailer A, License # ABRA-060602

10. Case# 16-CC-00151, Giant Food Store #378, 1345 Park Road N.W., Retailer B, License # ABRA-072580

11. Case# 16-CC-00153, Benmoll Liquors, 1700 U Street N.W., Retailer A, License # ABRA-072334.

12. Case# 16-251-00273, Bourbon, 2321 18th Street N.W., Retailer CT, License # ABRA-097968

13. Case# 16-CMP-00839, Peace Lounge, 2632 Georgia Avenue N.W., Retailer CT, License # ABRA-094013

14. Case# 16-CMP-00844, Ari's Diner, 2003 Fenwick Street N.E., Retailer CT, License # ABRA-101456

15. Case# 17-CMP-00006, Ping Pong, 900 7th Street N.W., Retailer CR, License # ABRA-082097

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JANUARY 25, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 6D. SMD 6D06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Shulman Liquors*, 1550 1st Street SW, Retailer A Liquor Store, License No. 060659.

-
2. Review Request to Extend Safekeeping of License – Fifth Request. Original Safekeeping Date: 9/1/2006. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Machu Picchu Restaurant*, 3263 M Street NW, Retailer CR, License No. 008309.

-
3. Review Request to Extend Safekeeping of License. Original Safekeeping Date: 9/23/2001. Extensions have been made on a regular basis approximately every 6 months since that time. ANC 3C. SMD 3C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Shemali's*, 3306 Wisconsin Avenue NW, Retailer B, License No. 070233.

-
4. Review Request for Change of Hours. **Approved Hours of Operation:** Sunday 11am to 2am, Monday-Thursday 4pm to 2am, Friday 4pm to 3am, Saturday 11am to 3am. **Approved Hours of Alcoholic Beverage Sales and Consumption:** Sunday 11am to 1:45am, Monday-Thursday 4pm to 1:45am, Friday 4pm to 2:45am, Saturday 11am to 2:45am. **Approved Hours of Live Entertainment:** Sunday-Saturday 6pm to 11pm. **Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:** Sunday 10am to 2am, Monday-Thursday 9am to 2am, Friday-Saturday 9am to 3am. ANC 1A. SMD 1A08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Reliable Tavern & Hardware*, 3655 Georgia Avenue NW, Retailer CT, License No. 098182.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

BRIDGES AND BRIYA PUBLIC CHARTER SCHOOLS**NOTICE OF INTENT TO ENTER INTO A CONTRACT****NMTC LEGAL AND ACCOUNTING SERVICES**

On December 30, 2016 Bridges and Briya Public Charter Schools on behalf of the Mamie D. Lee, LLC (MDL) entered into a term sheets with USBank and Harbor Bankshares for New Market Tax Credits (NMTC). These agreements required legal and accounting services to provide the expertise needed to implement a large facility redevelopment project. This notice is being published to notify the community of Mamie D. Lee, LLC's intent of entering into a contract for NMTC legal services with Jones Walker for a fixed fee to be determined by agreement with MDL upon receipt of final NMTC allocation, and into a contract for NMTC accounting services with Cohn Resnick for approximately \$22,000 to \$28,0000

CHILD AND FAMILY SERVICES AGENCY**NOTICE OF PUBLIC MEETING****Mayor's Advisory Committee on Child Abuse and Neglect (MACCAN)**

Tuesday – January 24, 2016
10:00 a.m. – 12:00 p.m.
Child and Family Services Agency
200 I Street SE, Conference Room 2203-B
Washington, DC 20003

Agenda

1. Call to Order
2. Ascertainment of Quorum
3. Acknowledgement of Adoption of the Minutes of the December 6, 2016 meeting
4. Report by the Chair and Co-Chair of MACCAN
 - a. MACCAN's feedback on CFSA's Annual Public Report
5. Membership Update
 - a. Participation and support of the mission and activities of MACCAN
 - b. VACANCY- Child & Family Services Agency
6. Discussion
 - a. Think Before you Spank Kick-off (set for March 28, 2017)
 - o Review card
 - o Debut website
 - o PSA and publicity of campaign
 - o Support from Community Leaders
7. Opportunity for Public Comment
8. Adjournment
9. Next Meeting March 28, 2017, 10:00-12:00 pm @ CFSA, room 2203-B

If any questions/comments, please contact Roni Seabrook at (202) 724-7076 or roni.seabrook@dc.gov.

D.C. CRIMINAL CODE REFORM COMMISSION**2017 PUBLIC MEETING SCHEDULE**

The Criminal Code Reform Commission has scheduled meetings of its Advisory Group for the following dates in 2017:

Wednesday, January 11, 2 pm
Wednesday, February 1, 2 pm
Wednesday, March 1, 2 pm
Wednesday, April 5, 2 p m
Wednesday, May 3, 2 pm
Wednesday, June 7, 2 pm
Wednesday, July 5, 2 pm
Wednesday, August 2, 2 pm
Wednesday, September 6, 2 pm
Wednesday, October 4, 2 pm
Wednesday, November 1, 2 pm
Wednesday, December 6, 2 pm

Additional information, including agendas and locations of 2017 meetings will be posted on the website, <http://ccrc.dc.gov>, and published in the D.C. Register.

For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 4C06

Petition Circulation Period: **Monday, January 23, 2017 thru Monday, February 13, 2017**

Petition Challenge Period: **Thursday, February 16, 2017 thru Thursday, Feb 23, 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**.

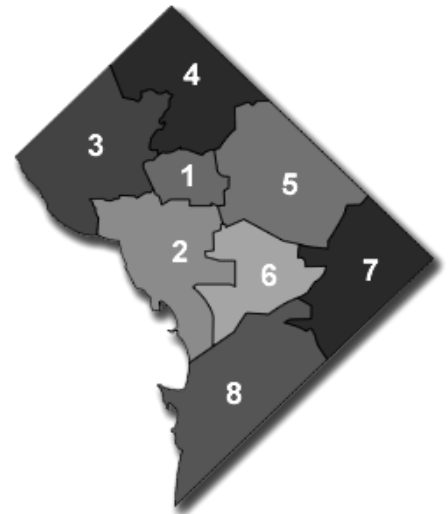
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

WARD	DEM	REP	STG	OTH	N-P	TOTALS
1	45,845	2,997	647	328	11,545	61,362
2	31,138	5,942	212	336	10,928	48,556
3	38,654	6,752	346	291	11,293	57,336
4	49,766	2,317	530	241	8,996	61,850
5	51,795	2,336	560	312	9,120	64,123
6	54,926	7,082	494	443	13,687	76,632
7	48,196	1,284	428	210	6,699	56,817
8	46,375	1,376	424	223	7,283	55,681
Totals	366,695	30,086	3,641	2,384	79,551	482,357
Percentage By Party	76.02%	6.24%	.75%	.49%	16.49%	100.00%

**DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF DECEMBER 31, 2016**

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY

ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
<http://www.dcboee.org>



**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
20	1,476	30	10	10	253	1,779
22	3,957	401	30	27	1,027	5,442
23	2,906	200	41	28	787	3,962
24	2,684	262	31	31	803	3,811
25	3,851	454	47	24	1,106	5,482
35	3,576	231	50	22	831	4,710
36	4,385	275	60	26	1,083	5,829
37	3,424	165	49	24	825	4,487
38	2,870	126	46	26	718	3,786
39	4,261	219	74	22	976	5,552
40	4,066	191	92	29	1,037	5,415
41	3,614	211	61	27	1,036	4,949
42	1,857	79	33	14	458	2,441
43	1,794	62	16	10	357	2,239
137	1,124	91	7	8	248	1,478
TOTALS	45,845	2,997	647	328	11,545	61,362

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	NP	TOTALS
2	831	177	8	22	494	1,532
3	1,669	397	22	23	666	2,777
4	1,943	505	6	21	778	3,253
5	2,163	622	12	24	789	3,610
6	2,334	913	19	29	1,275	4,570
13	1,298	242	5	10	411	1,966
14	2,944	509	21	27	954	4,455
15	3,086	411	28	36	904	4,465
16	3,584	444	24	34	979	5,065
17	4,869	636	31	41	1,518	7,095
129	2,412	395	13	24	913	3,757
141	2,446	324	13	22	654	3,459
143	1,559	367	10	23	593	2,552
TOTALS	31,138	5,942	212	336	10,928	48,556

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
7	1,293	399	16	11	559	2,278
8	2,500	651	30	15	792	3,988
9	1,202	506	7	21	489	2,225
10	1,834	421	19	19	697	2,990
11	3,510	972	40	47	1,308	5,877
12	484	197	0	6	210	897
26	2,977	360	21	16	883	4,257
27	2,534	265	23	13	622	3,457
28	2,462	499	36	14	768	3,779
29	1,365	255	12	18	432	2,082
30	1,313	216	12	10	297	1,848
31	2,472	310	20	17	574	3,393
32	2,748	304	20	13	583	3,668
33	2,953	312	22	10	706	4,003
34	3,738	442	33	25	1,105	5,343
50	2,149	270	16	12	488	2,935
136	857	103	7	2	268	1,237
138	2,263	270	12	22	512	3,079
TOTALS	38,654	6,752	346	291	11,293	57,336

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
45	2,278	68	30	13	387	2,776
46	2,928	97	36	18	526	3,605
47	3,405	163	42	24	772	4,406
48	2,854	136	28	10	548	3,576
49	924	49	17	8	209	1,207
51	3,403	523	26	14	644	4,610
52	1,280	162	8	2	238	1,690
53	1,287	75	22	6	244	1,634
54	2,455	99	22	6	467	3,049
55	2,518	81	18	12	444	3,073
56	3,139	92	33	22	630	3,916
57	2,550	81	34	17	478	3,160
58	2,312	66	20	11	368	2,777
59	2,639	89	32	14	433	3,207
60	2,161	72	22	13	600	2,868
61	1,611	54	14	3	275	1,957
62	3,236	128	25	7	385	3,781
63	3,737	130	56	20	648	4,591
64	2,349	74	19	13	346	2,801
65	2,700	78	26	8	354	3,166
Totals	49,766	2,317	530	241	8,996	61,850

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
19	4,388	200	60	21	985	5,654
44	2,806	240	25	26	664	3,761
66	4,460	100	43	18	564	5,185
67	2,895	107	22	13	400	3,437
68	1,901	167	23	12	384	2,487
69	2,074	70	18	10	274	2,446
70	1,469	79	21	6	223	1,798
71	2,385	69	25	13	318	2,810
72	4,293	136	37	33	714	5,213
73	1,911	96	21	14	349	2,391
74	4,482	246	58	27	910	5,723
75	3,862	218	49	32	829	4,990
76	1,465	68	24	12	297	1,866
77	2,857	118	24	16	469	3,484
78	3,015	96	39	17	483	3,650
79	2,123	87	21	16	375	2,622
135	3,062	187	37	19	599	3,904
139	2,347	52	13	7	283	2,702
TOTALS	51,795	2,336	560	312	9,120	64,123

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
1	4,828	587	50	47	1,309	6,821
18	4,939	376	44	37	1,076	6,472
21	1,209	58	9	6	263	1,545
81	4,680	390	46	31	973	6,120
82	2,639	265	36	17	585	3,542
83	5,015	716	36	46	1,367	7,180
84	2,012	414	22	15	551	3,014
85	2,770	522	16	21	740	4,069
86	2,189	258	26	19	472	2,964
87	2,746	277	17	14	584	3,638
88	2,183	290	15	10	525	3,023
89	2,618	653	20	20	780	4,091
90	1,624	258	12	14	486	2,394
91	4,057	390	38	37	984	5,506
127	4,086	304	41	37	863	5,331
128	2,533	214	30	18	655	3,450
130	810	312	6	5	296	1,429
131	2,416	626	15	34	761	3,852
142	1,572	172	15	15	417	2,191
TOTALS	54,926	7,082	494	443	13,687	76,632

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
80	1,570	86	18	9	268	1,951
92	1,584	35	13	7	229	1,868
93	1,543	41	18	7	232	1,841
94	2,003	57	20	6	298	2,384
95	1,605	47	14	5	267	1,938
96	2,376	65	20	12	360	2,833
97	1,449	40	14	8	198	1,709
98	1,892	43	23	9	254	2,221
99	1,483	50	15	10	214	1,772
100	2,249	46	13	12	267	2,587
101	1,582	29	13	7	183	1,814
102	2,415	54	20	9	327	2,825
103	3,570	83	42	12	527	4,234
104	3,005	87	29	21	426	3,568
105	2,489	64	21	11	387	2,972
106	2,841	57	17	15	386	3,316
107	1,800	64	16	10	227	2,117
108	1,122	29	6	3	132	1,292
109	949	36	5	0	91	1,081
110	3,693	94	20	15	413	4,235
111	2,711	72	30	7	414	3,234
113	2,142	54	22	10	274	2,502
132	2,123	51	19	5	325	2,523
TOTALS	48,196	1,284	428	210	6,699	56,817

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of DECEMBER 31, 2016**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
112	2,147	63	18	11	292	2,531
114	3,472	126	29	22	565	4,214
115	2,882	73	22	19	596	3,592
116	4,094	102	36	18	635	4,885
117	2,113	50	18	14	347	2,542
118	2,808	75	32	13	423	3,351
119	2,952	115	37	15	531	3,650
120	2,009	39	17	4	284	2,353
121	3,381	82	25	10	471	3,969
122	1,805	42	19	9	245	2,120
123	2,302	152	25	25	371	2,875
124	2,684	61	19	8	361	3,133
125	4,603	111	36	18	723	5,491
126	3,792	137	45	21	694	4,689
133	1,315	42	11	0	173	1,541
134	2,170	46	26	8	291	2,541
140	1,846	60	9	8	281	2,204
TOTALS	46,375	1,376	424	223	7,283	55,681

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 11/30/2016 and 12/31/2016

NEW REGISTRATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Beginning Totals	364,914	29,924	3,622	2371	78,971	479,802
BOEE Over the Counter	48	7	0	1	35	91
BOEE by Mail	0	0	0	0	0	0
BOEE Online Registration	118	24	5	3	49	199
Department of Motor Vehicle	249	39	1	7	105	401
Department of Disability Services	0	0	0	0	0	0
Office of Aging	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0
Department of Corrections	4	0	0	0	0	4
Department of Human Services	0	0	0	0	0	0
Special / Provisional	0	0	0	0	0	0
All Other Sources	3,230	192	29	5	16,088	19,544
+Total New Registrations	3,622	260	35	16	16,265	19,780

ACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Reinstated from Inactive Status	312	13	3	3	69	400
Administrative Corrections	2	0	0	0	0	2
+TOTAL ACTIVATIONS	314	13	3	3	69	402

DEACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Changed to Inactive Status	6	0	0	0	1	7
Moved Out of District (Deleted)	1	0	0	0	0	1
Felon (Deleted)	0	0	0	0	0	0
Deceased (Deleted)	14	2	0	0	3	19
Administrative Corrections	2,619	145	23	8	15,265	18,060
-TOTAL DEACTIVATIONS	2,640	147	23	8	15,269	18,087

AFFILIATION CHANGES	DEM	REP	STG	OTH	N-P	TOTAL
+ Changed To Party	695	90	16	19	238	1058
- Changed From Party	-210	-54	-12	-17	-723	-1016
ENDING TOTALS	366,695	30,086	3,641	2,384	79,551	482,357

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS**Fiscal Year 2017 Monthly Meeting Schedule**

This notice outlines the schedule of the regular meetings of the Board for the Office of Employee Appeals. Portions of the meetings are held in open session, and the public is invited to attend. The meetings are held at 1100 4th Street, Suite 380E, NW, Washington, D.C. A copy of the draft agenda for each meeting will be posted on the agency's website and the lobby of the Office of Employee Appeals. For further information, please contact the front desk at 202.727.0004. This schedule is subject to change.

DATE	TIME	ROOM NUMBER
Tuesday, January 24, 2017	11:00 AM	Room 380 East
Tuesday, March 7, 2017	11:00 AM	Room 380 East
Tuesday, April 18, 2017	11:00 AM	Room 380 East
Tuesday, May 30, 2017	11:00 AM	Room 380 East
Tuesday, July 11, 2017	11:00 AM	Room 380 East
Tuesday, August 22, 2017	11:00 AM	Room 380 East

**DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF YOUTH PROGRAMS**

Notice of Funding Availability

**Release Date- Request for Applications: January 11, 2017
Pre-Application Meeting Webinar: January 17th 2:00 PM
Notice of Intent to Apply Due: January 20, 2017
GRANT APPLICATIONS DUE: January 23, 2017**

Innovation/ Youth Grants – Round 2

The District of Columbia Department of Employment Services (DOES) is pleased to announce a second round of funding opportunity soliciting grant applications to support the delivery of innovative workforce solutions that will drastically improve the opportunity for youth between the ages of 18-24 years to successfully enter and remain in the 21st Century Workforce.

DOES, Office of Youth Programs (OYP) will provide grant applications to assist youth in obtaining high school credentials, entering post-secondary education programs, and obtaining post-secondary credentials to improve workforce opportunities.

Recipients of the Innovation/ Youth Grants will aid youth in placement and retention in employment, education, or training, in program skills gains and credential attainment.

Applicants will develop a model based upon a theory of action that is supported by a solid research basis with evidence of previous successes. The model should address the following elements:

1. Prepare youth for work experiences through training and guidance in soft skills.
2. Offer training for youth in technical skills, or hard skills, needed for specific career pathways or work settings.
3. Address how a significant amount of time will be used to develop and maintain relationships with employers to promote youth employment opportunities.
4. Provide matching opportunities for youth entering post-secondary education programs and obtaining post-secondary credentials to enter the workforce based upon individual interests and skills.

The DOES is soliciting proposals under three categories.

Developing Youth Who are Prepared to Start Small Businesses	Engaging DC’s Youth in College and Career Readiness	Engaging DC’s youth in an emerging career field
Models proposed under this category will recruit youth who are interested in	Models proposed under this category will recruit youth who need support engaging	Models proposed under this category will recruit youth for emerging careers in

<p>becoming business owners. Through this opportunity youth must receive a holistic program that assesses individual interests, mentoring and adult relationship building, and address barriers that may keep them from becoming a business owner at a minimum.</p>	<p>or reengaging in the post-secondary education arena. Successful models under this category may consider accelerated basic skills development, college cultural capital, strategic college visits, and any research proven strategy to increase the likeliness of youth who enter and persist through college.</p>	<p>Professional, Scientific, and Technical Services, Health Care and Social Assistance, Finance and Insurance, Public Administration, and Educational Services, Retail Trade and Manufacturing.</p>
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The DOES is seeking innovative proposals for high quality, technology- infused employment programs that will introduce and enhance technical skills, promote new methodologies in employment training, and build workforce readiness skills in a way that will allows DC’s most valuable population to fully engage in the 21st Century economy.

To apply for this grant opportunity, applicants must be an entity who is eligible to do business with the District Government or an eligible training provider with documented experience providing training for DC’s youth

Up to \$ 600,000 in grant funds will be available for these small grants.

Determinations regarding the number of innovative grant awards will be based on the quality and number of applications received and available funding. Successful applicants may be awarded amounts less than requested.

A review panel(s) will be convened to review, score, and rate each application for a competitive grant. The review panel(s) will be composed of external neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. Each application will be scored against a rubric and applications will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). The Agency Director or her designee will make all final award decisions.

For more information or questions, please contact:
 LaShaun Basil
 Program Manager, Office of Youth Programs
 4058 Minnesota Ave, NE, 2nd Floor
 Washington, DC 20019
 Email: lashaun.basil@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality Permit No. 7144 to Trump Old Post Office, LLC to construct and operate a 600 kWe emergency generator set with a 674 kWm (904 bhp) diesel-fired engine at the property located at 1100 Pennsylvania Avenue NW, Washington DC 20004. The contact person for facility is Andrew Weiss, Vice President, at (212) 715-7206 or aweiss@trumporg.com.

Emissions:

Maximum emissions from the emergency generator set, operating five hundred (500) hours per year, are expected to be as follows:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Total Particulate Matter (PM Total)	0.0178
Sulfur Dioxide (SO ₂)	1.828
Nitrogen Oxides (NO _x)	1.904
Volatile Organic Compounds (VOC)	0.024
Carbon Monoxide (CO)	0.270

The proposed overall emission limits for the equipment are as follows:

- a. Emissions from this unit shall not exceed those in the following table as measured according to the procedures set forth in 40 CFR 89, Subpart E for NMHC, NO_x, and CO and 40 CFR 89.112(c) for PM. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)-(c)]:

Pollutant Emission Limits (g/kW-hr)		
NMHC+NO _x	CO	PM
6.4	3.5	0.20

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- c. In addition to Condition II(b) exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:
 - 1. 20 percent during the acceleration mode;

2. 15 percent during the lugging mode;
 3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*
- d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The 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 Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after February 20, 2017 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality Permit Nos. 7145 through 7148 to Trump Old Post Office, LLC to construct and operate four identical natural gas-fired boilers rated at 6.0 MMBTU per hour heat input. The only allowable fuel to be used in the units will be natural gas. The boilers are to be located at 1100 Pennsylvania Avenue NW, Washington DC 20004. The contact person for the facility is Andrew Weiss, Vice President, at (212) 715-7206 or aweiss@trumporg.com.

Emissions:

Maximum emissions from each of the four (4) unit are expected to be as follows:

	Maximum Annual Emissions
Pollutant	(tons/yr)
Total Particulate Matter (PM Total)	0.208
Sulfur Dioxide (SO ₂)	0.0165
Oxides of Nitrogen (NO _x)	0.758
Volatile Organic Compounds (VOC)	0.151
Carbon Monoxide (CO)	2.299

The proposed overall emission limits for the equipment are as follows:

- a. Each of the four (4) identical 6.0 million BTU per hour AERCO natural gas-fired boilers, shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Boiler Emission Limits	
Pollutant	Short-Term Limit (lb/hr)
Carbon Monoxide (CO)	0.53
Oxides of Nitrogen (NO _x)	0.18
Total Particulate Matter (PM Total)	0.05
Sulfur Dioxide (SO ₂)	0.004

*PM Total includes both filterable and condensable fractions.

- b. Visible emissions shall not be emitted into the outdoor atmosphere from the boilers, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]
- d. Total suspended particulate matter (TSP) emissions from each of the boilers shall not exceed 0.11 pound per million BTU. [20 DCMR 600.1]

The permit applications and supporting documentation, along with the draft permit document are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after February 20, 2017 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#7149) to the District of Columbia Water and Sewer Authority (DC Water) to operate one existing 300 kWe Onan-Cummins emergency generator set with a Cummins diesel engine rated at 465.0 bhp (346.9 kWm) engine output. The generator is located at Bryant Street Pumping Station, 301 Bryant Street NW, Washington DC. The contact person for the facility is Mark Babbitt, Supervisor, Permitting and Interagency Coordination, at (202) 787-2534.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the generator engine are as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
Carbon Monoxide (CO)	0.73
Oxides of Nitrogen (NO _x)	3.40
Total Particulate Matter (PM Total)	0.24
Volatile Organic Compounds (VOCs)	0.28
Sulfur Dioxide (SO _x)	0.00119

The application to operate the emergency generator and the draft permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement, outlining the air quality

issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
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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 February 20, 2017 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit Nos. 7150 and 7151 to the District of Columbia Water and Sewer Authority (DC Water) to operate two (2) Cleaver Brooks 8.328 MMBtu per hour natural gas-fired boilers, located at the Bryant Street Pumping Station, 301 Bryant Street NW, Washington, DC. The contact person for the facility is Mark Babbitt, Supervisor, Permitting and Interagency Coordination, at (202) 787-2534.

Boilers to be Permitted

Boiler Name	ID Number	Model	Natural Gas Rating (MMBTU/hr)	Permit Number
Cleaver Brooks	Boiler B-01	CB-LE 700	8.328	7150
Cleaver Brooks	Boiler B-02	CB-LE 700	8.328	7151

The proposed emission limits are as follows:

- a. Each of the boilers (identified as Boiler B-01 and Boiler B-02) shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Pollutant	Short-Term Limit (Natural Gas) (lb/hr)
Carbon Monoxide (CO)	0.69
Oxides of Nitrogen (NO _x)	0.82
Total Particulate Matter (PM Total)*	0.06
Sulfur Dioxide (SO ₂)	0.005

*PM Total includes both filterable and condensable fractions.

- b. Visible emissions shall not be emitted into the outdoor atmosphere from the boilers, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- c. Total suspended particulate matter (TSP) emissions from the each of the boilers shall not be greater than 0.11 pounds per million BTU. [20 DCMR 600.1]

- d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated maximum emissions from each of the boilers is as follows:

Pollutant	Maximum Annual Emissions Using Natural Gas Only (tons/yr)
Carbon Monoxide (CO)	3.00
Oxides of Nitrogen (NO _x)	3.58
Total Particulate Matter (PM Total)	0.27
Volatile Organic Compounds (VOCs)	0.20
Sulfur Dioxide (SO ₂)	0.02

The application to operate the boilers and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after February 20, 2017 will be accepted.

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

**DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

NOTICE OF MEETING

Board of Medicine
January 25, 2017

On January 25, 2017 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

The meeting will be open to the public from 8:30 am to 10:30 am to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session from 10:30 am until 4:45 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Frank B. Meyers, J.D.

DEPARTMENT OF HEALTH**PUBLIC NOTICE**

The District of Columbia Board of Veterinary Medicine (“Board”) hereby gives notice of a cancellation of its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.)

The Board’s upcoming meeting, scheduled for January 19, 2017 from 9:30 AM to 12:30 PM is cancelled due to scheduling conflict. The Board will resume its regular monthly meeting on Thursday, February 16, 2017. The meeting will be open to the public from 9:30 am until 10:00 am to discuss various agenda items and any comments and/or concerns from the public. In accordance with section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-575(b), the meeting will be closed from 10:00 am to 12:30 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

DEPARTMENT OF HEALTH
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b) (4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the application of Washington DC Hand & Upper Extremity Ambulatory Surgery Center, LLC - Certificate of Need Registration No. 16-4-10. The hearing will be held on Tuesday, January 24, 2017, at 10:00 a.m., at 899 North Capitol Street, N.E., 2nd Floor, Room 216, Washington, D.C. 20002.

The hearing shall include a presentation by the Applicant, describing its plans and addressing the certifications required pursuant to D.C. Official Code § 44-406(b). The hearing includes an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA at (202) 442-5875 before 4:45 p.m. on Monday, January 23, 2017. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Tuesday, January 31, 2017. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFFPEPPOR 2016-01, PURCHASE OF RECEIVABLES

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Official Code,¹ and pursuant to Order No. 17052 directing the Potomac Electric Power Company (Pepco or the Company) to implement a Purchase of Receivables (POR) program in the District of Columbia,² of our intent to act upon Pepco's tariff filing revising the POR tariff and Supplier Discount Rate.³ The Commission will act upon Pepco's tariff in not less than 30 days from the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. The Company implemented the POR Supplier Discount on October 7, 2013. The first true-up of the POR Supplier Discount Rate was derived based on the POR activity from October 2013 through December 2014. This second true-up is derived based on POR activity from January 2015 through August 2016. Pepco's proposed tariff modifies and provides additional language to the Company's Electric Supplier Coordination Tariff (Electric Supplier--P.S.C. of D.C. No. 1). The tariff filing provides revised language of the Supplier Tariff Schedule 3, which describes in detail the components and derivation of the POR Supplier Discount Rates, including the proposed Discount Factors (Attachment A).⁴ Specifically, Pepco proposes to revise the current tariff pages:

Electricity Supplier Coordination Tariff, P.S.C. of D.C. No.1
Current Fourth Revised Page No. i to Fifth Revised Page No. i
Current Fourth Revised Page No. ii to Fifth Revised Page No. ii
Current Fourth Revised Page No. iii to Fifth Revised Page No. iii
Current Fourth Revised Page No. iv to Fifth Revised Page No. iv
Current First Revised Page No. 41 to Second Revised Page No. 41
and Current First Revised Page No. 42 to Second Revised Page No. 42

3. Pepco's proposed tariff applies a discount rate on the receivables associated with Residential customers of 0.0000% on Schedule R including RIDER RAD, 2.0608% for Residential customers on Schedule AE including RIDER RAD (AE), and 0.0000% for Residential customers On Schedule R-TM. Pepco proposes to apply a discount rate of 0.0000% on receivables associated with Small Commercial customers,

¹ D.C. Official Code §§ 34-802 (2001) and 2-505 (2001).

² *Formal Case No. 1085, In the Matter of the Investigation of a Purchase of Receivables Program in the District of Columbia (Formal Case. No. 1085)*, Order No. 17052, issued January 18, 2013.

³ *PEPPOR 2016-01, Purchase of Receivables Tariff Filing*, filed December 6, 2016 (Proposed Tariff).

⁴ Proposed Tariff at 4.

Schedules GS-LV ND, T, SL, TS and TN, and 0.0000% on the receivables associated with Large Commercial customers, Schedules GS-LV, GS-3A, GT-LV, GT-3A, GT-3B and RT, and finally, 0.0307% for Market Priced Customers, Schedules GSLV-ND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL, and TS. These proposed changes represent a 1.2527% increase in the currently effective 0.8081% POR discount rate for Residential customers on Schedule AE including RIDER RAD (AE), and a 0.0112% decline in the currently effective 0.0419% rate for Market Priced Customers, Schedules GSLV-ND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL, and TS.⁵ The other four supplier discount rates are unchanged under Pepco's proposed tariff and remain at 0.0000%.

4. In Attachment B through Attachment G, Pepco provides information detailing how the Discount Rates are derived using the POR data for the period January 2015 through August 2016. Pepco states that Attachment B is a summary showing the results of the Write-Offs, including Reinstatements, and Late Payment Revenues expressed as a percentage of Third Party Supplier Revenues for Residential Customers served under Schedules R (including Rider RAD), AE (Rider RAD (AE)), and RTM, and Non-Residential Customers. Small Commercial Non-Residential Customers are served under Schedules GS-LV-ND, T, SL, TS and TN. Large Commercial customers are served under Schedules GS-LV, GS-3A, GT-LY, GT-3A, GT-3B and RT. Market Priced Service customers are served under Schedules GS-LV-ND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL and TS.

5. In Order No. 16916,⁶ the Commission approved a Risk Component to be included in the Discount Rate. In the same Order, the Commission allowed for a Cash Working Capital adjustment. Pursuant to the Commission's directive that both components be set to zero and that they may not be changed without the Commission's written authorization, Pepco set the Risk Factor and the Cash Working Capital component to zero. Pepco states that the Program Development and Operation Cost component and the Interest and Reconciliation Factors are added to arrive at the Discount Rates for each of the six rate classes described above.

6. In Attachment C, Pepco lists by month from January 2015 through August 2016, and by customer type the Electric Revenues Billed, less POR Discounts, the Net Electric Revenues Billed, and the Write-Offs, net of Reinstatements. Pepco states that there is a timing difference of about six months between billing the customer and writing off the account as uncollectible. Pepco's policy for uncollectibles is to write off delinquent accounts after 120 days. Pepco states that interest is calculated based on the cumulative Over/ (Under) Collection at 7.65% per *Formal Case No. 1103*, Order No. 17424 from January 1, 2015 through August 31, 2016.

7. In Attachment D, Pepco provides the detailed calculation by customer type for the Reconciliation and Interest Factor. It states that the Reconciliation factor is derived by adding the Amortization of Program Cost to the POR Discounts less Write-

⁵ Proposed Tariff at Attachment B.

⁶ *Formal Case No. 1085*, Order No. 16916, issued September 20, 2012.

Offs, plus Late Fee Revenues. The Company provides that the net Over/ (Under) Collection is divided by the Electric Revenues billed for January 2015 through August 2016. Pepco states that the Interest Factor is derived by dividing the Interest from Attachment C by the Electric Revenues billed for January 2015 through August 2016.

8. In Attachment E, Pepco displays the derivation of the Program Development and Operation Cost Component. Pepco states that the Program Development and Operation Cost is amortized over three years and earns interest at the Company's most recent authorized distribution system rate of return, currently at 7.65% per Order No. 17424. The Company states that the Annual Amortization Cost by Customer Type is divided by the number of Choice Accounts to derive an Annual Cost per Customer and the Average Annual Customer kWh Usage by Type is multiplied by the Supply Rate for that type to calculate the Annual Supply Revenue per Customer. Pepco states that the Program Development and Operation Cost Component percent is derived by dividing the Annual Cost per Customer by the Annual Supply Revenue per Customer.

9. In Attachment F, Pepco provides the detailed calculation for the Program Development and Operation Cost by contractor labor hour and contractor rate per hour, and in Attachment G, Pepco shows the detail of the three-year amortization for the Program Development and Operation Cost.

10. The original and proposed tariff pages and attachments are on file with the Commission. They may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday, as well as on the Commission's Website at www.dcpsec.org. Once at the website, open the "eDocket System" tab, click on "Search Current Dockets" and input "PEPPOR2016-01" in the "Select Case Number" field. Copies of the tariff pages and attachments are available, upon request, at a per page reproduction fee.

11. Comments and reply comments on the Proposed Tariff must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the above address, at psc-commissionsecretary@dc.gov or by clicking on the following link: <http://edocket.dcpsec.org/comments/submitpubliccomments.asp>. All comments and reply comments must be received within 30 and 45 days, respectively, from the date of publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final rulemaking action on Pepco's Proposed Tariff.

DISTRICT OF COLUMBIA RETIREMENT BOARD
ANNUAL OPEN PUBLIC MEETING SCHEDULE

As of January 10, 2017

The District of Columbia Retirement Board (DCRB) holds Open Board of Trustee meetings on the third Thursday of each month at 1:00 p.m., unless specified differently. The meetings will be held in the DCRB Board Room (2nd floor) at 900 7th Street, N.W., Washington, D.C 20001. The meeting place and time are subject to change without prior notice.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant to the Executive Director/Office Manager, at (202) 343-3200 or email Deborah.reaves@dc.gov.

2017 Annual Open Board Meeting Schedule

January 26, 2017 **(rescheduled from January 19 due to presidential inauguration)**

February 16, 2017

March 16, 2017

April 20, 2017

May 18, 2017

June 15, 2017

July 20, 2017

August – No Meeting

September 21, 2017

October 19, 2017

November 16, 2017

December 21, 2017 (May be rescheduled to accommodate holiday.)

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

January 26, 2017
10:00 a.m.

DCRB Board Room
900 7th Street, N.W.
Washington, D.C 20001

On Thursday, January 26, 2017, at 10:00 a.m., the District of Columbia Retirement Board (DCRB) will hold a closed investment committee meeting regarding investment matters. In accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e), the investment committee meeting will be closed to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

The meeting will be held in the Board Room at 900 7th Street, N.W., Washington, D.C 20001.

For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD**NOTICE OF OPEN PUBLIC MEETING**

January 26, 2017
1:00 p.m.

900 7th Street, N.W.
2nd Floor, DCRB Boardroom
Washington, D.C. 20001

The District of Columbia Retirement Board (DCRB) will hold an Open meeting on Thursday, January 26, 2017, at 1:00 p.m. The meeting will be held at 900 7th Street, N.W., 2nd floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the Open Board meeting is outlined below.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

AGENDA

- | | | |
|-------|-----------------------------------|-----------------|
| I. | Call to Order and Roll Call | Chair Bress |
| II. | Approval of Board Meeting Minutes | Chair Bress |
| III. | Chair's Comments | Chair Bress |
| IV. | Executive Director's Report | Mr. Stanchfield |
| V. | Investment Committee Report | Ms. Blum |
| VI. | Operations Committee Report | Ms. Collins |
| VII. | Benefits Committee Report | Mr. Smith |
| VIII. | Legislative Committee Report | Mr. Blanchard |
| IX. | Audit Committee Report | Mr. Hankins |
| X. | Other Business | Chair Bress |
| XI. | Adjournment | |

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR 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 February 15, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on January 30, 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: February 15, 2017

Recommendations for appointment as DC Notaries Public

Page 2

Altemus	Amy J.	US Department of the Treasury Office of the Inspector General 875 15th Street, NW	20005
Anderson	Cecelia J.	Self 71 Elmira Street, SW	20032
Ateke	Elaina	Self 1625 E Street, NE, Apartment 2	20002
Baker	Angela C.	Girl Scout Council, Nation's Capital 4301 Connecticut Avenue, NW, M-2	20008
Barrett	April C.	Suntrust Bank 900 17th Street, NW	20006
Becton-Moody	Carolyn R.	Brookland Manor Apartments 2413 14th Street, NE, Suite 1	20018
Bhatia	Naman	The UPS Store 1300 Pennsylvania Avenue, NW	20004
Blount	Rosalind B.	Foundations for Home and Community 1012 14th Street, NW	20005
Bose	Subhojit	United Bank 1301 U Street, NW	20009
Boyd	Georgia	Justice Federal Credit Union 145 N Street, NW	20002
Bristol	Katja Dietz	John I. Hass, Inc 5185 MacArthur Boulevard, NW, Suite 300	20016
Caldwell	Rolanda	American Chemical Society Federal Credit Union 1155 16th Street, NW	20036
Camua	Thelma	Georgetown University Office of the University Registrar 3700 O Street, NW, White - Gravenor Hall Room G-101	20057

D.C. Office of the Secretary

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Recommendations for appointment as DC Notaries Public

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Castro	Victoria	Rath Enterprises 2120 Bladensburg Road, NE, Suite 209	20018
Chevalier	Marissa	The Catholic University of America 620 Michigan Avenue, NE	20064
Ciavarra	Aidan Sullivan	Neal R. Gross and Company, Inc. 1323 Rhode Island Avenue, NW	20005
Colbert	Natasha	Self 5117 Fitch Street, SE, #304	20019
Cox	Joyce E.	Ankura Consulting Group 1220 19th Street, NW	20036
Del Gandio	Gabriella Vincent	Arent Fox LLP 1717 K Street , NW	20006
Dinolfo	Steven L.	Klein Hornig, LLP 1325 G Street, NW	20005
Duplain	Denise	AREVA Inc. 1155 F Street, NW, Suite 800	20004
El Darabi	Syham	Medstar Georgetown University Hospital 3800 Reservoir Road, NW	20007
Elangesan-Bogadhi	Saranga	HSBC 1401 I Street, NW	20005
Ford	Angela	Ellehsen Brands, LLC 1153 Morse Street, NE	20002
Foster	Kelly Ann	Self 1868 Columbia Road, NW, Apartment 510	20009
Friedman	Jennifer L.	Polsinelli, P.C. 1401 Eye Street, NW, Suite 800	20005
Frink	Rosalind C.	Holland & Knight, LLP 800 17th Street, NW	20006

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

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Frye	Althea	Hudson Cook, LLP 1909 K Street, NW, 4th Floor	20006
Gaines	Sashwana M.	Capital One Bank 85 H Street, NW	20001
Gales	Bernetta C.	United Planning Organization 301 Rhode Island Avenue, NW	20001
Goldwasser	Sarah	U.S. News & World Report 1050 Thomas Jefferson Street, NW, 4th Floor	20007
Gong	Leigh Ann	General Board of Church and Society of the United Methodist Church 100 Maryland Avenue, NE, Suite 310	20002
Gopen	Gabriel Ethan	Self 624 5th Street, NE	20002
Gopie	Ramona Indrani	Wells Fargo 1800 K Street, NW	20006
Gulick-Mellor	Janelle	National Society Daughters of the American Revolution 1776 D Street, NW	20006
Holland	Sarah L.	J Street Holdings, LLC 1025 Thomas Jefferson Street, NW, Suite 170	20007
Hunter	Samantha M.	Alliance for Aging Research 1700 K Street, NW, Suite 740	20006
Hunter	Tiffany	T D Bank 1275A First Street, NE	20002
Hurt	Carlissa J.	Eagle Academy Public Charter School 3400 Wheeler Road, SE	20032
Innocent	Stephanie	TD Bank 1753 Connecticut Avenue, NW	20009
Jaber	Nicole	American Petroleum Institute 1220 L Street, NW	20005

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

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Jeffries	Brenda	Self (Dual) 5159 7th Street, NE	20011
Jernigan	Tina Louise	Federal Housing Finance Agency Office Of Inspector General 400 7th Street, NW	20219
Johnson	Alexandria M.	Capital One Bank 85 H Street, NW	20001
Johnson	Melinda	Planet Depos 1100 Connecticut Avenue, NW, Suite 900	20036
Johnston	Caramai DuBois	Abramson & Associates, LLC 5147 MacArthur Boulevard, NW	20016
Kennedy	Smylla L.	Self 2628 4th Street, NE	20002
Kennie	Tracy Antonio	Self (Dual) 1820 Tubman Road, SE	20024
Kruse	Margaret	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Latini	Camille C.	Logan Title LLC 2308 14th Street, NW	20009
Leonard	Catherine L.	Mintz Group LLC 1150 18th Street, NW, Suite 500	20036
Lindsey	Carrie Deem	KVS Title 230 6th Street, NE	20002
Livingston	Debra R.	Glass Construction, Inc. 3307 Connecticut Avenue, NW	20008
Lockerby	Jonathan P.	Logan Title LLC 2308 14th Street, NW	20009
Lockman	Gwendolyn Reid	Washington Nationals Baseball Club 1500 South Capitol Street, SE	20003

D.C. Office of the Secretary
Recommendations for appointment as DC Notaries PublicEffective: February 15, 2017
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Lund	John J.	Arent Fox LLP 1717 K Street, NW	20006
Mandeville	Kathleen A.	Federal Housing Finance Agency Office Of Inspector General 400 7th Street, NW	20219
Manguera	Jennifer	Trister Ross Schadler & Gold, LLC 1666 Connecticut Avenue, NW, Suite 500	20009
Martin	Nancy J.	Alderson Court Reporters 1155 Connecticut Avenue, NW, Suite 200	20036
Martinez	Marbelly	Wells Fargo Bank 215 Pennsylvania Avenue, SE	20003
Maso	Alisa Jane	Self (Dual) 2236 40th Place, NW, #1	20001
Mayo	Marcus J.	BB&T 317 Pennsylvania Avenue, SE	20003
Mayo	Shanica	Comcast NBC Universal 300 New Jersey Avenue, NW	20001
McCabe	Andrea	Novartis Corporation 701 Pennsylvania Avenue, NW	20004
Metzger	Chenxi Liu	Polsinelli 1401 Eye Street, NW, Suite 800	20005
Milner	Rebecca M.	Frankel PLLC 1707 L Street, NW, Suite 500	20036
Nair	Rani	Citibank 1000 Vermont Avenue, NW	20005
Nwosu	Pamela C.	Association of American Railroads 425 3rd Street, SW, Suite 1000	20024
Oh	Sung Eon	ACDI/VOCA 50 F Street, NW, Suite 1000	20001

D.C. Office of the Secretary
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O'Mara	Jonathon	Media Matters of America 455 Massachusetts Avenue, NW	20001
Pham	Minh T.	US Department of Justice – ENRD 601 D Street, NW, Room 3507	20004
Proctor	Faith	American Federation of Teachers 555 New Jersey Avenue, NW	20001
Reid	Charrise L.	William C. Smith and Company 1100 New Jersey Avenue, SE, Suite 1000	20003
Risper-Mearite	Tiffany L.	N Street Village 1333 N Street, NW	20005
Ross	Pamela Oneeda	Federal Mediation and Conciliation Service 250 E Street, SW, One Independence Square	20427
Rudd	Nichole R.	Holland & Knight, LLP 800 17th Street, NW, Suite 1100	20006
Sanchez	Marco	UTS Corporation 1801 Columbia Road, NW, Suite 103	20009
Selman	David C.	DCHR 441 4th Street, NW	20002
Sevier	Veronica	The George Washington University Law School 2000 H Street, NW	20052
Sewell	Koran	Ober Kaler Grimes and Shriver 1401 H Street, NW	20005
Shields	Brenda E.	Self (Dual) 3835 Halley Terrace, SE	20032
Shipman	Jennifer K.	The Fairfax Embassy Row 2100 Massachusetts Avenue, NW	20008
Shoemaker	Kimberly S.	Hunton & Williams, LLP 2200 Pennsylvania Avenue, NW	20037

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Siler	Nadine D.	AARP Services Inc. 650 F Street, NW	20004
Slifka	Marisa	Zamani & Associates, PLLC 2121 K Street, NW	20037
Smith	Carroll	Alliance Bernstein 800 Connecticut Avenue, NW	20006
Tan	Kristina	Planet Depos 110 Connecticut Avenue, NW, Suite 1000	20036
Taylor	Mya I.	Beveridge & Diamond, PC 1350 I Street, NW, Suite 750	20005
Thomas	Angela D.	Venable, LLP 575 7th Street, NW	20716
Ver Dier	Joan L.	DC Department of Energy and Environment 1207 Taylor Street, NW	20011
Washington	Cynthia D.	Federal Mediation and Conciliation Service (FMCS) 250 E Street, SW, 7th Floor	20427
Watson	Daniel	KVS Title, LLC 1407 T Street, NW, #201	20009
Weber	Christina M.	Munger, Tolles & Olson, LLP 1155 F Street, NW	20004
White	Hermelinda O.	Saul Ewing, LLP 1919 Pennsylvania Avenue, NW, Suite 550	20006
Whittaker	Tiffani K.	Monarch Title 5151 Wisconsin Avenue, NW	20016
Williams	Frances Marlene	DOEE 1200 First Street, NE	20002
Willis	Sherrie	Bank Fund Staff Federal Credit Union 1725 I Street, NW	20006

**D.C. Office of the Secretary
Recommendations for appointment as DC Notaries Public****Effective: February 15, 2017****Page 9**

Wing	Shelin	Colon Cancer Alliance 1025 Vermont Avenue, NW	20005
Wright	Nancy	Kelley Drye & Warren, LLP 3050 K Street, NW, Suite 400	20748
Wulff	Nicolas	Law Office of Justin Zelikovitz - DC Wage Law 519 H Street, NW	20001
Zavala	Maria D.	DC Department of Energy and Environment 1207 Taylor Street, NW	20011

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF 2017 PUBLIC MEETING SCHEDULE

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled the following meetings for 2017:

January 12
February 9
March 9
April 13
May 11
June 8
July 13
September 14
October 12
November 9
December 14

Meetings are held in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 10:00 a.m. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19211 of Kathryn Johnston, pursuant to 11 DCMR § 3104.1¹, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the court width requirements under § 406, and the nonconforming structure requirements under § 2001.3, to construct a second-story addition to an existing one-family dwelling in the R-4 District at premises 629 L Street, N.E. (Square 856, Lot 166).

HEARING DATES: March 22 and April 5, 2016²
DECISION DATE: April 5, 2016

DECISION AND ORDER

Kathryn Johnston, the property owner of the subject premises (the “Owner” or the “Applicant”), filed an application with the Board of Zoning Adjustment (the “Board”) on December 1, 2015, for a special exception under § 223 of the Zoning Regulations to construct a second-story addition to an existing one-family dwelling, wherein the completed project will not conform to the requirements of §§ 403.2, 406, and 2001.3 of the Zoning Regulations. For the reasons explained below, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification. 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 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.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final paragraph and final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order. Pursuant to Subtitle A § 104 of the 2016 Regulations, the construction authorized by this Order is vested as to the area requirements contained in 1958 Regulations as of September 5, 2016.

² The application was originally scheduled for the Public Hearing of March 22, 2016 and was postponed to April 5, 2016 for the Applicant to meet the posting requirements. (Exhibit 30.)

Commission (“ANC”) 6C, and the District of Columbia Office of Planning (“OP”). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibits 34 and 34.)

ANC Report. In its report dated February 11, 2016, ANC 6C indicated that, at a regularly scheduled monthly meeting on February 11, 2016, with a quorum present, the ANC voted 5-0-0 in opposition to the project. The ANC indicated that the “proposed addition has the potential for significant adverse impacts on the light, air, and privacy of the properties on either side, especially 627 L Street, which has several windows facing toward the existing narrow, nonconforming court.” The ANC noted that, at the time of its decision, no neighbors had submitted letters of support to the public record. In addition, the ANC raised concerns regarding the lack of a name and stamp of a D.C.-licensed architect or structural engineer on the plans, as well as the design’s noncompliance with the fire-rating requirements found within the D.C. Building Code. (Exhibit 21.)

Requests for Party Status. ANC 6C was automatically a party to this proceeding. No other requests for party status were submitted in this case.

Persons in Support. The Board received letters in support of the application signed by the residents of 621 L Street, N.E., 625 L Street, N.E., 627 L Street, N.E. (adjacent property owner), 631 L Street, N.E. (adjacent property owner), 635 L Street, N.E., and 644 L Street, N.E. (Exhibits 28 and 32.) At the April 5, 2016 public hearing, no witnesses appeared to testify in support or opposition.

OP Report. OP submitted a report, dated March 15, 2016, recommending approval of the application. OP specifically noted that “[l]ight and air available to the adjacent properties would not be unduly impacted. The proposed addition extends 12 feet to the rear, which would be in line with the adjacent addition at 631 L Street. The open court would remain between the proposed addition and the adjacent property at 627 L Street for access to light and air.” (Exhibit 26.)

DDOT Report. The District Department of Transportation (“DDOT”) submitted a report stating that it had no objection to the application. (Exhibit 29.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The Subject Property is located at 629 L Street, N.E. (Square 856, Lot 166) in the R-4 District.
2. The Subject Property is improved with a three-story, one-family row dwelling.

3. The Subject Property is adjacent to row dwellings, with 627 L Street, N.E. to the west and 631 L Street, N.E. to the east. Across the street to the north is a block of row dwellings. The Subject Property abuts an alley to the south.
4. The surrounding neighborhood consists of row dwellings and small apartment buildings.

The Proposed Addition

5. The Applicant requests to construct a two-story addition to the rear of the existing three-story structure. The use of the Subject Property will not change, as the structure on the property will remain a one-family dwelling.
6. The proposed addition will extend 12 feet beyond the existing rear of the structure. The east side of the proposed addition will be constructed along the party wall with the adjacent dwelling at 631 L Street, N.E. and will not extend beyond that structure.
7. The proposed addition will extend the existing open court on the west side to the second story of the structure. The proposed addition will not have windows on the west side facing the adjacent dwelling at 627 L Street, N.E.
8. Based on the concerns raised by ANC 6C in its report, the Applicant submitted revised architectural plans dated May 10, 2016, which do not impact the zoning relief requested. (Exhibit 37.)

Zoning Relief

9. Subsection 403.2 of the Zoning Regulations requires that each structure in an R-4 zone have maximum lot occupancy of 60%. The proposed addition will increase the existing lot occupancy from 52.7% to 64.7%. Therefore, the proposal requires relief from the requirements of § 403.2.
10. Section 406 of the Zoning Regulations requires that an open court in the R-4 zone have a minimum width equal to four inches per foot of the height of the court, but not less than six feet. The existing structure has a nonconforming open court with a width of four feet, and the proposed addition will extend the nonconforming open court. The proposed addition therefore requires relief from the requirements of § 406.
11. Subsection 2001.3 of the Zoning Regulations prohibits additions that extend or increase existing nonconformities. Based on the proposal to extend the nonconforming open court, the project requires relief from the requirement of § 2001.3.

The Impact of the Addition

12. The proposed addition will not be visible from the street; however, it will be visible from

the rear alley at the south of the property. Viewed from the alley, the rear addition would be consistent with the context of the surrounding dwellings.

13. The proposed addition would not extend beyond the adjacent structure at 631 L Street, N.E. and would not impact the light, air, or privacy of that neighbor.
14. The proposed addition will preserve the existing open court on the side adjacent to 627 L Street, N.E., which will adequately preserve the adjacent neighbor's access to light and air.
15. The proposed addition will not have windows on the west side and, therefore, the addition will not impact the privacy of the adjacent neighbor to the west.
16. The owner of 627 L Street, N.E. submitted a letter in support of the application.
17. ANC 6C submitted a report indicating that it voted to oppose the application. The ANC raised concerns regarding the impact of the addition on air, light, and privacy, as well as concerns about the lack of input from neighbors in the public record. The ANC specifically identified the property at 627 L Street, N.E. as being significantly impacted by the proposed addition.
18. The ANC also noted issues relating to building code requirements for fire-rated wall assembly and the failure of the Applicant to have the plans stamped by a D.C. licensed structural engineer. The concerns related to the building code and structural engineer stamp not related to the zoning relief requested in this application.
19. The Applicant's agent from the firm Case Design/Remodeling testified that they would revise the plans to address the ANC's issues regarding the building code and would comply with all Department of Consumer and Regulatory Affairs ("DCRA") requirements as they continue with the process of obtaining a building permit. (Hearing Transcript of April 5, 2016, p. 51.)
20. The Applicant submitted revised plans dated May 10, 2016. (Exhibit 37.)

CONCLUSIONS OF LAW

The Applicant requests special exception relief under § 223 of the Zoning Regulations to construct a second-story addition to an existing one-family dwelling, not meeting the lot occupancy requirements under § 403.2, the court width requirements under § 406, and the nonconforming structure requirements under § 2001.3, in the R-4 District at premises 629 L Street, N.E. (Square 856, Lot 166). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning

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Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

In addition to meeting the general special exception standard, the Applicant must satisfy the “specific conditions” of § 223 to be granted special exception relief. Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

Based on the Findings of Fact, the Board concludes that the request for special exception relief satisfies the requirements of § 223. The Board finds that the proposed addition would not have an adverse impact on the light and air of adjacent properties. (Findings of Fact 13 and 14.) As there will be no windows on the west side of the addition, the privacy of use and enjoyment of neighboring properties will not be significantly affected. (Findings of Fact 13 and 15.) The Board finds that the addition will not be viewed from the street and shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. The Board also concurs with OP’s analysis that, viewed from the alley to the south of the Subject Property, the rear addition would be consistent with the context of the surrounding dwellings.

Subsection 223.3 requires that the lot occupancy of the dwelling, together with the addition, shall not exceed 70% in the R-4 District. With the proposed addition, the lot occupancy will be 64.7%; therefore, this condition will be met.

For these same reasons, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties as required by § 3104.1. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board concludes that the Applicant meets the requirements of § 3104.1.

Great Weight

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, for the reasons discussed, the Board concurs with OP’s recommendation to approve the application, as reflected in its report under Exhibit 26.

The Board is also required to give “great weight” to the issues and concerns raised by the

affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) On February 11, 2016, ANC 6C voted 5-0-0 in opposition to the project, based on concerns about impacts on air, light, and privacy, as well as concerns about the lack of letters in support of the application from neighbors in the public record. ANC 6C also raised concerns regarding the lack of a name and stamp of a D.C.-licensed architect or structural engineer on the plans, as well as the design's noncompliance with the D.C. Building Code, specifically with the fire rating requirements. (Exhibit 21.)

The Board considered the ANC's concerns regarding impacts on air, light, and privacy, but concluded that the Applicant has met the requirements of § 223 for the reasons discussed in the above Findings of Fact and Conclusions of Law. Specifically, the Board was persuaded that the proposed addition will not impact the light and air of the adjacent properties because the addition would not extend beyond the adjacent structure to the east at 631 L Street, N.E. and will preserve the open court to the west, adjacent to 627 L Street, N.E. The Board was persuaded that the addition will not have a significant impact on the privacy of adjacent neighbors because the addition will not extend beyond the structure to the east and will not have windows on the side facing west. The Board also notes that, after the ANC's meeting and decision, the Applicant submitted six letters to the public record in support of the project from nearby residents, including both adjacent neighbors. (Exhibits 28 and 32.) The Board was persuaded by the evidence provided by the Applicant that the addition would not impact light, air, or privacy of surrounding neighbors and concludes that special exception relief should be granted.

As to the concerns related to the D.C. Building Code requirements and the stamp of the structural engineer, the Board finds that these issues are not related to the zoning relief requested, and therefore, are not legally relevant to the decision to grant or deny the application at hand. *See Concerned Citizens of Brentwood v. District of Columbia Board of Zoning Adjustment*, 634 A.2d 1234, 1241 (1993) (The "great weight requirement extends only to 'issues and concerns that are legally relevant.' *Bakers Local 118 v. District of Columbia Board of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981) (Exhibit 21.) Nonetheless, the Board notes that the Applicant's agent testified that they would revise the plans to address these issues and that they will comply with DCRA's requirements.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the issuance of a building permit authorizing a second-story addition to an existing one-family dwelling.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED ARCHITECTURAL DRAWINGS AT EXHIBIT 37.**

VOTE: 5-0-0 (Marnique Y. Heath, Anita Butani D'Souza , Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

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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: January 9, 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.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19262 of Dr. Barry Fisher, pursuant to 11 DCMR § 3103.2¹, for a variance from the use requirements under § 501.1, to allow a massage establishment² in the DC/SP-1 District at premises 1800 R Street, N.W., Unit #C-6 (Square 134, Lot 161).

HEARING DATE: May 24, 2016

DECISION DATE: May 24, 2016

DECISION AND ORDER

Pursuant to a Zoning Administrator memorandum dated February 17, 2016 (Exhibit 7), this application was submitted on March 11, 2016 by Dr. Barry Fisher (“Applicant”). The application requested variance relief to allow the use of Unit # C-6, 1800 R Street, N.W. in the DC/SP-1 District as a massage establishment. Following a public hearing, the Board voted 5-0-0 to approve the application with conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 28, 2016, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), and Advisory Neighborhood Commission (“ANC”) 2B, the ANC within which the subject property is located. Pursuant to 11 DCMR § 3113.13, OZ mailed letters providing notice of the hearing to the Applicant, ANC 2B, and all owners of property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on April 8, 2016 (63 DCR 5209). A hearing was scheduled for May 24, 2016.

Party Status. Pursuant to 11 DCMR § 3199.1(b), the Applicant and ANC 2B were automatically parties. The Board received a party status request in opposition from the 1800 R Condominium Unit Owners Association (“1800 R”) that was dated May 10, 2016. At the public hearing on May 24, 2016, the Board granted the request. The representatives for 1800 R testified that the condominium bylaws allow for “professional offices within the definition of SP-1 zoning

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

² The description of the proposed use was changed from “yoga studio” to “massage establishment”, based on the Applicant’s testimony and the Office of the Attorney General’s recommendation. The caption has been amended accordingly.

regulations” on the first floor of the building, therefore the proposed massage establishment would go beyond the scope of what the bylaws permit. (Hearing Transcript, p. 151.) The Party in Opposition also raised concerns regarding the possibility of increased vehicular traffic and foot traffic based on the proposed use. The Party in Opposition also argued that the proposed use would “adversely affect the image of the professional units located on the first floor.” (Exhibit 29.)

Applicant’s Case. The Applicant provided evidence and testimony from John Aquino, who represented the Applicant, Dr. Barry Fisher. Dr. Fisher is the owner of the subject property. The Applicant provided testimony regarding the unique condition of the unit, the financial hardship encountered in attempting to sell or lease the unit, and how the proposed operation of the establishment will not have a negative impact on surrounding neighbors.

Persons in Support. Letters in support of the application were submitted to the record from a resident of 1800 R Street Condominiums (Exhibit 23) and from the Applicant’s would-be purchaser’s prior landlord together with copies of several online reviews of other businesses located at other sites. (Exhibit 26.)

OP Report. In a report dated May 17, 2016, the Office of Planning (“OP”) recommended approval of the use variance relief requested. The report addressed the three-part use variance test and concluded that the application satisfied the requirements. (Exhibit 31.)

DDOT Report. The Department of Transportation submitted a report dated May 10, 2016, stating that the proposed project would have no adverse impacts on the travel conditions of the District’s transportation network. DDOT expressed no objection to the approval of the requested variance. (Exhibit 28.)

ANC Report. The subject property is in the jurisdiction of ANC 2B. ANC 2B did not submit a report or participate in the hearing.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this application is a condominium unit that is owned by the Applicant and is at premises 1800 R Street, N.W., #C-6 (Square 134, Lot 161). The property is one of nine commercial units within the ground floor of the 1800 R Street Condominium building. Other than the nine commercial units, the rest of the building is residential.
2. The building sits upon a square-shaped lot that has vehicular access via porte cochere off of R Street and vehicular access off of 18th Street. An alley serves the building along the west side as well.

3. The building is in the Dupont Circle Overlay and the Dupont Circle Historic District.
4. The building is in the DC/SP-1 District. The Special Purpose Districts act as a buffer between commercial and residential zones and contain a mix of row homes, apartments, offices and institutions of medium (SP-1) and medium high levels (SP-2). (11 DCMR § 500.3 & 500.4.) The Dupont Circle Overlay zone provides protection of the scale, uses, height, and character of the area. (11 DCMR § 1501.4), but does not govern what uses may or may not established.
5. The neighborhood surrounding the building is predominately developed with a mix of institutional, multifamily, professional offices, etc., of both medium and high levels of density and height. Dupont Circle is located three blocks to the south.
6. Abutting the building is a four-to-five story row house to the east; a 10-story multi-family building to the south; four-story row homes to the west; and institutional uses across R Street to the north.
7. The unit that is the subject property of this application is located on the ground floor of the building.
8. The unit, with only 365 square feet, is exceptionally small and has no windows. The entrance to the unit is external and separate from the entrance to the residential part of the building. The unit has two bathrooms and a waiting room.
9. The unit, along with the eight other commercial units in the building, was constructed in the early 1960's, and is exceptionally small, as compared to typical office spaces or ground-floor retail spaces. It is highly unlikely that the configuration of multiple small, commercial units on the ground-floor of a residential building would be built today, as larger spaces would likely be constructed for primarily retail or for residential leasing, office, or amenity space. (Exhibit 31.)
10. The unit was previously used as a psychiatry clinic, but has remained vacant for two years as the Applicant has made attempts to sell or lease the space.
11. The Applicant has been unsuccessful in selling or leasing the unit and has been informed by potential buyers or tenants that the unit's small size and lack of windows are undesirable features for their matter of right uses.
12. The inability to find a buyer or tenant has caused the Applicant to incur monthly expenditures with no off-setting income. Absent the granting of variance relief, the Applicant is likely to continue to incur these monthly costs for the foreseeable future, which amounts to an undue financial hardship.

13. The Applicant has paid over \$975 per month from September 2014 to March 2015, totaling \$6,825, in attempts to find a buyer for the property. The staging fees have contributed to his financial hardship.

The Proposed Use

14. The Applicant seeks a use variance to permit the unit to be used by a massage establishment. A use variance is required because a massage establishment is not among the SP-1 matter of right uses listed in § 501.1 or among the special exception uses identified in Chapter 5.
15. The proposed use will be subject to the following restrictions, which have been adopted as conditions of the Order. The restrictions were developed by the Board, in collaboration with the Applicant and the Party in Opposition during the public hearing, in order to address the legally relevant concerns raised by the Party in Opposition:
 - a. The hours of operation shall be similar to those of the professional offices in the building.
 - b. The Applicant shall display the professional licenses of all practitioners.
 - c. Massage services shall be available by appointment only.
 - d. No appointments shall be scheduled for more than one customer at a time.
 - e. Customers shall be prohibited from parking in the 1800 R Street Condominium parking lot.
16. In addition, the Applicant testified that customers will enter and exit from the existing separate external building entrance.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property" D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), 11 DCMR § 3103.2.

The District of Columbia Court of Appeals has held that "an exceptional or extraordinary situation or condition" may encompass the buildings on a property, not merely the land itself, and may arise due to a "confluence of factors." *See Clerics of St. Viator v. District of Columbia*

Bd. of Zoning Adjustment, 320 A.2d 291 (D.C. 1974); Gilmartin v. District of Columbia Bd. Of Zoning Adjustment, 579 A.2d 1164, 1168 (D.C. 1990).

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship,” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment, 287 A.2d 535, 541 (D.C. 1972)*. The Applicant in this case requests a use variance from § 501.1 of the Zoning Regulations, to allow a massage establishment in the DC/SP-1 District. Therefore, the Applicant must demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an “undue hardship” to the Applicant. Lastly, the Applicant must demonstrate that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The purpose of the variance procedure is to “prevent usable land from remaining idle.” *Palmer v. Dist. of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 541 (D.C. 1972)*. The use variance inquiry focuses on whether “the property can be put into any conforming use with a fair and reasonable return to the owner.” *Id.* at 542. The court has also recognized in a use variance application that approval is justified when the relief requested is minor relative to the nature of the surrounding community. *The Oakland Condominium v. Dist. of Columbia Bd. of Zoning, 22 A.3d 748, 750 (D.C. 2011)*.

Based on the above findings of fact, the Board finds that the Applicant has satisfied the burden of proof and that the application should be granted.

Exceptional Condition

The Board concludes that the subject property is affected by a “confluence of factors” that create an exceptional situation or condition.

At 365 square feet, the unit is exceptionally small compared to typical office spaces or ground-floor retail spaces. As OP notes in its report recommending approval of the application, it is highly unlikely that the configuration of multiple small, commercial units on the ground-floor of a residential building would be built today, as larger spaces would likely be constructed for primarily retail or for residential leasing, office or amenity space. Other factors that create a unique situation for this unit include a lack of windows and its configuration with two bathrooms and a waiting room. In addition, the Board finds that the fact that the property remains vacant, despite attempts by the owner to sell or lease the property over the course of two years, contribute to the property’s uniqueness.

Undue Hardship

The Board concludes that the unit cannot be put to any conforming use with a fair and reasonable return to the owner and therefore the strict application of the Zoning Regulations would result in undue hardship to the Applicant as the owner of the unit. Uses permitted as a matter of right include art gallery; child/elderly development center; or adult day treatment facility; community

center building; private school, including kindergarten, elementary, secondary, trade, or any other school; public school; religious reading room; and ticket office. (11 DCMR § 501.1.) General office use is also “permitted in an SP District as a replacement for office use for international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person existing and approved by the Board of Zoning Adjustment or the Zoning Commission or authorized by a validly issued certificate of occupancy prior to January 29, 1999.” (11 DCMR § 501.3.)

The Applicant testified that, in attempting to sell or lease the property, potential buyers or tenants indicated that the unit’s small size and lack of windows are undesirable features for the matter-of-right uses envisioned. As a result of these impediments, the Applicant has been unsuccessful in his attempts to sell or lease the unit, despite his significant efforts, over the course of two years during which the Applicant has expended over \$6,825 in staging fees. Further, because a change to these circumstances is unlikely, the Applicant will continue to incur such costs for the foreseeable future without any off-setting income. Therefore, denying use variance relief would prevent the Applicant from receiving a fair and reasonable return on the property, and instead would result in a permanent undue economic hardship.

The Public Good and Integrity of the Zone Plan and Regulations

The Board concludes that the requested variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. As to the zone plan, the Board finds that the proposed use would be in keeping with the character of the neighborhood and the square. The SP-1 District permits a mix of row homes, apartments, offices and institutions at a medium density. (11 DCMR §§ 500.3 & 500.4.) The DC Overlay was established to protect the low scale, predominately residential character, independent small retail businesses, human scale streetscapes, and historic character of the Dupont Circle neighborhood. (11 DCMR § 1501.1.) Although the proposed use is ordinarily prohibited, its small-scale and location within a larger residential building will prevent any impairment to the zone plan.

Further, the Board finds that the impacts of the proposed use, as described by the Applicant in his testimony and as restricted by the conditions of this Order, would not impair the public good. The Board credits OP’s finding that the proposed use will “activate a vacant, windowless, small commercial space, which is in keeping with the maintenance of the public good in this neighborhood.” (Exhibit 31.)

During the public hearing of April 5, 2016, the Board considered the concerns raised by the Party in Opposition, including: (1) that the use will generate increased foot and vehicular traffic, (2) that the use will negatively affect the image of the other professional units on the first floor, and (3) that the condominium bylaws permit only uses that are allowed as a matter of right in the DC/SP-1 District, therefore, regardless of the granting of a use variance, the bylaws would not allow the proposed use.

In response to the first two concerns raised by the Party in Opposition, the Board developed five conditions, in collaboration with the Applicant and the Party in Opposition, during the public hearing. The conditions aim to mitigate potential impacts of the proposed use and include: (1) a restriction on the hours of operation; (2) a requirement to display the professional licenses of practitioners; (3) a requirement that services be available by appointment only; (4) a requirement that one customer be seen at a time; and (5) a prohibition on customers parking in the condominium's parking lot. The Applicant agreed to the conditions, and they were adopted by the Board. In limiting the hours of operation and requiring that customers be seen by appointment, one at a time, the Board finds that the use will not generate foot traffic that would impair the public good. In prohibiting customers of the proposed use from using the parking lot at 1800 R Street Condominium, the Board finds that possible vehicular traffic impacts have been mitigated, such that the proposed use will not have a negative impact on the surrounding neighborhood.

As to whether the massage establishment would be allowed under the condominium bylaws, that is a question that concerns the interpretation and enforcement of a private agreement rather than of the Zoning Regulations and is therefore not a basis for the Board to deny use variance relief. *See Spring Valley Wesley Heights Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 644 A.2d 434, 435–36, 438 (D.C. 1994) (Affirming the Board's determination that its jurisdiction may not extend beyond that prescribed in the Zoning Regulations, notwithstanding the existence of a private agreement.)

Great Weight

The Board 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, which in this case is ANC 2B. In this case, the ANC did not submit a written report to the record and thus there is nothing to which to give great weight.

The Board is also required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, the Board concurs with OP's recommendation to approve the application, crediting the analysis provided in OP's written report.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS** governing the massage establishment use:

1. The hours of operation shall be similar to those of the professional offices in the building.
2. The Applicant shall display the professional licenses of all practitioners.

3. Massage services shall be available by appointment only.
4. No appointments shall be scheduled for more than one customer at a time.
5. Customers shall be prohibited from parking in the 1800 R Street Condominium parking lot.

VOTE: 5-0-0 (Anita Butani D'Souza, Anthony J. Hood, Marnique Y. Heath, Fredrick L. Hill, and Jeffrey L. Hinkle to APPROVE).

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: January 9, 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 § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

BZA APPLICATION NO. 19262

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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. 03-12U/03-13U
Z.C. Case No. 03-12U/03-13U
Square 769, LLC and District of Columbia Housing Authority
(Time Extension for Planned Unit Development @ Square 769)
November 14, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on November 14, 2016. At that meeting, the Commission approved the request of Square 769, LLC and the District of Columbia Housing Authority (“DCHA”) (collectively, the “Applicant”) for a time extension in which to file a building permit application for the planned unit development (“PUD”), approved by Z.C. Order Nos. 03-12/03-13, 03-12C/03-13C, and 03-12F/03-13F, until September 26, 2018. The property that is the subject of this request is located in the southern portion of Square 769, and has an address of 250 M Street, S.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. On March 21, 2003, Capper/Carrollsbury Venture, LLC, DCHA, and Square 769, LLC filed applications requesting first-stage and consolidated approval of a PUD for a large area of multiple properties located in the southeast quadrant of Washington, D.C. These properties were generally bound by Virginia Avenue on the north, 7th Street on the east, M Street on the south, and 2nd Street on the west. The property consists of approximately 927,000 square feet of land area and was the site of the former Arthur Capper/Carrollsbury Dwellings and a privately owned parcel that formerly operated as a Shell gas station. (Exhibit [“Ex.”] Ex. 1.)
2. Pursuant to Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval for the overall development, including the preliminary approval for an office building to be constructed at 250 M Street, S.E. on the southern portion of Square 769. On May 14, 2007, the Commission approved Z.C. Case No. 03-12C/03-13C, which granted second-stage PUD approval of an office building at 250 M Street, S.E. A modification of the second-stage PUD for the 250 M Street, S.E. office building was approved by the Commission on September 26, 2008, pursuant to Z.C. Order No. 03-12F/03-13F. Thereafter, the Commission extended approval of the office building at 250

M Street, S.E. pursuant to Z.C. Order Nos. 03-12K/03-13K, 03-12N/03-13N, and 03-12S/03-13S such that the Applicant was required to file a building permit application for the office building no later than September 26, 2016, with construction to begin no later than September 26, 2017. (Ex. 1.)

CURRENT REQUEST

3. The Applicant filed the present time extension request on September 16, 2016 requesting that it be allowed a two-year time extension to file a building permit application for the construction of the office building at 250 M Street, S.E. (Ex. 1.)
4. The Applicant noted that the only party in the original case was Advisory Neighborhood Commission (“ANC”) 6D. ANC 6D was served a copy of this request. (Ex. 1.)
5. The Applicant stated that there has been no substantial change of material facts that affect the Property since the Commission’s approval of the last time extension in 2014. (Ex. 1.)
6. The Applicant noted that most of the factors and circumstances that existed in 2014 regarding the inability to obtain project financing for an office building in the Capitol Riverfront office submarket still exist today. The Applicant stated that it has continued its marketing efforts to create interest in the approved office building on this site, and the Capitol Riverfront neighborhood in general. The Applicant continued to present this building to non-profit organizations, engineering firms, educational institutions, broadcasting industry companies, health industry companies, government and quasi-government prospects, and law firms. Despite these efforts, the Applicant was not able to secure sufficient pre-leasing of the building at the 70% level which is required by lenders. (Ex. 1, 2C.)
7. The Applicant noted that it had undertaken the following marketing efforts:
 - In conjunction with the Capitol Riverfront BID, the Applicant participated in marketing efforts to attract the Motley Fool, a multimedia financial-services company, to relocate from Alexandria, Virginia to the Capitol Riverfront. While the BID focused on the Live, Work, Play benefits of the neighborhood and its proximity to Capitol Hill, the Applicant stressed the unique features of 250 M, including the top floor conference center, efficient floor plates, and naming rights availability. In late July of this year, Governor Terry McAuliffe announced that the Motley Fool would remain in Virginia. It was noted in the announcement that Virginia successfully competed against Washington, D.C., for the project, and that the Virginia Economic Development Partnership worked with the City of Alexandria and Governor McAuliffe to provide a grant from the Commonwealth’s Opportunity Fund to assist the City with keeping the Motley Fool in Virginia.
 - The Applicant’s outreach to the brokerage community uncovered that Sinclair Broadcasting was open to relocating from their Roslyn location and was evaluating sites in the Capitol Riverfront area. The Applicant worked with JLL and Sinclair’s brokers to try to redesign the 250 M Street building in order to meet the specialized building requirements of a communications and broadcasting company. These requirements included high-ceilinged studios, special roof top antenna/dish requirements, extraordinary floor-load capacities and specialized vehicle parking requirements. After weeks of effort to accommodate Sinclair’s

requirements within the approved building envelope, the Applicant came to the conclusion that meeting Sinclair's needs would require a complete redesign of the building along with new PUD approvals from the Commission. Both the time requirements and the additional costs associated with such changes pushed 250 M's delivery outside of Sinclair's move timeline.

- As a result of the working relationship that the Applicant established with JLL on the Sinclair effort, it was offered the opportunity to negotiate with a national health care services company that was seeking 80,000 to 100,000 square foot of space in Southeast, DC. The Applicant worked with JLL and the potential client's brokerage team to match 250 M to their space requirements. Unfortunately, the Applicant was forced to end discussions with this group when their operations team determined that they would require three parking spaces per 1,000 square feet of space leased (the approved building provided only one parking space per 1,000 square feet of space leased). (Ex. 1, 2C.)
8. The Applicant identified the previous concerns that the Capitol Riverfront BID had raised about the oversaturation of residential uses in the Capitol Riverfront neighborhood and the need for a truly mixed-use community in this neighborhood. The Applicant noted that while some new office buildings in the Capitol Riverfront area (such as Skanska's speculative owner-financed office building at 99 M Street, S.E., and the National Association of Broadcasters owner-occupied building to be located at the intersection of M Street, S.E. and S. Capitol Street, S.E.) are moving forward, it is important that sites such as 250 M Street, S.E. remain as office building sites and are not converted to residential buildings. Granting another time extension for the approval of the office building at 250 M Street, S.E. will help ensure the Capitol Riverfront neighborhood is a dynamic and thriving community with a sense of vibrancy in the middle of the day, as well as at night and on weekends. (Ex. 1, 2C.)
9. The Applicant requested a waiver from 11-Z DCMR § 705.5, which limits an applicant to no more than two time extensions, with the second time extension limited to no more than one year. The Applicant argued that it is appropriate for the Commission to grant this waiver due to the unique nature of this second-stage PUD application being part of the much larger Capper/Carrollsborg PUD project that was approved in Z.C. Case No. 03-12/03-13. That PUD project has been amended and extended on numerous other occasions (in fact, on September 12, 2016 in Z.C. Case No. 03-12T/03-13T, the Commission granted a similar waiver in approving a time extension request for the Sq. 769N project, which is located immediately to the north of this project), but most importantly it has seen significant elements of the project move forward. The Applicant stated that it is appropriate for the Commission to grant the waiver, to allow for a time extension even if more than two time extensions have been previously granted, as the Applicant has shown that it is diligently moving forward with the marketing of the approved office building, but it has not been able to obtain the levels of pre-leasing that are necessary to obtain construction financing for the building. (Ex. 1.)

10. In its November 4, 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 and that the granting of the waiver of § 705.5 was appropriate. (Ex. 6.)
11. ANC 6D, at its regularly scheduled and properly noticed public meeting on October 17, 2016 with a quorum present, voted 7-0-0 to support the request. The ANC noted that it supported the request because it believes that the time extension will allow the Applicant additional time to find an office tenant and thus keep the property as an office building, rather than a residential building. The ANC noted that it believed that the Capitol Riverfront neighborhood needs a mix of office and residential buildings and wants 250 M Street, S.E. to become an office building as planned. The ANC also noted that it appreciated the Applicant’s commitment to participate in a future pre-construction meeting with adjacent residents in order to prepare residents for any construction impacts and provide them with the Applicant’s contact information so that the community can contact the Applicant in order to ensure the expeditious resolution of any construction-related issues. (Ex. 5.)
12. The Capitol Riverfront BID prepared a letter which noted its support for this time extension request. The letter included the following statements and conclusions:
 - “Our neighborhood currently has over 34,000 employees and this could total over 60,000 employees at the ultimate build-out of the Capitol Riverfront. WC Smith’s proposed 250 M Street, SE office project would take advantage of a signature site for a class A office building and continue our office market momentum”;
 - “WC Smith showed great vision in the purchase of this site at 250 M Street, SE as it could be considered as a candidate for office, residential, or hotel uses with ground floor retail. However, the current market dynamics in the Capitol Riverfront suggest that our office market is gaining traction in the neighborhood”;
 - “Over the past several years, we have seen the residential market become the most popular in our neighborhood – 10 apartment buildings have been under construction over the past two years, and there are another 1,400 units in the development pipeline. We have seen five different office building sites switch to residential uses, and our existing apartment building inventory is over 95% leased up”;
 - “As a BID organization that provides management services to this 500-acre new growth area, we appreciate the development of this urban residential neighborhood. But a true mixed-use neighborhood must have a balance of uses including a vibrant office market”;
 - “The proposed office building at 250 M Street, SE will add to that balance of land uses and ultimately increase our daytime office population – a population

necessary to sustain restaurants and other neighborhood support retail while helping to create an 18-hour activity cycle for the neighborhood.” (Ex. 2D)

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 6D. ANC 6D submitted a letter in support of this request.

Subsection 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 approved PUD at 250 M Street, S.E. is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Subsection 705.2(c) requires that the Applicant demonstrate with substantial evidence one or more of the following criteria:

- (1) An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant’s reasonable control;
- (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or
- (3) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the Order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the office building approved in the PUD application. The Commission concludes that the Applicant has diligently pursued the marketing of this office building and has not been able to move forward due to market conditions outside of its control. The Commission agrees with the statements of the Applicant, ANC 6D, and Capitol Riverfront Business Improvement District that maintaining this Property as an office building will help further the goals of creating a mix of uses in the Capitol Riverfront neighborhood. For these reasons, the Commission finds that the Applicant has satisfied the requirements of § 705.2(c)(1).

In regards to the Applicant’s request for a waiver from § 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 agrees with the Applicant’s argument that granting this

additional time extension, given all of the significant work and expense that the Applicant has engaged in, 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 the Applicant.

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. ANC 6D supported this time extension request and the Commission agrees with their conclusion regarding the time extension request. 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 Nos. 03-12/03-13, 03-12C/03-13C, and 03-12F/03-13F. The consolidated PUD approved by the Zoning Commission shall be valid until September 26, 2018, within which time the Applicant will be required to file a building permit application to construct the approved PUD, and construction of the PUD must start no later than September 26, 2019.

On November 14, 2016, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, 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; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.8 this Order shall become final and effective upon publication in the *D.C. Register* on January 20, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04F
Z.C. CASE NO. 06-04F
Florida & Q Street, LLC
(Two-Year PUD Time Extension @ Square 3100, Lot 48)
July 11, 2016

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on July 11, 2016. At the meeting, the Commission approved a request from Florida & Q Street, LLC ("Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 48 in Square 3100 ("Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 06-04, the Commission approved a PUD for the Subject Property and an application to amend the Zoning Map from the C-2-A to the C-2-B Zone District for the Subject Property ("the "PUD"). The Subject Property consists of approximately 18,984 square feet of land area.
2. Pursuant to Z.C. Order No. 06-04C, the Commission approved a modification to the PUD. As modified, the PUD includes construction of a mixed-use development consisting of approximately 85,428 square feet of gross floor area ("GFA"). Approximately 84,306 square feet of GFA will be devoted to residential use, providing between 85 and 95 dwelling units, and approximately 4,998 square feet of floor area will be devoted to retail use in the cellar. The PUD will have a maximum density of 4.5 FAR, and a maximum building height of 72'-4½" (not including penthouses). The approved PUD will include 41 parking spaces located on one level of underground parking accessed from Florida Avenue, N.W.
3. Pursuant to Z.C. Order No. 06-04A, the Commission extended the validity of the PUD for a period of two years such that an application for a building permit would need to be filed no later than June 15, 2011, and construction of the project to commence no later than June 15, 2012.
4. Pursuant to Z.C. Order No. 06-04B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2014.
5. Pursuant to Z.C. Order No. 06-04C, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2014, and construction of the project is to commence no later than June 15, 2015.
6. Pursuant to Z.C. Order No. 06-04D, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2015, and construction of the project is to commence no later than June 15, 2016.

7. On June 1, 2016, the Applicant filed a request for a two-year time extension of the PUD, since, due to the lengthy process associated with procuring building permits, the Applicant would be unable to commence construction by June 15, 2016, as required by Z.C. Order No. 06-04D.
8. On June 10, 2015, the Applicant submitted applications for a building permit.
9. The Applicant submitted evidence that the project has experienced delays beyond the Applicant's control. As demonstrated in the materials submitted by the Applicant, including a sworn affidavit by Eyob Mamo, Manager, Florida & Q Street, LLC, the Applicant has worked diligently to advance the PUD but has been unable to do so due to the time required to obtain all necessary building permits. As noted, on June 10, 2015, the Applicant submitted an application for a building permit. Further, the Applicant has retained a development manager; undertaken extensive environmental analysis of the Subject Property; obtained several proposals for construction services including, but not limited to, civil and structural engineering, surveying, and subsurface exploration. Notwithstanding the foregoing, due to the extensive and lengthy governmental approvals required to obtain the required building permits, the Applicant was unable to begin construction of the PUD by the June 15, 2016 deadline established by Z.C. Order No. 06-04D.
10. On June 27, 2016, the Office of Planning ("OP") submitted a report recommending approval of the application for a period of one year, rather than the two-year period requested by the Applicant.
11. The only other party to the application was Advisory Neighborhood Commission ("ANC") 5E. On July 11, 2016, the ANC 5E submitted a resolution in support of the request.¹
12. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(b) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the PUD should be granted.

¹ Simultaneously with the subject request for a two-year time extension, the Applicant filed an application for minor modification of the approved PUD to add penthouse habitable space to the proposed building which is assigned Z.C. Case No. 06-04E. The ANC 5E reviewed and voted to support both the time extension request and the minor modification at the same duly noticed meeting, and subsequently submitted its resolution in support of both this request and the application as part of the same resolution. While the resolution addressed both filings, it was only submitted to the record for the minor modification case (*See* Exhibit 5 of Z.C. Case No. 06-04E). Therefore, by way of this Order, the ANC 5E's resolution is incorporated by reference into the record for the subject request.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the request and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
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 affected ANC's recommendations. The Commission has carefully considered the ANC 5E's resolution in support of the request and agrees that approval of the requested two-year time extension is appropriate.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. After careful consideration of the OP report, the Commission is not persuaded by OP's recommendation to limit the time extension to one year. Rather, noting the substantial investment made in the project thus far by the Applicant, and that a building permit has been applied for, the Commission is amendable to granting the time extension for a period of two years.

6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(b). Specifically, while the Applicant has filed for a building permit, because of the lengthy permit approval process the Applicant has been unable to secure all government agency approvals required to begin construction of the PUD by the expiration date established pursuant to Z.C. Order No. 06-04D.
7. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a two-year time extension of the validity of Z.C. Order No. 06-04, as modified by Z.C. Order No. 06-04C, such that construction of the PUD shall commence no later than June 15, 2018.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 11, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at

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its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull approve).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 20, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-15
Z.C. Case No. 15-15
JBG/Boundary 1500 Harry Thomas Way, LLC and
JBG/Boundary Eckington Place, LLC
(Consolidated PUD & Related Map Amendment
@ Square 3576, Lot 814 and Square 3576, Lots 2001-2008)
August 8, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on May 12, 2016 to consider an application from JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (collectively, “Applicant”) for review and approval of a consolidated planned unit development (“PUD”) for 1500 Harry Thomas Way, N.E. (Square 3576, Lot 814) and 1611-1625 Eckington Place, N.E. (Square 3576, Lots 2001-2008) (“Property”) and a related Zoning Map amendment to rezone the Property from the M Zone District to the CR Zone District. The application proposes a mixed-use development incorporating retail and residential uses (“Project”). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”)¹. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Application, Parties, Hearing, and Post-Hearing Submissions

1. The Property consists of 1500 Harry Thomas Way, N.E. (Square 3576, Lot 814) (“West Parcel”) and 1611-1625 Eckington Place, N.E. (Square 3576, Lots 2001-2008) (“East Parcel”).
2. On June 17, 2015, the Applicant submitted an application to the Commission for the review and approval of a consolidated PUD and a related Zoning Map Amendment to rezone the Property from the M Zone District to the CR Zone District. The application submission proposed a mixed-use building with residential, commercial/retail, and parking uses. (Exhibits [“Ex.”] 2-3A5.) On November 13, 2015, the Office of Planning (“OP”) submitted a setback report. (Ex. 10.)
3. At a public meeting on November 23, 2015, the Commission voted to set the application down for a public hearing and made several information or modification requests of the Applicant relating to the Project proposal.

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with Chapter 3 of Title 11-X DCMR. However, because this application was set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24.

4. On February 29, 2016, the Applicant filed pre-hearing submissions responding to issues raised by the Commission and OP at setdown. The Applicant responded with additional plans, diagrams, and information regarding:
 - (a) Simplification of multiple buildings' façade treatments and materials;
 - (b) Refining the Northwest Structure, including the elimination of eight feet (equating to one floor);
 - (c) Modifications to the Northeast Structure including greater upper-story setbacks adjacent to existing rowhouses on R Street, N.E. and widening the alley to the north of the Northeast Structure;
 - (d) Addition of habitable roof structures;
 - (e) Updates to the Project's loading and parking plans (particularly as it relates to sharing such facilities with The Gale);
 - (f) Addition of potential mezzanine space for commercial areas;
 - (g) Removal of below-grade self-storage use;
 - (h) Dedication of all affordable housing units to households earning 60% of the area median income (AMI), rather than the previously proposed mix of approximately six percent at 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for household size ("AMI")) and two percent at 50% AMI; and
 - (i) Additions to and clarifications of the community benefits and amenities proposals.

(Ex. 11-1118.)

5. Notice of the public hearing was published in the *D.C. Register* on April 1, 2016 and was mailed to Advisory Neighborhood Commission ("ANC") 5E and to owners of property within 200 feet of the Property. (Ex. 15.)
6. On March 30, 2016, the Applicant posted notice of the public hearing scheduled for May 12, 2016. (Ex. 16.)
7. The Applicant submitted a 20-day pre-hearing submission on April 22, 2016 with additional information and diagrams in response to the Commission and OP, including: enhanced drawings and views of the Project, information relating to changes made to the Project in response to community requests (such as setbacks to the Northeast Structure); additional information relating to the Project's public benefits and amenities, including affordable housing; the Applicant's traffic impact study; and further information

- regarding events in and usage of the Promenade and maker space use guidelines. (Ex. 23-23C.)
8. Several individuals and neighbors and the Eckington Citizens Association submitted letters of support into the record, as discussed more fully in Findings of Fact 80-83 below.
 9. A public hearing was conducted on May 12, 2016. The Commission accepted Eric Colbert as an expert in the field of architecture, Dan Van Pelt as an expert in the field of traffic engineering, Gabriela Canamar as an expert in the field of landscape architecture, and Elizabeth Floyd as an expert in the field of LEED/sustainability consulting. The Applicant presented testimony from the experts as well as Bryan Moll, Heather Howard, and John Wilkinson on behalf of the Applicant and submitted additional plans and exhibits in support of the application. (Ex. 39A1-39A5, 50.)
 10. In addition to the Applicant, ANC 5E was automatically a party in the proceeding and submitted a report in unanimous support of the application. (Ex. 37.)
 11. The Commission received reports from OP, DDOT, and the District Department of Energy and the Environment (“DOEE”). (Ex. 26, 27, 28.) At the hearing, the Commission heard testimony from OP, DDOT, and DOEE.
 12. At the conclusion of the hearing, the Commission closed the record except for the Applicant’s post-hearing submission and proposed order as well as responses to the Applicant’s post-hearing submission from OP, DDOT, DDOE, ANC 5E, and Jennifer Nieratko, whose requested party status in support of the application was denied. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: further plans and information regarding the eastern façade of the Project and both the design and operations of the promenade; further plans and information regarding the Project’s roof structures, including modifications to certain elements of the roof structures and justification for the request for flexibility from the uniform height requirement for the roof structure at the northeast of the Project; further information regarding the PUD’s LEED commitment and sustainability approaches; further information regarding the location of the PUD’s affordable housing component within the Project; additional detail regarding the Project’s public benefits and project amenities; and further information regarding the commercial tenants to be located at the Property. The Applicant submitted these materials to the Commission in its post-hearing submission dated June 2, 2016. (Ex. 45E.) The Applicant also submitted the requested draft findings of fact and conclusions of law to the Commission on June 2, 2016. (Ex. 43, 44.)
 13. The Commission received additional reports from OP and DOEE on June 9, 2016. (Ex. 46, 47.) OP requested additional information on certain benefits and amenities of the project, clarifications regarding the Applicant’s affordable housing, and confirmed that it had no objection to the Applicant’s requested flexibility to convert certain elements of the project’s residential space to commercial space (provided that the amount of affordable

- housing provided remain constant). (Ex 46.) DOEE requested additional focus on the project's sustainable design. (Ex. 47.)
14. On June 13, 2016, the Commission voted to take proposed action to approve the application. The Commission expressed concern over the Applicant's request for a full waiver of the requirements of the Inclusionary Zoning ("IZ") regulations in order to reserve eight percent of the project's residential gross floor area to households earning equal to or less than 60% of Washington DC's AMI so that the project could reserve that same amount of gross floor area to household earning equal to or less than 60% of the AMI. The Applicant claimed that the waiver was needed because the Department of Housing and Community Development's ("DHCD") only administered IZ units at the 80% and 50% AMI levels. The Commission debated whether the deeper affordability proffered was worth the absence of the administrative oversight detailed in the IZ administrative regulations found at Chapter 14 of Title 22 DCMR. The Commission therefore requested that the Applicant provide greater details as to how the affordable units would be administered.
 15. The Commission also requested additional information from the Applicant concerning the Project's sustainable design and proposed LEED certification and to respond to OP's concerned pertaining to the definition of "maker uses" on site (as related to the proffer of subsidized tenant space for such uses), and the Department of Housing and Community Development's ("DHCD") view as to whether it could administer the proposed affordable housing proffer. The Commission also requested that the Applicant further refine the sizes of the mezzanines proposed for the roof structure within the Northwest Structure of the Project.
 16. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCP") as required by the District of Columbia Home Rule Act on June 14, 2016. In a letter dated July 12, 2016, the NCP Executive Director advised the Commission that through a delegated action he found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.
 17. The Office of Zoning scheduled the case for final action at the Commission's July 25, 2016 public meeting.
 18. On June 20, 2016, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR §§ 2403.16-2403.18.
 19. On June 20, 2016 and July 5, 2016, the Applicant submitted its initial and revised lists of benefits and amenities. (Ex. 49, 51.) The Applicant's July 5, 2016 filing also addressed items requested by the Commission regarding employment obligations, and requested updates to plans and diagrams. (Ex. 51.) As to affordable housing, the Applicant noted its parent company's prior experience in administrating affordable housing within its developments and also agreed to sign the DHCD affordable housing covenant. The letter indicated that an example of such a covenant was attached, but in fact none was provided.

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20. On July 20, 2016, OP filed a request to reopen the record along with a supplemental report requesting clarifications regarding the Applicant's definition of "maker" uses. (Ex. 53.)
21. On July 22, 2016, DHCD filed a request to reopen the record along with a supplemental letter stating that "the Applicant's requested waiver will not serve the District's interests and will diminish the efficacy of the IZ program" because of the difficulty and inefficiencies that would result from its having to administrator affordable housing at multiple income levels and because the grant of such a waiver will encourage other developers to seek similar waivers in the hopes of avoiding IZ administrative oversight. (Ex. 54, 55.)
22. At its July 25, 2016 public meeting the Commission deferred taking final action on the case to July 28, 2016. As to the maker space issue, it appeared that OP and the Applicant had reached agreement on refining the language, but the Commission was reluctant to take final action without having the text before it. On the IZ waiver issue, the Commission indicated that it wished to receive further information from DHCD and continued its deliberations until July 28, 2016. The Secretary to the Commission identified the specific information sought through an email to DHCD dated July 26, 2016. (Ex. 56.)
23. Through a letter dated July 28, 2016, DHCD responded to the Commission's request. (Ex. 57.) In addition to providing the information requested, DHCD noted that it had requested the Applicant to consider revising its proffer to reserve four percent of the residential gross floor area at the 80% AMI level and four percent at the 50% level, which would both allow for deeper affordability while keeping the project subject to the IZ administrative regulations. The letter indicated that the Applicant declined the proposal.
24. The Applicant submitted a letter clarifying the "maker" use definition on July 28, 2016. (Ex. 58.)
25. At a special public meeting held July 28, 2016, the Commission expressed satisfaction with the revised definition of maker space, but deferred its consideration of the application until August 8, 2016, when Commissioner May would be present.
26. On August 5, 2016, the Applicant submitted a letter identifying two housing options. The first option was its existing proposals, while the second option would provide the 80%/50% split described in finding of fact no. 23. This option would eliminate the need for an IZ waiver. The Applicant also indicated that it had never declined this second option, but was unable to formally commit to it by July 25, 2016.
27. The Applicant responded to the Commission's request with a letter dated August 5, 2016 offering alternative housing options. (Ex. 59.)

28. At its special public meeting on August 8, 2016, the Commission permitted the DHCD Director to speak, at which time she expressed her support for the second option. The Commission thereafter voted to take final action to approve the application subject to the conditions enumerated in this Order including a condition that requires the second affordable housing option.

THE MERITS OF THE APPLICATION

Description of Property and Surrounding Areas

29. The Property consists of approximately 135,099 square feet of land area. The Property is located in the Northeast quadrant of the District of Columbia bounded by rowhouses, a vacant lot, and a self-storage facility to the north, Eckington Place to the west, the multi-family property that is the subject of Z.C. Order No. 05-23A (“The Gale”) to the south, and Harry Thomas Way to the east. (Ex. 2.)
30. The entrance to the NoMA/Gallaudet Metrorail station is located approximately one-quarter mile to the southwest of the Property. (Ex. 2.)
31. The Property is in Single Member District 5E03 of ANC 5E in Ward 5. The main portion of the Eckington neighborhood is to the north and west, with the railroad/Metro right-of-way and the Union Market district to the east, and NoMA to the south. (Ex. 2.)
32. The site is currently improved with parking lots and a single-story commercial structure operated as an insurance office on the west side and a two-story commercial structure operating as the “Washington Flower Market” on the east side. (Ex. 2.)
33. The Future Land Use Map designates the Property in the mixed-use Medium-Density Residential/Production, Distribution, and Repair Land Use categories. The Property is identified as a Land Use Change Area on the Generalized Policy Map. (Ex. 2.)

The Project

34. The Applicant proposes to construct a mixed-use building comprised of four connected structures containing residential units, ground-floor commercial uses, and underground parking. Three of the structures will be constructed to a height of approximately 75 feet and one of the structures will be constructed to a height of up to approximately 102 feet. Exclusive of penthouse space, the project will contain up to approximately 703,362 gross square feet (“GSF”), which is equivalent to a density of up to approximately 5.2 floor area ratio (“FAR”). Specifically, the Project will provide up to approximately 695 residential units, and up to approximately 77,184 GSF of commercial, retail, and service uses. The building will occupy approximately 80% of the lot. The underground parking area will accommodate up to approximately 331 parking spaces when fully constructed. (Ex. 2, 51A.)

35. The Project is designed as four connected structures including one structure of approximately 102 feet (nine stories) at the northwest quadrant of the Property and three structures of 75 feet (seven stories) on the remaining three quadrants of the Property. The 102-foot structure and one 75-foot structure will front on Eckington Place. The two remaining 75-foot structures will front on Harry Thomas Way. The four masses will be connected by a variety of bridges and structural elements, including those spanning the “alley” and plaza area bisecting the site. The PUD will consist of four above-grade structures connected through a series of improvements and structures. Therefore, the Project will be one building for zoning purposes. (Ex. 2.)
36. The Project’s four connected components are described further as:
- (a) “Northwest Structure” – The structure at the northwest of the Project will be constructed to a maximum height of approximately 102 feet. It will contain up to approximately 181,254 square feet of residential space (approximately 176 residential units) over up to approximately 23,379 square feet of ground-floor commercial/retail use with up to approximately 14,676 square feet of commercial/retail use in an optional mezzanine space. Approximately 171 of the residential units in the Northwest Structure will be in the “main” structure while approximately five of the residential units (comprising approximately 5,440 square feet) will be in the penthouse structure;
 - (b) “Southwest Structure” – The structure at the southwest of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 222,199 square feet of residential space (approximately 292 residential units) over up to approximately 28,089 square feet of commercial/retail use with up to approximately 11,040 square feet of commercial/retail use in an optional mezzanine space. Together with the Northwest Structure, it comprises the “West Phase” of the Project and will provide approximately 187 parking spaces (102 compact);
 - (c) “Northeast Structure” – The structure at the northeast of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 175,050 square feet of residential space (approximately 182 residential units); and
 - (d) “Southeast Structure” – The structure at the southeast of the Project will be constructed to a maximum height of approximately 75 feet. It will contain approximately 61,780 square feet of residential space (approximately 45 residential units). Together with the Northeast Structure, it comprises the “East Phase” of the Project and will provide approximately 144 parking spaces (54 compact).

(Ex. 2, 51A.)

37. The Applicant proposes amenities such as enhanced affordable housing, significant public space and streetscape upgrades intended to stimulate and enhance pedestrian activity, reduced rent for maker spaces, the provision of a publicly available promenade and plaza connecting Eckington Place and Harry Thomas Way, contributions to local initiatives and programs, the furtherance of neighborhood connectivity to the Metropolitan Branch Trail and Metro, exemplary architecture, and other amenities. (Ex. 2, 49, 51, 59.)
38. Aesthetically, the Project's façades strive to capture the feeling of the industrial architecture that was present on the site and is still visible along the nearby railroad tracks in order to convey the neighborhood's authentic industrial characteristics. The Applicant intends to employ façade elements that are a modern abstracted version of the warehouse and production aesthetic. Due to the façade lengths of the Project, the Applicant's project architect created a variety of façade expressions which strive to break down the scale of the building and create hierarchy. The Applicant reduced the amount of materials and expression taking place on the Project's façades, particularly the Eckington Place façade, based on requests from the Commission and OP. The result is a façade that adds visual interest and "breaks up" the extent of the street frontages but does not overcomplicate the visual expression of the site. (Ex. 2, 32A, 45A, 51A.)
39. A further design goal of the project is to maximize the Project's interaction with the public and allow for light and a feeling of openness over a long site, east to west. As such, each component of the Project will read as a separate building, further breaking down the large site. (Ex. 2.)
40. The Applicant proposed high-ceiling commercial/retail space along Eckington Place and the Project's promenade, which will create high-quality commercial opportunities. (Ex. 2, 51A.)
41. A central design element of the Project is the creation of the promenade and plaza through the center of the site ("Promenade"). The Promenade is essentially the extension of Quincy Place through the Property and will operate as a pedestrian-oriented focal point for the Project that also allows vehicular circulation. The "alley" has a width of approximately 30 feet for the western portion of the site and a width of 20 feet for the eastern portion. The plaza created at the middle of the size is approximately 80 feet by approximately 79.5 feet – for a total area of approximately 6,360 square feet. The total length of the Promenade from east to west is approximately 638 feet. The Promenade is intended to function hand-in-hand with the more active "maker" and innovative retail uses flanking the space on the Project's ground floor. (Ex. 2, 45A, 51A)
42. The Project will include a significant percentage of larger units, including two- and three bedroom units and larger, two-story dwellings to encourage occupancy by families. (Ex. 2, 45A, 51A.)
43. Consistent with the requirement of the IZ regulations, the residential component will set aside approximately eight percent of its gross floor area (approximately 56 units) as IZ

- Units. However, the Applicant is offering this housing with deeper affordability than IZ requires, as is more specifically described in finding of fact no. 56(e).
44. The Project will have significant landscaped and hardscaped areas throughout the structures – particularly focusing on outdoor recreational and communal activities on the roof terraces of the building. The Project will deliver a wide, interesting variety of differentiated areas including spaces as a sun deck, an airwalk, a skypark, and multiple courtyards. (Ex. 2, 45A, 51A.)
 45. While the original application requested the location of self-storage in the Project, that use component has been removed. (Ex. 2, 11.)
 46. The Applicant will include approximately 271 long-term bicycle parking spaces in the Project and will work with DDOT to locate approximately 58 short-term bicycle parking in the form of no less than approximately 29 U-racks within and along the perimeter of the site, subject to the public space permitting process. (Ex. 2, 45A, 51A.)
 47. The Project’s loading will occur in four places: through the existing 20-foot-wide public alley at the northeast of the Property (for the Northeast Structure loading), through the central private “alley” (for the majority of the commercial loading on the Property and the entirety of the Northwest Structure), from a curb cut on Eckington Place in The Gale property and from a curb cut on Harry Thomas Way in The Gale property. Such loading facilities will allow space for the types of trucks, delivery vans, and service vehicles anticipated to service the Project. (Ex. 2, 39A, 45A, 51A.)
 48. The Applicant aims to incorporate a high degree of sustainable elements into the Project. The Project will be designed and constructed to Silver certification under the LEED-NC v. 2009 rating system. The Northwest and Southwest Structures will act as one building for LEED-NC review purposes and the Northeast and Southeast Structures will act as another building for LEED-NC review purposes. In its post-hearing submission, the Applicant further agreed to achieve a minimum of five-six additional points beyond the Silver level for each structure under the LEED-NC 2009 system. In addition, the Applicant made enhancements to the Project’s sustainability, including introducing a minimum of 10,000 square feet of solar panels on the Project roof. (Ex. 2, 32A, 45A, 51A.)

Zoning Map Amendment

49. The Property is located in the M Zone District. Surrounding property is also located in the M Zone District. The M Zone District permits “heavy industrial sites” with a maximum density of 6.0 FAR, maximum height of 90 feet, and no lot occupancy limit. New residential uses are not permitted in the M Zone District. (11 DCMR §§ 820.1, 820.2, 840.1, 841.1.)
50. The Applicant requested a PUD-related Zoning Map amendment to the CR Zone District for the Property to permit the proposed residential use and to permit the Northwest

Structure to reach the requested height. The maximum permitted height in the CR Zone District, with PUD flexibility, is 110 feet and the maximum permitted density is 8.0 FAR. (Ex. 2.)

51. Pursuant to the same Future Land Use Map designation, the Commission previously approved another PUD and related rezoning from the M Zone District to the C-3-C Zone District for the parcel located immediately south of the Property in Z.C. Order No. 05-23 (2006) (“The Gale PUD”).

Zoning Flexibility Requested

52. The Applicant requested flexibility: (a) under § 610 to allow for light industrial use in the Project’s commercial structure; (b) under § 411.11 relating to the Northwest Structure’s roof structure not having a uniform height for the habitable space as required under § 411.8; (c) under § 411.11 relating to the Northeast Structure’s roof structure being comprised of more than one enclosure where only a single enclosure is permitted under § 411.6; (d) from §§ 2201, 2203, and 2204 from the loading requirements of the Project for the number, dimensions, and location of loading facilities; (e) from the minimum closed court dimensions of § 638.2(a); and (f) from § 2115.2 regarding the maximum allowable percentage of compact spaces provided in the parking garage. The flexibility was requested in order to accommodate the design of the Project. (Ex. 2, 11, 23, 45.) As noted, the request for a waiver from IZ was withdrawn as no longer being unnecessary given that the 80% and 50% income levels can be administered by DHCD under the IZ administrative regulations.

Development flexibility requested

53. The Applicant requested flexibility to phase the construction of the PUD to allow for the construction of the West Phase or the East Phase of the Project first, as further set forth in the conditions of approval. (Ex. 2, 11.)
54. The Applicant requested flexibility to modify the interior and exterior design of the PUD as set forth in the conditions of approval and shown on the approved plans, including the flexibility to design the commercial facades in accordance with tenant and market requirements, including lighting, materials, and the introduction of signage. (Ex. 2, 11, 11F, 45, 51A.)
55. The Applicant requested flexibility to construct commercial space in lieu of residential for portions of the B-1 level of the Southwest Structure and the portion of the Northeast Structure facing the Promenade and Harry Thomas Way. (Ex. 45.) OP had no objection to this flexibility provided the total square footage of affordable housing provided by the Project would be based on such converted space as though it remained residential. (Ex. 45A, 46, 51A.)

Project Amenities and Public Benefits

56. As detailed in the Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits:
- (a) Exemplary Urban Design, Architecture, and Open Spaces – The Applicant will provide such items through the use of high quality materials and design that will enhance and celebrate the industrial characteristics of the Eckington neighborhood, increase the porosity of the neighborhood, and commit to sustainable design features;
 - (b) Site Planning and Efficient Land Utilization – The Applicant will provide such items through the replacement of low-scale structures and surface parking lots with a mixed-use, transit-oriented development that enhances the urban street grid, provides multi-modal transportation connections, strengthens the emerging Eckington neighborhood, and fulfills many of the planning goals and policies of the Comprehensive Plan;
 - (c) Provision of the Promenade – The Applicant will enhance the connectivity and porosity of the neighborhood patterns through the design, construction, and maintenance of the Promenade;
 - (d) Street-Engaging Maker, Innovative Retail and Commercial Offerings – The Applicant will provide up to approximately 77,184 total square feet of maker, innovative retail, and commercial space to create an inviting destination, activate the public realm around the site and stimulate other development in the vicinity. Most of this space will be double height space. For the purposes of this Order, a “maker” space or “maker” use is defined as: production, sale, distribution, and/or consumption of food and beverages; small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; recreation uses; engineering and design; and technology design and production;
 - (e) Affordable Housing – The affordable housing component of the PUD will be approximately 50,541 square feet of the residential gross floor area of the PUD, which equals eight percent of its residential gross floor area including the habitable penthouse space, all of which will be subject to the Inclusionary Zoning regulations. Of this amount, the IZ regulations require that 446 square feet of gross floor area be set aside for a unit for households earning no more than 50% AMI because of the construction of penthouse habitable space. The remaining 50,094 square feet of gross floor area (approximately 55 units) must be set aside for households earning no more than 80% of the AMI (“80% Units”). Instead, the Applicant will set-aside half of the 80% Units at the 50% AMI level, thereby exceeding the requirements of Inclusionary Zoning;

- (f) Repaving of Northeast Alley – The Applicant will repave the alley to the northeast of the Property, subject to approval by DDOT, and has designed such alley to be able to utilize a two-foot setback for the first two levels of the Project abutting such alley;
- (g) Community Meeting Space – The Applicant will provide, at no cost and for the life of the Project, ANC 5E and the Eckington Citizens Association access to a community meeting room comprising a total of approximately 1,200 square feet of gross floor area. Such organizations will reserve the meeting space with building management on an ongoing basis;
- (h) Adopt-A-Block Program – The Applicant will participate in the District’s Adopt-A-Block Program for the two city blocks defined as the north side of Seaton Place, N.E. at the north, the east side of 3rd Street, N.E. at the east, the south side of Randolph Street, N.E. at the south, and the west side of 2nd Street, N.E. on the west for a period of six years (three terms of two years each);
- (i) Contribution for Eckington Banners – The Applicant will contribute up to \$20,000 to the vendor(s) responsible for work relating to the design and installation of banners denoting the Eckington neighborhood on streetlights and/or lampposts surrounding the Property. Any excess from such \$20,000 allocation will be donated in equal proportion to the three nonprofit organizations identified in paragraph (p) below for the purposes stated in that paragraph;
- (j) Public Art – The Applicant will purchase and install a piece of public art in the public space at the entrance of the promenade along Eckington Place, subject to approval by DDOT. The Applicant will determine the ideal type and configuration for such art, subject to the review and approval of such proposal through the public space permitting process. The approximate location for such art is shown on Page L1.02 on Exhibit 51A;
- (k) Employment Agreement – The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services (“DOES”) in the form submitted into the record to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the Project (Ex. 11E);
- (l) Community Garden – The Applicant will provide a minimum of approximately 1,200 square feet for a community garden to the surrounding community within the ANC 5E03 boundaries for a minimum of a six-year term. ANC 5E (or similar community organization) will manage and operate such garden including such functions as processing applications for plots, distributing plots to interested individuals, enforcing garden guidelines, and other similar functions;

- (m) Metropolitan Branch Trail Security Enhancements – The Applicant will contribute \$25,000 to DDOT (or the NoMA Business Improvement District) to improve safety measures along the Metropolitan Branch Trail, with a preference on the areas of the portion of the trail north of R Street, N.E. most directly affecting the Eckington community. Examples of such safety measures include but are not limited to cameras, lighting, and call boxes;
- (n) NOMA Park Enhancements – The Applicant will contribute \$25,000 to the NoMA Business Improvement District (or similar organization) for the design and implementation of the NoMA Park on Harry Thomas Way, N.E.;
- (o) Maker Space Financial Assistance – The Applicant will subsidize or provide a reduction in rent (or otherwise financially assist) equivalent to \$10.00 per square foot (below then-current market rents) for innovative retail or “maker” uses the commercial areas on the first floor (and related optional mezzanine) for initial lease up of such space, for a minimum of 10,000 gross square feet;
- (p) Contribution to Community Non-Profit – The Applicant will contribute \$5,000 each for a total of \$15,000 contribution to the Coalition for Homeless, Inc. to operate its Emery Work Bed Program, So Others Might Eat to operate the Shalom House, and Pathways to Housing DC to assist with the Housing First Program;
- (q) 3rd and Rhode Island Signal (Mitigation Related) – The Applicant will contribute \$115,000 to DDOT towards the traffic signal design and installation project for the signal at 3rd Street and Rhode Island Avenue, N.E. Excess funds from such contribution will be allocated to the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project;
- (r) Car Share Spaces (Mitigation Related) – The Applicant will dedicate two spaces in the residential garage or elsewhere on the surface of the Project for car sharing services to use with right of first refusal, if the demand exists from car share companies. These spaces will be convenient to the garage entrance, available to members of the car-sharing service 24 hours a day, seven days a week, without restrictions; and
- (s) Bike Share Station and Operating Costs (Mitigation Related) – The Applicant will fund the installation of a Capital Bikeshare station, including the first year of operation of the new station, at the perimeter of the NoMA Green Park (total cost currently \$88,000) or other nearby area subject to DDOT/public space and, if necessary, BID approval. (Ex. 2, 11, 45C.)

Compliance with PUD Standards

57. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development

incentives requested, and any potential adverse effects.” (11 D.C.M.R. § 2403.8.) The Commission finds that the development incentives for the residential use capability, flexibility, and related rezoning to CR are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant’s statement and the OP report.

58. The Commission credits the testimony of the Applicant and its experts as well as OP and DDOT and finds that the superior design, site planning, streetscape and transportation network improvements, housing and affordable housing, uses of special value, transportation demand, Promenade and loading management plans, and employment opportunities of the PUD all constitute acceptable project amenities and public benefits.
59. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of the Applicant and OP and the many letters from ANC 5E and community members and neighbors that the PUD provides significant and sufficient public benefits and project amenities, including elements of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP and DDOT’s testimony that the impact of the PUD on the level of services will not be unacceptable.
60. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant’s architectural and transportation planning experts that the PUD represents an efficient and economical redevelopment of a strategic and transit-oriented parcel one-quarter mile from a Metrorail station entrance.
61. The Commission credits the testimony of the Applicant’s traffic consultant, who submitted a detailed transportation impact analysis that concluded that the PUD would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. (Ex. 29.) The Applicant’s traffic expert also concluded that the number of parking and loading spaces and the location of access to parking and loading spaces from the alley would not generate adverse impacts on neighboring property. In addition, the Commission credits the Applicant’s traffic consultant to conclude that the use of the shared loading facilities at the adjacent parcel (The Gale) would not create adverse conditions, and in fact would create a more desirable plan for the Eckington neighborhood. The Commission credits the Applicant’s transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the

surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.

Compliance with the Comprehensive Plan

62. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Medium-Density Residential and Production, Distribution, and Repair on the Future Land Use Map of the District of Columbia. The proposed rezoning to the CR Zone District as well as the height and density of the Project is consistent with this designation, and the rezoning is necessary to permit the mix of uses, height, and density of the PUD, including residential use. In addition, the application is in accordance with the Comprehensive Plan's Generalized Policy Map which includes the Property in the "Land Use Change Area" category. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
63. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan as follows:
 - (a) The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and, in particular, promotes the policies of its Land Use, Transportation, Housing, Urban Design, and Economic Development Citywide Elements and its Mid-City Area Element;
 - (b) The Project implements Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development near Metrorail stations with mixed-use projects that will encourage transit usage. The PUD and map amendment bring growth and revitalization to the Eckington neighborhood. In addition, the Project will allow for the redevelopment of outmoded and obsolete industrial sites with a vibrant catalyst for the area. The Project is replacing a more suburban form of buildings with a concept that emphasizes and capitalizes on its location. The Project proposes to locate the parking beneath the building to maximize the productive use and interaction on the ground floor;
 - (c) The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing and commercial uses within walking distance of the Metrorail station and, through its Transportation Demand Management Plan, provides effective incentives to discourage motor vehicle use;
 - (d) The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including

affordable housing units that exceed the requirements of Inclusionary Zoning. The Project will produce housing on an underutilized commercial site and will stimulate the development of additional housing in the area. The Project will also furnish a significant amount of its Inclusionary Zoning requirement – four percent of the residential component (excluding penthouse habitable space) for households 50% or less of the AMI where IZ would have only required this same square footage be set aside at the 80% AMI level. Perhaps most importantly, the Project will provide unique unit types in the District – both three-bedroom units and multilevel units – that will be attractive to families wishing to either move into or stay in the District. This is particularly noteworthy at this close of a proximity to mass transit;

- (e) The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance of a key site in the Eckington neighborhood and will catalyze additional investments in the neighborhood. At the same time, the Project will be of a scale, height, and density appropriate for a site at the crossroads between the Eckington neighborhood and the NoMA district. The Project will maximize the storefront design and architectural details at the pedestrian level, further encouraging pedestrians to interact with the Project along its entire extensive frontage – including the substantial frontage it will offer in the Promenade itself. The result will be an improved and attractive street environment that will foster pedestrian activity and neighborhood vitality. In addition, the Project will enhance the pedestrian environment by improving public space walkways (by incorporating such items as street furniture and lighting) and bringing them into compliance with the Mid-City East Plan;
- (f) The Project implements the Economic Development Element policies that call for expanding the retail sector, creating additional neighborhood shopping commercial districts, attracting new businesses, and improving the mix of goods and services available to residents through appropriately scaled infill development on vacant and underutilized sites. This will help create the critical mass necessary to implement the Ward 5 Works Study and the neighborhood’s vision for the area; and
- (g) The Project implements the Mid-City Area Element policies stating that new businesses that provide local services are to be encouraged, particularly on the east side of the Mid-City Area, that new affordable housing units should be constructed in the area, and that the neighborhood should be “greened”. This Element also states that redevelopment of infill sites is to be encouraged when compatible in scale and character with adjacent uses, as is the case here. Further, in accordance with the Element, the Project will deliver a high degree of affordable housing on a site where housing is currently not permitted as a matter-of-right, at levels beyond what would be required by Inclusionary Zoning, if it were to be applied to the site.

64. The Commission credits the testimony of the Applicant, OP, and ANC 5E that the PUD is consistent with and furthers the goals of the Ward 5 Industrial Land Transformation Study.

Agency Reports

65. By report dated May 2, 2016, and by testimony at the public hearing, OP recommended approval of the application. OP supported the PUD-related rezoning to the CR Zone District, which would support the written elements of the Comprehensive Plan and would not be inconsistent with the Future Land Use and Generalized Policy maps of the Comprehensive Plan. In OP's final report:
- (a) OP noted that the maximum height of 102 feet for the Northwest Structure would be within the upper range of the Medium-Density Residential category and that such height would be limited to the western end of the Project, adjacent to a self-storage building. Further, OP noted that such massing would result in the Project being significantly lower towards the east, where it is adjacent to townhouses to the north and The Gale apartments to the south;
 - (b) OP stated that the Project would be not inconsistent with written elements of the Comprehensive Plan noting the Project's consistency with the Land Use, Transportation, Housing, Urban Design and Economic Development Elements in particular;
 - (c) OP stated that the level of benefits, amenities, and proffers appears to be commensurate with the additional height and density the PUD is requesting through the related map amendment. The greater depth of affordability being proffered would be of significant benefit;
 - (d) OP noted that it supported the Applicant's requests for flexibility but did not support the Applicant's request for flexibility from § 411.9's requirement to construct habitable space in the Northwest Structure's penthouse to two heights. The Applicant submitted a post-hearing submission on June 2, 2016 addressing such reservation; and
 - (e) OP noted that it still required additional information regarding whether DDOT determined that the traffic mitigation, TDMP, and loading and vehicular entrance approaches were acceptable; a comparison of alternative loading proposals and their impacts on both the Project and The Gale; further study of the affordable housing in light of DHCD's administrative guidelines; submission of floor plans showing the location and unit type of the IZ units; a list of project amenities to which the IZ units will have access without an additional fee and those which will require an additional fee; the distance between the north side of The Gale and the south side of the Project and the impact on the north-facing windows of The Gale;

further information relating to the Project's public benefits and amenities; further study of the historicist elements on the Eckington Place façade and the overall coherence of the architecture; clarification of routes and distances between loading platforms and retail/maker spaces; further information regarding the management and programming of the pedestrian promenade and plaza; further information about additional safety measures to enhance the Promenade; and the relationship of the proposed retail and maker uses to similar offerings proposed for nearby developments.

66. During the Hearing, OP noted that most of its information requests had been satisfied but requested further information regarding the justification for having two habitable space heights in the Northwest Structure penthouse, whether the Applicant should request additional sections for its Inclusionary Zoning relief; further specificity regarding the Project's public benefits and amenities; further study of the Project's "historicist" treatment along Eckington Place; further detail regarding the Project's landscaping plans; further information regarding the viability and adaptability of non-residential uses along with differentiations between the Project and other similar endeavors in the vicinity; and further information regarding how the Promenade will be animated. (Ex. 26; May 12, 2016 Transcript ["Tr."].)
67. By a supplemental report on June 9, 2016, OP requested additional information on certain benefits and amenities of the project, clarifications regarding the Applicant's affordable housing, and confirmed that it had no objection to the Applicant's requested flexibility to convert certain elements of the project's residential space to commercial space (provided that the amount of affordable housing provided remain constant). (Ex. 46.) On July 20, 2016, OP filed a request to reopen the record along with a supplemental report requesting clarifications regarding the Applicant's definition of "maker" uses. (Ex. 53.)
68. During the Hearing and in its post-hearing submission, the Applicant responded to OP's issues and agreed to the requested clarifications to the "maker" definition along with amendments to its affordable housing set aside. (Tr. May 12, 2016; Ex. 45, 51, 58, 59.)
69. Based on the foregoing, the Commission concludes that the Applicant has addressed OP's requests and concerns.
70. By report dated May 2, 2016 and by testimony at the public hearing, DDOT noted that it did not object to the approval of the application subject to certain conditions:
 - (a) DDOT noted that the backing movements into public space for the shared loading at The Gale do not meet DDOT standards and requested additional studies of alternatives to such condition;
 - (b) DDOT stated that the Applicant utilized sound methodology to perform its traffic analysis and that the background growth, mode split, and trip generation

assumptions proposed by the Applicant are reasonable if supported by an appropriate transportation network and TDM measures;

- (c) DDOT stated that the proposed parking supply is appropriate for the proposed usage;
- (d) DDOT requested a loading management plan and DDOT also requested that the Applicant:
- Conduct a signal warrant and, if warranted, design and install a signal at Rhode Island Avenue/3rd Street, N.E.;
 - Conduct a warrant analysis and, if warranted, install a four-way stop at Eckington Place/Harry Thomas Way, N.E.;
 - Design and construct traffic calming and pedestrian improvements in line with the Mid-City East Livability Study adjacent to the site;
 - Redesign the loading facilities to provide front in/front out movements on Eckington Place and Harry Thomas Way;
 - Provide a loading management plan for the Promenade;
 - Enhance to the Project's TDM measures to provide an \$85 credit to all new residents for the first five years;
 - Ensure that the definition for market rate parking is the average cost for parking within a quarter mile of the site; and
 - Modify the funding of the Bikeshare station to include the costs for the first year of operation; and
- (e) DDOT also indicated that DDOT would continue to review and approve components of the PUD within its jurisdiction for review and permitting, including design and construction of streetscape elements in public space.
71. During the Hearing, DDOT noted that the Applicant had addressed all of its above comments and conditions by agreeing to specific acceptable responses to each and that DDOT had no further comments or issues with the application. (Ex. 27; May 12, 2016 Tr.) The Applicant also submitted its responses to DDOT and its Transportation Demand Management Plan into the record on May 12, 2016. (Ex. 50.) Based on the foregoing, the Commission finds that the Applicant has addressed DDOT's conditions and issues.
72. Through its report dated May 3, 2016 and through testimony at the public hearing, a representative of DOEE testified regarding the sustainability elements of the PUD. The

Commission waived its rules and accepted the DOEE report into the record late. The DOEE report noted that the Applicant should further study:

- (a) The Project's energy model and commit to increase energy efficiency;
- (b) The DC PACE program to assist in financing improvements to energy efficiency and on-site generation;
- (c) The installation of photovoltaic panels on the Project's roof;
- (d) Opportunities to maximize capture of street runoff along with rainwater harvesting for water reuse in the building; and
- (e) Opportunities for the Project to increase its LEED-NC level to Gold

(Ex. 28; May 5, 2016 Tr.) By a supplemental report filed on June 9, 2016, DOEE requested additional focus on the project's sustainable design. (Ex. 47.)

73. In its post-hearing submission, the Applicant responded to DDOE's recommendations and agreed to achieve additional credits beyond the LEED-NC Silver level, described the introduction of solar panels on the Project roof, and discussed elements of the Project's water reuse management strategy. (Ex. 45.) The Applicant further addressed the issues in its post-proposed action submission. (Ex. 51-51C.)
74. Based on the foregoing, the Commission finds that the Applicant has addressed DOEE's conditions and issues.
75. On July 26, 2016, DHCD filed a request to reopen the record along with a supplemental letter stating its opposition to granting flexibility from IZ regulations for the reasons discussed earlier in this Order. (Ex. 54, 55.) On July 28, 2016, DHCD filed a supplemental letter that responded to the Commission's information request. The DHCD response in part requested that all of the project remain subject to IZ, but with half of the IZ set-aside not attributable to the penthouse habitable space be reserved for households earning 40% or less of the AMI. (Ex. 57.) The Applicant responded to the Commission's request with a letter dated August 5, 2016 offering an alternative housing consistent with the DHCD recommendation, which the Commission accepted at its August 8, 2016 special meeting. (Ex. 59.) Based on the foregoing, the Commission finds that the Applicant has addressed DHCD's conditions and issues and in fact the Commission agreed to the alternative proposal.

Advisory Neighborhood Commission 5E Report

76. ANC 5E submitted a letter in support of the application indicating that at a duly noticed and regularly scheduled monthly meeting on April 19, 2016, with a quorum present, ANC 5E unanimously voted to support the PUD and Zoning Map amendment. The ANC noted that the Applicant had been active in the community regarding the Project for a

long period of time and had incorporated updates to the Project based on community feedback. The ANC stated that it supported the coordination between the Project and The Gale property, specifically noting the benefits of the combined curb cuts/loading. The ANC further stated that it is supportive of the Applicant's proposed benefits and amenities package, noting that the specific public benefits were tailored to satisfy requests and needs of the community. (Ex. 37.)

Parties in Support or Opposition

77. No parties appeared in opposition to the application.
78. The Commission received a letter in support of the application along with a party status request from Jennifer Nieratko. (Ex. 25.) The Commission discussed whether to grant Ms. Nieratko party status and ultimately decided that it was not warranted given her support for the Project. The Commission kept the record open for Ms. Nieratko to submit any additional information.

Persons and Organizations in Support or Opposition

79. No persons or organizations appeared in opposition to the application.
80. The Commission received a letter in support from the Eckington Citizens Association. (Ex. 38.)
81. The Commission also received a letter in support from the neighboring property owner at 151 Q Street, N.E. (The Gale). (Ex. 20.)
82. The Commission also received letters in support of the application from Michael Aiello and Quinta Martin, Sarah Moxley, Christopher Cafiero, Amy and Jay Hariani, and Matt Miller, all nearby residents. (Ex. 22, 24, 34, 35, 36.)
83. Daniel Agold also testified in support of the application at the hearing and submitted comments into the record. (Ex. 40.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the applicant as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less

- than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The Property meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
 4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
 5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property's strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
 6. The Applicant seeks a PUD-related zoning map amendment to the CR Zone District as well as flexibility relating to the closed court, roof structure, compact parking percentage, and loading requirements as well as the constraints on light industrial uses in the CR Zone District. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
 7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and commercial uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
 8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
 9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Medium-Density Residential and Production, Distribution, and Repair designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the M to the CR Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The PUD-related rezoning of the PUD Site to CR is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.
12. The PUD will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. 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. The Commission carefully considered the ANC 5E position supporting approval of the application and concurred in its recommendation of approval. The Commission was not required to give such "great weight" to the recommendations of other community members and associations submitting materials or testimony into the record. Nevertheless, the Commission carefully considered the issues raised by such persons and associations in its approval of the Project.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for the review and approval of a consolidated planned unit development and a related Zoning Map amendment from M to CR for the Property subject to the following conditions:

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A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on July 5, 2016 (Exhibit 51A), and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Project shall include a mixed use building composed of four connected structures containing up to approximately 703,362 gross square feet ("GSF"), which is equivalent to a density of up to approximately 5.2 FAR. Such GSF will be composed of up to approximately 77,184 GSF of commercial, retail, and service uses and approximately 695 residential units. The Project will contain a parking garage containing up to approximately 331 parking spaces for both commercial and residential parking. Three of the structures will be constructed to a height of up to approximately 75 feet and one of the structures will be constructed to a height of up to approximately 102 feet.
3. The Property shall be rezoned from the M Zone District to the CR Zone District. Pursuant to 11-X DCMR § 311.3, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.2.
4. The Applicant shall have flexibility relating to the closed court, roof structure, compact parking percentage, and loading requirements as well as the constraints on light industrial uses in the CR Zone District as shown on the Plans and described in the record.
5. The Applicant shall construct a Promenade as shown on Pages A4.01, A4.02, A4.05, A4.06, L1.01, L1.02, and L1.04 of the Plans.
6. The Project's LEED and solar panel requirements shall be as follows:
 - (a) **Prior to the issuance of the first Certificate of Occupancy for the structures on the West Parcel**, the Applicant shall demonstrate that it has designed the structures on the West Parcel to the Silver level or higher under the LEED-NC v. 2009 rating system and a minimum of 56 LEED points;
 - (b) **Prior to the issuance of the first Certificate of Occupancy for the structures on the East Parcel**, the Applicant shall demonstrate that it has designed the structures on the East Parcel to Silver level or higher under the LEED-NC v. 2009 rating system and a minimum of 57 LEED points; and
 - (c) **Prior to the issuance of the first Certificate of Occupancy for the structures on the second phase of the Project**, the Applicant shall demonstrate that it has designed and constructed a minimum of

approximately 10,000 square feet of solar panels on the entirety of the Project.

B. PUBLIC BENEFITS

1. The affordable housing component of the PUD shall be eight percent of the residential gross floor area of the Project or approximately 50,541 square feet of gross floor area (approximately 56 units) all of which shall be subject to the Inclusionary Zoning Implementation Amendment Act of 2006, effective Mar. 14, 2007 (D.C. Law 16-275; 54 DCR 880), Chapter 26 of Title 11 DCMR, and Chapter 14 of Title 14 DCMR. All such units shall hereinafter be referred to as IZ Units. Of these IZ Units, approximately 55 units with a combined gross floor area of approximately 50,095 square feet shall be governed by paragraphs (a) through (e) below and one unit with approximately 446 square feet of gross floor area shall be governed by paragraph (f) below:
 - (a) If construction of the Project does not proceed in phases, **prior to the issuance of the first Certificate of Occupancy for the Project, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area of the building (excluding the penthouse habitable space in the Northwest Structure) for IZ Units and subject to the last phrase of Conditions D(1)(f) and D(1)(g);
 - (b) If construction of the Project does proceed in phases:
 - (i) **Prior to the issuance of the first Certificate of Occupancy for the structures on the West Parcel, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area (excluding penthouse habitable space of the Northwest Structure) for IZ Units, subject to the last phrase of Condition D(1)(f); and
 - (ii) **Prior to the issuance of the first Certificate of Occupancy for the structures on the East Parcel, and for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor area of the East Parcel structures for IZ Units, subject to the last phrase of Condition D(1)(g);
 - (c) Half of the IZ Units shall be set aside for households with an annual income of no more than 50% of the AMI (adjusted for household size) and half of the IZ Units shall be set-aside for households with an annual income of no more than 80% of the AMI (adjusted for household size).

The first IZ Unit and each additional odd number unit shall be set aside at the 80% AMI level;

- (d) The mix of IZ Unit types shall be proportional to the mix of market-rate unit types. The size of the IZ Units shall be of a size substantially similar to the market-rate units;
 - (e) The IZ Units shall be distributed throughout the building on all floors except that the Applicant shall not be required to locate any IZ Unit on the top two floors of the structures as shown on Pages A1.21-A1.23 of the Plans or within any roof structure as shown on Exhibit 51A1. Furthermore, within each floor, IZ Units shall not be concentrated in any one tier or section of the building. The distribution of the IZ Units shall be consistent with the potential affordable housing locations shown on Sheets A1.21-A1.23 of the architectural drawings dated July 5, 2016 in Exhibit 51A2;
 - (f) In addition to the IZ Units required by paragraphs (a) or (b) above **prior to the issuance of the first Certificate of Occupancy for any portion of the building that includes the Northwest Structure habitable penthouse space (if constructed in phases) and in either case for the life of the Project**, the Applicant shall demonstrate that it has set aside a minimum of eight percent of the residential gross floor of the penthouse habitable space of the Northwest Structure, approximately 446 square feet of gross floor area as an IZ Unit reserved for households with an annual income of no more than 50% of the AMI as adjusted for household size. This IZ Unit may be located in any of the structures that comprise the building.
2. **Prior to the issuance of a Certificate of Occupancy for the Northeast Structure**, the Applicant shall demonstrate that it has repaved the alley to the northeast of the Property, subject to approval by DDOT, and has designed such alley to be able to utilize a two-foot setback for the first two levels of the Project abutting such alley. After the Northeast Structure has been constructed and prior to the Applicant repaving such alley, DDOT may inspect such alley to determine whether damage occurred to the alley as the result of the Project construction that would otherwise require the Applicant to repave the alley. If DDOT determines that the alley was damaged by the construction of the Project, this public benefit will be replaced by Applicant contributing \$35,000 to DDOT (or as otherwise directed by DDOT) for the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project.
3. **Upon issuance of the Certificate of Occupancy for the portion of the Project covering such space and for the life of the Project**, the Applicant shall provide

evidence of its provision of, at no cost and for the life of the Project, ANC 5E (and the Eckington committee or Single Member District constituency meeting thereof) access to use a community meeting room comprising a total of approximately 1,200 gross square feet. The Eckington Citizens Association (and committees thereof) shall have the right to such space no less than 12 times per year and ANC 5E (or a committee or Single Member District constituency meeting thereof) shall have the right to such space no less than six times per year. Such organizations shall have the right to utilize such space more than these minimum amounts subject to availability on a first-come, first-served basis. Such organizations will reserve the meeting space with building management on an ongoing basis and shall be provided with current building management contact information at all times.

4. **Prior to the issuance of the first Certificate of Occupancy for the Project and for six years (three terms of two years each)**, the Applicant shall provide evidence of its participation in the District's Adopt-A-Block Program for the two city blocks defined as the north side of Seaton Place, N.E. at the north, the east side of 3rd Street, N.E. at the east, the south side of Randolph Street, N.E. at the south, and the west side of 2nd Street, N.E. on the west. As part of this program, the Applicant will regularly clean up trash, beautify, and remove graffiti in such areas.
5. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$20,000 to the vendor(s) responsible for work relating to the design and installation of banners denoting the Eckington neighborhood on streetlights and/or lampposts surrounding the Property (subject to approval by DDOT). Such evidence shall be in the form of a letter submitted to the Zoning Administrator of such contribution. The banners shall be designed in coordination with the Eckington Neighborhood Association and the effort shall produce a minimum of five and a maximum of 40 banners. Any excess from such \$20,000 allocation shall be donated in equal proportion to the three nonprofit organizations identified in Condition B12 for the purposes stated in that condition and the Applicant shall provide evidence of the use of those contributions as provided for in that condition.
6. **Prior to the issuance of the first Certificate of Occupancy for the structure on the Western Parcel**, the Applicant shall purchase and install a piece of public art in the public space at the entrance of the promenade along Eckington Place (subject to approval by DDOT). The Applicant will determine the ideal type and configuration for such art, subject to the review and approval of such proposal through the public space permitting process. The approximate location for such art is shown on Page L1.02 on Exhibit 51A.
7. **Prior to the issuance of the first above-grade building permit for the Project**, the Applicant shall enter into a First Source Employment Agreement with the

Department of Employment Services (“DOES”) substantially in the form submitted into the record as Exhibit 51B to make good faith efforts to utilize District of Columbia residents for at least 51% of the new construction jobs created by the Project.

8. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has provided a minimum of an approximately 1,200 square foot community garden to the surrounding community within the ANC 5E03 boundaries for a minimum of a six-year term. ANC 5E (or similar community organization) shall manage and operate such garden, including such functions as processing applications for plots, distributing plots to interested individuals, enforcing garden guidelines, and other similar functions.
9. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$25,000 to DDOT (or the NoMA Business Improvement District) to improve safety measures along the Metropolitan Branch Trail, with a preference on the areas of the portion of the trail north of R Street, N.E. If such contribution is provided to the NoMA Business Improvement District, such evidence shall be in the form of a letter submitted to the Zoning Administrator stating that the safety measures have been funded by the Applicant’s contribution and the amount of such contribution. Examples of such safety measures include but are not limited to cameras, lighting, and call boxes.
10. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed \$25,000 to the NoMA Business Improvement District (or similar organization) for the design and implementation of the NoMA Park on Harry Thomas Way, N.E. Such evidence shall be in the form of a letter submitted to the Zoning Administrator stating that the items or services related to the NoMA Park have been funded by the Applicant’s measures a letter submitted to the Zoning Administrator.
11. **Prior to the issuance of the first commercial Certificate of Occupancy for the Western Parcel**, the Applicant shall provide evidence that it has subsidized or provided a reduction in rent (or otherwise financially assisted, or will so financially assist) equivalent to \$10.00 per square foot (below then-current market rents) for innovative retail or “maker” uses the commercial areas on the first floor (and related optional mezzanine) for initial lease up of such space, for a minimum of 10,000 gross square feet. Such evidence shall be in the form of a letter from the Applicant and/or the tenant submitted to the Zoning Administrator certifying to the current market rent for the commercial space in the Project, the amount of such reduction in rent, and that the reduction is for the initial lease up term of such space. “Maker” uses shall consist of a use within the following use list: production, sale, and/or distribution of food and beverages (provided that the on-

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site consumption of food and beverages shall be permitted only as an accessory use of such production, sale, and/or distribution user); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation uses (not including traditional gyms or fitness clubs); engineering and design; and technology design and production.

12. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall provide evidence that it has contributed a total of \$15,000 to the following local organizations and programs in the following amounts:
 - (a) \$5,000 to the Coalition for Homeless, Inc. at 1725 Lincoln Road, N.E. to operate its Emery Work Bed Program;
 - (b) \$5,000 to So Others Might Eat at 1876 4th Street, N.E. to operate the Shalom House; and
 - (c) \$5,000 to Pathways to Housing DC at 101 Q Street, N.E. to assist with the Housing First Program.

Such evidence shall be in the form of a letter (or letters) submitted to the Zoning Administrator stating that the above contribution (or contributions) have been made in the amount (or amounts) set forth above and have been utilized for the purpose (or purposes) set forth above.

C. **TRAFFIC MITIGATION**

1. **Prior to the issuance of the first Certificate of Occupancy for the Project**, the Applicant shall contribute \$115,000 to DDOT towards the traffic signal design and installation project for the signal at 3rd Street and Rhode Island Avenue, N.E. Excess funds from such amount shall be allocated to fund the Mid-City Livability Study design and installations implementing such designs on the east side of Eckington Place adjacent to the Project.
2. **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:
 - (a) The Applicant will identify TDM Leader(s) (for planning, construction, and operations);
 - (b) The TDM Leader(s) will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for resident and retail employees, including developing a site-specific transportation guide for residents and visitors;

- (c) Building management will provide updated contact information for the TDM Leader(s) and report TDM efforts and amenities to goDCgo staff once per year;
- (d) Building management will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures;
- (e) The Applicant will unbundle all parking costs from the cost of the lease and set the cost at market rate, defined as the average cost for parking within a quarter-mile of the site on a weekday;
- (f) The Applicant will exceed requirements and guidelines by providing no less than approximately 271 long-term bicycle parking spaces in the garages and no less than approximately 58 short-term bicycle parking spaces in the form of no less than approximately 29 U-racks within and along the perimeter of the site, upon the final built-out condition, subject to the approval by DDOT of any items to be installed in the public space;
- (g) The Applicant will install a bicycle maintenance facility in the promenade, or other location on ground floor or first level of garage, upon the final built-out condition;
- (h) The Applicant will install Transportation Information Center Displays (kiosks or screens) within the lobbies of the four residential component structures, containing information related to local transportation alternatives, as each such lobby is built out;
- (i) The Applicant will dedicate two spaces in the residential garage or elsewhere on surface of the Property for car sharing services to use with right of first refusal, if the demand exists from car share companies. These spaces will be convenient to the garage entrance, available to members of the car sharing service 24 hours a day, seven days a week, without restrictions (the garage may be gated – members of the service would have access to the spaces via a key pad combination to a pass code system or other similar device);
- (j) The Applicant will fund the installation of a Capital Bikeshare station, including the first year of operation of the new station, at the perimeter of the NoMA Green Park (total cost currently \$88,000) or other nearby area subject to DDOT/public space and, if necessary, BID approval; and
- (k) The Applicant will provide to each new resident a one-time Bikeshare or carshare subsidy of \$85 (annual membership costs, plus an account credit if an annual membership costs are less than \$85) until the maximum value is

obtained. The total amount of subsidies will have a maximum value of \$59,075 cumulative for the Project (equivalent to providing one subsidy for each dwelling unit). This benefit shall be codified in rental/condominium documents.

3. The Applicant shall provide loading facilities as shown on Pages A4.05 of the Plans and as described on Page A1.01 of the Plans. The Applicant shall undertake loading in accordance with the Promenade Management Plan submitted into the record as Exhibit 45B and as described in the Unified Loading Management Plan submitted into the record as part of Exhibit 50.

D. **MISCELLANEOUS**

1. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - (b) To vary final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction;
 - (c) To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - (d) To vary the residential unit count of the Project by up to 10%;
 - (e) To vary the size, location and design features of the commercial component, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design subject to the commercial component tenant guidelines submitted as Exhibit 11F in the record;
 - (f) In the event that a retail tenant desires to lease the portions of the first and B-1 levels of the Southwest Structure shown on Pages A4.03 and 4.05A of the Plans, these levels may be modified as shown on the Plans and the portions of the Southwest Structure may be converted to commercial

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space, with the relevant portions of the façade modified accordingly; provided that the Applicant continue to provide its proposed affordable housing as though such converted space is remained in residential use;

- (g) In the event that a retail tenant desires to lease the portion of the Northeast Structure shown on Pages A4.06A and A4.10A of the Plans, such portions of the Northeast Structure may be converted to commercial space, with the relevant portions of the façade modified accordingly, provided that the Applicant continue to provide its proposed affordable housing as though such converted space remained in residential use;
 - (h) To vary the number, type, and location of doors related to the rooftop uses to accommodate changes in building operation and function;
 - (i) To construct mezzanine space of up to approximately 25,716 above the first floor commercial space for use by such tenants or users;
 - (j) To vary the location and configuration of the green roof areas and solar panels on the roofs as specified in the Plans and to remove the water tower elements on the elevated courtyard; and
 - (k) To revise the design of the public space surrounding the Property and elements of the Property ground-floor landscaping and hardscaping to be consistent with the forthcoming Livability study for the public space adjacent to the Property.
2. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
3. If the Applicant elects not to construct the project in a phased manner, the consolidated PUD approval hereunder shall be valid for a period of two years from the effective date of this Order. Within such time, an application (or applications) must be filed for the building permit (or building permits) for the entire Project and construction must commence within three years of the effective date of this Order.
4. If the Applicant elects to construct the Project in a phased manner, the consolidated PUD approval hereunder shall be valid for a period of two years from the effective date of this Order. Within such time an application must be filed for the building permit for either the structure on the West Parcel or the structure on the East Parcel (or both) and construction under such permit must

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commence within three years after the effective date of this Order. The Applicant shall file an application for the building permit for the second selected phase of the Project within five years after the issuance of a certificate of occupancy for the first selected phase of the Project and construction must commence within two years thereafter.

5. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. (“Act”) and this Order is conditioned upon full compliance with those provisions. In accordance with the 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.

For these reasons stated above, the Commission concludes that the Applicant has met its burden, and it is **HEREBY ORDERED** that the application be **GRANTED**.

On June 13, 2016, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On August 8, 2016, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on January 20, 2017.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-21
Z.C. Case No. 15-21
Kenilworth Revitalization IJV, LLC & DCHA
(1st-Stage & Consolidated PUDs & Related Map Amendment @
Squares 5113, 5114, and 5116)
December 12, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on September 8, 2016 to consider applications from District of Columbia Housing Authority (“DCHA”) and Kenilworth Revitalization I JV, LLC (collectively, the “Applicant”), for review and approval of a first-stage and a consolidated planned unit development (“PUD”) and related map amendment to rezone Lots 5 through 9 of Square 5113 and Lot 10 of Square 5114 from the R-5-A Zone District to the R-5-B Zone District; to rezone Lots 164, 165, and 172 of Square 5116 from the R-1-B Zone District to the C-2-A Zone District; and to rezone Lots 173-180 and 186 of Square 5116 from the R-5-A Zone District to the C-2-A Zone District (collectively, the “PUD Site”). The Commission considered the applications pursuant to Chapters 24¹ and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Application, Parties, Hearing, and Post-Hearing submissions

1. On August 31, 2015 the Applicant filed applications with the Commission for the review and approval of a mixed-use, mixed-income development and related zoning map amendment from the R-1-B and R-5-A Zone Districts to the R-5-B and C-2-A Zone Districts for the PUD Site (“Application”). The PUD Site runs from Kenilworth Avenue, N.E., south along Douglas Street, N.E., west to Anacostia Avenue, N.E. north. The property is presently the site of HUD-owned and DCHA-owned multi-family housing. The property is presently zoned R-5-A, except for Lots 164, 165, and 172 of Square 5116, which are zoned R-1-B. (Exhibit [“Ex.”] 1-3A3.)
2. The Applicant proposes to build a mixed-use, mixed-income development on the PUD Site composed of up to 530 residential units, including public housing replacement units, tax credit rental units, and market-rate units for rent and sale (“Project”). The Project will also include approximately 4,500 square feet of non-residential space, which the Applicant will endeavor to devote to a grocer, food co-op, or other fresh food use. The proposed development provides an overall density of 1.6 floor area ratio (“FAR”), as permitted under the moderate-density zone designation for the PUD Site. The Applicant

¹ Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with Chapter 3 of Title 11-X DCMR. However, because this application was set down for hearing prior to that date, the Commission’s approval was based upon the standards set forth in Chapter 24.

- will provide a total of approximately 261 off-street parking spaces, along with 139 street spaces. (Ex. 2.)
3. At its public meeting held on December 15, 2015, the Commission voted to schedule a public hearing on the Application. (Ex. 17.)
 4. On April 29, 2016, the Applicant submitted a Prehearing Statement. (Ex. 18-18G.) The Prehearing Statement included additional information regarding the phasing of the PUD; Relocation Plan, First Source Agreement, IZ Compliance Waiver, Status of Property Archeological Survey, and Compliance with the Requirements of § 3013.
 5. On August 25, 2016, the Kenilworth Courts Resident Council (“KCRC”) filed a Party Status Request to participate at the hearing in opposition to the Application. (Ex. 29.) The KCRC is recognized by the DCHA as the official resident-elected entity representing all public housing tenants living at the subject property. The KCRC subsequently withdrew their Party Status Request (Ex. 43.)
 6. On August 30, 2016, Advisory Neighborhood Commission (“ANC”) 7D submitted a report. (Ex. 31.) The report stated that on August 20, 2016, at a properly noticed public meeting at which a quorum was present, the ANC voted 4-0-0 to oppose the Application. The report stated that the issues and concerns of the ANC were, “failure to identify and explain with specificity the relocation plan, one to one replacement plan, displacement date to clearly give full disclosure as to how residents will be housed for duration of Phase I.”
 7. After proper notice, the Commission held a public hearing on the application on September 8, 2016. At the public hearing, the Commission accepted KCRC’s withdrawal of its August 25, 2016 Request for Party Status as Opponent.
 8. The parties to the case were the Applicant and ANC 7D, the ANC within which the PUD Site is located.
 9. At the September 8, 2016 hearing, the Applicant submitted a copy of a report prepared by Kimberly Black King and Janice Burgess of the DCHA, and the hearing PowerPoint presentation. (Ex. 45A1, 45A2.) In addition, the following principal witnesses testified on behalf of the Applicant: Kimberly Black King, Chief Development Officer of the DCHA and Janice Burgess, Deputy Director for Planning of the DCHA. (Ex. 48, 49.)
 10. On September 30, 2016, the Applicant submitted a post-hearing submission. (Ex. 53). The post-hearing submission included: (i) an updated, consolidated draft Relocation Plan and completion schedule; (ii) additional architectural submissions; and (iii) statements regarding including fresh food use in the Project, van service to community recreation centers, multi-family amenity space use by the broader community, employment opportunities, and remaining DDOT issues.

11. On October 6, 2016, ANC 7D submitted a report stating that at a duly noticed public meeting at which proper notice was given, the ANC had voted 4-0-0 to adopt a report stating that they had rescinded the ANC's opposition to the Project because DCHA explained to its satisfaction why DCHA had not yet produced a fully developed relocation plan for the current residents, DCHA provided sufficient assurances that it would provide a full relocation plan, and because the ANC did not want to delay DCHA's ability to obtain funding for the Project. (Ex. 54.)
12. On October 7, 2016, the Applicant submitted its draft findings of facts and conclusions of law. (Ex. 56.)
13. On October 7, 2016, the Office of Planning ("OP") submitted a supplemental report. (Ex. 57.)
14. At its public meeting on October 17, 2016, the Commission took proposed action to approve the Application. The Commission requested that the Applicant consider revisions to the corner tower of the multi-family building and the fencing at the rear of the townhouse yards.
15. On October 24, 2016, the Applicant submitted its list of final proffers and draft conditions, and its affordable housing chart. (Ex. 58-60.)
16. On October 31, 2016, the Applicant submitted a letter responding to the two issues raised by the Commission when it took proposed action. (Ex. 61.) The Applicant attached plans showing its revised design of the corner tower of the multi-family building, and its revised fencing plan for the townhouse yards that included a complete enclosure for the yards.
17. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on October 18, 2016. (Ex. 66.) NCPC's Executive Director, by delegated action dated November 23, 2016, found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 66A.)

The PUD Project

18. The PUD Site runs from Kenilworth Avenue, N.E., south along Douglas Street, N.E., west to Anacostia Avenue, N.E. north. The property is presently the site of U.S. Department of Housing and Urban Development ("HUD")-owned and DCHA-owned multi-family housing. The property is presently zoned R-5-A, except for Lots 164, 165, and 172 of Square 5116, which are zoned R-1-B. The PUD Site includes approximately 620,366 square feet (14.24 acres) of land. (Ex. 2.) The PUD Site is currently developed with the Kenilworth Courts residences (290 public housing units); consisting of 263 townhouse units and 27 walk-up garden style apartments. The property is located in

historically rich Kenilworth-Parkside neighborhood, an area within Ward 7, bounded by Interstate 295 to the east, a decommissioned Pepco plant to the south, 1,200 acres of National Park land focused along the Anacostia River to the west, and the Maryland line to the north. (Ex. 18C.)

19. The Kenilworth Parkside community is also the footprint of the neighborhood selected by the US Department of Education (“DOE”) for a Promise Neighborhood Initiative (“PNI”) grant of \$25 million. DCHA received a Choice Neighborhood Initiative (“CNI”) Grant for \$500,000 in planning funds in 2011 and has worked very closely with DCPNI and Kenilworth Courts Resident Council coordinating planning efforts, sharing data and resources and conducting work groups and joint community meetings. (Ex 18 C.)
20. The Plan is to clear the site in three phases. The first phase (“Phase One”) consists of 89 existing public housing units. It is bordered by Quarles Street on the north, Douglas Street on the south, Kenilworth Avenue on the east, and 45th Street on the west. DCHA will submit an application to HUD to demolish and dispose the 89 units in Phase One. Once approved, DCHA will begin the process of relocating the residents remaining in that phase. Seventy-two of the 89 units are occupied as of March 15, 2016. (Ex. 18 C.)
21. The proposed redevelopment plan would provide a mixed-use, mixed-income development of approximately 530 residential units. The residential units would include a mix of public housing replacement units, tax credit units and workforce units, both for rent and for sale. (Ex. 13.) The majority of the proposed housing units included in the PUD will be affordable. Affordable units include 290 public housing replacement units, a portion of which will be provided in the first phase, (“Consolidated PUD”). These units will include 290 very-low-income units (below 50% AMI) and approximately 240 low- and moderate-income (60% to 120% AMI) units. The PUD will also include approximately 42 homeownership units. (Ex. 2.)
22. The Consolidated PUD comprises approximately three acres and consists of two multi-family buildings which front on Kenilworth Avenue, a 67-unit building (Apartment Building 3), and a 42-unit senior building (Apartment Building 4), as well as 44 additional rental units in a mix of single-family town houses and stacked flats with two-, three-, four-, and five-bedroom unit types. The first-stage PUD includes a second and third phase of development which consist of three multi-family buildings, townhouses and stacked flats with two-, three-, four- and five-bedroom types (“First Stage PUD”). A total of approximately 321 units is included in Phase 2 and 42 units in Phase 3. Pursuant to § 2407.10, there is an additional two years to apply for second-stage approval of the second phase and an additional three years to apply for the third phase. The Commission finds that the additional time is necessary to allow the Applicant to address infrastructure and relocation needs.
23. The PUD incorporates a realigned the street and alley scheme within the PUD Site. These proposed scheme will provide enhanced connectivity within the community and will provide additional security within the development by providing new and better views and additional eyes and ears on the street.

24. The Applicant will provide a total of approximately 304 vehicular parking spaces and 263 bicycle parking spaces in the PUD Project.

Development Under Existing Zoning

25. The PUD Site is currently zoned R-5-A with a small portion of the PUD Site zoned R-1-B. R-5 Zone Districts are general residence districts designed to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for the applicable zone district. The maximum height permitted by right in the R-5-A Zone District is 40 feet, and the maximum permitted density is 1.08 FAR, utilizing Inclusionary Zoning bonus density. A PUD in the R-5-A Zone District may achieve a maximum height of 60 feet and a maximum density of 1.0 FAR.
26. The Applicant is requesting a PUD-related zoning map amendment to rezone the PUD Site to the R-5-B Zone District with a small strip of C-2-A zoning to accommodate a grocer, food coop, or other fresh food distribution use. The maximum height permitted by right in the R-5-B Zone District is 50 feet, and the maximum permitted density is 2.16 FAR, utilizing Inclusionary Zoning bonus density. A PUD in the R-5-B Zone District may achieve a maximum height of 60 feet and a maximum density of 3.0 FAR. The R-5-B Zone District also includes the following additional development requirements:
- (a) The maximum percentage of lot occupancy for a building or portion of building devoted to residential uses is 60% (11 DCMR § 403.2);
 - (b) A minimum rear yard depth of four inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet (11 DCMR § 404.1);
 - (c) If provided, a side yard width of at least three inches wide per foot of height of building, but not less than eight feet wide (11 DCMR § 405.6); and
 - (d) If provided, an open court width of four inches per foot of height of court but not less than 10 feet; a closed court width of four inches per foot of height of court but not less than 15 feet; and a closed court area of twice the square of the required width of court based on the height of court, but not less than 350 square feet (11 DCMR § 406.1); and
 - (e) For a row dwelling, one parking space for each dwelling unit; and for a flat, one parking space for each two dwelling units (11 DCMR § 2101.1).
27. The C-2-A Zone District is designed to provide facilities to support shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. The maximum height permitted by right in the C-2-A Zone District is 50 feet, and the maximum density permitted is 3.0 FAR, utilizing Inclusionary Zoning bonus density. A PUD in the C-2-A Zone District may achieve a maximum

height of 65 feet and a maximum density of 3.0 FAR. The C-2-A Zone District includes the following additional development requirements:

- (a) The maximum percentage of lot occupancy for a building or portion of building devoted to residential use is 60%; (11 DCMR § 772.1)
- (b) A minimum rear yard depth of 15 feet; (11 DCMR § 774.1)
- (c) If provided, a side yard width of at least two inches wide per foot of building height, but not less than six feet; (11 DCMR § 775.5)
- (d) For an apartment house, one off-street parking space for each two dwelling units; and for a retail establishment in excess of 3,000 square feet, one parking space for each additional 300 square feet of gross floor area and cellar floor area; and (11 DCMR § 2101.1)
- (e) For an apartment house with 50 or more units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep; and for a retail or service establishment with 5,000 to 20,000 square feet of gross floor area and cellar floor area, other than a grocery store or drug store, one loading berth at 30 feet deep and one loading platform at 100 square feet (11 DCMR § 2201.1).

Requested Flexibility

28. The Applicant requested the following areas of flexibility from the Zoning Regulations for the First-Stage PUD (Ex. 40A, S16-18):
- (a) Off-Street Parking: Relief is requested primarily for the apartment buildings located closer to Kenilworth Avenue and public transportation with less relief requested for the lower-density housing. Relief is required for rental units – only 200 spaces are required and 150 are proposed. All home ownership units comply. The applicable Zoning Regulations require one parking space for every townhouse unit, 0.5 spaces per unit for the stacked unit, and one space for every two apartment-style dwelling units;
 - (b) Side Yards: The Application requested flexibility for one of the apartment buildings north of Quarles Street (eight feet required; five feet proposed) and for some of the lower-density housing west of 45th Street (eight feet is required, with side yards between four and six feet proposed);
 - (c) Rear Yards: A fifteen-foot-deep rear yard is required for most of the structures within the First Stage PUD, although two of the apartment buildings require a rear yard of 16.67 feet. The majority of the rear yards are proposed to be five feet deep; and

- (d) Lot Occupancy: For the two larger apartment buildings north of Quarles Street, flexibility from the 60% lot occupancy standard is requested and 79.32% and 83.77% lot occupancy is proposed. For the remainder of the first-stage portion of the PUD, 61.54% to 68.63% lot occupancy is proposed.
29. The Applicant requested the following areas of flexibility from the Zoning Regulations for the Consolidated PUD: (Ex. 40A, S16-18.)
- (a) Off-Street Parking: Thirty-six to 40 off-street parking spaces would be required for the apartment building proposed for Lot 3B. Flexibility is sought to permit thirty spaces. Fifty-two spaces are required for the lower-density housing within this portion of the PUD, and 47 are proposed;
- (b) Side Yards: A minimum side yard of eight feet is required and the Applicant proposes six-foot side yards;
- (c) Rear Yards: A rear yard for the lower-density housing of between 15 feet and 16.67 feet, is required and the Applicant proposes a minimum of 10 feet for some of the townhouses and stacked flats;
- (d) Lot Occupancy: The Zoning Regulations permit maximum lot occupancy of 60% for apartment buildings. The Applicant proposes 87% for the Apartment Building 3 and seeks flexibility. OP supported the request to enable the Applicant to provide additional units and accommodate a variety of sizes and types of households; and (Ex.33.)
- (e) Loading: The regulations require a 55-foot loading berth for the Apartment Building 3 and the Applicant requested relief for a 30-foot loading berth. Provision of a larger loading berth within this building would reduce the amount of retail space available. As the Project is located within an area with few retail choices, OP supported the requested flexibility to loading, but requested the Applicant to provide a loading management plan for DDOT review. The Applicant provided the requested loading management plan. (Ex. 33, p.7; Ex. 53, p. 44.)
30. The Commission finds that the normal court, side yard, rear yard, and lot occupancy requirements would adversely impact the design of the PUD and would hinder the Applicant's ability to provide an optimal amount of affordable housing.
31. The Applicant requested a complete waiver of the Inclusionary Zoning ("IZ") requirements of the IZ Regulations of Chapter 26 as a form of PUD relief
32. The Project will include affordable units reserved for households earning no more than 60% AMI for a minimum period of 40 years and affordable units reserved for households earning no more than 80% AMI for a minimum period of 40 years. The Department of Housing and Community Development only administers IZ units for households earning

50% or 80% of the AMI, and requires the IZ units to be reserved for as long as the development exists. In lieu of the IZ requirements, the PUD will include significantly more affordable housing than is required under IZ. All of the housing in the Consolidated PUD is comprised of affordable units, with 118 units reserved for households earning no more than 50% of the AMI for a reserve period of at least 40 years, and 49 units reserved for households earning no more than 60% of AMI for a reserve period of at least 40 years. The First Stage PUD is also comprised entirely of housing units with income restrictions, including 172 units reserved for households earning no more than 50% of the AMI for a reserve period of at least 40 years, 84 units reserved for households earning no more than 60% of AMI for a reserve period of at least 40 years, and 65 units reserved for households earning no more than 80% of the AMI for a reserve period of at least 30 years. The total gross floor area reserved for affordable housing is far greater than required by IZ.

33. OP supported the waiver in view of the overall affordability of the PUD and the conflict between the IZ affordability periods and that of some of the funding sources for the Project.

PUD Benefits and Amenities

34. The Commission finds that the following benefits and amenities will be created as a result of the PUD:
- (a) Urban Design, Architecture, and Landscaping (§ 2403.9(a)). The Commission finds that the PUD will implement a number of current best planning practices within a site that has not seen significant improvement or redevelopment for over half a century. (Ex. 2, 33.) These include the introduction of a rational street grid with the creation of smaller, pedestrian-friendly blocks. The proposed PUD would eliminate the super-block design of the existing neighborhood, improving the connectivity of neighborhood, with increased density at a site located approximately 0.6 miles from the Deanwood Metrorail station. The interior of the PUD would include traditional architecture, with larger apartment buildings with a modern theme buffering the traffic noise from Kenilworth Avenue;
 - (b) Transportation Features (§ 2403.9(c)). A new pattern of public streets would provide improved connectivity, eliminating the superblocks, improving pedestrian safety and pedestrian crossing opportunities. Access to Kenilworth Aquatic Gardens and the Riverwalk Trail system would also be improved. New sidewalks would be provided along all streets, with all off-street parking accessible via public alleys only. Street parking would be permitted where appropriate. The Applicant has proposed transportation management measures that have been developed in conjunction with DDOT; (Ex. 30, 33.)
 - (c) Employment and Training Opportunities (§ 2403.9(e)). The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant is committed to complying with § 3 of the Housing and

Urban Development Act of 1968 (12 U.S.C. 1701u), as amended by § 915 of the Housing and Community Development Act of 1992 by ensuring that all contractors and any tier subcontractors that are awarded contracts partially or wholly funded by DCHA for work generated through HUD funding shall take all necessary and reasonable steps to provide meaningful, full-time, permanent employment and training to § 3 residents. DCHA's Office of Resident Services will establish a committee composed of Kenilworth residents to facilitate Kenilworth residents' access to the job opportunities and to promote job readiness and will monitor § 3 compliance; (Ex. 18D, 53.)

- (d) Housing and Affordable Housing (§ 2403.9(f)). The PUD’s most important benefit is the creation of new housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor’s housing initiative. The PUD includes a variety of housing types to serve households of all sizes and at a range of incomes. The PUD will provide a mixed-income development of approximately 530 residential units. The residential units would include a mix of public housing replacement units, tax credit units and workforce units, both for rent and for sale. (Ex. 13.) Affordable units include 290 public housing replacement units. These units will include 290 very-low-income units (below 50% AMI) and approximately 240 low- and moderate-income (60% to 120% AMI) units. The PUD will also include approximately 42 homeownership units. (Ex. 2.) Phase 1 will include four- and five-bedroom units. Later phases will include four-, five- and six-bedroom units. (Ex. 44.) The Project will include affordable housing in accordance with the following charts:

Kenilworth Courts - Consolidated PUD

Residential Unit Type	GFA & Percentage of Total	Units	Target Income	Affordable Control Period	Affordable Unit Type
Total	207,698 / 100%	167			
Market Rate	0	0			
IZ	N/A				
Affordable / Non IZ	151,401 / 73%	118	<= 50% AMI	Min. 40 years	Rental
Affordable/Non IZ	56,297 / 27%	49	<= 60% AMI	Min. 40 years	Rental

Kenilworth Courts - Stage 1 PUD

Residential Unit Type	GFA & Percentage of Total	Units	Target Income	Affordable Control Period	Affordable Unit Type
Total	461,414 / 100%	363			
Market Rate	0	0			
IZ	N/A				
Affordable / Non IZ	197,738 / 43%	172	<= 50% AMI	Min. 40 years	Rental
Affordable/Non IZ	133,400 / 27%	84	<= 60% AMI	Min. 40 years	Rental
Affordable/Non IZ	65,780 / 14%	65	<= 80% AMI	Min. 30 years	Rental
Affordable/Non IZ	74,496 / 16%	42	<= 120% AMI	First sale only. No price controls on subsequent sales.	For-Sale

(Ex. 2, 33, 65.)

- (e) Environmental Benefits. The PUD incorporates green building practices. The PUD will comply with applicable Enterprise Green Communities standards; and
- (f) Special Value for the Neighborhood.
 - (1) The proposed PUD would add new residents to the neighborhood, provide housing designed specifically for seniors which is in great need in the City and the neighborhood and provide for a mix of income levels to stabilize the neighborhood; (Ex. 2.)
 - (2) DCHA will establish a regular meeting schedule with the Kenilworth Resident Council Board on at least a quarterly basis to share information on the redevelopment progress and resident relocation plans; (Ex. 44.)
 - (3) DCHA will establish criteria for residents' right to return to the Project which require lease compliance but bar criminal background, work or service requirements, and credit and drug screening that is more stringent than DCHA policy; (Ex. 44.)
 - (4) The Applicant will make best efforts to work with Good Food Markets or other potential fresh food distributors, as needed, to assure that 4,500 square feet of nonresidential space in the Project is available for a small grocer, food coop, or other fresh food distribution use; and
 - (5) The Applicant will provide a van service to both the Deanwood and the Kenilworth Recreation Centers until a more direct, well-lit pedestrian path from the Project to the new Kenilworth Recreation Center is established. Loop service from the Project to the Deanwood and Kenilworth facilities will be provided four times per weekday, in the morning hours and after school. During this period, the Applicant will include the costs of the van and its operation in development and operating budgets for the approval of the affordable housing development funders.

Compliance with the Comprehensive Plan

35. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is not inconsistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.

Compliance with the Comprehensive Plan Future Land Use Map and Generalized Policy Map

36. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site for Moderate-Density Residential uses. The Moderate-Density Residential category is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, two-four unit buildings, row houses, and low-rise apartment buildings.. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate-Density Residential category; the R-5-B Zone District and other zones may also apply in some locations. OP indicated that the PUD is consistent with these designations with its mix of building types at the scale proposed by the Applicant.
37. The Commission finds that both the proposed R-5-B and C-2-A Zone Districts for the PUD Site is not inconsistent with the Moderate-Density Residential Category or with the Future Land Use Map. The C-2-A Zone District is only designated to accommodate 4,500 square feet of needed nonresidential space which the Applicant will endeavor to devote to a grocery or other fresh food use. The majority of the PUD Site is proposed to be zoned R-5-B.
38. The Commission finds that the policies and goals of the Comprehensive Plan, which sometimes may be in conflict with one another, must be applied using the interpretive guidelines of the Comprehensive Plan. These guidelines state that the Future Land Use Map is to be "interpreted broadly" and recognize that the densities within any given area on the Future Land Use Map "reflect all contiguous properties on a block - there may be individual buildings that are higher or lower than these ranges within each area." (10A DCMR § 226(c) (emphasis added).) The guidelines further advise that "the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here." (*Id.*)
39. The Commission finds that based on the flexibility afforded by the PUD process, the proposed density can be appropriately distributed across the PUD Site by concentrating the higher density apartment buildings closer to Kenilworth Avenue and directing the lower density housing types to the interior of the PUD Site. The Commission finds that the proposed density and the distribution of the density across the PUD Site are acceptable.
40. The District of Columbia Comprehensive Plan Generalized Policy Map designates the PUD Site as a Neighborhood Enhancement Area with the exception of the portion of the

lots fronting on Douglas Street which are designated as a Neighborhood Conservation Area.. The guiding philosophy of Neighborhood Enhancement Areas is to:

“ensure that new development “fits in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place.”

(10 DCMR A § 223.8.) The Commission finds that the PUD is consistent with the goals of the Neighborhood Enhancement Area designation because it responds to the existing character of the Kenilworth/Parkside neighborhood. The PUD will retain and realign the existing streets to connect the PUD Site to the surrounding community and create a grid pattern with smaller pedestrian-oriented blocks and put additional eyes and ears on the street to increase safety and security. The PUD also includes a diversity of housing types that meet the various needs of community residents. The Commission finds that these features sufficiently demonstrate the PUD’s consistency with the Comprehensive Plan Generalized Policy Map’s designation.

41. The Commission finds that the proposed PUD-related map amendment will continue to protect and strengthen the residential uses of the PUD Site while creating new, high-quality public housing, affordable housing, and market-rate housing units and significant new infrastructure improvements. The PUD will replace each public housing unit, bring residents back to the redeveloped site while adding new mixed-income housing. Based upon the testimony and evidence submitted in this case, the Commission finds that the development effort will stabilize and enhance the Kenilworth/Parkside neighborhood.
42. The Commission finds that the PUD-related map amendment would implement the Future Land Use Map’s designation of the PUD Site for Moderate-Density Residential and permit the development of the proposed new residential uses on the PUD Site, which are not inconsistent with the PUD Site’s designation within a Neighborhood Enhancement Area on the Generalized Policy Map. The Commission notes that the amount of nonresidential zoned area is nominal and will facilitate the Applicant’s ability to bring a fresh food use to the neighborhood.

Compliance with the Guiding Principles of the Comprehensive Plan

43. The Commission finds that the proposed PUD would further many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to employment, connecting the city, and building green and healthy communities, as follows:

- (a) Managing Growth and Change. The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The PUD is fully consistent with a number of the goals set forth in this element. Specifically, the PUD will help to attract a diverse population with the inclusion of a mix of housing types for households of different incomes; and (§§ 217.2 and 217.3.)
- (b) Creating Successful Neighborhoods. The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and preserving existing affordable housing and producing more new affordable housing. (§§ 218.1, 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the Plan's elements. (§ 218.8.) The PUD furthers each of these guiding principles with the construction of affordable and market-rate housing on the PUD site. (Ex. 13, p. 8.)

Compliance with the Elements of the Comprehensive Plan

44. The Commission finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the OP reports (Ex. 13, 33, 57.) and as discussed in more detail below.
45. Land Use Element. For the reasons discussed below, the PUD supports a number of the policies of the Land Use Element of the Comprehensive Plan:
- (a) Policy LU-1.2.1: Reuse of Large Publicly-Owned Sites: Recognize the potential for large, government-owned properties to supply needed community services, create local housing and employment opportunities, remove barriers between neighborhoods, and improve and stabilize the city's neighborhoods;
- (b) Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods- Consistent with this policy, the PUD both conserves public housing and affordable housing options on the PUD Site while enhancing that housing with new, higher quality development;
- (c) Policy LU-2.2.4: Neighborhood Beautification - This policy encourages projects to improve the visual quality of the District's neighborhoods. The PUD includes a number of neighborhood beautification elements including new high-quality architecture and design and landscaping; and (Ex. 13.)
- (d) Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods - In designing the PUD, and consistent with this policy element, the Applicant has sought to balance the housing supply in the area by ensuring the replacement of the existing housing on the Site and providing additional mixed-income housing.

The lower-density housing proposed for the interior of the Site will preserve surrounding neighborhood character. (Ex. 13, p. 9.)

46. Transportation Element. The overarching goal of the Transportation Element is to create a safe, sustainable, efficient and multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents. (10A DCMR § 401.1.) The PUD furthers several policies of the Transportation Element of the Comprehensive Plan, including:
- (a) Policy T-2.2.2: Connecting District Neighborhoods - The PUD will help to encourage improved connections between District neighborhoods by eliminating existing superblocks and adding new and extended streets improving access through the PUD Site and surrounding neighborhood; (Ex. 30, p. 9.)
 - (b) Action T-2.3-A: Bicycle Facilities - This element encourages new developments to include bicycle facilities. The Applicant has integrated a substantial amount of bicycle parking in the Project as well as a bike repair station in the Consolidated PUD; and (Ex. 53.)
 - (c) Policy T-2.4.1: Pedestrian Network - The PUD will further this policy through constructing new sidewalks to ensure a safe pedestrian network within and around the PUD Site.
47. Housing Element. The overarching goal of the Housing Element is to “[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia.” (10 DCMR § 501.1.) The PUD will help achieve this goal by advancing the following policies:
- (a) Policy H-1.1.1: Private Sector Support - The PUD helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the PUD will contain a substantial contribution to the District’s housing supply. The Applicant will provide a one-for-one replacement of all public housing units that are removed from the PUD Site. The Applicant will also undertake an extensive relocation and return process to ensure that current residents have a place to live during redevelopment of the PUD Site and to guarantee that those residents can return to the PUD Site after redevelopment if they choose to do so. (Ex. 53.) The PUD will also provide additional affordable and workforce housing on the Site. Overall, the PUD will leverage private sector development to assist in the District’s affordable housing needs; and
 - (b) Policy H-1.2.3: Mixed-Income Housing - The Applicant will build a wide range of housing options, including public and affordable housing. Housing on the PUD Site will be offered to households at a range of sizes and income levels.

48. Environmental Protection Element. The Environmental Protection Element addresses the protection, restoration, and management of the District’s land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality, and specific policies include the following:
- (a) Policy E-1.1.3: Landscaping - encourages the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity. The Applicant’s Plans include a detailed landscaping plan; and (Ex. 18A11-18A14.)
 - (b) Policy E-3.2.1: Support for Green Building - calls for the use of green building methods in new construction projects. The PUD includes green building aspects including solar panels on the multi-family buildings. Planting street tree and adding new landscaping will also help to reduce urban run-off consistent with the Environmental Protection Element.
49. Urban Design. The Urban Design Element supports high-quality distinctive design especially for East of the River gateways like the PUD Site:
- (a) Policy UD-1.4.2: City Gateways: Create more distinctive and memorable gateways at points of entry to the city, and points of entry to individual neighborhoods and neighborhood centers. Gateways should provide a sense of transition and arrival, and should be designed to make a strong and positive visual impact;
 - (b) Policy UD-2.2.8: Large Site Development: Ensure that new developments on parcels that are larger than the prevailing neighborhood lot size are carefully integrated with adjacent sites. Structures on such parcels should be broken into smaller, more varied forms, particularly where the prevailing street frontage is characterized by small, older buildings with varying façades; and
 - (c) Policy UD-3.2.5: Reducing Crime Through Design: Ensure that the design of the built environment minimizes the potential for criminal activity. Examples of preventive measures include adequate lighting, maintaining clear lines of sight and visual access, and avoiding dead-end streets.
50. The PUD site, located east of the river along Kenilworth Avenue just inside the District line, is a large site that would be redeveloped with housing that would blend into existing surrounding development, especially to the existing single-family detached housing to the south, while also providing modern apartment buildings at the city’s gateway. The existing superblock layout would be eliminated, replaced with smaller blocks and housing directly facing streets to improve “eyes on the street” and safety of the residents.
51. Based upon the testimony and evidence presented, as well as the OP reports, the Commission finds that the proposed rezoning is not inconsistent with numerous elements of the Comprehensive Plan. The Commission also finds that the proposed PUD-related

map amendment would create favorable conditions for the District and satisfies each of the statutory standards applicable to map amendments.

52. The Commission further finds that the Applicant's proposal to replace 290 public housing units on the PUD Site will meet the needs of the returning residents. DCHA submitted a draft Relocation Plan which details the process for relocating residents back to the redeveloped Site in a manner which meets their specific housing needs. (Ex. 53.) Based upon the testimony and this evidence presented by the Applicant, the Commission finds that relocated residents will be able to return to a unit that includes a bedroom size consistent with their needs. (See DCHA testimony and draft Relocation Plan dated September 30, 2016.)
53. Moreover, the Commission finds that the PUD will include major infrastructure investments in order to create a sustainable neighborhood that will serve the city in the long term. Proposed infrastructure improvements include the demolition of existing structures; the creation or reconstruction of a new street and alley grid to include new street lighting and sidewalks, new landscaping, and stormwater management and erosion control measures.

Zoning Map Amendment Application

54. The Applicant is requesting a PUD-related map amendment to rezone a portion of the PUD Site to the R-5-B Zone District and a portion of the PUD Site to the C-2-A Zone District. OP reviewed the Applicant's proposal to rezone the PUD Site and in its reports recommended approval of the map amendment. (Ex. 13, 33.) OP opined that the map amendment would not be inconsistent with the Comprehensive Plan, and that the proposed map amendment and redevelopment would facilitate numerous policy statements of the Comprehensive Plan. OP also indicated that the proposed map amendment coupled with the accompanying PUD is intended to facilitate a site-specific project and ensure a quality of development at a scale that is consistent with the surrounding neighborhood.
55. The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, D.C. Official Code § 6-641.01 *et. seq.*) ("Zoning Act"). Section 2 of the Zoning Act provides:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the

supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

56. The Commission finds that the proposed PUD-related map amendment is consistent with the purposes of the Zoning Act. The PUD will use land efficiently and at an appropriate height and density and provide much needed affordable housing and housing for seniors. Furthermore, the Commission finds that the map amendment will allow use of the PUD Site that is not inconsistent with its designation on the Future Land Use Map, as indicated in the findings of fact in this Order.

Office of Planning Reports

57. By report dated November 13, 2015, OP stated that it supported the Application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the Application. (Ex. 13.)
58. On August 31, 2016, OP submitted a report recommending approval of the Application and recommended that the Applicant address a number of issues and concerns. (Ex. 33.) The issues primarily revolved around additional information and clarifications requested by OP. OP also noted the relocation and reentry concerns expressed by the Residents Council in their Party Status Request as an opponent of the PUD. However, the Office of Planning indicated that it was supportive of the proposal and that the proffered benefits and amenities are commensurate with the relatively limited amount of flexibility gained through this PUD, in terms of additional density or height. The Applicant proposes to phase in the development, which will serve to minimize displacement during construction. At the public hearing and in the Applicant's supplemental filings, the Applicant provided details on the affordable housing program as well as additional information requested by OP. Further, based on the updated relocation and reentry details provided by the Applicant, the Resident's Council withdrew its party status request and filed a letter from legal counsel supporting the PUD. Finally, the ANC rescinded its opposition to the PUD. Therefore, the Commission finds that the Applicant adequately addressed the comments outlined in OP's report.
59. On October 7, 2016, OP submitted a supplemental report. The report responded to the Commission's request that it provide an update on the issues raised in OP's August 31st report. (Ex. 57.)

District Department of Transportation Report

60. The District Department of Transportation (“DDOT”) submitted a report, dated August 29, 2016, indicating DDOT’s support for the PUD subject to the following conditions: (Ex. 30.)
- (a) Disperse the long-term bicycle parking in all of the multi-family residential buildings, including the senior housing development;
 - (b) Install 16 short-term bicycle parking spaces (eight inverted U-style racks) located in public space near the entrances of the multi-family buildings (one short-term space per 20 apartment units);
 - (c) Modify the TDM plan to include the following:
 - Provide to each new resident, upon move-in, for a period of three years, a one-time Capital Bikeshare membership. This benefit shall be codified in rental/condominium documents;
 - Provide each new resident, upon move-in, for a period of three years, a one-time car-share membership. This benefit shall be codified in rental/condominium documents;
 - Provide each new resident, upon move-in, for a period of three years, a one-time SmartTrip card, valued at \$50. This benefit shall be codified in rental/condominium documents;
 - Provide a welcome packet to each new resident with transportation information and TDM amenities;
 - Appoint a TDM coordinator and share contact information with goDCgo, DDOT's TDM program;
 - Coordinate annually with goDCgo on transportation fares for residents and to receive customized marketing materials;
 - Unbundle parking from leases of all multi-family units and charge market rate, defined as the average cost for parking within a quarter-mile of the site on a weekday; and
 - Provide a Transit Screen in the lobby of each multi-family building;
 - (d) Public space, including curb and gutter, street trees and landscaping, street lights, sidewalks, and other features within the public rights of way, are expected to be designed and built to DDOT standards. Careful attention should be paid to

pedestrian and bicycle connections along the site's perimeter and adjacent infrastructure, particularly connecting the site to the Deanwood Metro Station;

- (e) Street closure and rededication will require coordination with DDOT and may require Council action. This includes coordination regarding street distribution, and ensuring that building projections meet code. New public streets and alleys shall be designed and constructed to DDOT standards in order for acceptance by DDOT;
 - (f) The location of utility vaults. DDOT expects vaults to be located on private property; and
 - (g) The exact location of short-term bicycle parking spaces will be addressed during the public space permitting process.
61. The DDOT report states that the new street network has the potential to disperse traffic throughout the site in a way that minimizes impact on the road network in the vicinity and improves connectivity to the adjacent neighborhood. The Commission therefore finds that the PUD will have minimal impacts to traffic in the surrounding area.
62. The Applicant's post-hearing submission included a loading management plan requested by DDOT as well as enhanced TDM provisions. The Applicant will provide outlets for charging stations in the private townhouse garages. (Ex. 38.) The Applicant has agreed to provide a bike repair station in Phase 1 and later phases where secure bike parking is provided. The Applicant will consider including a bike-share station in a later phase of the Project contingent on future DDOT subsidies to install and/or operate such a station. (Ex. 53.) Based on the Applicant's loading management plan and TDM measures, the Commission finds that the Applicant has addressed the comments outlined in DDOT's report.

Contested Issues

63. ANC 7D, EGCA, and a number of individuals raised concerns at the public hearing and in written testimony. The concerns raised include the following issues: density and compliance with District plans; affordability; phasing; reentry eligibility criteria; need for fresh food alternatives in the community; and potential displacement. The Commission has carefully reviewed the written and oral testimony presented by ANC 7D and individuals and makes the findings below.
64. Density. The Commission notes that the ANC subsequently rescinded its opposition to the PUD and finds that the proposed number of units for the PUD Site is appropriate and that additional density is needed as outlined by the Applicant's witness to attain the goal of achieving a sustainable, mixed income community.
65. The Commission finds that the PUD's proposed zoning designation is appropriate for the PUD Site and is not inconsistent with the Comprehensive Plan's designation for the PUD

- Site. The PUD Site is designated Moderate-Density Residential on the Comprehensive Plan's Future Land Use Map, and the Commission notes that guidelines state that the Future Land Use Map is to be "interpreted broadly" and that the densities within any given area on the Future Land Use Map "reflect all contiguous properties on a block - there may be individual buildings that are higher or lower than these ranges within each area."
66. The Commission also finds that the PUD's overall density is not inconsistent with the moderate-density designation. Similar to other developments reviewed by this Commission, through the flexibility afforded by the PUD process, the proposed density can be appropriately distributed across the PUD Site. In this case, the Applicant carefully located the taller, multi-family buildings along Kenilworth Avenue with the lower density housing closer to the Eastland Gardens lower-density neighborhood.
67. Unit Size, Relocation and Return Plans. ANC 7D and a number of individuals asserted that the Applicant did not provide adequately detailed information regarding the intended income mix or unit size of the replacement public housing units, or describe whether the PUD would replace each public housing unit with another public housing unit with the same number of bedrooms and at the same level of affordability. ANC7D and a number of individuals asserted that the Applicant did not provide an adequate relocation or return plan for current residents, and did not explain how people would be transitioned during redevelopment, where they would go, how they would go, and when they would return. EGCA stated that the Applicant did not provide sufficient measures to prevent displacement of current tenants. In addition, ANC 7D argued that the proposed PUD did not provide a sufficient number of larger units.
68. The Commission finds that the Applicant provided sufficient details regarding the intended income mix, and size of the proposed residential units on the PUD Site as well as an updated draft Relocation Plan which addressed a number of the concerns expressed. The Commission finds that the Applicant has submitted detailed information regarding the timing and process for finalizing the draft Relocation Plan. (Ex. 44-45A2, 49, 53; and DCHA testimony from the Transcript dated September 8, 2016.) Moreover, based on the additional information submitted by the Applicant including an updated draft Relocation Plan, the Residents Council withdrew its Party Status Request in opposition to the PUD and submitted a letter in support of the PUD and ANC 7D also rescinded its opposition to the PUD. (Ex. 44, 54, 55,)
69. The Commission has reviewed the submissions of ANC 7D, EGCA, and the Applicant, and the Commission has given great weight to ANC 7D's views. The Commission finds that the Applicant has responded in detail to each of the concerns raised by the ANC, EGCA, and other individuals, and the Commission further finds that the Applicant's exhibits, expert testimony, and reports, as well as the testimony and reports of OP, address the substantives issues raised in this case.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a first-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this Application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this Project are appropriate for the property. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
6. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
7. The Applicant’s request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. Moreover, the Project’s benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Consolidated and first-stage approval of this PUD is appropriate because the proposed development, and the proposed R-5-B and C-2-A zoning, are not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC’s recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC’s concerns. The written rationale for the decision

must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).) ANC 7D submitted two reports described in Findings of Fact 6 and 11. The second report rescinded the opposition expressed in the first report. Because the Applicant had addressed the issues related to relocation to its satisfaction, it believed the Applicant would provide a full relocation plan, and therefore it was rescinding its opposition to the Project. The Commission therefore concludes that all of the issues stated in the first report were resolved to the ANC's satisfaction and thus there are no issues and concerns remaining for the Commission to give great weight to.

10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.*, (2007 Repl.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for review and approval of a first-stage and consolidated planned unit development ("PUD") and related Zoning Map amendment from R-5-A and R-1-B to R-5-B and C-2-A for Lots 5 through 9 in Square 5113, Lot 10 in Square 5114, and Lots 164, 165, 172 through 180, and 186 in Square 5116 (collectively the "PUD Site") subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the architectural plans and development data submitted in to the record on April 29, 2016 as Exhibits 18A1 through 18A14, as modified by the architectural drawings and pages submitted on September 6th as Exhibits 40A-40C, the architectural drawings submitted on September 30th as Exhibit 53, pp. 26-39, and the architectural drawings and plans submitted on October 31, 2016 as Exhibit 61, and as further modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of 530 residential uses, and approximately 4,500 square feet of gross floor area devoted to nonresidential uses:
 - (a) The Consolidated PUD shall include two multi-family buildings which front on Kenilworth Avenue, a 67-unit building (Apartment Building 3)

which includes 4,500 square feet of nonresidential space on the ground floor and a 42-unit senior building (Apartment Building 4), as well as 44 additional rental units in a mix of single-family town houses and stacked flats with two-, three- four-, and five- bedroom unit types; and

- (b) The First Stage PUD shall include a second and third phase of development (“Phase 2” and “Phase 3”) which consist of three multi-family buildings, townhouses and stacked flats with two-, three-, four- and five-bedroom types. A total of approximately 321 units is included in Phase 2 and approximately 42 units in Phase 3.
3. The overall PUD shall have a maximum density of 1.61 FAR, with a maximum density of 1.57 FAR for the Consolidated PUD and a maximum density of 1.63 FAR for the First Stage PUD.
4. The Applicant shall construct the fencing shown in Sheet L-220 of Exhibit 61 for the townhouses and low rise units.
5. The Applicant is granted flexibility from the parking requirements, side yard requirements, rear yard requirements, loading requirements, and lot occupancy requirements consistent with the approved Plans (Ex. 40A, pp. S16-S18A) as well as a complete waiver of the Inclusionary Zoning Regulations set forth in former Chapter 26 of Title 11 DCMR as those regulations existed on September 5, 2016.
6. The Applicant is granted additional flexibility with the design of the PUD as follows:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - (b) To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction; and
 - (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, bell courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems

B. PUBLIC BENEFITS

1. Housing and affordable housing. The Applicant shall provide the following housing and affordable housing benefits:

(a) The Applicant shall provide affordable housing units in accordance with the following charts:

Consolidated PUD

Residential Unit Type	GFA & Percentage of Total	Units	Target Income	Affordable Control Period	Affordable Unit Type
Total	207,698 / 100%	167			
Market Rate	0	0			
IZ	N/A				
Affordable / Non IZ	151,401 / 73%	118	< = 50% AMI	Min. 40 years	Rental
Affordable / Non IZ	56,297 / 27%	49	< = 60% AMI	Min. 40 years	Rental

First Stage PUD

Residential Unit Type	GFA & Percentage of Total	Units	Target Income	Affordable Control Period	Affordable Unit Type
Total	461,414 / 100%	363			
Market Rate	0	0			
IZ	N/A				
Affordable / Non IZ	197,738 / 43%	172	< = 50% AMI	Min. 40 years	Rental
Affordable / Non IZ	123,400 / 27%	84	< = 60% AMI	Min. 40 years	Rental
Affordable / Non IZ	65,780 / 14%	65	< = 80% AMI	Min. 30 years	Rental
Affordable / Non IZ	74,496 / 16%	42	< = 120% AMI	First sale only. No price controls on subsequent sales.	For-Sale

(b) The Consolidated PUD shall include four- and five-bedroom units;

(c) For each second-stage application for the development of the First Stage PUD, the Applicant shall include at least one of the following unit types: four-bedroom, five-bedroom, and six- bedroom units; and

(d) The monitoring and enforcement documents required by D.C. Official Code § 6-1041.05 (a)(2) (2012 Repl.) shall include a provision requiring compliance with this Condition.

2. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall establish a meeting schedule with the Kenilworth Resident Council Board. The meeting schedule shall include meetings at least quarterly between the Applicant and the Kenilworth Resident Council Board beginning with the quarter the

meeting schedule is established, and lasting until the redevelopment and relocation process is completed.

3. **Prior to the issuance of a Certificate of Occupancy for the Consolidated PUD**, the Applicant shall finalize a written tenant selection/screening plan for the Consolidated PUD that shall bar the establishment of any minimum work or service requirements, criminal background requirements, or credit or drug screening requirements more stringent than DCHA policy in order for Kenilworth residents to return to units supported by District or HUD subsidy.
4. **Prior to the issuance of a Certificate of Occupancy for the non-residential space in the Project**, the Applicant shall make best efforts to work with potential grocers, food coops, or other fresh food distributors to make the 4,500 square feet of non-residential space in the Project available for a fresh food distribution use.
5. **Commencing with the issuance of a Certificate of Occupancy for the first building in Phase 1 and continuing service up until the issuance of a Certificate of Occupancy for the first building in Phase 2**, the Applicant shall provide a van loop service from the Project to both the Deanwood and the Kenilworth Recreation Center. The Applicant shall provide loop service from the Project to the Deanwood and Kenilworth facilities four times per weekday, in the morning hours and after school.
6. **Prior to the issuance of a Building Permit for each multi-family building**, the Applicant shall include an appropriate checklist with the building permit application for each multifamily building indicating that the building has been designed to meet the Enterprise Green Communities standards.
7. **Prior to the issuance of a Building Permit for the first building in the Consolidated PUD**, the Applicant shall submit to the Zoning Administrator at the Department of Consumer and Regulatory Affairs a fully executed First Source Employment Agreement between the Applicant and the D.C. Department of Employment Services. DCHA's Office of Resident Services will establish a committee composed of Kenilworth residents to facilitate Kenilworth residents' access to the job opportunities and to promote job readiness and will monitor § 3 compliance.

C. TRAFFIC MITIGATION

1. The Applicant shall construct new streets and sidewalks as shown on the Plans and the Applicant's PowerPoint presentation in accordance with DDOT standards and subject to DDOT approval; (Ex. 45A1-45A2.)
2. The PUD shall provide a total of approximately 304 vehicular parking spaces within the PUD Site, and a total of 263 bicycle parking spaces;

3. **For the life of the Project**, the Applicant shall implement the following TDM measures;
 - (a) Designate a TDM coordinator (“TDM Leader”) responsible for implementing the TDM plan;
 - (b) Unbundle the parking costs in the multi-family buildings from the lease/rent and price at market rate;
 - (c) Provide each new age-eligible resident with a one-time Capital Bikeshare membership for the initial three years of their residency;
 - (d) Work with DDOT and Capital Bikeshare as to the feasibility of locating a new bike-share station within or adjacent to the Project;
 - (e) SmartTrip Registration: Upon move in, provide every household with a one-time SmartTrip card and one initial pass with \$50 credit on the entire Metro system and instructions on how to load value onto the card and account;
 - (f) Car-share membership: Offer each new resident a membership with both a traditional and point-to-point car-share program of their choice;
 - (g) Work with ZipCar or other car-share companies to locate vehicle in the multi-family building garage or on-street;
 - (h) Install a Transit Screen or a similar product in the Phase I multi-family building lobbies;.
 - (i) Provide a Welcome Package to all households outlining the information available on the various commute options and transportation programs for residents; and
 - (j) Work with goDCgo to coordinate social events and friendly challenges to continuously raise the awareness of the available transportation options among Project residents and broaden the education of the surrounding community.
4. The Applicant shall provide a bike repair station in the Consolidated PUD and later phases where secure bike parking is provided.
5. **Prior to the sale of the for sale townhouses**, the Applicant shall provide the infrastructure necessary for car charging stations in those townhouses, which shall include a conduit and an adequate size house panel to support a charging station.
6. **For the life of the Project**, the Applicant shall abide by the following loading management plan requirements:

- (a) The Applicant shall ensure that all tenants are required to schedule deliveries that utilize the loading dock – defined here as any loading operation conducted using a truck 20 feet in length or larger. If a restaurant or food store is included as a retail tenant, the tenant shall designate its own loading manager to coordinate with the building's dock manager;
- (b) The dock manager shall schedule deliveries in such a way that the deliveries do not exceed the dock's capacity. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as to not impede the alley that passes in front of the loading dock;
- (c) The dock manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic from accessing the alley or adjacent parking except during those times when a truck is actively entering or exiting a loading berth;
- (d) The loading dock shall be open seven days a week. The potential overlap of service vehicle traffic with residential traffic shall be monitored at all times and management measures shall be taken if necessary to reduce conflicts between truck, vehicular, and pedestrian movements;
- (e) Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 - Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
- (f) The dock manager shall be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the loading dock. The dock manager shall also distribute flyers and other written materials such as DDOT's Freight Management and Commercial Vehicle Operations document to drivers, as needed, to encourage compliance with idling laws. The dock manager shall also post these documents in a prominent location within the service area;
- (g) The Applicant shall coordinate with the community quarterly to discuss any specific issues regarding the loading dock and/or loading operations; and

- (h) The Applicant shall coordinate with bicycle access to the building via the alley. The bicycle access must remain available at all times and not blocked by delivery vehicles.

D. MISCELLANEOUS

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The Consolidated PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit for the Consolidated PUD. Construction of the Consolidated PUD must begin within three years of the effective date of this Order.
3. Pursuant to § 2407.10 of the Zoning Regulations, the Commission is specifying a longer period than one year for the First Stage PUD, which shall be valid for a period of three years from the effective date of this Order, provided that a second-stage application for Phase 2 shall be filed within two years of the effective date of this Order.
4. 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.

October 17, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot; Third Mayoral Appointee position vacant, not voting).

On December 12, 2016, 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 **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull too approve; Peter Shapiro, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D. C. *Register*; that is on January 20, 2017.

Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
)	
Dancy Simpson, Pamela Chase, Ernest Durant,		)	PERB Case Nos. 10-S-05
Shante Briscoe, et al.,		)	10-S-07
		)	10-S-08
Complainants,		)	10-S-09
)	
v.)	
		)	Opinion No. 1601
Fraternal Order of Police/Department)	
of Corrections Labor Committee,		)	CORRECTED COPY
)	
Respondent.)	
_____)	

DECISION AND ORDER

Several standards of conduct complaints were filed by various members of the Fraternal Order of Police/Department of Corrections Labor Committee (“FOP”), alleging that FOP failed to conduct a fair election of local union officials, improperly denied a member the right to run for the election, and failed to disclose requested financial documents.¹ The complaints were consolidated and a hearing was held before hearing examiner Lois Hochhauser. After reviewing the record, the Board issued a Decision and Order in July 2015 (hereinafter “Slip Op No. 1537”), finding that the Hearing Examiner’s Report and Recommendation was inconsistent with the Board’s precedents and remanded the case to Hearing Examiner Hochhauser for further factual findings.² Ms. Hochhauser was unavailable to prepare a supplemental report and recommendation. Accordingly, with the consent of the parties, PERB’s Executive Director assigned the case to a new hearing examiner, Mr. Bruce Rosenstein, to review the underlying transcripts, post hearing briefs, and other related documents in order to prepare and issue a supplemental report and recommendation. Mr. Rosenstein issued his Supplemental Report and Recommendation on February 19, 2016. For the reasons explained below, the complaints are sustained in part, and dismissed in part.

¹ Complainants originally included FOP Lodge #1 as a Respondent in PERB Case No. 10-S-05. The Board dismissed FOP Lodge #1 as a party in *Dancy Simpson, et al. v. Fraternal Order of Police/Dep’t of Corr. Labor Comm.*, 62 D.C. Reg. 14621, Slip Op. No. 1537 at n. 1, PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, 10-S-09 (2015).

² Slip Op No. 1537.

Decision and Order

PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, 10-S-09

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I. Statement of the Case

A. Case No. 10-S-05

On April 6, 2010, Dancy Simpson filed a standards of conduct complaint alleging that FOP violated §§ 1-617.03(1), (3), (4), and (5), and 1-617.10 of the Comprehensive Merit Personnel Act (“CMPA”), by “failing to make its financial reports and contract terms available to members at the December 30, 2009 meeting for their approval ‘for the 2010 budget as required by the By-laws and the CMPA....’”³ Simpson additionally alleged that FOP’s contract required members to pay a portion of legal fees, contravening FOP’s bylaws and constitution.⁴ Simpson also challenged the appointment of Betty Wofford as the 2010 Election Committee Chairperson by FOP Chairperson Nila Ritenour, and the appointment of Theresa Capers to the election committee, and alleged that the election rules posted by Capers on March 1, 2010, violated FOP’s bylaws and the CMPA. FOP filed an answer, denying the allegations and also filed a motion to dismiss, contending that the complaint contained allegations arising from a 2008 election that had already been resolved by PERB.⁵

B. Case No. 10-S-07

On April 10, 2010, Ernest Durant filed a standards of conduct complaint, asserting that FOP improperly conducted the 2010 election by adopting election rules that members with less than two years of service could not vote. He also objected to the location of the polling site, which was the office of the incumbent Executive Board, rather than the D.C. Jail where 90% of the members worked. FOP filed an answer, denying the allegations.⁶

C. Case No. 10-S-08

On May 14, 2010, Pamela Chase, Edwin Hull, Curtis Thomas, Dancy Simpson, Jacqueline White, Keith Allison, Linwood Benton, and Ernest Durant filed a standards of conduct complaint. The complaint alleged that the 2010 election was a “sham” election, and that FOP violated D.C. Official Code § 1-617.03 because the poll watcher was a close friend of Capers and did not fully observe the election. In addition, the Complaint alleged that 160 dues paying members were not permitted to vote, even though they were members in good standing, because their status was probationary.⁷ FOP filed an answer denying the allegations.

D. Case No. 10-S-09

On June 10, 2010, Shante Briscoe filed a standards of conduct complaint against FOP. Briscoe alleged that on March 31, 2010, she was nominated for the position of FOP Executive Secretary, but that Capers sent Briscoe a letter stating that Briscoe could not run because she was

³ *Id.* at 2.

⁴ *Id.*

⁵ Complainants also filed a motion for preliminary relief. The Board denied the motion in Slip Op. No. 1019, and consolidated Case Nos. 10-S-05 and 10-S-07 for a hearing.

⁶ Slip Op No. 1537 at p. 2.

⁷ *Id.*

Decision and Order

PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, 10-S-09

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not a member in good standing. Briscoe contested Capers' decision, but Capers did not respond.⁸

E. First Hearing Examiner's Report and Recommendation and Slip Op. No. 1537

The four cases were consolidated and a hearing was held before Hearing Examiner Lois Hochhauser on four separate dates in 2010. On November 8, 2011, Ms. Hochhauser issued her Report and Recommendation ("Hochhauser Report").⁹ In Slip Op. No. 1537, the Board noted that Ms. Hochhauser analyzed the allegations as though it was a duty of fair representation case.¹⁰ The Board further noted that Ms. Hochhauser failed to address the complainants' financial misconduct allegations.¹¹ The Board found that since the complainants' allegations were filed as standards of conduct complaints under D.C. Official Code §§ 1-617.03(a)(1), (4), and (5) and PERB Rule 544, and since the case law concerning a union's duty of fair representation "is fundamentally different than whether a fair election was conducted and whether the union met its financial reporting and disclosure obligations under the Standards of Conduct established by the CMPA," Ms. Hochhauser applied the wrong legal standard to the allegations.¹² Accordingly, the Board remanded the case to Ms. Hochhauser to re-analyze the allegations concerning the election under the correct legal standards, and to address the complainants' financial misconduct allegations.¹³

F. Supplemental Hearing Examiner's Report and Recommendation

Ms. Hochhauser was unavailable to prepare a supplemental report and recommendation. Accordingly, with the consent of the parties, PERB's Executive Director assigned the case to a new hearing examiner, Mr. Bruce Rosenstein, to review the underlying transcripts, post hearing briefs, and other related documents in order to prepare and issue a supplemental report and recommendation. Mr. Rosenstein's issued his Supplemental Report and Recommendation on February 19, 2016.

1. 10-S-05

In PERB Case No. 10-S-05, Mr. Rosenstein found that the complainants did not provide any evidence at the hearing to substantiate the allegation that FOP violated D.C. Official Code §§ 1-617.03(1), (3), (4), and (5), and 1-617.10 by failing to make its financial reports and contract terms available to members at the December 30, 2009 meeting.¹⁴ Mr. Rosenstein further found that no evidence was presented at the hearing to substantiate the allegations that members were required under FOP's bylaws and constitution to pay a portion of legal fees, or that Betty Wofford and Theresa Capers were inappropriately appointed to FOP's 2010 election

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-4 (internal citations omitted).

¹¹ *Id.* at 4.

¹² *Id.* at 3-5.

¹³ *Id.* at 5-6.

¹⁴ Supplemental R&R at 6-7.

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PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, 10-S-09

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committee.¹⁵ Accordingly, Mr. Rosenstein found that complainants did not meet their burden of proof and recommended that these allegations in PERB Case No. 10-S-05 be dismissed.¹⁶

2. 10-S-07

In PERB Case No. 10-S-07, Mr. Rosenstein noted that Department of Corrections (“DOC”) correctional officers must complete an 18-month probationary period, after which they become permanent employees and can, if they choose, become FOP members and authorize FOP to begin deducting dues from their pay checks instead of service fees. Mr. Rosenstein further noted that according to FOP bylaws 3.2, 3.3, 3.4, and 5.4, once the membership and dues authorization forms are completed, the officer “is eligible to participate in the full range of FOP membership benefits including the right to vote in internal union elections.”¹⁷ The election rules for the 2010 election, however, added an additional requirement that dues-paying officers in good standing must have been permanently employed with DOC no less than six months prior to the election.¹⁸ Mr. Rosenstein found that this additional requirement conflicted with FOP’s bylaws and disenfranchised more than 160 employees from voting in the election.¹⁹ He further found that the added rule caused many officers to believe that “there was no point in voting or that their vote would be challenged if they did attempt to vote on May 10, 2010.”²⁰ Mr. Rosenstein noted that according to PERB case law, the simple breach of a union’s bylaw is insufficient to find a standards of conduct violation unless the complainant can provide evidence that an actual injury resulted from the breach for which PERB can grant relief.²¹ Here, Mr. Rosenstein found that the election rule’s exclusion of more than 160 employees from the 2010 election constituted an actual injury.²²

With regard to the allegation that holding the election at FOP’s Executive Board office instead of at the D.C. Jail constituted a standards of conduct violation, Mr. Rosenstein found that the complainants did not meet their burden of proof.²³ Mr. Rosenstein noted that prior to 2006, the elections were routinely held at the jail, but when an incident occurred in which lives were threatened, it was determined that future elections would be held at the Executive Board office.²⁴ He reasoned that although the complainants presented evidence at the hearing that parking was more difficult at the new location and that slightly fewer people voted than when the elections were held at the jail, those were not sufficient reasons to overcome FOP’s legitimate

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 7 (citing Transcript at 407).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* (citing Complainants Hearing Exhibits 5-8, and Respondent Hearing Exhibit 3).

²¹ *Id.* (citing *William Corboy, et al. v. Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 48 D.C. Reg. 8505, Slip Op. No. 391 at n. 3, PERB Case No. 93-S-01 (1994), and *Ernest Durant v. Fraternal Order of Police/Dep’t of Corr. Labor Comm.*, 49 D.C. Reg. 782, Slip Op. No. 430 at n. 2, PERB Case No. 94-U-18 (1995)).

²² *Id.* (noting that this same allegation was also raised in PERB Case No. 10-S-08).

²³ *Id.* at 8.

²⁴ *Id.* (citing Transcript at 533).

Decision and Order

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nondiscriminatory reason for moving the election. Accordingly, Mr. Rosenstein recommended that this allegation be dismissed.²⁵

3. Case No. 10-S-08

In PERB Case No. 10-S-08, Mr. Rosenstein found that the complainants did not meet their burden to prove that the 2010 election was a “sham” election, and that FOP violated D.C. Official Code § 1-617.03 because the poll watcher was a close friend of Capers and did not fully observe the election.²⁶ Mr. Rosenstein noted that the poll watcher had observed several FOP elections prior to the 2010 election.²⁷ He further reasoned that even though testimony showed that the poll observer was absent from the voting site several times during the voting period, it was also uncontested that both ballot boxes were inspected before they were locked, that the poll observer had the only keys to the boxes for the duration of the election, and that the boxes remained locked until the poll observer unlocked them to count the ballots.²⁸ Accordingly, Mr. Rosenstein recommended that these allegations be dismissed.²⁹

4. Case No. 10-S-09

In PERB Case No. 10-S-09, Mr. Rosenstein agreed with Ms. Hochhauser’s analysis that the complainants presented sufficient documentary and testimonial evidence to prove that Briscoe had been eligible to run for FOP Executive Secretary in the 2010 election, and that FOP had therefore wrongfully denied her candidacy.³⁰ As a remedy, Mr. Rosenstein recommended that a new election be held for the office of Executive Secretary and that Briscoe be included on the ballot.³¹

5. Additional Findings

Mr. Rosenstein noted that in Slip Op. No. 1537, the Board ordered the hearing examiner to “determine under the totality of the circumstances whether FOP/DOC committed the alleged violations and whether those alleged violations violated its governing rules and applicable law in breach of the right of individual members to participate in the affairs of the organization, D.C. Official Code § 1-617.03(a)(1), and deprived the Complainants’ of a fair election under D.C. Official Code § 1-617.03(a)(4).”³²

In accordance with the Board’s Order, Mr. Rosenstein found that FOP failed to safeguard the integrity of the ballot through appropriate measures when it destroyed all election-related documents, including ballots, just thirteen days after the election.³³ Mr. Rosenstein rejected FOP’s argument that it destroyed the election documents because no one had raised any

²⁵ *Id.* (citing Transcript at 294 and 502).

²⁶ *Id.*

²⁷ *Id.* (citing Transcript at 640, 679, and 689).

²⁸ *Id.* (citing Transcript at 543, 603, 643, and 646).

²⁹ *Id.*

³⁰ *Id.* at 9 (citing Complainants Hearing Exhibit 10, and Transcript at 444-45 and 453-54).

³¹ *Id.*

³² *Id.* at 9-10 (citing Slip Op. No. 1537 at p. 5).

³³ *Id.* at 10.

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complaints about the election. Mr. Rosenstein's finding was based on testimony and other evidence that demonstrated FOP knew that at least one member had challenged the election rules and that another had challenged FOP's determination that Briscoe was ineligible to run for Executive Secretary.³⁴ Mr. Rosenstein also rejected FOP's argument that it destroyed the material because it had nowhere to securely store the materials. Mr. Rosenstein looked to a guideline that the U.S. Department of Labor established in 29 CFR 452.106 that requires ballots and other election records from secret elections to be preserved for at least one year.³⁵ Mr. Rosenstein concluded that "destroying election materials two weeks after the election knowing that objections were raised to the election rules and the conduct of the election is a clear violation of the Standards of Conduct provisions under the CMPA."³⁶

Mr. Rosenstein further found that FOP violated the standards of conduct in the CMPA when it failed to effectively post nomination and election notices, which precluded at least one complainant who had intended to run from attending the nomination meeting.³⁷ Mr. Rosenstein based his conclusion on PERB case law and the un rebutted testimony of multiple correctional officers who testified that notices were not posted in their assigned work areas.³⁸

Additionally, Mr. Rosenstein criticized FOP's lack of transparency in how it safeguarded the ballots during several specific periods of time when the poll observer was not present.³⁹ However, as noted previously, Mr. Rosenstein reasoned that since the ballot boxes were locked and the poll observer was the only one with the keys during those periods, no standards of conduct violation was committed.⁴⁰

Finally, Mr. Rosenstein found that although FOP listed some candidates twice on the ballot (once individually and then once again as part of a slate), FOP's balloting procedures for individual and slate candidates complied with all of the guidelines stated in 29 CFR 452.112, and were therefore fair and effective and did not violate the standards of conduct.⁴¹

6. Recommendations

Based on his findings, Mr. Rosenstein recommended that the Board: (1) order FOP to cease violating its constitution and bylaws and the CMPA's standards of conduct in the manners sustained in his report; (2) vacate the 2010 election results in their entirety and order FOP to hold a new election consistent with the findings in his report within 60 days; (3) require that all future

³⁴ *Id.* (citing Complainants Hearing Exhibits 5-6).

³⁵ *Id.* at 5, 10; *see also* Slip Op. No. 1537 at p. 5 (authorizing the Hearing Examiner to "consider the Department of Labor's regulations and cases" when determining whether a fair election was conducted).

³⁶ Supplemental R&R at 10.

³⁷ *Id.* at 10-11.

³⁸ *Id.* (citing Transcript at 111, 199, 371, 482, and 535, and *Dupree et al. v. Fraternal Order of Police/Dep't of Corr. Labor Comm., et al.*, 47 D.C. Reg. 1431, Slip Op. No. 605, PERB Case Nos. 98-S-08 and 98-S-09 (1999) (holding that failing to provide a prospective candidate with adequate notice of a nomination meeting constitutes a violation of the Standards of Conduct in the CMPA)).

³⁹ *Id.* at 11-12.

⁴⁰ *Id.* at 8, 12.

⁴¹ *Id.* at 12 (citing Transcript at 510, 512, and 514).

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elections be supervised by PERB and administered by a neutral third party which shall be designated by PERB; and (4) order FOP to post a notice of its violations.⁴²

Mr. Rosenstein's Supplemental Report and Recommendation and FOP's Exceptions are before the Board for consideration.

II. Analysis

The Board will affirm a hearing examiner's findings and recommendations if the findings are reasonable, supported by the record, and consistent with PERB precedent.⁴³ Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner.⁴⁴ Issues concerning the probative value of evidence are also reserved to the Hearing Examiner.⁴⁵ Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions.⁴⁶

Here, FOP filed six exceptions to Mr. Rosenstein's Supplemental Report and Recommendation.

First, FOP asserted that Mr. Rosenstein exceeded the scope of the Board's Order in Slip Op. No. 1537 when he reexamined facts that had already been found by Ms. Hochhauser.⁴⁷ Specifically, FOP argued that Mr. Rosenstein's findings contradicted Ms. Hochhauser's factual conclusions that FOP had posted adequate notice of the nomination meeting and election; that nobody in the bargaining unit was refused an opportunity to vote, felt fearful, or believed that there was no purpose in voting; and that even if all the challenged ballots had been counted, it would not have changed the outcome of the election.⁴⁸ However, Ms. Hochhauser's findings are no longer of any consequence in this matter because the Board expressly stated in Slip Op No. 1537 that it "decline[d]" to accept her findings and instructed the hearing examiner on remand to "determine under the totality of the circumstances whether FOP/DOC committed the alleged violations and whether those alleged violations violated its governing rules and applicable law in breach of [the Standards of Conduct in D.C. Official Code §§ 1-617.03(a)(1) and/or (4)]."⁴⁹ That is exactly what Mr. Rosenstein did. Moreover, his conclusions were reasonable, supported by

⁴² *Id.* at 13-14.

⁴³ *Am. Fed'n of Gov't Emp., Local 872 v. Dist. of Columbia Water and Sewer Auth.*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

⁴⁴ *Hoggard v. Dist. of Columbia Pub. Sch.*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).

⁴⁵ *Am. Fed'n of Gov't Emp., Local 2725, AFL-CIO v. Dist. of Columbia Hous. Auth.*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998).

⁴⁶ *Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

⁴⁷ Exceptions to the Supplemental R&R at 3-4.

⁴⁸ *Id.*

⁴⁹ Slip Op. No. 1537 at p. 5.

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the record, and consistent with PERB precedent.⁵⁰ Accordingly, the Board finds that FOP's first exception is based on nothing more than competing evidence and contrary to the Board's order in Slip Op. No. 1537, and therefore does not qualify as a valid exception.⁵¹

Second, FOP contended that the 2010 election rules did not violate its bylaws.⁵² FOP asserted that it generally takes the District of Columbia Government about six (6) months to convert an employee from a service fee status to a full-fledged dues-paying member of the union. Accordingly, the election rule was designed to prevent service fee employees from voting in the election.⁵³ FOP further asserted that no one was disenfranchised by the rule because everyone who presented themselves at the polling station was permitted to vote. If there was doubt about whether or not an employee was a dues-paying member, that employee's ballot was placed in a "challenged" votes box. FOP claimed that even if all the challenged votes had been counted, it would not have made a difference in the outcome of the election, and that the rule therefore did not result in any actual injury.⁵⁴ Further, FOP asserted that there was no evidence in the record to support Mr. Rosenstein's finding that some members did not vote because they felt their vote would not be counted.⁵⁵ FOP also contended that the complainants had an obligation under FOP's bylaws to submit their claims to FOP's internal resolution procedures before filing their complaints with PERB, and that when they failed to do so, they gave FOP a complete defense against their allegations.⁵⁶

The Board rejects FOP's second exception. Mr. Rosenstein substantiated his findings with evidence in the record provided by the parties.⁵⁷ Since determinations concerning the probative value, admissibility, relevance, and weight of evidence are reserved to the hearing examiner, the Board defers to Mr. Rosenstein's analysis and conclusions based on that evidence.⁵⁸ Additionally, since Mr. Rosenstein found that more than 160 otherwise eligible members were affected by the election rule, it cannot be definitively concluded that the election results would not have been different had the rule not been in place.⁵⁹

The Board also rejects FOP's complete defense argument. The D.C. Court of Appeals has held that union members do not need to exhaust internal union remedies before filing a standards of conduct complaint with PERB. The Court stated that although "a union has the right to compel its members to follow certain prescribed practices, among which can be the requirement to exhaust available internal complaint processes before litigating against the union, ...[s]uch requirements will not be enforced if [unions] violate clearly expressed labor policy"

⁵⁰ *AFGE, Local 872 v. DC WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.

⁵¹ *Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

⁵² Exceptions to the Supplemental R&R at 3-8.

⁵³ *Id.* at 3-4.

⁵⁴ *Id.* at 5-6.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 7.

⁵⁷ Supplemental R&R at 7 (*citing* Complainants Hearing Exhibits 5-8 and Respondent Hearing Exhibit 3).

⁵⁸ *See AFGE, Local 2725 v. DCHA*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07; *see also Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

⁵⁹ Supplemental R&R at 7 (*citing* Complainants Hearing Exhibits 5-8 and Respondent Hearing Exhibit 3).

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such as the standards of conduct articulated in the CMPA.⁶⁰ The Court reasoned that “[t]he [CMPA] and the rules adopted by the Board express a clear intent that alleged violations of the [CMPA’s] standards of conduct [for labor organizations] be promptly brought to the Board’s attention.”⁶¹ Accordingly, the Court held that “in view of this unambiguously expressed intent that complaints alleging standards of conduct violations be filed with the Board, . . . an individual need not exhaust available union remedies before seeking the Board’s services.”⁶²

Third, FOP excepted to Mr. Rosenstein’s finding that FOP failed to effectively post nomination and election notices in all employees work areas.⁶³ FOP contended that Ms. Hochhauser had found that the complainants had failed to meet their burden of proof on this allegation because none of them could testify that they had visited all locations and therefore could not state with certainty that the notices had not been posted.⁶⁴ FOP argued that there was no cause for Mr. Rosenstein to set aside her finding. Further, FOP excepted to Mr. Rosenstein’s reasoning that although an FOP witness testified that she personally posted notices in the jail, that did not bolster FOP’s defense because the union failed to call witnesses to establish that it had posted the required notices in all other work areas.⁶⁵ FOP asserted that this erroneously shifted the burden of proof to FOP.⁶⁶

As reasoned *supra*, Mr. Rosenstein was not bound by Ms. Hochhauser’s findings because the Board set them aside in Slip Op. No. 1537.⁶⁷ Furthermore, although Mr. Rosenstein noted that FOP did not call the person who had been assigned to post the notices in other work areas to testify at the hearing, that was not the basis of his finding, nor did it constitute a shifting of the burden of proof.⁶⁸ Rather, the core of Mr. Rosenstein’s finding was expressly based on the testimony of two complainant witnesses and PERB case law.⁶⁹ As additional support for his finding, Mr. Rosenstein merely commented that FOP had failed to call the only witness who could adequately rebut the assertions of those witnesses.⁷⁰ Accordingly, since determinations concerning the probative value, admissibility, relevance, and weight of evidence are reserved to the hearing examiner, the Board defers to Mr. Rosenstein’s reasoning and rejects FOP’s third exception.⁷¹

⁶⁰ *Holden, et al. v. Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 49 D.C. Reg. 4366, Slip Op. No. 675 at p. 5, PERB Case No. 02-S-03 (2002) (citing *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. Dist. of Columbia Pub. Emp. Relations Bd.*, 516 A.2d 501, 505 (D.C. 1986); and *Chambers v. Local Union No. 639*, 578 F.2d 375 (D.C. 1978)).

⁶¹ *Id.*

⁶² *Id.*

⁶³ Exceptions to the Supplemental R&R at 8-9.

⁶⁴ *Id.* (citing Hochhauser R&R at 23-24).

⁶⁵ *Id.* (citing Supplemental R&R at 11).

⁶⁶ *Id.*

⁶⁷ Slip Op. No. 1537 at p. 5.

⁶⁸ *Id.*

⁶⁹ Supplemental R&R at 11 (internal citations omitted).

⁷⁰ *Id.*

⁷¹ See *AFGE, Local 2725 v. DCHA*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07; see also *Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

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Fourth, FOP excepted to Mr. Rosenstein's findings that FOP failed to safeguard the integrity of the ballots through appropriate measures when the poll observer was not present and that FOP had violated the CMPA's standards of conduct when it destroyed the ballots thirteen days after the election.⁷² FOP asserted that Mr. Rosenstein should have "looked to the applicable standards imposed in the CMPA rather than the federal regulations [stated in 29 CFR 452.106], which at best would be guidance, not binding authority on the manner in which [FOP] determined to maintain internal records."⁷³

With regard to FOP's exception concerning FOP's failure to safeguard the ballots when the poll observer was not present, Mr. Rosenstein ultimately found that although FOP could have taken safer measures to protect the integrity of the ballots, its failure to do so did not violate the standards of conduct.⁷⁴ Accordingly, it is not necessary for the Board to address FOP's arguments on that issue.

With regard to FOP's exception concerning Mr. Rosenstein's reliance on 29 CFR 452.106 in finding that FOP violated the standards of conduct when it destroyed the ballots 13 days after the election, the Board notes that it expressly stated in Slip Op. No. 1537 that since "the Board has not promulgated specific regulations for conducting elections, the Hearing Examiner may consider the Department of Labor's regulations and cases arising under them in making [an] analysis regarding whether a fair election was conducted."⁷⁵ Since that is exactly what Mr. Rosenstein did, the Board rejects FOP's fourth exception.

Fifth, FOP excepted to Mr. Rosenstein's finding that FOP wrongfully denied Briscoe the opportunity to run for FOP Executive Secretary.⁷⁶ However, FOP's arguments were again based on nothing more than competing evidence from the record.⁷⁷ As discussed, *supra*, determinations concerning the probative value, admissibility, relevance, and weight of evidence are reserved to the hearing examiner.⁷⁸ Here, Mr. Rosenstein reasserted all of Ms. Hochhauser's findings that Briscoe was eligible to run, noted that the D.C. Superior court had also found in a separate action that she was eligible to run, and then cited additional evidence from the record to sustain his conclusion that FOP erred when it denied Briscoe's candidacy.⁷⁹ Accordingly, the Board finds that Mr. Rosenstein adequately supported his conclusion and rejects FOP's fifth exception.

⁷² Exceptions to the Supplemental R&R at 9-12.

⁷³ *Id.* at 11-12.

⁷⁴ Supplemental R&R at 8, 12.

⁷⁵ Slip Op. No. 1537 at p. 5.

⁷⁶ Exceptions to the Supplemental R&R at 12-13.

⁷⁷ *Id.* (internal citations omitted); *see also Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

⁷⁸ *See AFGE, Local 2725 v. DCHA*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07; *see also Hoggard v. DCPS*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

⁷⁹ Supplemental R&R at 9 (citing Complainants Hearing Exhibit 10, and Transcript at 444-45 and 453-54).

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Sixth, FOP argued that Mr. Rosenstein's recommended remedies were unwarranted, impossible, unsustainable, and/or unnecessary.⁸⁰ In part, the Board agrees. The Board finds that because Mr. Rosenstein found that the complainants were able to prove some of their standards of conduct allegations, it is appropriate to order FOP, going forward, to cease violating its constitution and bylaws and the CMPA in the manners sustained in Mr. Rosenstein's Supplemental Report and Recommendation, and to post a notice detailing its violations.⁸¹

However, the Board finds that it is not appropriate under the circumstances of these cases to vacate the 2010 election results in their entirety, or to order FOP to hold a new election consistent with Mr. Rosenstein's findings. As FOP stated, at least three elections have been held since the 2010 election that are not under review in this matter.⁸² Vacating the 2010 election and ordering that another one be held within 60 days of this Order would effectively vacate those elections as well. Furthermore, all but two of the complainants (including Briscoe) are no longer employed by DOC.⁸³ Thus, even if the Board wanted to adopt those recommendations, it could not do so. Similarly, the Board finds that it would not be appropriate to order all future FOP elections to be supervised by PERB and/or to order that they be administered by a neutral third party designated by PERB. The Board's jurisdiction and authority allow it to review statutory violations committed during union elections, but do not authorize the Board to insert itself into the everyday decision-making and administration of those elections.⁸⁴ Accordingly, the Board will not adopt Mr. Rosenstein's recommendations that suggest otherwise.

III. Conclusion

The allegation that FOP's 2010 election rules violated FOP's bylaws, constitution, and the CMPA by imposing qualifications for voting not contained in the bylaws is sustained.

The allegation that FOP violated the CMPA because the nomination and election notices were not effectively posted in all work areas where members were employed is sustained.

The allegation that FOP violated the CMPA when it destroyed all election ballots and materials 13 days after the 2010 election is sustained.

The allegation that FOP violated the CMPA when it denied Briscoe's candidacy for the office of Executive Secretary in the 2010 election is sustained.

All other allegations in the complaints are dismissed with prejudice, for the reasons stated herein and in Mr. Rosenstein's Supplemental Report and Recommendation.

⁸⁰ Exceptions to the Supplemental R&R at 13-17.

⁸¹ FOP's assertion that PERB should not order FOP to post a notice detailing its violations of the CMPA because it might harm FOP's standing in an attempted takeover of the bargaining unit by another union is now moot since the challenging union withdrew its Recognition Petition in PERB Case No. 16-RC-02 on August 4, 2016.

⁸² *Id.* at 14.

⁸³ *Id.*

⁸⁴ See D.C. Official Code §§1-605.01 and .02; and §§ 1-617 *et seq.*

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ORDER

IT IS HEREBY ORDERED THAT:

1. FOP shall immediately cease violating its bylaws, constitution, and the CMPA in the conduct of its internal elections, as described in this Decision and Order;
2. FOP shall conspicuously post, within fourteen (14) calendar days of the service of this Decision and Order, the attached Notice detailing its violations of the CMPA where notices to bargaining-unit employees are customarily posted;
3. Said Notice shall remain posted for thirty (30) consecutive days;
4. Within twenty-one (21) days of the service of this Decision and Order, FOP shall notify the Board in writing that the Notice has been posted as ordered; and
5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORER OF THE PUBLIC EMPLOYEER RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof. Members Yvonne Dixon and Barbara Somson were not present.

November 22, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached CORRECTED COPY of the Board's Decision and Order in PERB Case Nos. 10-S-05, *et al.*, Op. No. 1601 was transmitted to the following parties on this the 1st day of December, 2016.

J. Michael Hannon, Esq.
J. Scott Hagood, Esq.
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/s/ Colby Harmon
PERB



Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA



1100 4th Street, SW Suite E630 Washington, D.C. 20024 Business: (202) 727-1822 Fax: (202) 727-9116 Email: perb@dc.gov

NOTICE

TO ALL BARGAINING UNIT MEMBERS OF THE FRATRENAL ORDER OF POLICE/DEPARTMENT OF CORRECTIONS LABOR COMMITTEE, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1601 (CORRECTED COPY), PERB CASE NOS. 10-S-05, ET AL. (DECEMBER 1, 2016).

WE HEREBY NOTIFY our members that the District of Columbia Public Employee Relations has ordered FOP/DOC to post this Notice pursuant to the Board’s finding in Slip Opinion No. 1601 that we violated the law in the conduct of our 2010 election of union officers, by:

1. imposing qualifications for voting in the 2010 election that were not contained in the union’s bylaws;
2. not effectively posting the nomination and election notices in all work areas where members were employed;
3. destroying all election ballots and materials 13 days after the 2010 election; and
4. wrongly denying Shante Briscoe’s candidacy for the office of Executive Secretary.

WE WILL cease and desist from violating the CMPA in these manners, as ordered in Slip Opinion No. 1601 (CORRECTED COPY).

Fraternal Order of Police/Department of Corrections Labor Committee

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or FOP/DOC’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

December 1, 2016

Washington, D.C.

Government of the District of Columbia
Public Employee Relations Board

<hr/>)	
In the Matter of:)	
)	
District of Columbia Nurses Association,		)	PERB Case No. 16-I-07
)	
Petitioner,		)	Opinion No. 1602
)	
and)	
		)	Decision and Order
District of Columbia Department of Health,)	
)	
Respondent.)	
<hr/>)	

DECISION AND ORDER

On September 29, 2016, the District of Columbia Nurses Association (“DCNA”) filed a Notice of Impasse (“Notice”) pursuant to PERB Rules 526 *et seq.* and 527 *et seq.* DCNA asserts that it reached an impasse with the District of Columbia Department of Health (“DOH”) during impact and effects (“I&E”) bargaining over the relocation of the DOH Immunization Clinic.¹ During negotiations, DOH accepted four of DCNA’s proposals, and rejected two proposals. DCNA now asks PERB to find that the parties are at impasse and to appoint a mediator from the Federal Mediation and Conciliation Service to help the parties reach a resolution on DCNA’s rejected proposals.²

The Board’s impasse procedures are reserved for negotiations related to collective bargaining and compensation agreements, not for I&E bargaining.³

Indeed, the impasse procedures outlined in PERB Rule 526 *et seq.* are by their express terms reserved for negotiations of compensation agreements pursuant to D.C. Official Code §§ 1-617.17 *et seq.* DCNA states that its compensation agreement with DOH will not expire until September 30, 2017.⁴ Accordingly, the Board finds that the impasse procedures outlined in PERB Rule 526 *et seq.* are not appropriate for this case.

¹ Notice at 1-2.

² *Id.*

³ See *Am Fed’n of State, Cnty., and Meun. Emp., Dist. Council 20, Local 2401, AFL-CIO and Dist. of Columbia Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06 (2014); see also *Dist. of Columbia Nurses Ass’n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06 (2015).

⁴ *Id.*

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PERB Case No. 16-I-07
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Similarly, the impasse procedures outlined in PERB Rule 527 *et seq.* are reserved for negotiations of terms and conditions collective bargaining agreements pursuant to D.C. Official Code § 1-617.01(b)(2).⁵ Accordingly, the Board finds that the impasse procedures outlined in PERB Rule 527 *et seq.* are not appropriate for the I&E stalemate described in DCNA's petition.

DOH unquestionably had a duty to engage in good faith I&E bargaining with DCNA over its decision to move the Immunization Clinic, but that duty did not require DOH to bargain in perpetuity or to reach an agreement on all of DCNA's proposals.⁶ Unlike the negotiation of collective bargaining and compensation agreements, there is not an obligation to reach an agreement during I&E bargaining. Thus, I&E bargaining can never reach "impasse" as defined in PERB Rule 599.1⁷ and therefore does not qualify for the impasse resolution procedures in PERB Rules 526 and 527.⁸ Accordingly, DCNA's Notice of Impasse is denied and dismissed.⁹

ORDER

IT IS HEREBY ORDERED THAT:

1. DCNA's Notice of impasse is denied and the case is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman and Douglas Warshof. Members Yvonne Dixon and Barbara Somson were not present.

November 22, 2016

Washington, D.C.

⁵ See *Am Fed'n of State, Cnty., and Meun. Emp., Dist. Council 20, Local 2401, AFL-CIO and Dist. of Columbia Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06 (2014); see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06 (2015).

⁶ See *AFSCME, Dist. Council 20, Local 2401 and CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06; see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06.

⁷ PERB Rule 599.1: "Impasse – The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining."

⁸ See *AFSCME, Dist. Council 20, Local 2401 and CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497, PERB Case No. 10-I-06; see also *Dist. of Columbia Nurses Ass'n and Dist. of Columbia Dept. of Health*, 62 D.C. Reg. 10498, Slip Op. No. 1522, PERB Case No. 15-I-06.

⁹ The Board's decision should not impede the parties from continuing to bargain over DCNA's proposals if they both desire to do so.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-I-07, Op. No. 1602, was transmitted by File & ServeXpress to the following parties on this the 30th day of November, 2016.

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Washington, D.C. 20001

/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
)	
District of Columbia, Metropolitan Police)	
Department)	
	)	PERB Case No. 16-A-03
Petitioner,)	
	)	Opinion No. 1604
and)	
)	
Fraternal Order of Police/)	
Metropolitan Police Department)	
Labor Committee (obo G. Singletary))	
)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Introduction

The District of Columbia Metropolitan Police Department (“MPD,” or “Petitioner”) filed this Arbitration Review Request (“Request”) seeking review of an Arbitration Award (“Award”) that determined that the grievance filed by the Fraternal Order of Police/ Metropolitan Police Department (“Union” or “FOP”) on behalf of Officer G. Singletary (“Grievant”) was arbitrable. The issues before the Board are whether the award on its face is contrary to law and public policy and whether the Arbitrator exceeded his jurisdiction.¹

For the reasons stated herein, Petitioner’s Request is denied.

II. Statement of the Case

On August 30, 2006, a private citizen filed a complaint with MPD’s Office of Police Complaints (“OPC”) against the Grievant and another MPD officer (not a grievant in this matter), alleging on-duty misconduct occurring on August 12, 2006.² MPD conducted an investigation.³ On August 20, 2007, OPC issued a Report of Investigation, which concluded there was reasonable cause to believe the Grievant and the other officer had violated certain

¹ See D.C. Official Code § 1-605.02(6).

² Award at 1.

³ *Id.*

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MPD policies and procedures.⁴ OPC referred the matter to an MPD Complaint Examiner for an evidentiary hearing.⁵ On February 27, 2008, an evidentiary hearing was held.⁶

On May 28, 2008, the Complaint Examiner issued a “Findings of Fact and Merits Determination,” sustaining the allegation of “Harassment” against the Grievant.⁷ On October 28, 2008, MPD issued a “Final Notice of Adverse Action,” advising Grievant that he would be suspended for 20 workdays for the conduct set forth therein.⁸ On November 20, 2008, the Grievant appealed the “Final Notice” to the Chief of Police.⁹ That appeal was subsequently denied and on December 30, 2008, the Union invoked arbitration.¹⁰

On September 30, 2015, MPD raised the issue of the scope of arbitrability. MPD contended that under D.C. Official Code § 5-1114(e),¹¹ the Arbitrator, Lawrence M. Evans, could not hear this matter *de novo* on its merits because all “essential facts” had already been determined by the Complaint Examiner.¹² MPD argued that Section 5-1114(e) established that the Arbitrator was bound by the Complaint Examiner’s “merits determination.”¹³ MPD also contended that public policy compelled this outcome because of the costs incurred in having a complaint examiner conduct an evidentiary hearing.¹⁴ MPD asserted that “[i]t would be inefficient and wasteful to repeat the process again in arbitration, particularly, where, as here, the evidentiary hearing was held 7.5 years ago—now, witnesses might not be available and memories have faded.”¹⁵ MPD requested that the Arbitrator rule on the threshold arbitrability issue prior to the hearing on the merits.¹⁶

The Union opposed MPD’s position, citing to the April 25, 2016 Decision and Award of Arbitrator Donald Wasserman (“referenced herein as the *Wasserman Award*”) in a separate and unrelated case.¹⁷ In the *Wasserman Award*, heard under the same CBA, Wasserman rejected

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ “A merits determination by a complaint examiner, on the basis of an evidentiary hearing, or a later decision of a final review panel, shall be binding on the subject police officer and on the Police Chief in all subsequent proceedings as to the essential facts determined and all violations found.” D.C. Official Code § 5-1114(e).

¹² Award at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.* In his Award, the Arbitrator determined that the *Wasserman Award* was not directly relevant to the matter before him and was therefore not “dispositive of the outcome in the instant case as argued by the Union. *Id.* at 10. The Arbitrator found that the *Wasserman Award* did not analyze D.C. Official Code § 5-1114(e). *Id.* The parties do not dispute this finding and did not submit the *Wasserman Award* as part of the record.

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MPD's argument that the hearing could not be *de novo* and conducted a traditional arbitration hearing.¹⁸

In this case, MPD argued that the *Wasserman* Award was not binding on this matter because (1) in the *Wasserman* Award, the grievant was not given a Departmental hearing; and (2) PERB has held that an arbitrator's decision does not bind another arbitrator, even when the decision is based on the same collective bargaining agreement.¹⁹ The Union countered that there is neither a contractual nor statutory impediment to a *de novo* hearing by the Arbitrator.²⁰ The Union also argued that its position is supported by the parties' CBA, District of Columbia law, and the *Wasserman* Award.²¹

The Arbitrator in the current matter issued an Order to Show Cause, and the parties submitted responses.²² The threshold issue before the Arbitrator in this case was whether the Arbitrator was precluded from conducting a *de novo* hearing in this matter under D.C. Official Code § 5-1114(e) and/or the parties' CBA.^{23,24}

III. The Arbitrator's Award

In an Award dated November 12, 2015, the Arbitrator determined that "there is no statutory or contractual impediment to this case being heard *de novo* by the Arbitrator."²⁵ In particular, the Arbitrator found that Article 19, Part E of the Union's CBA "contains no language, direct or indirect, which limits the Arbitrator to the record developed before MPD's complaint examiner and his/her 'merits determination' where, as here, an adversarial hearing has been held, where the witnesses were subject to cross-examination and where the proceedings were transcribed."²⁶ The Arbitrator went on to state that "[h]ad the parties wanted the arbitrator to function [...] as MPD proposes they would have clearly said so somewhere in Article 19, Part E."²⁷

He noted several specific requirements and limitations enumerated in Article 19, Part E. First, the Arbitrator referred to Section 5, Subsection 1, which provides, in pertinent part, that "the arbitrator shall hear and decide only one grievance on appeal in each case."²⁸ Second, he noted that Section 2, in relevant part, provides that the "parties agree to meet at least once in a

¹⁸ *Id.*; See FMCS Case No. 05-5480 (Opinion and Award, April 25, 2006) (Donald S. Wasserman, Arb.).

¹⁹ Award at 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² *Id.* at 3.

²³ *Id.* The parties did not stipulate to the issues. Under the parties' CBA, Article 19, Part E, Section 2, "If the parties are unable to agree on a joint statement of the issue the arbitrator shall be free to determine the issue." Request, Attachment 2.

²⁴ As MPD requested that Arbitrator Evans bifurcate the proceedings and rule on the threshold arbitrability issue prior to a hearing on the merits, the merits of the case are not discussed in this decision and order.

²⁵ Award at 9.

²⁶ *Id.* at 9.

²⁷ *Id.* at 11.

²⁸ *Id.* at 11 (emphasis added by Arbitrator).

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last attempt at conciliation.” The Arbitrator contended that MPD’s theory “simply makes no sense” that “the parties would meet to conciliate after the complaint examiner had already determined ‘guilt and punishment[.]’”²⁹ Additionally, the Arbitrator noted that Section 5, Subsection 6, in relevant part, provides for the “decision of the arbitrator...”³⁰ Furthermore, the Arbitrator determined that “if [he] were to agree with the position taken by MPD, [he] would be violating Article 19, Part E, Section 5, Subsection 4 which provides that the ‘arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement.’”³¹ The Arbitrator noted that D.C. Official Code § 5-1114(e) was enacted in 1999—five years before the current CBA went into effect, which shows that the parties chose not to incorporate that particular provision of the D.C. Official Code into the parties’ CBA.³²

The Arbitrator was not persuaded by MPD’s argument that D.C. Official Code §5-1114(e) renders a complaint examiner’s merit determinations binding on “all subsequent proceedings, including this arbitration.”³³ In the Arbitrator’s view, the language only applies to all proceedings within the “chain of command of MPD or the District of Columbia, to include the Office of Employee Appeals where it has jurisdiction.”³⁴ Accordingly, the Arbitrator found that the Grievant was entitled to a *de novo* hearing in arbitration.³⁵

IV. Standard of Review

In accordance with the Comprehensive Merit Personnel Act (“CMPA”), the Board is authorized to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.³⁶

V. Discussion

A. Law and Public Policy

MPD argues that the Arbitrator’s Award is contrary to law and public policy.³⁷ Specifically, MPD takes the position that the Arbitrator erred in finding that *de novo* review of merit determinations is permitted. In support of its argument, MPD claims that the Arbitrator’s findings were contradictory to the plain language of D.C. Official Code §§ 5-1114(e) and 5-1111(h), which provide that a merits determination by a complaint examiner may not be rejected

²⁹ *Id.* at 11-12.

³⁰ *Id.* at 12 (emphasis added by Arbitrator).

³¹ *Id.* at 12.

³² *Id.*

³³ *Id.* at 10; D.C. Official Code § 5-1114(e).

³⁴ *Id.* at 10-11.

³⁵ *Id.* at 12.

³⁶ *Fraternal Order of Police D.C. Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 62 D.C. Reg. 12587 (2015), Slip Op. 1531, PERB Case No. 15-A-10 (2015).

³⁷ Request at 3.

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unless they “clearly misapprehend the record” and “shall be binding on the subject police officer” “in all subsequent proceedings.”³⁸ Additionally, MPD points to §§ 5-1114(c) and (d), that instruct the Department to accept a complaint examiner’s merits determination for disciplinary purposes.³⁹ In its Opposition, FOP counters that MPD has failed to present any specific law or public policy that would mandate a different result from that reached by the Arbitrator.⁴⁰

The Board’s scope of review, particularly on the basis of law and public policy, is extremely narrow. “[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy.”⁴¹ The law and public policy question must be “well defined and dominant,” and is to be ascertained “by reference to the law and legal precedents and not from general considerations of supposed public interest.”⁴² Absent a clear violation of law evident on the face of the arbitrator’s award, the Board lacks authority to substitute its judgment for that of the arbitrator.⁴³

D.C. Official Code § 5-1114(e) provides that a “[m]erits determination by a complaint examiner, on the basis of an evidentiary hearing, or a later determination of a final review panel, if any, shall be binding on the subject police officer or officers and on the Police Chief in all subsequent proceedings as to all essential facts determined and all violations found.” In the Arbitrator’s view, this language applies to all proceedings within the exclusive structure and chain of command of MPD and the District of Columbia, to include the Office of Employee Appeals where it has jurisdiction, but that “the section does not state or suggest that it is binding on the Union as exclusive bargaining agent for certain employees under the parties’ CBA.”⁴⁴ The Arbitrator noted, “[w]hat controls the nature and scope of the proceeding before the arbitrator is determined by Article 19, Part E of the parties’ CBA, and not by any provisions of the D.C. Official Code at issue here.”⁴⁵

We find that, under the facts of this case, the Arbitrator’s interpretation is reasonable. Section 5-1114(e) of the D.C. Official code does not state or suggest that it is binding on the Union as the exclusive bargaining agent for certain employees under the parties’ CBA. As noted

³⁸ *Id.* at 4. D.C. Official Code § 5-1111(h) states, in pertinent part: “written findings of fact and determinations by the complainant examiner (collectively, the ‘merits determination’) may not be rejected unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.”

³⁹ Request at 4-5.

⁴⁰ Opposition at 9.

⁴¹ *D.C. Metro. Police Dep’t and Fraternal Order of Police/D.C. Metro. Police Dep’t Labor Comm.*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (quoting *Am. Postal Workers Union, AFL-CIO v. US Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986).

⁴² *D.C. Metro. Police. Dep’t v. Fraternal Order of Police/ D.C. Metro. Police Dep’t Labor Comm.*, 63 D.C. Reg. 4573, Slip Op. 1561, PERB Case No. 14-A-09 (2016); *See Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986).

⁴³ *D.C. Metro. Police. Dep’t*, Slip Op. 1561 at 6.

⁴⁴ Award at 10.

⁴⁵ *Id.* at 11.

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above, that provision only states that a merits determination is binding on the “subject police officer or officers and on the Police Chief.”⁴⁶

We further find it reasonable that there is no language in Article 19 of the parties’ collective bargaining agreement that suggests that the arbitrator accept a complaint examiner’s factual determinations. In Article 19, the CBA states that the arbitrator “shall hear and decide” one grievance on appeal in each case.⁴⁷ The parties are instructed to “meet at least once in a last attempt at conciliation.”⁴⁸ There are no provisions which limit the Arbitrator’s factual determinations to those of the complaint examiner. Accordingly, the Arbitrator reasonably determined that Section 19, Part E of the parties’ collective bargaining agreement and not § 1114(e) of the D.C. Official Code, controls the nature and scope of the arbitration proceedings.

Moreover, the Board has adopted the D.C. Court of Appeals position in other cases involving MPD and FOP that “issues of procedural arbitrability are for the arbitrator to decide.”⁴⁹ This Arbitration Review Request is a disagreement with how that Arbitrator interpreted the CBA and the D.C. Official Code.

In sum, we find persuasive the Arbitrator’s conclusion that the Grievant is entitled to a *de novo* hearing under the facts of this case. Again, the Board stresses that our scope of review is extremely narrow. For MPD to prevail, it has the burden to specify the “applicable law and public policy that mandates that the Arbitrator arrive at a different result.”⁵⁰ In the present case, MPD has failed to meet its burden. Therefore, we cannot find, based on the Arbitrator’s finding and his interpretation of the pertinent statutes that the Award is contrary to law and public policy.

B. *The Arbitrator’s Jurisdiction*

As a second basis for review, MPD argues that the Arbitrator exceeded his authority in finding that Grievant is entitled to a *de novo* review.⁵¹ Specifically, MPD argues that the Arbitrator’s findings contravened the Arbitrator’s authority under § 5-1111(h), which allows the Arbitrator to reject a merits determination by a complaint examiner only if the determination “clearly misapprehend[s] the record before the complaint examiner and [is] not supported by substantial, reliable, and probative evidence in that record.”⁵² In its Opposition, FOP counters that issues of procedural arbitrability, such as whether the Arbitrator could hear this matter *de novo*, are reserved for the exclusive province of Arbitrators to decide.⁵³ FOP also argues that

⁴⁶ D.C. Official Code § 5-1114(e).

⁴⁷ Article 19, Part E, Section 5, Subsection 1.

⁴⁸ Article 19, Part E, Section 2.

⁴⁹ *E.g.*, *DCMPD v. FOP/MPLC*, 61 D.C. Reg. 11609, Slip Op. 1487 at 6, 09-A-05 (2009) (citing *Washington Teachers’ Union v. D.C. Pub. Sch.*, 77 A.3d 441, 446, n.10 (D.C. 2013)).

⁵⁰ *MPD and FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000).

⁵¹ Request at 5.

⁵² *See* n. 35; Request at 5.

⁵³ Opposition at 6-7.

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Article 19, Part E, Section 3 of the parties' CBA "expressly empowers Arbitrator Evans to determine whether a *de novo* review of all factual findings is warranted...."⁵⁴

The test the Board uses to determine whether an Arbitrator has exceeded his jurisdiction and was without authority to render an award is: "whether the Award draws its essence from the collective bargaining agreement."⁵⁵ To determine whether the award "draw its essence" from a collective bargaining agreement, the Board looks to (1) whether the arbitrator acted "outside his authority" by resolving a dispute not committed to arbitration; (2) whether the arbitrator committed fraud, had a conflict of interest or otherwise acted dishonestly in issuing the award; and (3) in resolving any legal or factual disputes in the case, whether the arbitrator arguably construed or applied the contract⁵⁶

The Board has also held that by agreeing to submit a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, for which the parties have bargained.⁵⁷ The Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based."⁵⁸ Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."⁵⁹ A party's disagreement with an arbitrator's interpretation of a provision in the parties' collective bargaining agreement does not mean that the arbitrator exceeded his jurisdiction.⁶⁰ The Board has further stated that this is the case even if the arbitrator misconstrued the contract, for it is the arbitrator's interpretation for which the parties bargained.⁶¹

⁵⁴ *Id.* at 7. See Exhibit 2 at 24. ("If the Department believes the issues is not arbitrable and the Union disagrees or if the agreement cannot be reached on a joint stipulations of the issue, each party shall submit its own statement of the issue to arbitration and the arbitrator will rule on arbitrability as a threshold issue before proceeding to a hearing on the merits.")

⁵⁵ *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.*, (OBO Charles Jacobs), 60 DC Reg. 3060, Slip Op. 1366, PERB Case No. 12-A-04 (2013); See e.g., *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.* (OBO Kenneth Johnson), 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (quoting *D.C. Pub. Schools v. AFSCME, Dst. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)). See also *Dobbs, Inc. v. Local No. 1614, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 813 F.2d 85 (6th Cir. 1987).

⁵⁶ *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on Behalf of Kenneth Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012).

⁵⁷ See *Univ. of the District of Columbia and Univ. of the District of Columbia Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320, PERB Case No. 92-A-04 (1992).

⁵⁸ E.g., *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at p. 3, PERB Case No. 00-A-04 (2000); *D.C. Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. 738 PERB Case No. 02-A-07 (2004).

⁵⁹ *D.C. Dep't of Corr. and Int'l Bhd. of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. 157 at p. 3, PERB Case No. 87-A-02 (1987).

⁶⁰ *D.C. Dept. Pub. Works v. AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. 194, PERB Case No. 87-A-08 (1988).

⁶¹ *UDC v. UDC Faculty Assn.*, 36 D.C. Reg. 3635, Slip Op. 220, PERB Case No. 88-A-03 (1989).

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MPD's argument that *de novo* review is not permitted under D.C. Official Code § 5-1111(h) is merely a disagreement with the Arbitrator's interpretation of the CBA. Neither party disputes that the collective bargaining agreement committed this grievance to arbitration and the Arbitrator was mutually selected by the parties to resolve this dispute. In the current matter, MPD requested that the Arbitrator "rule on arbitrability before proceeding to a hearing on the merits" pursuant to Article 19, Part E of the parties' CBA.⁶² Further, MPD does not cite to any provisions in the CBA that limit the Arbitrator's authority. Contrary to MPD's contentions, § 5-1111(h) does not limit issues of arbitrability. Accordingly, the Board rejects the argument that the Arbitrator exceeded his authority.

VI. Conclusion

For the reasons discussed, the Board finds that the Arbitrator did not exceed his authority in this matter, and the Award is not contrary to law or public policy. Accordingly, no statutory basis exists for setting aside the award; MPD's Request is, therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

- 1. The arbitration review request is hereby denied.**
- 2. Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Members Ann Hoffman and Douglas Warshof.

Washington, D.C.

November 22, 2016

⁶² Exhibit 9.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-03, Op. No. 1604 was sent by File and ServeXpress to the following parties on this the 30th day of November, 2016.

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PERB

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