

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-0312, D.C. Voting Rights Notification Act of 2017
- D.C. Council schedules a public hearing on Bill 22-0594, Student Fair Access to School Act of 2017
- Department of Consumer and Regulatory Affairs (DCRA) publishes a new schedule of fines for DCRA infractions
- Board of Elections relocates the polling place for Precinct 6, Ward 2
- Department of Health establishes regulations for registering a medical marijuana dispensary in Ward 7 and Ward 8
- District Department of Transportation schedules a public hearing on the proposed major service changes to the DC Circulator system
- University of the District of Columbia establishes rules for the University's new Performance Management Program

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

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

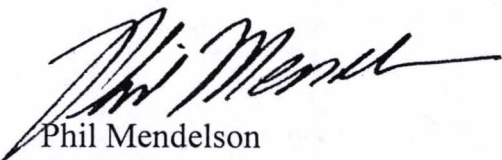
NOTICE

D.C. LAW 22-28

"Unity Health Care, Inc. Certificate of Need Maximum Fee Establishment Temporary Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-384 on first and second readings July 11, 2017, and September 19, 2017, respectively. Following the signature of the Mayor on October 4, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-141 and was published in the October 13, 2017 edition of the D.C. Register (Vol. 64, page 10166). Act 22-141 was transmitted to Congress on October 18, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-141 is now D.C. Law 22-28, effective December 1, 2017.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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

COUNCIL OF THE DISTRICT OF COLUMBIA

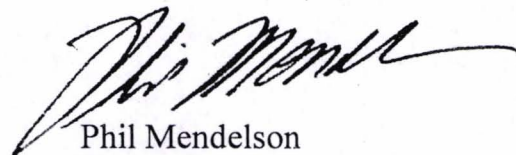
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D.C. LAW 22-29

"Fort Dupont Ice Arena Programming Temporary Amendment Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-389 on first and second readings July 11, 2017, and September 19, 2017, respectively. Following the signature of the Mayor on October 4, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-142 and was published in the October 13, 2017 edition of the D.C. Register (Vol. 64, page 10168). Act 22-142 was transmitted to Congress on October 18, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-142 is now D.C. Law 22-29, effective December 1, 2017.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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

COUNCIL OF THE DISTRICT OF COLUMBIA

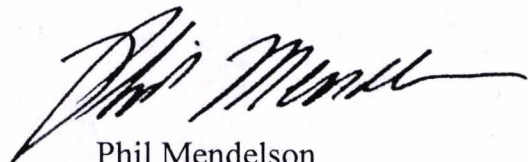
NOTICE

D.C. LAW 22-30

"Voter Rolls Protection Temporary Act of 2017"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-391 on first and second readings July 11, 2017, and September 19, 2017, respectively. Following the signature of the Mayor on October 4, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-143 and was published in the October 13, 2017 edition of the D.C. Register (Vol. 64, page 10170). Act 22-143 was transmitted to Congress on October 18, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-143 is now D.C. Law 22-30, effective December 1, 2017.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-198

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To amend, on a temporary basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to increase the number of consecutive terms a member may serve on the Public Employee Relations Board from 2 terms to 3 terms.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Public Employee Relations Board Term Limit Temporary Amendment Act of 2017”.

Sec. 2. Section 501(h) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-605.01(h)), is amended by striking the phrase “No person shall serve for more than 2 consecutive terms” and inserting the phrase “No person shall serve for more than 3 consecutive terms” in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

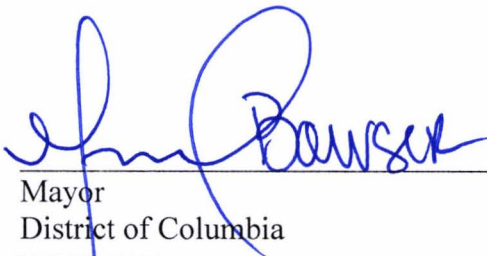
ENROLLED ORIGINAL

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-199

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To amend, on a temporary basis, the Homeless Services Reform Act of 2005 to define the term medical respite services, to require a provider of medical respite services to provide 24-hour notice before a placement will end, and to exempt the provision of medical respite services from certain requirements of the act, including the transfer, suspension, termination, and hearing requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Respite Services Exemption Temporary Amendment Act of 2017".

Sec. 2. The Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-751.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 4-751.01) is amended by adding a new paragraph (26A) to read as follows:

"(26A) "Medical respite services" means limited-time acute and post-acute 24-hour residential care that is provided 7 days a week to eligible individuals who are:

"(A) Homeless; and

"(B) Determined by a qualified medical professional, licensed in the District and regulated by and subject to the grievance processes of the appropriate professional licensing board, to require medical assistance."

(b) Section 19 (D.C. Official Code § 4-754.33) is amended by adding a new subsection (b-2) to read as follows:

"(b-2) All providers of medical respite services shall give to any client receiving medical respite services prompt oral and written notice that the client no longer requires medical respite services and that the placement will end within 24 hours following receipt of the written notice."

(c) A new section 29a is added to read as follows:

"Sec. 29a. Medical respite services; exemptions.

"Medical respite services shall be exempt from the requirements of section 9(a)(15), (16), and (18), and sections 20, 21, 22, 23, 24, 25, 26, and 27."

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-602.02(c)(1)), and publication in the District of Columbia Register.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-200

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To amend, on a temporary basis, the Government Employer-Assisted Housing Amendment Act of 1999 to provide that Employer-Assisted Housing Program participants who settle on the purchase of a housing unit in Fiscal Year 2018 and are not provided funds at the time of settlement in the amounts that they are eligible to receive under the act shall be retroactively compensated by the Department of Housing and Community Development, and to require the department to provide written notice describing the act's provisions to any person who has begun the application process for the program, all program participants, and the community-based organizations charged with the program's implementation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Government Employer-Assisted Housing Temporary Amendment Act of 2017".

Sec. 2. Section 4 of the Government Employer-Assisted Housing Amendment Act of 1999, effective May 9, 2000 (D.C. Law 13-96; D.C. Official Code § 42-2503), is amended by adding new subsections (e) and (f) to read as follows:

"(e)(1) Subject to the availability of funds, if, at the time of a Participant's settlement in Fiscal Year 2018, the Department does not provide the Participant all of the matching contributions under section 5(b), or, if the Participant is a first responder, all of the matching contributions under section 5(b-1) and a grant of up to \$10,000 under section 6a, which the Participant was eligible to receive under this act at the time of settlement, the Department shall compensate the Participant retroactively after settlement in the amount that the Participant should have received but did not receive.

"(2) This subsection shall apply as of October 1, 2017.

"(f) Within 5 days after the effective date of the Government Employer-Assisted Housing Emergency Amendment Act of 2017, passed on emergency basis on November 7, 2017 (Enrolled version of Bill 22-562), the Department shall provide written notice describing the provisions of this act to any person who has begun the application process for the Program, all Participants, and the community-based organizations charged with the Program's implementation."

ENROLLED ORIGINAL


Sec. 3. Fiscal impact statement.

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

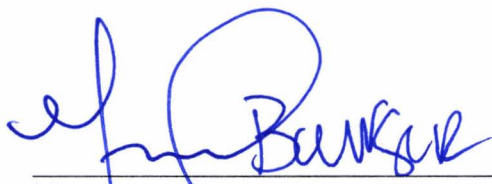
Sec. 4. Effective date.

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-201

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To amend, on a temporary basis, Chapter 46 of Title 47 of the District of Columbia Official Code to exempt Business Improvement Districts from certain taxation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Business Improvement Districts Tax Exemption Temporary Amendment Act of 2017".

Sec. 2. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

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

"47-4666. BID corporation – tax exemptions."

(b) A new section 47-4666 is added to read as follows:

"§ 47-4666. BID corporation – tax exemptions.

"(a)(1) Except as provided in subsection (b) of this section, a BID corporation, as defined in section 3(4) of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.02(4)), its real and personal property, income, and transactions, shall be exempt from District taxation, including, without limitation, sales, use, franchise, gross sales or receipts, income, personal or real property, transfer, or excise taxes.

"(2) A BID shall obtain a certificate of exemption from the Mayor, as required by law or regulation.

"(b) A BID corporation shall not be exempt from employment or withholding taxes.

"(c) The Council orders that all unpaid taxes described in subsection (a)(1) of this section, including any interest, penalties, fees, and other related charges assessed from May 29, 1996, through the effective date of this section be forgiven."

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

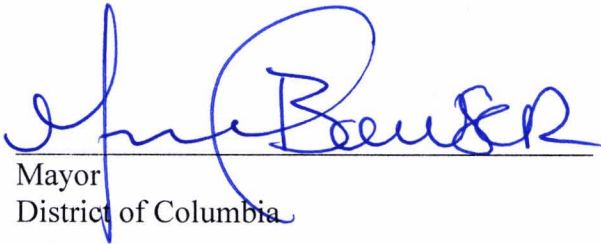
Sec. 4. Effective date.

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-202

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To approve, on an emergency basis, Modification Nos. 0004 and 0005 to Contract No. CW40572 with Centric Group, LLC dba Keefe Supply Company to provide the Department of Corrections with commissary services for inmates, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Contract No. CW40572 with Centric Group, LLC Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 0004 and 0005 to Contract No. CW40572 with Centric Group, LLC dba Keefe Supply Company to provide the Department of Corrections with commissary services for inmates, and authorizes payment in the not-to-exceed amount of \$1,300,000 for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

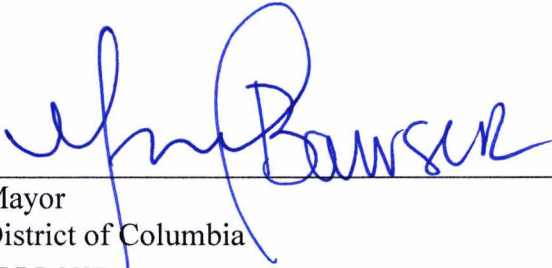
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT
D.C. ACT 22-203

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 7, 2017

To prohibit, on a temporary basis, buses from operating or parking on certain streets near Southwest Waterfront Park.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Southwest Waterfront Park Bus Prohibition Temporary Act of 2017”.

Sec. 2. (a) No person shall operate or park a bus, as that term is defined in 24 DCMR § 3599.1, on:

(1) The streets within or adjacent to Lots 90, 880, 881, 882, 922, 923, or 924 in Square 473, including Water Street, S.W., and M Place, S.W., except the portions of Maine Avenue, S.W., and M Street, S.W., within or adjacent to Lots 90, 880, 881, 882, 922, 923, or 924 in Square 473; or

(2) The portion of Sixth Street, S.W., that is south of M Street, S.W.

(b)(1) Any entity listed in 18 DCMR § 3002.1 or 3003.1 may issue a notice of infraction for a violation of subsection (a) of this section.

(2) A person who violates subsection (a) of this section shall be fined \$150.

(3) A notice of infraction issued pursuant to this section shall be adjudicated pursuant to the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.01 *et seq.*).

Sec. 3. Fiscal impact statement.

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


Sec. 4. Effective date.

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

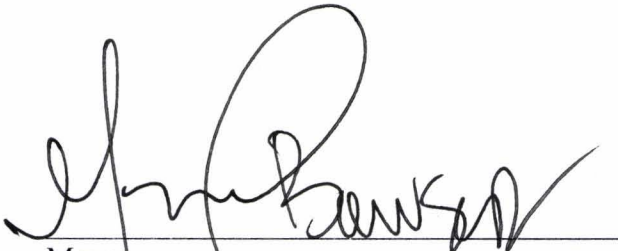
ENROLLED ORIGINAL

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
December 7, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-204

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 13, 2017

To amend, on an emergency basis, the Procurement Practices Reform Act of 2010 to exempt the Department of Health Care Finance's procurement of services for the management and operation of the United Medical Center from the requirements of the act, with certain enumerated exceptions; and to amend the Small and Certified Business Enterprise Development and Assistance Act of 2005 to authorize the Director of the Department of Health Care Finance to waive subcontracting requirements for government-assisted projects in excess of \$250,000 for a procurement to manage and operate the United Medical Center.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Health Care Finance Independent Procurement Authority Emergency Amendment Act of 2017".

Sec. 2. Section 105(c) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.05(c)), is amended as follows:

(a) Paragraph (18) is amended by striking the word "and" at the end.

(b) Paragraph (19) is amended by striking the period at the end and inserting the phrase "and" in its place.

(c) A new paragraph (20) is added to read as follows:

"(20) The procurement of services by the Department of Health Care Finance ("Department") for the management and operation of the United Medical Center; provided, that:

"(A) The procurement is conducted through a competitive process, as determined by the Department, producing not less than 2 responsive proposals; and

"(B) Sections 202, 401a, 415, and Title X of this act shall apply."

Sec. 3. Section 2351 of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.51), is amended by adding a new subsection (c) to read as follows:

"(c) Notwithstanding subsections (a), (a-1), and (b) of this section, the subcontracting requirements of section 2346 may be waived by the Director of the Department of Health Care Finance for a procurement solicited pursuant to section 105(c)(20) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.05(c)(20))."

ENROLLED ORIGINAL

Sec. 4. Applicability.

This act shall apply as of November 22, 2017.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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



Chairman
Council of the District of Columbia

~~UNSIGNED~~

Mayor
District of Columbia
December 7, 2017

ENROLLED ORIGINAL

A RESOLUTION

22-298

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To declare the existence of an emergency with respect to the need to approve the transfer of jurisdiction of U.S. Reservation 724 (Lots 896 and 897 in Square 620) from the United States of America, acting by and through the Department of the Interior, National Park Service, to the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Transfer of Jurisdiction of U.S. Reservation 724 (Lots 896 and 897 in Square 620) Emergency Declaration Resolution of 2017”.

Sec. 2. (a) The United States proposes to transfer administrative jurisdiction of approximately 15,608 square feet of land area that is located approximately 30 feet to the east of the northeast corner of the intersection of First Street, N.W. and L Street, N.W. (Lot 896, Square 620) and approximately 2,925 square feet of land area that occupies a 30-foot segment of the former First Street right of way (Lot 897, Square 620), known collectively as U.S. Reservation 724 (Lots 896 and 897 in Square 620) to the District of Columbia to facilitate the improvement of park space and pedestrian circulation along First Street, N.W.

(b) The transfer of administrative jurisdiction of Lots 896 and 897 in Square 620 will support the redevelopment of Sursum Corda, a tenant-owned, low-income housing cooperative located along First Street, N.W., between L Street, N.W. and M Street, N.W.

(c) The Sursum Corda Cooperative has been trying to update and renovate its homes for many years. The planned redevelopment will create 199 affordable-housing units, with a replacement unit reserved for each of the 136 current Sursum Corda residents. A neighborhood along North Capitol Street’s main thoroughfare will also be redeveloped to welcome new residents and amenities while keeping in place those who have lived there for decades.

(d) The approved first-stage planned unit development application calls for the creation of approximately 1,269,165 square feet of residential use, generating approximately 1,100 dwelling units and approximately 49,420 square feet of non-residential uses in a mixed-income, mixed-use development in 2 phases.

(e) In October 2016, the Council of the District of Columbia approved the Omnibus Sursum Corda Development Act of 2016, effective December 8, 2016 (D.C. Law 21-173; 63 DCR 13351), which closed certain streets and authorized the surplus and disposition of 2 District-owned lots in support of the Sursum Corda Cooperative redevelopment.

ENROLLED ORIGINAL

(f) Emergency legislation is necessary to expeditiously approve the transfer of administrative jurisdiction of Lots 896 and 897 from the United States to the District of Columbia as the beginning of the redevelopment of Sursum Corda Cooperative is imminent after years of delay.

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 Transfer of Jurisdiction of U.S. Reservation 724 (Lots 896 and 897 in Square 620) Emergency Approval Resolution of 2017 be approved on an emergency basis.

Sec. 4. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-299

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To approve, on an emergency basis, the transfer of jurisdiction of U.S. Reservation 724 (Lots 896 and 897 in Square 620) from the United States of America, acting by and through the Department of the Interior, National Park Service, to the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Transfer of Jurisdiction of U.S. Reservation 724 (Lots 896 and 897 in Square 620) Emergency Approval Resolution of 2017”.

Sec. 2. (a) Pursuant to section 1 of An Act To authorize the transfer of public land in the District of Columbia, approved May 20, 1932 (47 Stat. 161; D.C. Official Code § 10-111), the Council of the District of Columbia approves the transfer of jurisdiction of approximately 15,608 square feet of land area that is located approximately 30 feet to the east of the northeast corner of the intersection of First Street, N.W. and L Street, N.W. (Lot 896, Square 620) and approximately 2,925 square feet of land area that occupies a 30-foot segment of the former First Street right of way (Lot 897, Square 620), known collectively as U.S. Reservation 724 (Lots 896 and 897 in Square 620), and as further identified on the Plat of Transfer of Jurisdiction on A&T Lots 896 & 897, Square 620 map submitted to the Council by the Mayor with the proposed resolution on November 3, 2017 (“parcel”), from the United States, acting by and through the Department of the Interior, National Park Service, to the District of Columbia.

(b) This approval is subject to the following restrictions:

- (1) Lot 896 will continue to be used for recreational purposes.
- (2) Lot 897 will continue to be used for pedestrian circulation; except, that Lot 897 may be designated with a typical District Department of Transportation sidewalk section.
- (3) Only administrative jurisdiction of the parcel is hereby transferred and the title to the parcel remains vested in the United States of America.

(4)(A) The District of Columbia shall not transfer administrative jurisdiction of the parcel without the prior written approval of the National Park Service.

(B) The National Park Service shall concur or object in writing 45 days after the receipt of any proposed transfer.

(c)(1) If, in the opinion of the National Park Service, facts or circumstances arise that appear to be a material violation of any restriction, the National Park Service shall promptly so notify the District in writing.

ENROLLED ORIGINAL

(2) The National Park Service and the District shall then use diligent good-faith efforts to reach agreement regarding what, if any, corrective actions are necessary and a schedule for completing such corrective actions.

(3) The District shall initiate corrective action within 120 days of the notice of violation.

(d) Nothing in this resolution shall be construed as binding the United States or the District to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose or to involve the United States or the District in any contract or other obligation for a further expenditure of money in excess of such appropriations, as prohibited by 31 U.S.C. § 1341(a)(1). In addition, all obligations of the District provided in this resolution shall be subject to the limitations set forth in applicable federal law, D.C. Official Code § 47-105, D.C. Official Code §§ 47-355.01 *et seq.* (as the foregoing statutes may be amended from time to time), and section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46).

(e) The restrictions contained in this resolution shall bind the National Park Service and the District and their assigns.

(f) The National Park Service and the District have the right specifically to enforce the restrictions set forth in this resolution.

(g) This resolution is not intended to confer upon any entity other than the National Park Service and the District and their assigns any rights or remedies provided pursuant to this resolution.

Sec. 3. Transmittal.

The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Surveyor of the District of Columbia, the Director of the National Capital Planning Commission, the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, the Director of the National Parks Service, and the Regional Director of the National Capital Parks, National Service.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-308

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 21, 2017

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$8 million of District of Columbia refunding revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist The Thomas B. Fordham Foundation, Inc., in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Thomas B. Fordham Foundation, Inc., Refunding Revenue Bonds Project Approval Resolution of 2017”.

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 of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be The Thomas B. Fordham Foundation, Inc., a nonprofit educational institution, organized and existing 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), which is liable for repayment of the Bonds.

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

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

(7) “District” means the District of Columbia.

ENROLLED ORIGINAL

(8) "Financing Documents" means the documents other than Closing Documents that relate to the financing, refinancing, or reimbursement 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 the Borrower for all or a portion of the Borrower's costs (including payments of principal of, and interest and premium, if any, on, the bonds to be refunded) incurred in connection with:

(A) The acquisition, construction, furnishing, and equipping of 2 floors of an office condominium consisting of approximately 9,000 square feet located at 1016 16th Street, N.W., Washington D.C. 20036 ("Facility") and used by the Borrower as its headquarter offices and the costs to acquire, construct, furnish, and equip the Facility that were financed and refinanced by the \$6.3 million District of Columbia Variable Rate Revenue Bonds (The Thomas B. Fordham Foundation Issue) Series 2007.

(B) Issuance Costs; and

(C) Certain expenditures associated therewith to the extent financeable, including, without limitation, capitalized interest and contingency reserves.

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 affect 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.

ENROLLED ORIGINAL

(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 \$8 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 that contributes to the education and welfare of the residents of the District 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 \$8 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 and each Authorized Delegate 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;

ENROLLED ORIGINAL

(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, if any, 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.

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.

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(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 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.

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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 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 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.

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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, as amended, 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

22-309

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 21, 2017

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$25 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 Resources for the Future, Inc., 1616 P LandCo, LLC, and 1616 P OpCo, LLC, 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 "Resources for the Future, Inc. Revenue Bonds Project Approval Resolution of 2017".

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 leasehold owner, operator, manager, and user of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be, individually or collectively, as the context may require:

(A) Resources for the Future, Inc., a nonprofit corporation organized under the laws of the State of New York ("RFF"), 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);

(B) 1616 P LandCo, LLC, a District of Columbia limited liability company, of which RFF is the sole member; and

(C) 1616 P OpCo, LLC, a District of Columbia limited liability company, of which RFF is the sole member.

(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.

(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) Refinancing all or a portion of the outstanding principal amount of the District's \$8.2 million original principal amount variable-rate revenue bonds (Resources for the Future, Inc., Project) ("Series 1998 Bonds"), the proceeds of which were used by RFF in connection with the acquisition and renovation of a portion of an approximately 72,000 square foot office building, including the parking facility and the shared heating/cooling facility, located at 1616 P Street, N.W., Washington, D.C. ("Building") and certain costs associated with issuing the Series 1998 Bonds;

(B) The acquisition of a fee simple interest in the land on which the Building is located;

(C) Upgrades to facility improvements, including, but not limited to, the shared central heating and the ventilation and air conditioning system;

(D) Certain capital expenditures related to the renovation of the Building, including, but not limited to, renovations of space to be leased to certain charitable, tax-exempt section 501(c)(3) organizations with charitable purposes that contribute importantly to RFF's section 501(c)(3) purposes;

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

(F) Certain working capital and other expenditures associated with the foregoing to the extent financeable, including, without limitation, allowable costs of issuing the Bonds.

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 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 \$25 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 that 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 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 \$25 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;
- (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.

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.

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

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

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

Sec. 11. District officials.

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

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

Sec.12. Maintenance of documents.

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

Sec.13. Information reporting.

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

Sec. 14. Disclaimer.

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

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

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

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

22-336

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the sense of the Council that the Council commits to working with the Executive to meet the goals of the Paris Agreement and that the District should join coalitions of other cities and states within the United States working to meet the goals of the Paris Agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council Regarding the Paris Agreement on Climate Change Resolution of 2017”.

Sec. 2. The Council finds that:

(1) The occurrence of global warming and climate change due to human activities, in particular the burning of fossil fuels for energy, is a scientifically-accepted fact and presents a significant threat to the health and well-being of District residents.

(2) The District has committed in the Sustainable DC Plan to reducing carbon emissions 50% by 2032 and 80% by 2050 from 2006 levels, and has developed both a comprehensive energy plan, the Clean Energy DC plan, and a climate adaptation plan, the Climate Ready DC plan. The District has also committed to a renewable portfolio standard requiring 50% renewable energy, established a Sustainable Energy Utility, entered into one of the largest municipal onsite solar projects in the country, and completed one of the largest municipal wind power agreement deals.

(3) In December 2015, the United States signed the Paris Agreement within the United Nations Framework Convention on Climate Change, which committed its 197 signatories to keeping the increase in the global average temperature below 2 degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius.

(4) As part of the Paris Agreement, the signatories also pledged to contribute funds to the Green Climate Fund, which supports green energy investment in developing countries, with a goal of raising \$100 billion per year by 2020. The United States pledged to contribute \$3 billion, of which \$1 billion was paid shortly before President Obama left office.

(5) Adhering to the greenhouse gas reduction goals of the Paris Agreement would produce jobs, improve the economy, and protect the environment.

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(6) Since January 20, 2017, the federal government has taken steps to suppress and call into question established principles of climate science and to roll back existing federal measures intended to mitigate the effects of climate change.

(7) On June 1, 2017, President Donald Trump announced that the United States will withdraw from the Paris Agreement.

(8) The federal government's actions since January 20, 2017, and President Trump's decision to withdraw from the Paris Agreement put District residents at greater risk of job loss, public health crises, unpredictable severe weather, flooding, and other natural disasters as a result of climate change.

(9) On June 1, 2017, Mayor Muriel Bowser issued a statement committing to continue working with other cities and countries to meet the goals of the Paris Agreement, and, on June 5, 2017, Mayor Bowser issued an Executive Order binding the District to the Paris Agreement.

Sec. 3. It is the sense of the Council that:

(1) The Council commits to working with the Executive to ensure that the District meets the commitments in the Paris Agreement.

(2) The District should join coalitions of other cities and states within the United States, including the recently announced United States Climate Alliance, that are working together to meet the goals of the Paris Agreement, including the United States' pledge to contribute to the Green Climate Fund.

Sec. 4. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor, the City Administrator, and the Director of the Department of Energy and Environment.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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A RESOLUTION

22-339

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

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, 2019, 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, 2019, 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 2019 Budget Submission Requirements Resolution of 2017”.

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 March 21, 2018, 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, 2019.

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 and a table showing the proposed budget and financial plan, to include the following:

(i) Actual revenues and expenditures for Fiscal Year 2016, actual revenues and expenditures for Fiscal Year 2017, projected revenues and expenditures for the Fiscal Year 2018 approved and revised budgets, projected revenues and expenditures for the Fiscal Year 2019 proposed budget, and projected revenues and expenditures for Fiscal Years 2020 through 2022;

(ii) Revenues by source (local, dedicated tax, special purpose, federal, and private); and

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(iii) Expenditures by appropriation title;

(B) A detailed explanation of the revenue assumptions used for the proposed budget and financial plan to include the following for each dedicated tax and special purpose fund:

- (i) Actual Fiscal Year 2016 revenue;
- (ii) Fiscal Year 2016 end-of-year fund balance;
- (iii) Actual Fiscal Year 2017 revenue;
- (iv) Fiscal Year 2017 end-of-year fund balance; and
- (v) Certified revenues for Fiscal Years 2018 through 2022;

(C) For each agency or separate Organizational Level I line item in the District’s annual budget:

(i) The following information shall be provided in table format for Fiscal Year 2016 actual, Fiscal Year 2017 actual, the Fiscal Year 2018 approved budget, and the Fiscal Year 2019 proposed budget:

- (I) Total operating budget and full-time equivalents (“FTEs”);
- (II) Amount of funding and FTEs by revenue source (local, dedicated tax, special purpose, federal, private, and intra-district);
- (III) Expenditures by Comptroller Source Group (“CSG”);
- (IV) Expenditures and FTEs by Program (Organizational Level II) and Activity (Organizational Level III); and
- (V) Itemized changes, by revenue type, between the Fiscal Year 2018 approved budget and the Fiscal Year 2019 proposed budget;

(ii) The following information shall be provided in narrative form:

- (I) A description of each Program and Activity that explains the purpose and services to be provided; and
- (II) An explanation of each proposed programmatic change and its corresponding budget amount by Program, Activity, CSG, and fund type, disaggregated for any change more than \$50,000;

(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;

(C) A summary table showing the projected enrollment and local budget of each public charter school;

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(D) A summary table showing the projected enrollment and budget, by fund type, of each District of Columbia public school; and

(E) 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.

(4) A Capital Improvements Plan ("CIP") for Fiscal Years 2019 through 2024 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 2019 through 2024. 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 2019 spending plan that identifies the specific District assets that will be improved with the proposed budget; provided, that spending of more than \$5 million on a specific asset shall be budgeted in a separate project;

(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;

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(xv) The estimated impact that the project will have on the annual operating budget; and

(xvi) Projected dates and actual dates where applicable for project environmental approvals, design start, design complete, construction start, construction complete, and closeout that are consistent with the budget request;

(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 2019 through 2024, with actual expenditures for Fiscal Year 2017 and the approved plan for Fiscal Year 2018;

(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, 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 2019, including the proposed Fiscal Year 2019 Local Budget Act of 2018, proposed Fiscal Year 2019 Federal Portion Budget Request Act of 2018, and any other legislation that is necessary for implementation of the proposed budget for the District for Fiscal Year 2019;

(B) The proposed Housing Production Trust Fund budget and the projected cash flow to include actual Fiscal Year 2016 revenue and expenditures, Fiscal Year 2016 end-of-year fund balance, Fiscal Year 2017 revenue and expenditures, Fiscal Year 2017 end-of-year fund balance, certified revenues for Fiscal Years 2018 through Fiscal Year 2022, and planned expenditures for Fiscal Years 2018 through Fiscal Year 2022. This shall include the total amount of loan repayments due to the Housing Production Trust Fund, and the total amount paid, as of September 30, 2017, and the total amount of loans due, and paid, as of December 31, 2017.

(C) 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:

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- (i) Actual amounts for Fiscal Year 2016;
- (ii) Actual amounts for Fiscal Year 2017;
- (iii) Approved amounts for Fiscal Year 2018; and
- (iv) Proposed amounts for Fiscal Year 2019;

(D) A table of all intra-district funds included in the Fiscal Year 2019 budget, including the receiving and transmitting agency, and whether there is a signed Memorandum of Understanding for each intra-district funding arrangement;

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

(F) 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;

(G) A crosswalk, for any agency that has undergone a budget restructuring in Fiscal Year 2018 or which would undergo a proposed budget restructuring in Fiscal Year 2019, that shows the agency’s allocations before the restructuring under the new or proposed structure;

(H) A table showing each agency’s actual fringe rate and amount for Fiscal Years 2016 and 2017, the approved rate and amount for Fiscal Year 2018, and the proposed rate and amount for Fiscal Year 2019;

(I) 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;

(J) Copies of all agency operating, capital, FTE, and programmatic budget enhancement requests, including the “Form B” for all agencies, and any similar documentation describing in detail agencies’ budget needs or requests, consistent with D.C. Official Code § 47-318.05a; and

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

- (I) Identify each fee collected by a District agency;
- (II) Include the amount collected from each fee;
- (III) Identify the agency collecting the fee;
- (IV) Identify into which fund or special purpose revenue
- (V) Include information on whether the fee can be paid
- (VI) Identify the legislation, statute, or regulation
- (VII) Be published online in a spreadsheet format.

fund the fee is deposited;

online;

authorizing the fee; and

finances and other charges.

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

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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, 2018, all performance accountability reports for Fiscal Year 2017 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)(K), 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

22-343

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to dispose of the District-owned real property located at 33-35 Riggs Road, N.E., known for tax and assessment purposes as Lots 802 and 806 in Square 3702, and commonly known as the Keene School.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Keene School Disposition Emergency Declaration Resolution of 2017”.

Sec. 2.(a) There exists an immediate need to dispose of District-owned real property located at 33-35 Riggs Road N.E., known for tax and assessment purposes as Lots 802 and 806 in Square 3702 (“Property”).

(b) The Property consists of land and improvements, including a school building, which is commonly known as the Keene School.

(c) The District has not used the Property as a District of Columbia public school since 2009.

(d) The Property is surplus to the District’s needs, and the District has identified a charter school tenant for the Property through a competitive solicitation. The proposed charter school tenant is DC Bilingual Public Charter School.

(e) This matter requires immediate action by the Council because DC Bilingual Public Charter School needs to close on its construction financing by the end of December in order to enter into contracts for long-lead items and commence construction on the Property to meet its construction schedule.

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 Keene School Disposition Approval Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

22-346

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$7 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 American Association of Collegiate Registrars and Admissions Officers 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 “American Association of Collegiate Registrars and Admissions Officers Revenue Bonds Project Emergency Approval Resolution of 2017”.

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 American Association of Collegiate Registrars and Admissions Officers, 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 is liable for the repayment of the Bonds.

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

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

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

(A) The acquisition of one or more commercial office condominium units (comprised of approximately 9,407 square feet above grade), with an interest in the associated land and other common elements (collectively, "Condominium Units"), located at 1108 16th Street, N.W., Washington, D.C. ("Building");

(B) The renovations and improvements to the Condominium Units;

(C) The purchase of certain equipment and furnishings, all located at the Building, together with other property, real and personal, functionally related and subordinate thereto;

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

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

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

Sec. 3. Findings.

The Council finds that:

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(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 \$7 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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

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

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

Sec. 4. Bond authorization.

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

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$7 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.

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

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

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

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

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

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

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

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

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

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

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

Sec. 8. Financing and Closing Documents.

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

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

(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

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Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

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

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

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

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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 not rely upon the District with respect to these matters.

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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.

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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 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. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

22-348

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$53 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 Center for Strategic and International Studies, Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Center for Strategic and International Studies, Inc. Revenue Bonds Project Emergency Approval Resolution of 2017”.

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 the Center for Strategic and International Studies, Inc., a Delaware nonprofit corporation organized under the laws of the state of Delaware, 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), and is liable for repayment of the Bonds.

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

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

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

(A) Refunding the District of Columbia Revenue Bonds (Center for Strategic and International Studies, Inc. Issue), Series 2011, originally issued in the aggregate principal amount of \$44,815,000, pursuant to provisions of the Revised Center for Strategic and International Studies, Inc. Revenue Bonds Project Approval Resolution of 2011, effective May 3, 2011 (Res. 19-101; 58 DCR 4115);

(B) Funding any credit enhancement costs, liquidity costs or debt service reserve fund relating to the Bonds; and

(C) Paying cost of issuance and other related costs to the extent permissible relating to the Bonds.

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

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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 \$53 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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

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

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

Sec. 4. Bond authorization.

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

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$53 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.

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

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

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

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

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

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

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

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

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

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

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

Sec. 8. Financing and Closing Documents.

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

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

(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

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Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

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

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

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

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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 not rely upon the District with respect to these matters.

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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.

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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 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. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-350

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$25 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 Sidwell Friends 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 “Sidwell Friends School Revenue Bonds Project Emergency Approval Resolution of 2017”.

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 Sidwell Friends 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 is liable for the repayment of the Bonds.

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

(6) “Closing Documents” means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan, 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, refinancing or reimbursement 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, rehabilitation, and renovation of 3720 Upton Street, N.W. in Washington, D.C. (Lot 0818, Square 1825), including land and an existing building ("Upton Facility") for school use;

(B) The rehabilitation and renovation of the Borrower's main campus located at 3825 Wisconsin Avenue, N.W. in Washington, D.C. (Lot 0816, Square 1825) ("Main Campus Facility," and together with the Upton Facility, "Facility");

(C) The purchase of certain equipment and furnishings, together with other property, real and personal, functionally related and subordinate to the Facility;

(D) Funding certain expenditures associated with the financing of the Facility, to the extent permissible, including, credit enhancement costs, liquidity costs, debt service reserve fund or working capital; and

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

Sec. 3. Findings.

The Council finds that:

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(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 affect 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 \$25 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Facility 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 \$25 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,

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determinations of:

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

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

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

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

(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.

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

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

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

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

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

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

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shall be approved, as to form and content, by the Mayor.

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

(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.

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

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

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

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that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

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

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. § 147(f)), as amended, 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 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. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

22-352

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$55 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 the National Academy of Sciences and NAS Title Holding, LLC, 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 “National Academy of Sciences Revenue Bonds Emergency Project Approval Resolution of 2017”.

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 of the assets refinanced with proceeds from the Loan, which shall be NAS Title Holding, LLC, a limited liability company, organized and existing under the laws of the State of Maryland, the sole member of which is the National Academy of Sciences, which is exempt from federal income taxes under 26 U.S.C. § Section 501(a) as an organization described in 26 U.S.C. § 501(c)(3), and is liable for repayment of the Loan.

(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.

(7) “District” means the District of Columbia.

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(8) "Financing Documents" means the documents other than Closing Documents that relate to the financing, refinancing, or reimbursement 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 to the Borrower of the proceeds from the sale, in one or more series, of the Bonds.

(12) "Project" means the following items, the cost of which are financed, refinanced, or reimbursed with proceeds of the Bonds:

(A) The advance refunding of the District's Fixed Rate Revenue Bonds (National Academy of Sciences Project) Series 2010A ("Refunded Bonds"), which Refunded Bonds were issued for the restoration, renovation, equipping and furnishing of a portion of a facility located at 2101 Constitution Avenue, N.W., Washington, D.C. 20418 ("Facility"), comprising a building of approximately 110,000 square feet above grade and associated below-grade facilities and other adjacent or reasonably proximate property;

(B) Issuance Costs; and

(C) Certain expenditures associated with the Bonds and their issuance to the extent financeable, including, without limitation, capitalized interest and contingency reserves.

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 affect 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.

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(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 \$55 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 that contributes to the education and welfare of the residents of the District 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 \$55 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 and each Authorized Delegate 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;

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(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, if any, 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.

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

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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 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 said executed Financing Documents and said executed Closing Documents.

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(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 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

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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 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.

ENROLLED ORIGINAL**Sec. 16. Severability.**

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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 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. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-354

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$50 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 Provident Group – Howard Center, Inc. and Provident Group – Howard Center, LLC, or either of them, 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 “Howard Center Revenue Bonds Project Emergency Approval Resolution of 2017”.

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 Provident Group – Howard Center, Inc., a nonprofit corporation organized and existing 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), or Provident Group – Howard Center, LLC, a limited liability company organized and existing under the laws of the District of Columbia, 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) "Main Campus" means the Main Campus, which has an official mailing address of 2400 6th Street, N.W., Washington, D.C. 20059. The boundaries for the Main Campus are as follows: beginning at Georgia Avenue and Gresham Place, the boundary line runs east to the western edge of 511 Gresham Place, north to Hobart Place, and continues east to 5th Street. Here it turns south continuing along 5th Street, past 4th Street and Howard Place to the northern edge of a quadrangle of dormitories located on 4th Street and runs behind the dorms until it reaches Bryant Street. The boundary line continues west to 4th Street then runs south to W Street and then west to the church at 5th and W Streets. It continues south along the church property to the alley paralleling V Street. From this point it runs east to 4th Street. After running south on 4th Street, to Oakdale Street, it runs west to vacant lots that face 4th Street and then south along the rear of those properties to the middle of the block. At mid-block, it turns west to 5th Street and then south past Elm Street to the alley beyond the Howard University Hospital site. It turns west for approximately 160 feet and then south to U Street. Here it turns west down U Street to Bohrer Street. At this intersection, it continues northwest to Georgia Avenue. The boundary line continues north on Georgia Avenue to V Street. Here it turns west and runs to 8th

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Street. It continues north on 8th Street for approximately 520 feet, and then westward across 9th Street to Florida Avenue. The boundary follows Florida Avenue, N.W. to Sherman Avenue and Barry Place. Here it turns east again and runs out Barry Place to Georgia Avenue. The boundary line then runs north to Gresham Place. Included in the boundaries are several satellite properties: The John Burr Gymnasium at 6th and Girard Streets, N.W.; the School of Business at 2600 6th Street, N.W.; the Alain Locke Hall at 2500 4th Street, N.W.; the Power Plant at 2240 6th Street, N.W.; and the Howard University Hospital at 2041 Georgia Avenue, N.W.

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

(A) The acquisition from Howard University of long term leasehold interests in the site located at 2225 Georgia Avenue, N.W., Washington, D.C., comprising approximately 19,769 square feet of land ("Site"), and the use of the acquisition price by Howard University to finance a portion of its capital plan with respect to the facilities on its Main Campus;

(B) The renovation of the existing approximately 90,157 square feet building located on the Site into a mix of:

- (i) Approximately 165 dormitory and housing units; and
- (ii) Functional meeting and event space to be utilized by Howard

University;

(C) The purchase of certain equipment and furnishings, all located at the Site, together with other property, real and personal, functionally related and subordinate thereto;

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

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

(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 \$50 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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(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 a facility used in connection with educational purposes 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 \$50 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 and each Authorized Delegate 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;

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(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.

Sec. 6. Sale of the Bonds.

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(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 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.

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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 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.

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(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 not rely upon the District with respect to these matters.

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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 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. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

22-356

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To authorize and provide for, on an emergency basis, the issuance, sale, and delivery in an aggregate principal amount not to exceed \$121 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 National Community Reinvestment Coalition, Inc., in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “National Community Reinvestment Coalition Revenue Bonds Emergency Project Approval Resolution of 2017”.

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 of the assets refinanced by the Loan, which shall be National Community Reinvestment Coalition, Inc., a nonprofit corporation organized and existing 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), which is liable for repayment of the Loan.

(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.

(7) “District” means the District of Columbia.

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(8) "Financing Documents" means the documents other than Closing Documents that relate to the financing, refinancing or reimbursement 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 to the Borrower of the proceeds from the sale, in one or more series, of the Bonds.

(12) "Project" means:

(A) The refinancing by the Loan of the outstanding taxable debt of the Borrower that was incurred by the Borrower to finance:

(i) The acquisition, construction, furnishing, and equipping of 727 15th Street, N.W., Washington, D.C. 20005 (Lot 20, Square 222), a 12-floor, 36-unit office building with a total area of approximately 40,240 square feet; and

(ii) The acquisition, construction, furnishing, and equipping of 740 15th Street, N.W., Washington, D.C. 20005 (Lot 37, Square 221), an 11-floor, 22-unit office building with a total area of approximately 175,508 square feet;

(B) The payment of Issuance Costs for the Bonds; and

(C) The payment of certain expenditures associated with the Bonds and their issuance to the extent financeable, including, without limitation, capitalized interest and contingency reserves.

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 affect the financing, refinancing, or reimbursement by loans

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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 \$121 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 that contributes to the economic development of the District 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 of tax exempt and/or taxable obligations not to exceed \$121 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 and each Authorized Delegate 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;

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(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, if any, 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.

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

ENROLLED ORIGINAL

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 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 said executed Financing Documents and said executed Closing Documents.

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(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 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

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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 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.

ENROLLED ORIGINAL**Sec. 16. Severability.**

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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 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. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

22-362

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To declare the existence of an emergency with respect to authorizing and providing for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$150 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 the KIPP D.C. Public Charter Schools, formerly known as KIPP DC, 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 “KIPP DC Revenue Bonds Project Emergency Declaration Resolution of 2017”.

Sec. 2. The Council finds that:

(1) The KIPP D.C. Public Charter Schools, formerly known as KIPP DC, (“Borrower”) is a nonprofit corporation organized and existing under the laws of the District of Columbia that seeks to have District of Columbia revenue bonds issued and to receive a loan of the proceeds from the sale thereof for the financing, refinancing, or reimbursing of all or a portion of the Borrower’s costs of:

(A) Refunding the District of Columbia Revenue Bonds (KIPP DC Issue) Series 2013A, originally issued in the aggregate principal amount of \$63,070,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2013, effective June 18, 2013(Res. 20-156; 60 DCR 9568);

(B) Refunding the District of Columbia Variable Rate Revenue Bonds (KIPP DC Issue) Series 2014, originally issued in the aggregate principal amount of \$38,000,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2013, effective June 18, 2013(Res. 20-156; 60 DCR 9568);

(C) Refunding the District of Columbia Variable Rate Revenue Bonds (KIPP DC Issue) Series 2015, originally issued in the aggregate principal amount of \$20,000,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2015, effective March 3, 2015(Res. 21-30; 62 DCR 4719);

(D) Refinancing of certain existing indebtedness, the proceeds of which were used to finance or refinance the costs of the acquisition of a leasehold interest in a facility used

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primarily as a public charter school campus located at 2600-2620 Douglass Road, S.E., Washington, D.C.;

(E) Funding certain working capital costs related only to the costs of the project described in this paragraph, to the extent financeable relating to the Bonds;

(F) Funding any credit enhancement costs, liquidity costs, or debt service reserve fund relating to the Bonds; and

(G) Paying cost of issuance and other related costs to the extent permissible relating to the Bonds.

(2) The planned financing will make available funds critically needed to finance, refinance, or reimburse the Borrower for costs of the project described in paragraph (1) of this section.

(3) The Tax Cuts and Jobs Act (H.R. 1) (“proposed legislation”), released by the House Ways and Means Committee on November 2, 2017, proposes to eliminate the exemption of interest from federal income taxes for qualified private activity bonds described in section 141(e) of the Internal Revenue Code, of 1986, as amended, including qualified 501(c)(3) bonds such as District of Columbia revenue bonds.

(4) The effective date of the elimination of the exemption under the proposed legislation is currently December 31, 2017. To ensure that the Borrower is able to benefit from District of Columbia revenue bonds, the issuance date of the bonds needs to occur as soon as possible.

(5) Council approval of the bond resolution authorizing the issuance of up to \$150 million of District of Columbia revenue bonds would permit the revenue bonds to be issued promptly to provide maximum savings for the Borrower and enable the project described in this section to be completed.

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 KIPP DC Revenue Bonds Project Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

22-363

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$150 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 KIPP D.C. Public Charter Schools, formerly known as KIPP DC, 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 “KIPP DC Revenue Bonds Project Emergency Approval Resolution of 2017”.

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 KIPP D.C. Public Charter Schools, formerly known as KIPP DC, 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), which is liable for the repayment of the Bonds.

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

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

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

(A) Refunding the District of Columbia Revenue Bonds (KIPP DC Issue) Series 2013A, originally issued in the aggregate principal amount of \$63,070,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2013, effective June 18, 2013(Res. 20-156; 60 DCR 9568);

(B) Refunding the District of Columbia Variable Rate Revenue Bonds (KIPP DC Issue) Series 2014, originally issued in the aggregate principal amount of \$38,000,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2013, effective June 18, 2013 (Res. 20-156; 60 DCR 9568);

(C) Refunding the District of Columbia Variable Rate Revenue Bonds (KIPP DC Issue) Series 2015, originally issued in the aggregate principal amount of \$20,000,000 pursuant to the KIPP DC Revenue Bonds Project Approval Resolution of 2015, effective March 3, 2015(Res. 21-30; 62 DCR 4719);

(D) Refinancing of certain existing indebtedness, the proceeds of which were used to finance or refinance the costs of the acquisition of a leasehold interest in a facility used primarily as a public charter school campus located at 2600-2620 Douglass Road, S.E., Washington, D.C.;

(E) Funding certain working capital costs only related to the Costs of the Project, to the extent financeable relating to the Bonds;

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(F) Funding any credit enhancement costs, liquidity costs, or debt service reserve fund relating to the Bonds; and

(G) Paying cost of issuance and other related costs to the extent permissible relating to the Bonds.

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 \$150 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 \$150 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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

(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

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Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

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

Sec. 11. District officials.

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

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

Sec.12. Maintenance of documents.

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

Sec.13. Information reporting.

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

Sec. 14. Disclaimer.

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

ENROLLED ORIGINAL

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 not rely upon the District with respect to these matters.

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, 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 Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

ENROLLED ORIGINAL

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement 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. 20. Effective date.

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****BILL**

B22-623 Funeral Services Consumer Protection Amendment Act of 2017

Intro. 12-5-17 by Chairman Mendelson at the request of the Attorney General and referred to the Committee on Business and Economic Development with comments from the Committee of the Whole

PROPOSED RESOLUTIONS

PR22-656 Medical Marijuana Cultivation Center Schedule of Fines Rulemaking Approval Resolution of 2017

Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR22-657 Board of Marriage and Family Therapy Angela Sarafin Confirmation Resolution of 2017

Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR22-658 Public Charter School Board Enrique Cruz Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

PR22-659 Child Fatality Review Committee Ms. Stacy Mills Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-660 Child Fatality Review Committee Ms. Jacqueline Francis Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-661 Child Fatality Review Committee Ms. LaShunda Hill Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-662 Child Fatality Review Committee Lanita Williams Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-663 Child Fatality Review Committee Dr. Cheryl Williams Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-664 Child Fatality Review Committee Dr. Inez Reeves Confirmation Resolution of 2017
Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

- PR22-665 Commission on African-American Affairs Veda Rasheed Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations
-
- PR22-666 Commission on Out of School Time Grants and Youth Outcomes Darien Harris Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
-
- PR22-667 Commission on Out of School Time Grants and Youth Outcomes Travaughn Kinney Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
-
- PR22-668 Commission on Out of School Time Grants and Youth Outcomes Walter Peacock Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
-
- PR22-669 Real Estate Commission Ulani Prater Gulstone Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
-
- PR22-670 Commission on African-American Affairs Whitney Hubbard Confirmation Resolution of 2017
- Intro. 12-4-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations
-

- PR22-671 Local Rent Supplement Program Contract No. 2016-LRSP-05A Approval
Resolution of 2017
- Intro. 12-5-17 by Chairman Mendelson at the request of the District of
Columbia Housing Authority and Retained by the Council with comments from
the Committee on Housing and Neighborhood Revitalization
-
- PR22-672 Local Rent Supplement Program Contract No. 2016-LRSP-06A Approval
Resolution of 2017
- Intro. 12-5-17 by Chairman Mendelson at the request of the District of
Columbia Housing Authority and Retained by the Council with comments from
the Committee on Housing and Neighborhood Revitalization
-
- PR22-673 Housing Production Trust Fund Board Charles R. Lowery Confirmation
Resolution of 2017
- Intro. 12-6-17 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Housing and Neighborhood Revitalization
-
- PR22-679 Commission on the Arts and Humanities Chinedu Felix Osuchukwu
Confirmation Resolution of 2017
- Intro. 12-11-17 by Chairman Mendelson at the request of the Mayor and
referred to the Committee on Finance and Revenue
-
- PR22-680 Domestic Violence Fatality Review Board Ian Harris Confirmation
Resolution of 2017
- Intro. 12-11-17 by Chairman Mendelson at the request of the Mayor and
referred to the Committee on Judiciary and Public Safety
-

**Council of the District of Columbia
 COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
 NOTICE OF PUBLIC HEARING
 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
 COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC HEARING ON

**B22-0189, THE “DRUG-RELATED NUISANCE ABATEMENT AMENDMENT ACT
 OF 2017”**

B22-0312, THE “D.C. VOTING RIGHTS NOTIFICATION ACT OF 2017”

B22-0345, THE “VOTER REGISTRATION AGENCY AMENDMENT ACT OF 2017”

AND

**B22-0519, THE “EMERGENCY AND NON-EMERGENCY NUMBER TELEPHONE
 CALLING SYSTEMS FUND AMENDMENT ACT OF 2017”**

**Thursday, January 25, 2018, 9:30 a.m.
 Room 120, John A. Wilson Building
 1350 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004**

On Thursday, January 25, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0189, the “Drug-Related Nuisance Abatement Amendment Act of 2017”, Bill 22-0312, the “D.C. Voting Rights Notification Act of 2017”, Bill 22-0345, the “Voter Registration Agency Amendment Act of 2017”, and Bill 22-0519, the “Emergency and Non-Emergency Number Telephone Calling Systems Fund Amendment Act of 2017”. The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

Bill 22-0189, the “Drug-Related Nuisance Abatement Amendment Act of 2017”, would amend the Drug-Related Nuisance Abatement Act of 1998 to clarify that a civil action may be brought against an owner or a tenant, or both, for a property alleged to be a drug-, firearm-, and prostitution-related nuisance, and to establish a civil penalty for a defendant found to have knowingly conducted, maintained, aided, abetted, or permitted a drug-, firearm-, and prostitution-related nuisance.

Bill 22-0312, the “D.C. Voting Rights Notification Act of 2017”, would provide that non-incarcerated individuals with felony convictions are made aware of their right to vote in the District of Columbia, and to empower those individuals to participate civically by reducing misinformation about ex-felon voting rights.

Bill 22-0345, the “Voter Registration Agency Amendment Act of 2017”, would amend the District of Columbia Election Code of 1955 to add the District of Columbia Public Schools and the District of Columbia Public Library as voter registration agencies, and to require the Board of Elections to transmit an annual report to the Council containing the number of voter registration forms received by each voter registration agency.

Bill 22-0519, the “Emergency and Non-Emergency Number Telephone Calling Systems Fund Amendment Act of 2017”, would amend the Emergency and Non-Emergency Telephone Calling Systems Fund Act of 2000 to allow monies in the Fund to be used to pay for personnel costs, including the conversion of contractor positions to full-time equivalent information technology positions, and to eliminate the requirement that the Fund be used for direct costs incurred by wireless carriers in providing E-911 service.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8232, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, January 19, 2018**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on February 8, 2018.**

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
NOTICE OF PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004

REVISED

COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH

ANNOUNCES A PUBLIC HEARING ON

**BILL 22-0482, THE “LONG-TERM CARE OMBUDSMAN PROGRAM AMENDMENT ACT
OF 2017”**

BILL 22-0569, THE “OXYGEN THERAPY REGULATION AMENDMENT ACT OF 2017”

BILL 22-0597, THE “BEHAVIORAL HEALTH PARITY ACT OF 2017”

**MONDAY, DECEMBER 18, 2017
11 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on Bill 22-0482, the “Long-Term Care Ombudsman Program Amendment Act of 2017”, Bill 22-0569, the “Oxygen Therapy Regulation Amendment Act of 2017”, and Bill 22-0597, the “Behavioral Health Parity Act of 2017.” The hearing will be held on Monday, December 18, 2017, at 11 a.m., in Room 412 of the John A. Wilson Building. **This notice is revised to reflect the removal of Bill 22-480 and Bill 22-558 from the agenda at the request of the Director of the Department on Health.**

Bill 22-0482, the “Long-Term Care Ombudsman Program Amendment Act of 2017”, would amend the District of Columbia Long-Term Care Ombudsman Program Act of 1988 to provide the Long-Term Care Ombudsman with authority to lead the Long-Term Care Ombudsman Program in coordination with the Director of the Office on Aging ; provide authority for the Long-Term Care Ombudsman to make determinations and recommendations pertaining to residents' health, safety, welfare or rights; to clarify the responsibilities of the Long-Term Care Ombudsman ; prohibit certain individuals from serving as the Long-Term Care Ombudsman; align provisions of District law with C.F.R. § 1324 *et seq.* ; and align the abuse-reporting provisions for the Long-Term Care Ombudsman representatives of the Office of the Long-Term Care Ombudsman with federal law.

Bill 22-0569, the “Oxygen Therapy Regulation Amendment Act of 2017”, would amend Title 22-B of the District of Columbia Municipal Regulations to regulate the administration of oxygen therapy in nursing facilities.

Bill 22-0597, the “Behavioral Health Parity Act of 2017”, would facilitate implementation and enforcement of the federal Mental Health Parity and Addiction Equity Act and strength parity provisions within District law.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Friday, December 14, 2017.

Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

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

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

on

B22-0594 - Student Fair Access to School Act of 2017

and

B22-0179 - D.C. Public Schools Alternatives to Suspension Amendment Act of 2017

on

**Tuesday, January 30, 2018
2:00 p.m., Hearing Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public hearing on B22-0594, Student Fair Access to School Act of 2017, and B22-0179, D.C. Public Schools Alternatives to Suspension Amendment Act of 2017. The hearing will be held at 2:00 p.m. on Tuesday, January 30, 2018 in Hearing Room 500 of the John A. Wilson Building.

The stated purpose of B22-0594 is to establish parameters for local education agencies' discipline policies to ensure student safety and access to education, including limits on the use of suspensions and expulsions, reporting requirements, and supports provided by the Office of the State Superintendent of Education to promote trauma-informed educational settings.

The stated purpose of B22-0179 is to require D.C. Public Schools' principals to consider and justify in writing why a suspension is more appropriate than other forms of discipline prior to recommending the suspension of a student. It also requires the Chancellor to receive a monthly report on school suspensions from each public school and transmit a report aggregating that data to the Mayor and Council on a quarterly basis.

The Committee invites the public to testify or submit written testimony. 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 5:00 p.m. Friday, January 26, 2018. Persons wishing to testify are encouraged to bring 10-15 copies of their written testimony.

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 by email to Ashley Strange, Committee Assistant, at astrange@dccouncil.us, or by post 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 Tuesday, February 13, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B22-625, Personal Delivery Device Pilot Program Extension Temporary Act of 2017 was adopted on first reading on December 12, 2017. These temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on January 9, 2018.

<p style="text-align: center;">COUNCIL OF THE DISTRICT OF COLUMBIA EXCEPTED SERVICE APPOINTMENTS AS OF NOVEMBER 30, 2017</p>

NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	POSITION TITLE	GRADE	TYPE OF APPOINTMENT
Roosens, Thomas	Information Technology Specialist	9	Excepted Service - Reg Appt

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM 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 GBM 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 the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 22-53: FY 2018 Grant Budget Modifications as of October 31, 2017

RECEIVED: 14 day review begins December 7, 2017

GBM 22-54: FY 2018 Grant Budget Modifications as of November 1, 2017

RECEIVED: 14 day review begins December 4, 2017

GBM 22-55: FY 2018 Grant Budget Modifications as of November 7, 2017

RECEIVED: 14 day review begins December 7, 2017

GBM 22-56: FY 2018 Grant Budget Modifications as of November 15, 2017

RECEIVED: 14 day review begins December 11, 2017

GBM 22-57: FY 2018 Grant Budget Modifications as of November 28, 2017

RECEIVED: 14 day review begins December 11, 2017

GBM 22-58: FY 2018 Grant Budget Modifications as of November 30, 2017

RECEIVED: 14 day review begins December 11, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 15, 2017
Protest Petition Deadline: January 29, 2018
Roll Call Hearing Date: February 12, 2018

License No.: ABRA-098584
Licensee: IMA Pizza Store 12, LLC
Trade Name: & Pizza
License Class: Retailer's Class "C" Restaurant
Address: 705 H Street, N.W.
Contact: Mike Fry: (202) 734-0215

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on February 12, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

The licensee has requested an Entertainment Endorsement to provide Live Entertainment.

CURRENT HOURS OF OPERATION

Sunday - Thursday 7:00 am - 2:00 am
Friday - Saturday 7:00 am - 3:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday - Thursday 8:00 am - 2:00 am
Friday - Saturday 8:00 am - 3:00 am

PROPOSED HOURS OF LIVE ENTERTAINMENT

Sunday - Wednesday 6:00 pm - 11:00 pm
Thursday 6:00 pm - 12:00 am
Friday - Saturday 6:00 pm - 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: December 8, 2017
Protest Petition Deadline: January 22, 2018
Roll Call Hearing Date: February 5, 2018
Protest Hearing Date: April 4, 2018

License No.: ABRA-108460
Licensee: Deli Corner Store, LLC
Trade Name: Deli Corner Store
License Class: Retailer’s Class “B”
Address: 1643 34th Street, N.W.
Contact: Wolde Selassie: 703-850-4697

WARD 2

ANC 2E

SMD 2E02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 5, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **April 4, 2018 at 1:30 p.m.**

NATURE OF OPERATION

A new Retailer Class B License.

HOURS OF OPERATION

Sunday 8 am – 7 pm, Monday through Thursday 7 am – 9:30 pm, Friday and Saturday 7 am – 10 pm

HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday 9 am – 7 pm, Monday through Thursday 9 am – 9:30 pm, Friday and Saturday 9 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 15, 2017
Protest Petition Deadline: January 29, 2018
Roll Call Hearing Date: February 12, 2018

License No.: ABRA-106038
Licensee: Shillings' Cannery, LLC
Trade Name: Shilling Canning Company
License Class: Retailer's Class "C" Restaurant
Address: 1331 4th Street, S.E.
Contact: Stephen O'Brien, Esq.: (202) 625-7700

WARD 6 ANC 6D SMD 6D07

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on February 12, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Change of Hours for the Outdoor Summer Garden.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

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

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT FOR THE OUTDOOR SUMMER GARDEN

Sunday through Thursday 10 am – 11 pm, Friday through Saturday 10 am – 12 am

PROPOSED HOURS OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDEN

Monday through Friday 8 am – 12 am, Saturday and Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 15, 2017
Protest Petition Deadline: January 29, 2018
Roll Call Hearing Date: February 12, 2018
Protest Hearing Date: April 11, 2018

License No.: ABRA-108510
Licensee: 1201 K Street F & B Tenant, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Restaurant
Address: 1201 K Street, N.W.
Contact: Michael Fonseca, Esq.: 202-625-7700

WARD 2

ANC 2F

SMD 2F08

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 12, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **April 11, 2018 at 1:30 p.m.**

NATURE OF OPERATION

A new restaurant that will provide food and beverage operations for the restaurant, bars, cafés and co-working office spaces within the Eaton Hotel. Seating Capacity of 780, Total Occupancy Load of 1,135. Sidewalk Cafe with 20 seats adjacent to the restaurant. Summer Garden on the 10th floor rooftop with 50 seats. Live Entertainment and Dancing inside premises only.

HOURS OF OPERATION INSIDE PREMISES

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

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

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

HOURS OF OPERATION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Saturday 6 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Saturday 8 am – 12 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE 10TH FLOOR ROOFTOP SUMMER GARDEN

Sunday through Saturday 8 am – 1 am

**DISTRICT DEPARTMENT OF TRANSPORTATION
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD**

**Proposed Major Service Adjustment and Proposed Fare Media Adjustment for DC
Circulator**

The District Department of Transportation (DDOT) invites the public to comment on proposed major service changes and proposed fare media change for the DC Circulator system to be implemented in April 2018. District of Columbia Municipal Regulations Rule 18-1503: Fare Adjustments, Service Adjustments, and Public Participation requires DDOT to prepare a Major Service Adjustment Plan that includes a summary of the proposed major service adjustment, a proposed timeline implementation of the major service adjustment, an equity analysis illustrating any disparate impact or disproportionate burden of the proposed major service adjustment on populations protected under Title VI of the Civil Rights Act of 1964 (consistent with FTA Circular 4702.1B), and an explanation of the necessity of the proposed major service adjustment. DDOT must also prepare a fare adjustment plan that includes a summary of the proposed fare adjustment, a proposed timeline for implementation of the fare adjustment, an equity analysis illustrating any disparate impact or disproportionate burden of the proposed fare adjustment on populations protected under Title VI of the Civil Rights Act of 1964 (consistent with FTA Circular 4702.1B), and an explanation of the necessity of the proposed fare adjustment.

The public is invited to present information and comment on the proposed major service adjustment and proposed fare media adjustment at a public hearing, per the following details:

Public Hearing: January 4, 2018

HEARING DATE:	Thursday, January 4, 2018
TIME:	7:00 PM – 9:00 PM
PLACE:	The Miracle Theatre 535 8th Street SE Washington, DC 20003
TRANSIT:	<i>DC Circulator (8th & G St SE)</i> Union Station – Navy Yard Metro (US-NY) Potomac Ave Metro – Skyland (PS) <i>Metrobus</i> 90, 92, 30N, 30S, 32, 34, 36, 39 <i>Metrorail</i> Eastern Market Station (Blue/Orange/Silver)

Persons who wish to speak at the hearing may testify after signing up for a spot at www.dccirculator.com/service-changes-2018. All presentations shall be limited to three minutes. There will be a maximum of 30 presentations due to time constraints. All persons desiring to comment on the proposed regulations should submit comments in writing through the DC Circulator website comment form, or by email at DCCirculator@dc.gov, not later than thirty (30) days after the publication of the proposed major service changes in the *D.C. Register*.

If you need special accommodations, please email DCCirculator@dc.gov or 202-268-2503 at

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JANUARY 31, 2018
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 FOUR

19646
ANC 4A **Application of Claude and Kira Vol**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 307.1, and from the non-conforming structure requirements of Subtitle C § 202.2, to construct a third-story rear addition to an existing one family dwelling in the R-1-B Zone at premises 1729 Upshur Street N.W. (Square 2644, Lot 67).

WARD TWO

19664
ANC 2B **Application of Carnegie Institution for Science**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504 from the penthouse screening requirements of Subtitle C § 1500.6, to permit renovations to the existing office building in the MU-15 and RA-8 Zones at premises 1530 P Street N.W. (Square 195, Lot 848).

WARD SEVEN

19677
ANC 7E **Application of Plant the Seed Youth Treatment Services**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(e), to increase the occupant load of an existing Community-Based Institutional Facility from 6 to 15 persons in the R-2 Zone at premises 5212 Astor Place S.E. (Square 5308, Lot 25).

WARD THREE

19678
ANC 3D **Application of St. Patrick's Episcopal Day School**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use regulations of Subtitle U § 203.1(l) and under Subtitle C § 1504 from the penthouse requirements of Subtitle C § 1502.1, to construct a new play area/sports deck on the campus of an existing private school in the R-1-B Zone at premises 4700 Whitehaven Parkway N.W. (Square 1374, Lot 857).

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WARD ONE

19680 **Application of Quentin Ventures, LLC**, pursuant to 11 DCMR Subtitle X, ANC 1B Chapter 9, for a special exception under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a rear addition and convert the existing one-family dwelling to a flat in the RF-1 Zone at premises 1948 2nd Street N.W. (Square 3088, Lot 50).

WARD FOUR

19681 **Application of Rock Creek – Takoma Theater, LLC**, pursuant to 11 DCMR ANC 4B Subtitle X, Chapter 9, for a special exception under Subtitle H § 1200 from the designated use requirements of Subtitle H §§1101.1 and 1101.3, to reuse an existing theater as a medical office in the NC-2 and MU-4 Zones at premises 6833 4th Street N.W. (Square 3280, Lot 31).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

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

Do you need assistance to participate?

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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?

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
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,**

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**NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to Sections 7(d)(2)(A) and 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.06(d)(2)(A) and 7-1671.13 (2012 Repl. & 2017 Supp.)); the Medical Marijuana Dispensary Temporary Amendment Act of 2016, effective April 1, 2017 (D.C. Law 21-234; D.C. Official Code § 7-1671.06(d)(2)) and § 7-731(d) (2012 Repl. & 2017 Supp.)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of the following amendments to Chapter 52 (Registration Limitations) of Subtitle C (Medical Marijuana), Title 22 (Health), of the District of Columbia Municipal Regulations (DCMR).

This action is being taken to ensure adequate access to medical marijuana for patients located in Wards 7 and 8. The Department has exercised its authority under D.C. Official Code § 7-1671.06(d)(2)(A) to increase, by rulemaking, the number of dispensaries registered to operate in the District from six (6) to seven (7) so that a dispensary can be registered in Ward 7 and in Ward 8.

Notice of this rule was published as an Emergency and Proposed Rulemaking in the *D.C. Register* on September 1, 2017 at 64 DCR 8720. No comments were received during the thirty (30) day public comment period following publication of the Notice. Accordingly, no changes have been made to the rulemaking.

Following the required period of Council review, the rule was deemed approved by the D.C. Council on November 2, 2017. This rule was adopted as final on November 13, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 52, REGISTRATION LIMITATIONS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5200, LIMITATION ON THE NUMBER OF DISPENSARIES AND CULTIVATION CENTERS, is amended as follows:

Subsection 5200.1 is amended to read as follows:

5200.1 The number of dispensaries registered to operate in the District of Columbia shall not exceed seven (7). To ensure that qualifying patients have adequate access to medical marijuana, the sixth (6th) and seventh (7th) registrations shall be issued in Ward 7 and Ward 8.

OFFICE OF POLICE COMPLAINTS

NOTICE OF FINAL RULEMAKING

The Police Complaints Board, pursuant to the authority set forth under the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1106(d) (2012 Repl.)), hereby gives notice of the repeal of Chapter 21 (The Citizen Complaint Review Board and the Office of Citizen Complaint Review) of Title 6 (Personnel), Subtitle A (Police Personnel) of the District of Columbia Municipal Regulations (DCMR) and adoption of the following Chapter 21 in its place.

The newly amended regulations provide necessary updates to old rules and ensure consistency with recent statutory changes to D.C. Official Code §§ 5-1101-1115 from the Neighborhood Engagement Achieves Results Amendment Act of 2016, effective June 30, 2016 (D.C. Law 21-125; 63 DCR 4659 (April 1, 2016)).

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on October 6, 2017 at 64 DCR 9907. One comment was received. The comment received related the notification of complaint resolution by mediation, Subsection 2115.12. Language was included to clarify that notification is sent to the subject officer, complainant, and Metropolitan Police Department.

This rule was adopted as final on November 30, 2017, and will be effective upon publication of the notice in the *D.C. Register*.

Chapter 21, THE CITIZEN COMPLAINT REVIEW BOARD AND THE OFFICE OF CITIZEN COMPLAINT REVIEW, of Title 6-A DCMR, POLICE PERSONNEL, is repealed in its entirety and replaced to read as follows:

CHAPTER 21 THE POLICE COMPLAINTS BOARD AND THE OFFICE OF POLICE COMPLAINTS

<u>Secs.</u>	
2100	SOURCE OF AUTHORITY
2101	PURPOSE
2102	THE POLICE COMPLAINTS BOARD
2103	THE OFFICE OF POLICE COMPLAINTS
2104	JURISDICTION
2105	STANDING TO FILE A COMPLAINT
2106	FILING COMPLAINTS
2107	TIMELINESS
2108	INITIAL REVIEW OF COMPLAINTS

2109	WITHDRAWAL OF COMPLAINTS
2110	DISMISSAL OF COMPLAINTS
2111	REFERRAL OF COMPLAINT TO THE UNITED STATES ATTORNEY
2112	POLICY TRAINING REFERRAL OF COMPLAINTS
2113	RAPID RESOLUTION REFERRAL OF COMPLAINTS
2114	CONCILIATION OF COMPLAINTS
2115	MEDIATION OF COMPLAINTS
2116	INVESTIGATION OF COMPLAINTS
2117	SELECTION OF THE COMPLAINT EXAMINER
2118	DUTIES OF COMPLAINT EXAMINER
2119	PRELIMINARY HEARING CONFERENCE
2120	HEARING PROCEDURES
2121	RECORD OF HEARING
2122	FINDINGS OF FACT AND DETERMINATION
2123	FINAL REVIEW PANEL
2124	EFFECTIVE DATE OF REGULATIONS
2199	DEFINITIONS

2100 SOURCE OF AUTHORITY

2100.1 The Police Complaints Board (the “Board” or “PCB”) and the Office of Police Complaints (“OPC”) were established on March 26, 1999 by the Council of the District of Columbia in the Office of Citizen Complaint Review Establishment Act of 1998 (the “Act”), D.C. Law 12-208, subsequently codified as Chapter 11 of Title 5 of the D.C. Official Code. D.C. Official Code §§ 5-1101 *et seq.*, as amended. The Board is the governing authority of OPC and has power to promulgate rules implementing the provisions of the Act. D.C. Official Code § 5-1106(d).

2101 PURPOSE

2101.1 The purpose of these regulations is to implement the authority delegated to the Board and OPC by establishing an effective, efficient, and fair system of independent review and resolution of complaints by the public against sworn members of the District of Columbia Metropolitan Police Department (“MPD”) and the District of Columbia Housing Authority Police Department (“DCHAPD”), which have cooperative agreements with the MPD as provided in D.C. Official Code § 5-1107(j).

2101.2 In addition, it is the mission of the Board and OPC to improve the relationship between MPD and DCHAPD, their officers, and the community.

2102 THE POLICE COMPLAINTS BOARD

2102.1 The Board shall consist of five (5) residents of the District of Columbia, one of whom shall be a member of the MPD and four (4) of whom shall have no current

affiliation with any law enforcement authority. Members of the Board shall be uncompensated and shall serve terms of three (3) years or until a successor has been appointed. A Board member may be reappointed, as provided by D.C. Official Code § 5-1104(b).

- 2102.2 The Board shall meet as frequently as it determines necessary, but it shall meet at least quarterly. Public notice of regular Board meetings and the location of the meetings shall be made in the *D.C. Register* and on the OPC website. Similar notice will be provided for any rescheduled or special meeting of the Board.
- 2102.3 All meetings of the Board shall be open to the public, unless the Board determines that the meeting, or portion thereof, should be closed. Closure is appropriate only when the matter subject to discussion would, if written, be exempt from disclosure under D.C. Official Code § 2-534. No resolution, rule, act, regulation, or other official action of the Board shall be effective unless taken, made, or enacted at an open meeting.¹
- 2102.4 A quorum for the transaction of business shall be three (3) members of the Board.
- 2102.5 An audio recording and minutes shall be kept for all such meetings and shall be made available to the public.
- 2102.6 The Board shall conduct periodic reviews of the citizen complaint review process, and shall make recommendations, where appropriate, to the Mayor, the Council, the Chief of MPD, and the Director of the District of Columbia Housing Authority ("DCHA Director") concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate, make recommendations to the above-named entities concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers, as provided by D.C. Official Code § 5-1104(d).
- 2102.7 The Board may monitor and evaluate MPD's handling of, and response to, First Amendment assemblies, as defined in § 5-333.02, held on District streets, sidewalks, or other public ways, or in District parks, as provided by D.C. Official Code § 5-1104(d-1).

2103 THE OFFICE OF POLICE COMPLAINTS

- 2103.1 OPC shall be headed by an Executive Director, who is appointed by the Board to serve a term of three (3) years, or until a successor is appointed. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause.

¹ See D.C. Official Code § 1-207.42 (2016 Repl.).

- 2103.2 The Executive Director shall be an attorney who is an active member in good standing of the District of Columbia Bar.
- 2103.3 The Executive Director shall employ such persons or retain such volunteers on a full-time or part-time basis as he or she deems appropriate. The Executive Director may hire contractors to resolve particular cases. Complaint investigators may not be persons currently or formerly employed by the MPD or DCHAPD.
- 2103.4 The Executive Director shall create a pool of mediators and complaint examiners, subject to the approval of the Board. Such mediators and complaint examiners may not be current or former employees of the MPD or DCHAPD.
- 2103.5 The Executive Director may delegate his or her powers or authorities to other employees of OPC as appropriate.

2104 JURISDICTION

- 2104.1 OPC shall have the authority to receive a complaint against a member or members of the MPD or DCHAPD (herein jointly referred to as “subject officers”) that alleges abuse or misuse of police powers by such member or members, including:
- (a) Harassment;
 - (b) Use of unnecessary or excessive force;
 - (c) Use of language or conduct that is insulting, demeaning or humiliating;
 - (d) Discriminatory treatment based upon a person’s race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business;
 - (e) Retaliation against a person for filing a complaint pursuant to the Act; or
 - (f) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.
- 2104.2 OPC shall have the sole authority to dismiss, conciliate, mediate, adjudicate, or refer for further action to MPD or DCHAPD a complaint received under § 2104.1.
- 2104.3 Complaints that allege misconduct that is not within the authority of OPC to review shall be referred to the Police Chief for further processing by the MPD or DCHAPD, as appropriate.

- 2104.4 OPC shall have authority to audit citizen complaints referred to the MPD or the DCHAPD for further action.
- 2104.5 OPC, under the authority of the Executive Director, and as provided by D.C. Official Code §§ 5-1104(d-2)(1) and (d-2)(2), shall review, with respect to the MPD:
- (a) The number, type, and disposition of complaints received, investigated, sustained, or otherwise resolved;
 - (b) The race, national origin, gender, and age of the complainant and the subject officer or officers;
 - (c) The proposed discipline and the actual discipline imposed on a police officer as a result of any sustained complaint;
 - (d) All use of force incidents, serious use of force incidents, and serious physical injury incidents as defined in MPD General Order 907.07; and
 - (e) Any in-custody death.

2105 STANDING TO FILE A COMPLAINT

- 2105.1 A complaint may be filed with OPC by:
- (a) An alleged victim;
 - (b) Any individual having personal knowledge of alleged police misconduct; or
 - (c) The parent, legal guardian, or legal representative of either (a) or (b) above.

2106 FILING COMPLAINTS

- 2106.1 A complaint must be on a form approved by OPC, reduced to writing and signed by the complainant or the complainant's parent, legal guardian or legal representative. Complaint forms shall conclude with the following statement: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."
- 2106.2 If the complainant is represented by an attorney or other legal representative who files the complaint on behalf of the complainant, the complaint must be accompanied by a statement signed by the complainant that he or she has retained the representative for the purposes of investigation, mediation, conciliation or adjudication of the complaint.

- 2106.3 Complaints may be submitted electronically through the OPC website. The complainant shall assert the truthfulness of the statements within the complaint by electronic signature.
- 2106.4 If a paper complaint form is requested by telephone or other means, OPC shall send a complaint form and a self-addressed return envelope to the requestor's address. OPC may also send complaint forms electronically, refer individuals to the OPC website, or to locations in the District of Columbia where complaint forms may be found.
- 2106.5 A complaint may be presented in person at OPC's business address. When a complaint is received in a form other than the form referred to in § 2106.1 or § 2106.3, the complainant will be asked to complete and sign a form approved by OPC. Once the approved form is completed and signed, it will be attached to any written document(s) provided by the complainant. Upon signature, the complaint shall be deemed received.
- 2106.6 A complaint may be received by United States Postal Service, private delivery service, email, or facsimile. When it is received, it shall be date-stamped. If the format of the complaint does not comply with § 2106.1, an employee of OPC will be assigned to make arrangements with the complainant to assist him or her in properly completing a complaint form approved by OPC.

2107 TIMELINESS

- 2107.1 Unless extended for good cause, a complaint form must be received by OPC within ninety (90) days from the date of the incident that is the subject of the complaint.
- 2107.2 The Executive Director may, in his or her discretion, extend the deadline for filing for good cause.

2108 INITIAL REVIEW OF COMPLAINTS

- 2108.1 Upon the receipt of a complaint, OPC shall create a case file for the complaint, designate a number for the complaint, enter the case in a database, and preserve any body-worn camera evidence.
- 2108.2 OPC may request additional information from the complainant, and collect any evidence necessary for the initial review.
- 2108.3 The Executive Director shall screen each complaint and shall take one of the following actions:
- (a) Dismiss the complaint, with the concurrence of one member of the Board;

- (b) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;
- (c) Attempt to conciliate the complaint;
- (d) Refer the complaint to mediation;
- (e) Refer the complaint to investigation;
- (f) Refer the complaint to the MPD or DCHAPD for investigation because the complaint falls outside of the authority of OPC to review;
- (g) Refer the subject police officer or officers to complete appropriate policy training by the MPD or the DCHAPD; or
- (h) Refer the complaint to MPD or DCHAPD for rapid resolution.

2109 WITHDRAWAL OF COMPLAINTS

2109.1 A complaint may be withdrawn orally or in writing from further consideration at any time by the complainant.

2110 DISMISSAL OF COMPLAINTS

2110.1 A complaint may be dismissed on the following grounds:

- (a) The complaint is deemed to lack merit;
- (b) The complainant refuses to cooperate with the investigation; or
- (c) The complainant willfully fails to participate in good faith in the mediation process.

2110.2 A complaint may be dismissed upon the concurrence of one (1) member of the Board.

2111 REFERRAL OF COMPLAINT TO THE UNITED STATES ATTORNEY

2111.1 If the Executive Director determines that the misconduct alleged in the complaint or disclosed by investigation may be criminal in nature, he or she shall refer the case to the United States Attorney for the District of Columbia for possible criminal prosecution.

2111.2 The Executive Director shall give written notification of such referral to the Chief of Police of the MPD or DCHAPD, the complainant and subject officer(s). If

requested by the United States Attorney, OPC shall delay notification of the referral to one or more of these parties until the United States Attorney determines that notification is appropriate.

2111.3 The Executive Director shall transmit copies of all relevant files to the United States Attorney, maintain a record of each referral, and record the disposition of each referred matter.

2111.4 If the United States Attorney declines in writing to prosecute, then the Executive Director may take any such action under § 2108.3, as applicable.

2112 POLICY TRAINING REFERRAL OF COMPLAINTS

2112.1 If the Executive Director finds that an officer appears to be in violation of an MPD General Order, District Code, constitutional ruling, or other guiding authority, and that correction is best accomplished through additional training, the complaint may be referred to MPD or DCHAPD.

2112.2 OPC will notify MPD or DCHAPD in writing of the allegation(s), the rationale for policy training, and what type of policy training would be most appropriate.

2113 RAPID RESOLUTION REFERRAL OF COMPLAINTS

2113.1 If the Executive Director finds that an officer acted in compliance with all rules and regulations, then the Executive Director may refer the complaint to MPD or DCHAPD to contact the complainant to address the concerns.

2113.2 OPC will notify MPD or DCHAPD in writing of the allegation(s) and the rationale for rapid resolution.

2114 CONCILIATION OF COMPLAINTS

2114.1 If deemed appropriate by the Executive Director and if the complainant and the subject officer agree to participate, the Executive Director may attempt to resolve a complaint by conciliation. The complainant and the subject officer shall be notified of the date, time and place for the conciliation session. The conciliation session(s) may be conducted by telephone.

2114.2 The conciliation process will involve the complainant, the subject officer, the Executive Director, and an interpreter, if requested. In the case of a minor or incompetent adult, a parent, legal guardian or personal representative must be present. In appropriate cases arising from the same set of facts, more than one complainant and more than one subject officer may be asked to participate in the same conciliation process.

- 2114.3 No oral or written statement made during the conciliation process may be used by OPC, the MPD or DCHAPD as a basis for any discipline or recommended discipline of any subject officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2114.4 The parties, their attorneys, other representatives and participants shall not disclose to anyone oral or written statements made during the conciliation process for any reason, including any statements made or documents prepared for the conciliation process by any party, attorney or representative for any party or other participant. Parties who participate in conciliation sessions will be required to sign a confidentiality agreement submitting to these terms. The parties may agree in writing that a conciliation agreement shall not be a public document and shall not be available to the public.
- 2114.5 If conciliation resolves the complaint, then resolution of the complaint shall be evidenced by a written agreement signed by the Executive Director, the complainant and the subject officer. The agreement may provide for any terms satisfactory to the parties, except that the subject officer may only provide assurances or agree to undertakings that are within his or her control and cannot bind the Chief of Police, the MPD or DCHAPD as part of any conciliation agreement.
- 2114.6 OPC shall place a copy of the conciliation agreement in the complaint file, provide copies to the parties and furnish a copy to the Chief of Police. OPC shall monitor implementation of the agreement. If a party fails to abide by the agreement, the aggrieved party may contact OPC. In response to such a contact or in the ordinary course of monitoring, the Executive Director may investigate whether a breach of the agreement has occurred. If the Executive Director finds that the officer or complainant violated the agreement, he or she may take any such action under § 2108.3 as applicable.
- 2114.7 If the Executive Director determines that conciliation efforts are unsuccessful, the Executive Director may take any such action under § 2108.3 as applicable.

2115 MEDIATION OF COMPLAINTS

- 2115.1 OPC may refer complaints to mediation. Mediation is a way for the complainant and the subject officer to meet face-to-face with a neutral third party in an attempt to resolve their differences. OPC shall be permitted to contract for mediation services.
- 2115.2 If the Executive Director refers the complaint to mediation, the complainant and the subject officer shall be notified of the time, date and location of the mediation session. The mediator shall be chosen from a pool of persons selected by the Executive Director and approved by the Board, taking into account the factors set forth in D.C. Official Code § 5-1106(c).

- 2115.3 Once the matter has been referred to mediation, if the complainant fails to participate in good faith in the mediation process, the Executive Director may take any such action under § 2108.3 as applicable.
- 2115.4 If the subject officer refuses to participate in good faith in the mediation process, the Executive Director shall notify the Chief of Police for appropriate disciplinary action. In addition, the Executive Director may take any such action under § 2108.3 as applicable.
- 2115.5 The mediation session will involve the complainant, the subject officer, the mediator and an interpreter, if requested. In the case of a minor or incompetent adult, a parent, legal guardian or personal representative must be present. In appropriate cases arising from the same set of facts, more than one complainant and more than one subject officer may be asked to participate in the same mediation session. No other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint.
- 2115.6 No oral or written statement made during the mediation process may be used by OPC, the MPD, or DCHAPD as a basis for any discipline or recommended discipline of any subject officer or officers, or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2115.7 The parties and mediators shall not disclose to anyone oral or written statements made during the mediation session for any reason, including any statements made or documents prepared for the mediation procedure by any party, attorney or representative for any party or other participant. Parties who attend mediation sessions will be required to sign a confidentiality agreement submitting to these terms.
- 2115.8 The parties shall not subpoena the mediator, or documents or records submitted to the mediator, for any later judicial or administrative proceedings related to the dispute, and the mediator shall not voluntarily testify on behalf of any party at any subsequent proceeding.
- 2115.9 The mediation session(s) will continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond thirty (30) days from the date of the initial mediation session without the approval of the Executive Director.
- 2115.10 The Executive Director shall not refer a complaint to mediation involving a subject officer who has either participated in mediation for similar alleged misconduct within the previous twelve (12) months or where a complaint examiner has within the previous twelve (12) months sustained a complaint against the subject officer for similar alleged misconduct.

- 2115.11 If mediation resolves the complaint, then resolution of the complaint shall be evidenced by a written agreement signed by the mediator, the complainant and the subject officer.
- 2115.12 The mediator shall provide copies of the mediation agreement to the parties and OPC. OPC shall place a copy of the mediation agreement in the complaint file. OPC shall send notification of case resolution by mediation to the subject officer, complainant, and MPD.
- 2115.13 If the mediation does not resolve the complaint, the Executive Director may take any such action under § 2108.3 as applicable.

2116 INVESTIGATION OF COMPLAINTS

- 2116.1 The investigation shall be completed in an expeditious and efficient manner.
- 2116.2 The Executive Director may issue subpoenas under seal of the Superior Court of the District of Columbia compelling the complainant, the subject officer(s), witnesses, and other persons to respond to written or oral questions, produce relevant documents or other evidence necessary to carry out a proper investigation of the complaint.
- 2116.3 Service of a subpoena on a subject officer or other employee of the MPD or DCHAPD is deemed effective by service on the relevant Chief of Police or his/her designee who shall deliver the subpoena to the subject officer.
- 2116.4 If the complainant refuses or fails to cooperate in the investigation, the Executive Director may dismiss the complaint.
- 2116.5 If the subject officer, or an employee of the MPD or the DCHAPD refuses or fails to cooperate in the investigation, the Executive Director shall notify the relevant Chief of Police in writing. The Chief of Police shall institute appropriate disciplinary action against the officer or employee and shall notify the Executive Director of the outcome of the action.
- 2116.6 At the conclusion of the investigation, the Chief Investigator shall forward the file with a report of investigation to the Executive Director. The Executive Director shall take one of the following actions:
- (a) Refer the complaint to a complaint examiner to determine whether a violation of D.C. Official Code § 5-1107(a) has occurred;
 - (b) Dismiss the complaint if, based on the file and report of investigation, report, it is determined that the complaint lacks merit, as defined in § 2110.3;

- (c) Direct the investigator to undertake additional investigation;
- (d) Refer the complaint to conciliation or mediation;
- (e) Refer the subject officer or officers to appropriate policy training;
- (f) Refer the complaint for rapid resolution; or
- (g) Refer the complaint to the United States Attorney's Office.

2116.7 If the Executive Director refers the complaint to a complaint examiner, he or she shall provide a copy of the report of investigation and related exhibits to the subject officer. The officer may, within ten (10) calendar days, provide the complaint examiner a written response to the investigator's report.

2116.8 The Executive Director shall notify in writing all parties to the complaint of his or her decision under § 2116.6, and in the case of dismissal, provide a brief statement of the reasons.

2117 SELECTION OF THE COMPLAINT EXAMINER

2117.1 The complaint examiner shall be chosen from a pool of persons selected by the Executive Director and approved by the Board, taking into account the factors set forth in D.C. Official Code § 5-1106(c).

2117.2 In order to remain in the pool, complaint examiners must adjudicate at least one investigation per fiscal year. In addition, complaint examiners must attend at least one OPC training per fiscal year.

2117.3 A complaint examiner who cannot consider a case in a fair and impartial manner because of personal prejudice or bias, shall not consider that case and shall so inform the Executive Director. Examples of personal bias include, but are not limited to:

- (a) Familial relationship or friendship with parties to the complaint;
- (b) Being a party to the complaint;
- (c) Witnessing material events relevant to the complaint;
- (d) Having a financial interest in the outcome of the case;
- (e) Holding a bias for or against a party that is sufficient to impair the examiner's impartiality.

2117.4 Either party may challenge the impartiality of the complaint examiner at any time by written complaint addressed to the Executive Director who shall issue a written opinion within seven (7) calendar days of receipt of the challenge. The Executive Director's decision is final and unappealable.

2117.5 Complaint examiners shall avoid making public comment on any complaints, investigations and matters before OPC unless compelled to do so by a court of competent jurisdiction.

2118 DUTIES OF COMPLAINT EXAMINER

2118.1 The complaint examiner shall consider the complaint in a fair and impartial manner, ensure that facts are fully elicited, adjudicate all issues and avoid undue delay.

2118.2 If the parties express a willingness to resolve the complaint through conciliation, the complaint examiner may act as a conciliator. Any resulting written conciliation agreement may be kept confidential pursuant to D.C. Official Code § 5-1110(b)(2), and neither any such agreement nor any oral nor written statement made by a party during the course of the conciliation or mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

2118.3 Based on a review of the report of investigation and file, the complaint examiner may determine the merits of a complaint without conducting an evidentiary hearing. The complaint examiner may do so only when (1) the subject officer has had an opportunity pursuant to § 2116.7 to file a response to the report of investigation and (2) the material in the report and file present no genuine issue of material fact in dispute requiring an evidentiary hearing. In such cases, the complaint examiner shall issue findings of fact and a determination on the merits within thirty (30) days of the assignment of the matter, in accordance with § 2122 below.

2118.4 Upon review of the report of investigation and file and the evidence adduced at any evidentiary hearing, the complaint examiner shall make written findings of fact regarding all material issues of fact, and shall determine whether each allegation of misconduct is unfounded, sustained, presents insufficient facts or whether the officer is exonerated, as such terms are defined in § 2122.2 below. In making a determination, the complaint examiner will consider the definitions of misconduct contained in these regulations, as well as any regulation, policy, procedure or order that prescribes standards of conduct for officers.

2118.5 Based on a review of the report of investigation and file, the complaint examiner may determine that additional investigation is required. In such cases, the complaint examiner shall promptly notify the Executive Director, who may order

the investigator to investigate the issues identified by the complaint examiner. Such additional investigation shall be completed within thirty (30) days. Upon completion, the Executive Director shall transmit the supplemental report and file to the complaint examiner and to the subject officer and shall make them available to the complainant. In cases requiring additional investigation, the time allowed for the complaint examination to be completed will be tolled.

- 2118.6 If the complaint examiner determines that no additional investigation is required and that an evidentiary hearing is required, he or she shall proceed in accordance with §§ 2119 and 2120 below.

2119 PRELIMINARY HEARING CONFERENCE

- 2119.1 If the complaint examiner determines that an evidentiary hearing is necessary, a preliminary hearing conference shall be scheduled within forty (40) days of his or her assignment to the matter. The conference may be conducted by telephone or in person and may include the parties or their designated representatives. Notice of such conference shall include the time, date and location of the conference and shall be sent to all parties and their representatives.

- 2119.2 Prior to the preliminary hearing conference, OPC shall make a copy of the report of investigation and related exhibits available to the complainant.

- 2119.3 The complaint examiner may permit discovery only in extraordinary circumstances. Depositions of parties or witnesses will not be permitted. The parties may, no later than seven (7) days prior to the preliminary hearing conference, submit to the complaint examiner requests for documents or tangible evidence that are reasonably believed to contain or reveal information directly relevant to the incident or incidents in question. Discovery of facts that pre-date the incident(s) in question and of facts relating solely to the character, credibility or motivation of any party or witness will not be permitted. The complaint examiner shall grant, modify or deny these requests at the preliminary hearing conference. Discovery requests filed less than seven (7) days before the preliminary hearing conference will be denied. Those in custody or control of documents or tangible evidence permitted to be discovered will furnish such items within ten (10) days after the preliminary hearing conference.

- 2119.4 At the preliminary hearing conference, the complaint examiner will determine which of the witness statements furnished will be added to the hearing record. The parties will designate those witnesses whose statements are made part of the hearing record they wish to cross-examine. The complaint examiner may also request the attendance of witnesses who he or she wishes to examine. Witnesses not subject to examination, as determined by the complaint examiner, are not required to attend the hearing.

- 2119.5 The complaint examiner shall accomplish the following objectives at the preliminary hearing conference:
- (a) Facilitate the exchange of relevant information, including resolving discovery requests as provided in § 2119.3;
 - (b) Reach any stipulations of fact that will reduce the length and complexity of the hearing;
 - (c) Determine the authenticity of any documents;
 - (d) Determine which witness statements to add to the hearing record, which witnesses will testify at the hearing and to determine whether to permit subsequent witness statements to be submitted in light of any discovery permitted;
 - (e) Present, discuss, or resolve any matters as may aid in the orderly disposition of the proceeding or expedite the presentation of evidence;
 - (f) Set the time, date and location of the evidentiary hearing, which shall occur no more than sixty (60) days after his or her assignment to the matter; and
 - (g) Determine whether the complaint can be resolved through mediation or conciliation and to undertake either process if appropriate.
- 2119.6 If the parties resolve the complaint at this conference, the complaint examiner shall draft a written conciliation agreement and have both parties sign it. The agreement shall then be entered into the file and submitted to the Executive Director.
- 2119.8 Failure of a party to appear at the preliminary hearing conference may result in a decision against that party. The subject officer and complainant may request that their presence be waived provided an attorney or other representative is attending the conference on their behalf.

2120 HEARING PROCEDURES

- 2120.1 The complaint examiner must provide the complainant and the subject officer at least twenty (20) days advance notice of the hearing. The notice shall include the time, date and location of the hearing. If requested by the complainant or the subject officer within ten (10) days of the date of the hearing notice, OPC shall provide an interpreter for the hearing.
- 2120.2 The Executive Director may cause the issuance of subpoenas to compel the appearance of witnesses, the complainant, the subject officer, the production of

documents, and any other evidence as may be necessary for purposes of the hearing.

- 2120.3 All hearings shall be open to the public, unless the Executive Director approves the request of the complaint examiner to close the hearing to the public.
- 2120.4 The complainant may represent him or herself during the hearing or any phase of the complaint examination process, or may be represented by an attorney or other representative of their choice or by a law student under the supervision of a licensed attorney. OPC may assist in obtaining pro bono counsel for the complainant. Subject officers may represent themselves or be represented by a member of or an attorney for the police officers' labor organization, or by another representative of their own choosing.
- 2120.5 Hearings shall be conducted in accordance with the following provisions:
- (a) *Burden and Standard of Proof:* The burden shall be on the complainant to show by a preponderance of the evidence that the alleged misconduct actually occurred.
 - (b) *Exhibits:* All evidence to be considered in the case, including, but not limited to, all records in the possession of either party, or a true and accurate photocopy, shall be marked as that party's exhibit and offered and made a part of the record. Such exhibits shall be preserved by the complaint examiner and shall be turned over to OPC at the conclusion of the proceedings, to be filed with other closed records.
 - (c) *Rules of Evidence:* District of Columbia rules of evidence shall not apply to these hearings. Any objection, including grounds for such objection, may be stated orally and shall be included in the record. The complaint examiner shall consider and rule upon objections as appropriate. The complaint examiner may admit all evidence, which possesses probative value, including reliable hearsay. Evidence which is irrelevant, immaterial or which is unduly repetitious shall be excluded.
- 2120.6 The failure of the subject officer and his or her representative to appear at the hearing, without good cause as determined by the complaint examiner, may be considered in the weighing of the evidence.
- 2120.7 If the complainant fails to appear at the hearing, without good cause as determined by the complaint examiner, the complaint examiner may ask that the complaint be dismissed by the Executive Director with the concurrence of a member of the Board.
- 2120.8 If the complaint examiner finds good cause for the complainant's failure to appear, the hearing will be promptly rescheduled.

- 2120.9 Examples of good cause for failure to appear include, but are not limited to:
- (a) Sudden, severe illness or accident;
 - (b) Death or serious illness in the immediate family, such as spouse, partner, children, parents, siblings;
 - (c) Incarceration; or
 - (d) Inclement weather.
- 2120.10 If a witness designated by the complaint examiner at the preliminary conference to testify fails to appear at the hearing, the complaint examiner will determine how to proceed.
- 2120.11 The hearing shall proceed in the following order:
- (a) *Opening the Hearing:* The complaint examiner shall begin the hearing by briefly stating the complaint allegations and the procedural rules, including any additional rules.
 - (b) *Opening Statement:* The complainant, or his or her representative, shall make a short oral statement to the complaint examiner first. The subject officer, or his or her representative, shall follow.
 - (c) *Presentation of Evidence and Witnesses:* All witnesses shall be introduced and sworn in by the complaint examiner. The complainant shall present his or her witnesses first, and the subject officer may introduce witnesses second. Each party may introduce evidence as necessary during questioning of witnesses. Each party has the right to cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination. All witnesses may be questioned by the complaint examiner.
 - (d) *Closing Statements:* At the close of the presentation of evidence, the complaint examiner may provide each party with the opportunity for closing statements. The complainant shall proceed first and the subject officer shall follow.
 - (e) *Final Briefs:* The complaint examiner may direct parties to submit final briefs. The complaint examiner will set a due date for final briefs, and they shall not exceed ten (10) typewritten double-spaced pages unless the complaint examiner agrees in advance to accept a longer submission.

2121 RECORD OF HEARING

- 2121.1 The complaint examiner shall maintain the official record of the case until final findings of fact and a determination of the complaint are made.
- 2121.2 The record shall include:
- (a) Any notices or other procedural matters reduced to writing;
 - (b) All evidence, witness statements added to the record and exhibits received and considered;
 - (c) All memoranda or information submitted by any party in connection with the case;
 - (d) A copy of the investigative report and file;
 - (e) A court reporter's stenographic notes of the hearing or a tape-recording of the hearing; and
 - (f) A transcript of the hearing, if one was prepared.
- 2121.3 The record of the hearing shall be closed upon completion of the hearing, or receipt of the final written briefs, if any.
- 2121.4 The court reporter's stenographic notes of the hearing shall be transcribed if requested by a party or if ordered by the complaint examiner. If a transcript is made, the party requesting the transcript may be required to pay a reasonable charge.

2122 FINDINGS OF FACT AND DETERMINATION

- 2122.1 Within thirty (30) days of either the conclusion of the hearing, the submission of final briefs, if required, or the assignment to a complaint examiner of a case that does not require an evidentiary hearing, the complaint examiner shall make written findings of fact and a determination of the merits of the complaint.
- 2122.2 In the merits determination, the complaint examiner shall make one of the following findings about each allegation in the complaint:
- (a) "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;
 - (b) "Sustained," where the complainant's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;

- (c) “Insufficient facts,” where there are insufficient facts to decide whether the alleged misconduct occurred; or
- (d) “Exonerated,” where a preponderance of the evidence shows that the alleged conduct did occur but did not violate the policies, procedures, practices, orders or training of the MPD or DCHAPD.

2122.3 If the complaint examiner finds that no allegation in the complaint is sustained or the subject officer is exonerated on all allegations, the Executive Director shall dismiss the complaint and send written notice of such determination, along with copies of the merits determination, to the Chief of Police, the complainant, and the subject officer.

2122.4 If the complaint examiner determines that one or more allegations in the complaint is sustained, the Executive Director shall transmit OPC’s investigative report, together with the attached exhibits, as well as the merits determination of the complaint examiner, to the Chief of Police for appropriate action. OPC shall also provide the complainant and subject officer with written notices of such determination, along with copies of the merits determination.

2122.5 The complaint examiner’s written findings of fact and determination may not be rejected by the Chief of Police unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

2123 FINAL REVIEW PANEL

2123.1 If the Chief of Police finds that the merits determination clearly misapprehends the record and is not supported by substantial, reliable, and probative evidence in the record, the Chief of Police shall return the merits determination to the Executive Director for review by a final review panel. This request must be received within forty-five (45) days of the merits determination being sent to the Chief of Police.

2123.2 The final review panel shall be comprised of three complaint examiners selected by the Executive Director, and shall not include the complaint examiner who prepared the original merits determination.

2123.3 The final review panel shall review the complete record without taking any additional evidence and shall issue a written decision within thirty (30) days from assignment, with supporting reasons, regarding the correctness of the merits determination.

2123.4 The final review panel shall uphold the merits determination as to any allegations of the complaint unless it concludes that the determination regarding the

allegation clearly misapprehends the record and is not supported by substantial, reliable, and probative evidence in the record.

2123.5 A copy of the final review panel's decision shall be transmitted to the Executive Director, complainant, subject officer(s) and the Chief of Police.

2123.6 If the final review panel finds that the merits determination sustaining one or more of the allegations should be reversed in whole, the Executive Director shall dismiss the complaint and notify the Chief of Police and parties to the complaint in writing.

2123.7 If the final review finds that the merits determination sustaining one or more of the allegations should be upheld in whole or in part, then the upheld allegations will be sent in writing to the Chief of Police for action in accordance with § 2122.4. The parties will also be notified of the decision in writing.

2124 EFFECTIVE DATE OF REGULATIONS

2124.1 These regulations shall be effective upon publication of a Notice of Final Rulemaking in the D.C. Register.

2199 DEFINITIONS

2199.1 Whenever used in these regulations, unless plainly evident from the context that a different meaning is intended, the following terms are defined as follows:

Allegation(s): The conduct that forms the basis of a complaint for misconduct.

Board: The Police Complaints Board, which consists of five members appointed by the Mayor and confirmed by the Council of the District of Columbia.

Chief of Police: The Chief of the Metropolitan Police Department or District of Columbia Housing Authority Police Department.

Complainant: The person filing a complaint with OPC who alleges that he or she is a victim of, the guardian, parent or personal representative of a victim or, or has personal knowledge of alleged misconduct by a sworn member of the MPD or DCAHPD.

Complaint: An allegation of misconduct made by a person against a sworn officer who was either on-duty at the time of the incident or who, while off-duty, was acting under color of law during an incident occurring within the District of Columbia.

Complaint Examiner: The person designated by the Executive Director to determine the merits of a complaint.

Conciliation: A process whereby the Executive Director or his designated representative meets with the complainant(s) and the subject officer(s) and attempts to settle the allegations in a mutually satisfactory manner.

Day: In computing any period of time prescribed or allowed by the Act or these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Discriminatory treatment: Conduct by a member of the MPD or DCHAPD that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.

Evidentiary hearing: A proceeding overseen by a complaint examiner at which testimony and other evidence is presented in order to determine the merits of a complaint.

Excessive or Unnecessary Force: Unreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the “reasonableness” of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively and physically resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD or DCHAPD, including adherence to the Use of Force Framework; and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.

Harassment: Words, conduct, gestures or other actions directed at a person that are purposefully, knowingly or recklessly in violation of the law or internal guidelines of the MPD or DCHAPD, so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right,

privilege, power or immunity. In determining whether conduct constitutes harassment, OPC will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices and training of the MPD or DCHAPD, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.

Insulting, demeaning or humiliating language or conduct: Language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension.

Mediation: An informal dispute resolution process, facilitated by a neutral third party, whereby the complainant and the subject officer meet in good faith to discuss the alleged misconduct with the goal of reaching a resolution of the complaint.

Mediator: A neutral third party who has contracted with OPC to attempt to mediate disputes between complainants and subject officers.

Merits Determination: The complaint examiner's written findings of fact regarding all material issues of fact and law. This document will include the complaint examiner's determination as to whether each allegation of misconduct is unfounded, sustained, presents insufficient facts, or whether the officer is exonerated.

Misconduct: Abuse or misuse of police power by a sworn officer directed toward any person who is not a sworn officer, including: (1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning or humiliating; (4) discriminatory treatment; (5) retaliation; and (6) failure to wear or display required identification or to identify oneself when requested.

Personal Knowledge: Direct knowledge of the incident from which the allegations arose, as the victim of or witness to the alleged misconduct.

Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

Policy Training: A referral of a complaint to the MPD or DCHAPD when the action of the officer appears to be a violation of an MPD General Order, District Code, constitutional ruling, or other guiding authority and correction is best accomplished through additional training.

Rapid Resolution: A referral of a complaint to MPD or DCHAPD when it appears the officer acted in compliance with all rules and regulations to

direct the MPD or DCHAPD to contact the complainant and address the concerns of the complainant.

Retaliation: Action that discriminates against a person for making or attempting to make a complaint pursuant to the Act, including action taken against a person because he or she has opposed any practice made unlawful by this Act or because he or she has made a complaint or expressed an intention to file a complaint, testified, assisted, or participated in any manner in an investigation, mediation, conciliation, complaint examination or other proceeding under this Act.

Review Panel: A panel of three complaint examiners, appointed by the Executive Director that reviews and determines the merits of allegations in the complaint that the Chief of Police determines is not supported by the evidence.

Subject Officer: A sworn member of the MPD or DCHAPD against whom an allegation of misconduct has been made in a complaint.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl. & 2017 Supp.)), hereby gives notice of the adoption of amendments to Chapter 6 (Campus Life) of Title 8 (Higher Education), Subtitle B (University of the District of Columbia) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to increase daily parking rates for current students, faculty, and staff with active University issued identification beginning in the fall semester of 2017.

The substance of the final rule enacted herein was published on October 27, 2017 at 64 DCR 011202 for a thirty-day public comment period, in accordance with D.C. Official Code § 2-505(a). No public comment was received during the public comment period. The rule was adopted by the Board as final on November 28, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 6, CAMPUS LIFE, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Section 607, PARKING FEES, Subsection 607.4, is amended as follows:

607.4 The daily parking fee for students, Faculty, and Staff with active University issued identification shall be four dollars (\$4.00) per day, except as otherwise provided in this chapter.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl. & 2017 Supp.)), hereby gives notice of the adoption of amendments to Chapter 11 (General Personnel Policies) of Title 8 (Higher Education), Subtitle B (University of the District of Columbia) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to amend the University's Probationary Period to clarify that the provisions do not apply to the faculty, employees with temporary or time-limited appointments, or University Administration.

The substance of the proposed rule enacted herein was published on October 20, 2017 at 64 DCR 010560 for a thirty-day public comment period in accordance with D.C. Official Code § 2-505(a). No public comment was received during the public comment period. The rule was adopted by the Board as final on November 28, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 11, GENERAL PERSONNEL POLICIES, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Section 1110, PROBATIONARY PERIOD, is amended as follows:

1110 PROBATIONARY PERIOD

- 1110.1 The purpose of this chapter is to set forth rules that apply to the University's employees who are required to serve a one (1) year probationary period upon appointment to any position within the University.
- 1110.2 The provisions of this chapter apply to all University employees except as follows:
- (a) Faculty;
 - (b) Employees with a temporary or time-limited appointment; and
 - (c) The University Administration (President's Cabinet)
- 1110.3 Upon request by the appropriate University Administrator, the Vice President for Human Resources, or a designee, may waive the probationary period for any person who has previously completed a probationary period in the field of specialty for which that person is being hired at the University.

- 1110.4 The probationary period will be used to evaluate the performance of the employee and determine whether the employee is suited for successful job performance. The supervisor will provide appropriate instruction for the employee to function satisfactorily.
- 1110.5 An employee serving a probationary period shall be subject to the provisions of the UDC performance management system only to the extent that a Performance Plan shall be provided to the probationary employee and their performance shall be evaluated against the standards set forth in that Performance Plan.
- 1110.6 At least one progress discussion should occur for probationary employees. The mid-year progress discussion will not preclude a recommendation to nonetheless terminate the probationary employee during his or her probationary period. Likewise, an acceptable performance rating during the probationary period in and of itself does not ensure automatic passing of the probationary period or automatic movement to a permanent appointment.
- 1110.7 The University shall terminate a probationary employee if, at any point during the probationary period, the employee's work performance or conduct fails to demonstrate suitability and qualifications for continued employment.
- 1110.8 Neither the mid-year progress discussion nor the annual performance evaluation is appealable by a probationary employee.
- 1110.9 If an employee serves under a temporary or part-time appointment in the same position for twelve (12) consecutive months or longer, and is subsequently assigned regular full-time status in that position, he or she should be deemed to have fulfilled the requirement to serve a probationary period.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl. & 2017 Supp.)), and under the District of Columbia Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code, §§ 1-601.1 *et seq.* (2016 Repl.)), hereby gives notice of its adoption of amendments to Chapter 15 (Adverse Actions) of Title 8 (Higher Education), Subtitle B (University of the District of Columbia), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to amend the University's Adverse Actions regulations in order to establish more comprehensive Progressive Discipline regulations for Non-Faculty employees.

The substance of the proposed rule enacted herein was published on October 20, 2017 at 64 DCR 010562 for a thirty-day public comment period in accordance with D.C. Official Code § 2-505(a). No public comment was received during the public comment period. The rule was adopted by the Board as final on November 28, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 15, ADVERSE ACTIONS, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

The title of Chapter 15 is renamed PROGRESSIVE DISCIPLINE.

1500	GENERAL PROVISIONS
1501	POLICY
1502	EMPLOYEE RIGHTS
1503	MISCONDUCT & PERFORMANCE DEFICIENCIES
1504	ESTABLISHING APPROPRIATE ACTION
1505	MEMORANDUM OF COUNSELING
1506	CORRECTIVE ACTION: WRITTEN REPRIMAND
1507	CORRECTIVE ACTIONS: SUSPENSION OF LESS THAN TEN (10) DAYS
1508	ADVERSE ACTIONS: SUSPENSIONS OF 10 DAYS OR MORE, DEMOTIONS, AND TERMINATIONS
1509	ADMINISTRATIVE LEAVE DURING NOTICE PERIODS
1510	SUMMARY DISCIPLINARY ACTIONS
1511	CORRECTIVE & ADVERSE ACTIONS: FINAL ADMINISTRATIVE DECISION
1512	APPEAL RIGHTS
1513	GRIEVANCES
1514	MEDIATION
1599	DEFINITIONS

Section 1500, GENERAL PROVISIONS, is amended as follows:

1500 GENERAL PROVISIONS

1500.1 This chapter establishes a progressive approach for addressing employee performance and conduct deficiencies at the University of the District of Columbia.

1500.2 The provisions of this chapter shall apply to all University employees, except the following:

- (a) Faculty to the extent that their terms and conditions of employment regarding discipline are covered by a labor agreement;
- (b) Employees serving in a probationary period;
- (c) Employees serving in temporary, at-will or time-limited appointments; and
- (d) The University Administration (President’s Cabinet).

1500.3 The provisions of this chapter do not apply to:

- (a) Reductions in force;
- (b) Reassignments; and
- (c) Memoranda of Counseling, except to the extent specified herein.

Section 1501, [RESERVED], is amended as follows:

1501 POLICY

1501.1 The policies outlined in this section apply to employees and their supervisors, and form the basis for the standards governing this chapter.

1501.2 Each supervisor has a duty and responsibility to ensure that employees are aware of the established performance and conduct standards (“standards”) applicable to their roles and functions and the consequences of not meeting those standards. Whenever such standards are not met, a supervisor has an affirmative obligation to provide the employee with the necessary guidance and training to meet these standards and when appropriate, to take disciplinary action pursuant to this chapter.

1501.3 Each employee has the duty and the responsibility to be aware of and abide by the existing rules and policies. Each employee also has the responsibility to perform

his or her duties to the best of his or her ability and to the standards established by management and his or her job description.

1501.4 The University takes a positive approach toward workforce management to achieve organizational effectiveness by using a progressive system of discipline to address performance and conduct issues.

1501.5 The University employs a progressive disciplinary system to address performance and conduct issues, and it includes:

- (a) Oral Admonishment/Warning and Memorandum of Counseling;
- (b) Written Reprimand;
- (c) Suspension;
- (d) Demotion; and
- (e) Termination.

1501.6 Strict application of the progressive steps in § 1501.5 may not be appropriate in every situation. Therefore, the University retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps. However, deviation from the progressive disciplinary system is only appropriate when consistent with § 1504.

1501.7 University officials have the obligation to ensure that disciplinary actions are taken only when an employee does not meet or violates established performance or conduct standards.

Section 1502, [RESERVED], is amended as follows:

1502 EMPLOYEE RIGHTS

1502.1 Employees enjoy the protections established in this chapter. No employee subject to this chapter may be reprimanded, suspended, demoted, or removed without cause, as defined in this chapter.

1502.2 Employees who are subject to a recognized labor agreement enjoy the benefits of their collective bargaining agreement. Conflicts between such agreements and this chapter will be resolved as follows:

- (a) The provisions of any labor agreement shall be construed to give effect to the provisions of this chapter;

- (b) Where a specific provision of a labor agreement cannot be reconciled with a specific provision of this chapter, the labor agreement shall control with respect to that provisions.

1502.3 Disciplinary actions taken against employees are subject to the following limitations:

- (a) A disciplinary action must be commenced no more than ninety (90) days after the agency or personnel authority knew or should have known of the performance or conduct supporting the action;
- (b) When there is an investigation involving facts or circumstances germane to the performance or conduct supporting a disciplinary action, the time limit established in paragraph (a) will be delayed or suspended pending:
 - (1) Any criminal investigation by the Metropolitan Police Department or any other law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General; or
 - (2) Any investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, the Office of Police Complaints, or the University Office of the General Counsel.
- (c) The time limits imposed in paragraph (a) may be suspended by the Vice President of Human Resources or designee for good cause and will be suspended pending any related investigation by the Board of Ethics and Government Accountability.

Section 1503, [RESERVED], is amended as follows:

1503 MISCONDUCT & PERFORMANCE DEFICIENCIES

1503.1 University employees are expected to demonstrate high standards of integrity, both on and off the job, guided by established standards of conduct, and other Federal and District laws, rules, and regulations. When established standards of conduct are violated or performance measures are not met, or the rules of the workplace are disregarded, disciplinary action is warranted to encourage conformity with acceptable behavior and performance standards or to protect operational integrity.

1503.2 Taking a disciplinary action against an employee is appropriate when the employee fails to or cannot meet identifiable conduct or performance standards, which adversely affect the efficiency or integrity of University service. Before initiating such action, the University will conduct an inquiry into any apparent misconduct or performance deficiency (collecting sufficient information from

available sources, including, when appropriate, the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation.

1503.3 Whether an employee fails to meet performance standards will be determined by application of the provisions set forth in Chapter 19 of this Title.

1503.4 Though not exhaustive, the following classes of conduct and performance deficiencies constitute cause and warrant disciplinary action:

- (a) Conduct prejudicial to the University of the District of Columbia and/or the District of Columbia Government, including:
 - (1) Conviction of any felony;
 - (2) Conviction of any criminal offense that is related to the employee's duties or the University's mission;
 - (3) Conduct that an employee should reasonably know is a violation of law or regulation; and
 - (4) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the University's mission or has an otherwise identifiable nexus to the employee's position;
- (b) False Statements, including:
 - (1) Deliberate falsification of an application for employment or other personal history record by omission of a material fact or by making a false entry;
 - (2) Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter;
 - (3) Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record; and
 - (4) Knowingly and willfully reporting false or misleading information or purposely omitting material facts, to any supervisor;
- (c) Fiscal irregularities which include actions that impinge on the financial viability and/or accountability of the University;
- (d) Failure or refusal to follow instructions;
- (e) Neglect of duty;

- (f) Attendance-related offenses, including:
 - (1) Unexcused tardiness;
 - (2) Unauthorized absence; and
 - (3) Falsification of official records concerning attendance (*i.e.*, timesheets, overtime requests, etc.);
- (g) Using or being influenced by intoxicants while on duty;
- (h) Unlawful possession of controlled substances and paraphernalia;
- (i) Safety and health violations;
- (j) Discriminatory practices;
- (k) Sexual misconduct;
- (l) Prohibited personnel practices, such as:
 - (1) Deceitful obstruction of a person's right to compete for employment;
 - (2) Granting preference or an advantage to an applicant; and
 - (3) Discriminating for or against an applicant;
- (m) Failure to meet performance standards; and
- (n) Inability to carry out assigned responsibilities or duties.

1503.5

An employee of the University's Office of Public Safety and Emergency Management who is authorized to carry a firearm while on-duty, and/or who is a commissioned police officer, is held to a higher standard of conduct and therefore, will be deemed to have engaged in conduct prejudicial to the University if:

- (a) The police officer engages in any act or omission that constitutes a criminal offense; or
- (b) There is any credible evidence that the police officer unlawfully used a controlled substance.

Section 1504, [RESERVED], is amended as follows:

1504 ESTABLISHING APPROPRIATE ACTION

1504.1 After establishing a sufficient basis for taking action (*i.e.*, evidence to support the allegation(s) and a nexus between the conduct or performance at issue and the employee's job or the University's mission), a supervisor must determine the appropriate action to address the employee's conduct or performance deficiencies based on the totality of circumstances.

1504.2 For all disciplinary actions, supervisors must be prepared to demonstrate that the following factors were considered:

- (a) The nature and seriousness of the misconduct or performance deficiency, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent; was committed maliciously or for gain; or was frequently repeated;
- (b) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (c) The employee's past disciplinary record;
- (d) The employee's past work record, including length of service, performance on the job; ability to get along with fellow workers, and dependability;
- (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect on the supervisor's confidence in the employee's ability to perform assigned duties;
- (f) The consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (g) The consistency of the penalty with any table of disciplinary and adverse actions the University may decide to issue;
- (h) The notoriety of the offense or its impact upon the reputation of the University or the District Government;
- (i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (j) The potential for the employee's rehabilitation;

- (k) The mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of those involved in the matter; and
- (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

1504.3 These factors should be considered and balanced to arrive at the appropriate remedy. While not all of these factors may be relevant, consideration should be given to each factor based upon the circumstances.

1504.4 An analysis of the factors above will be included in any final agency decision on an adverse action.

Section 1505, ADVERSE ACTIONS: NON-FACULTY, is amended as follows:

1505 MEMORANDUM OF COUNSELING

1505.1 As an employer, the University, through its managerial staff, has an obligation to create a fair, supportive, and transparent work environment that prevents the need for disciplinary action. However, when an employee engages in misconduct or fails to meet performance standards, steps will be taken to gather the relevant facts, correctly identify the problem(s), and then determine whether further action is warranted.

1505.2 As a first step on the continuum of progressive discipline, management will attempt to correct misconduct and performance deficiencies.

- (a) When appropriate to the circumstances, employees will first be counseled concerning misconduct.
- (b) Performance matters will initially be addressed as set forth in Chapter 19 of this title.

1505.3 When counseling (admonishing or warning) the employee is deemed appropriate to the circumstances, the supervisor or manager must:

- (a) Articulate the relevant conduct standard;
- (b) Explain how the employee has failed to meet those standards;
- (c) Explain management's conduct expectations; and
- (d) Explain the potential consequences if those expectations are not met prospectively.

- 1505.4 The supervisor will follow-up the verbal counseling (admonishment or warning) with a Memorandum of Counseling to the employee. The memorandum will establish the date, time, and content of the verbal counsel and will include the information required by § 1505.3. Supervisors will retain a copy of the correspondence for a period of no less than two years, but the Memorandum of Counseling will not be made a part of the Official Personnel File.
- 1505.5 While verbal counseling is a means of addressing performance and conduct deficiencies as a first step within the Progressive Disciplinary Model, it is neither a corrective nor an adverse action for purposes of this chapter.

Section 1506, NOTICE OF ADVERSE ACTION: NON-FACULTY, is amended as follows:

1506 CORRECTIVE ACTION: WRITTEN REPRIMAND

- 1506.1 A Corrective Action is a Written Reprimand or a Suspension of less than ten (10) days.
- 1506.2 When counseling (admonishing or warning) fails to correct conduct or performance issues, or where such counseling is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more formal response may be required. Within the Progressive Disciplinary Model, one formal response is a Written Reprimand, and it represents a corrective action.
- 1506.3 A Written Reprimand is a document issued by the Proposing Official that identifies specific conduct and/or performance deficiencies by an employee. At a minimum, a Written Reprimand includes:
- (a) A short narrative concerning the factual circumstances warranting the action;
 - (b) A description of the conduct standards at issue and how these standards were not met;
 - (c) A brief narrative describing how the employee should conduct himself or herself prospectively to correct the conduct and/or performance deficiency;
 - (d) The potential consequences if the conduct and/or performance requirements are not met;
 - (e) A notice informing the employee that he or she may submit a written response to the Written Reprimand; and

- (f) Notification to the employee of his or her right to grieve the Final Administrative Decision pursuant to the provisions of this chapter or any applicable labor agreement, but not both.
- 1506.4 The employee to whom a Written Reprimand is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.
- 1506.5 Within fifteen (15) days of receipt of the Written Reprimand, an employee may elect to submit a written response to the Deciding Official.
- (a) An employee's written response may clarify, expand on, or take exception to the statements or conclusions made in the Written Reprimand. Once submitted, the response will be maintained and treated as an attachment to the Written Reprimand.
- 1506.6 The Deciding Official will consider any written response submitted by the employee. The Deciding Official may sustain, modify, or rescind the Written Reprimand, based on the employee's response, and will issue a written determination within fourteen (14) days of receipt of the employee's response.
- 1506.7 If the Written Reprimand is modified, it will be served on the employee, who will be provided an opportunity to submit a supplemental response consistent with § 1506.4.
- 1506.8 Unless modified or rescinded pursuant to § 1506.5, a Written Reprimand will constitute the Final Administrative Decision upon either the issuance of the Deciding Official's final determination, or the expiration of the fifteen (15) day employee response period as specified in § 1506.4, whichever is later.
- 1506.9 A Written Reprimand may be considered in determining whether additional and/or more severe disciplinary action is warranted in any subsequent instances of conduct or performance deficiencies when such disciplinary action is initiated within three (3) years of the Written Reprimand.

Section 1507, APPEAL OF ADVERSE ACTION: NON-FACULTY, is amended as follows:

1507 CORRECTIVE ACTIONS: SUSPENSION OF LESS THAN TEN (10) DAYS

- 1507.1 When counseling or a Written Reprimand fail to correct conduct or performance issues, or where counseling or a Written Reprimand is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more substantial response may be required. Within the Progressive Disciplinary

Model, one more substantial response is a suspension of less than ten (10) days, and it represents a corrective action.

- 1507.2 Except in the case of a Written Reprimand in accordance with § 1506 or a summary disciplinary action in accordance with § 1510, the Proposing Official shall issue a Notice of Proposed Corrective Action, which will inform the employee of the following:
- (a) The type of proposed corrective action (suspension of less than ten (10) days);
 - (b) The nature of the proposed corrective action (days of suspension);
 - (c) The specific performance or conduct at issue;
 - (d) The ways in which the employee's performance or conduct fails to meet appropriate standards;
 - (e) The name and contact information of the Deciding Official; and
 - (f) The employee's right to:
 - (1) Review material upon which the proposed corrective action is based;
 - (2) Prepare a written response to the notice, and
 - (3) Be represented by an attorney or other representative.
- 1507.4 The Notice of Proposed Corrective Action will be approved and signed by the Proposing Official.
- 1507.5 The employee to whom a Notice of Proposed Corrective Action is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.
- 1507.6 The material upon which the Notice of Proposed Corrective Action is based, and which is necessary to support the reasons given in the Notice, will be assembled and provided to the employee along with the Notice, unless impractical. If the materials cannot be provided at the time of Notice, they will be made available to the employee for his or her review, upon request.
- 1507.7 Within fifteen (15) days of receipt of the Notice of Proposed Corrective Action, an employee may elect to submit a written response to the Deciding Official.

1507.8 An employee's written response may clarify, expand on, or take exception to the statements or conclusions made in the Notice of Proposed Corrective Action. Once submitted, the response will be maintained and treated as an attachment to the Notice of Proposed Corrective Action.

1507.8 Except in the case of summary disciplinary action in accordance with §1510, an employee will remain in an active duty status pending issuance of a final determination of the proposed corrective action.

Section 1508, EMPLOYEE STATUS DURING NOTICE PERIOD: NON-FACULTY, is amended as follows:

1508 ADVERSE ACTIONS: SUSPENSIONS OF 10 DAYS OR MORE, DEMOTIONS, AND TERMINATIONS

1508.1 Whenever a corrective action fails to improve a performance or conduct problem or is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, or in the case when an employee cannot perform an essential duty of his or her employment, an adverse action may be warranted.

1508.2 An adverse action is a suspension of ten (10) days or more, a demotion, or a termination.

1508.3 Except in the case of summary disciplinary actions in accordance with §1510, the Proposing Official will issue a Notice of Proposed Adverse Action, which will inform the employee of the following:

- (a) The type of proposed adverse action (suspension of ten (10) days or more, demotion, or termination);
- (b) The nature of the proposed adverse action (days of suspension, demotion, or removal);
- (c) The specific performance or conduct at issue;
- (d) The ways in which the employee's performance or conduct fails to meet appropriate standards;
- (e) The name and contact information of the Deciding Official; and
- (f) The employee's right to:
 - (1) Review material upon which the proposed adverse action is based;
 - (2) Prepare a written response to the notice, and

- (3) Be represented by an attorney or other representative.
- 1508.4 The Notice of Proposed Adverse Action will be approved and signed by the Proposing Official.
- 1508.5 The employee to whom a Notice of Proposed Adverse Action is issued will be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal will provide a brief written statement that the employee refused to acknowledge receipt in writing, and that statement will be signed and dated by the witness.
- 1508.6 The material upon which the Notice of Proposed Adverse Action is based, and which is necessary to support the reasons given in the Notice, will be assembled and provided to the employee along with the Notice, unless impractical. If the materials cannot be provided at the time of Notice, they will be made available to the employee for his or her review, upon request.
- 1508.7 Within fifteen (15) days of receipt of the Notice of Proposed Adverse Action, an employee may elect to submit a written response to the Deciding Official.
- (a) An employee's written response may clarify, expand on, or take exception to the statements or conclusions made in the Notice of Proposed Adverse Action. Once submitted, the response will be maintained and treated as an attachment to the Notice of Proposed Adverse Action.
- 1508.8 Except in the case of summary disciplinary action in accordance with § 1510, an employee will remain in a pay status pending issuance of a final determination of the proposed adverse action.

Section 1509, [RESERVED], is amended as follows:

1509 ADMINISTRATIVE LEAVE DURING NOTICE PERIODS

- 1509.1 Following the issuance of a Notice of Proposed Adverse Action or a Notice of Proposed Corrective Action, the Vice President for Human Resources or designee may, at his or her discretion, place the employee on administrative leave pending a final determination in accordance with this section.
- 1509.2 The Vice President for Human Resources may place an employee on administrative leave for no more than ninety (90) days.
- 1509.3 The Vice President for Human Resources may extend the period of administrative leave in increments of no more than thirty (30) calendar days when:

- (a) Returning the employee to duty would undermine the integrity of University operations, threaten the safety of employees, or threaten the health, safety, or welfare of the public; or
- (b) The University has been diligently pursuing a final decision and the delay is due to circumstances beyond the University's control.

1509.5 When the time limits prescribed by this section are exhausted, the employee will be returned to full duty pending a Final Administrative Decision.

Section 1510, [RESERVED], is amended as follows:

1510 SUMMARY DISCIPLINARY ACTIONS

- 1510.1 An employee may be summarily suspended or terminated, notwithstanding the processes described in §§ 1507-1508 of this chapter.
- 1510.2 An employee may be suspended or terminated summarily when his or her conduct:
- (a) Threatens the integrity of University operations;
 - (b) Constitutes an immediate hazard to the University, to other University employees or students, or to the employee; or
 - (c) Is detrimental to public health, safety, or welfare.
- 1510.3 Any decision to take a summary disciplinary action under this section must be approved in writing by the Vice President for Human Resources, or designee. All such approvals must identify:
- (a) Sufficient facts relied upon by the Vice President for Human Resources to support the actions;
 - (b) The specific paragraph(s) of § 1510.2 justifying the summary action; and
 - (c) The specific misconduct, consistent with § 1504, warranting suspension or termination.
- 1510.4 When the Vice President for Human Resources is satisfied that the conditions of § 1510.2 are present, the University may order the employee to immediately leave his or her duty station. Additionally, the University may order the employee to stay away from any University owned or occupied properties to the extent reasonably necessary to ensure the safety of University employees and property; the integrity of University operations; and the public health, safety, and welfare.

- 1510.5 When summary action is warranted, the University will:
- (a) Provide the employee with a Notice of Summary Disciplinary Action;
 - (b) Provide the employee with an opportunity to respond in writing within fifteen (15) days of receipt;
 - (c) Provide the employee with a Final Administrative Decision if the employee submits a written response; and
 - (d) Advise the employee of his or her applicable appeal rights.
- 1510.6 Whenever the University summarily removes or suspends an employee, the Proposing Official will serve the employee with a Notice of Summary Disciplinary Action within five (5) days. The notice will inform the employee of the following:
- (a) The nature of the summary action;
 - (b) The effective date of the summary action;
 - (c) The specific conduct at issue;
 - (d) The ways in which the employee's conduct fails to meet appropriate standards;
 - (e) The specific paragraph(s) of § 1510.2 warranting summary action;
 - (f) The right to review material upon which the summary action is based;
 - (g) The right to be represented by an attorney or other representative.
 - (h) The right to prepare a written response to the notice of the proposed summary action;
 - (i) The name and contact information of the Deciding Official.
- 1510.7 Within fifteen (15) days of receipt of the Notice of Summary Disciplinary Action, an employee may elect to submit a written response to the Deciding Official.

Section 1511, [RESERVED], is amended as follows:

1511 CORRECTIVE & ADVERSE ACTIONS: FINAL ADMINISTRATIVE DECISION

- 1511.1 The Final Administrative Decision relating to a corrective, adverse or summary disciplinary action will constitute the University's final determination on the matter and will be made by the Deciding Official.
- 1511.2 In making the Final Administrative Decision, the Deciding Official will consider the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action and supporting materials, the employee's response (if any), and any report of investigation, if applicable.
- 1511.3 The Final Administrative Decision will be issued within fourteen (14) days of receipt of the employee's response to the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action.
- 1511.4 The Deciding Official may:
- (a) Sustain the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action;
 - (b) Reduce the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action;
 - (c) Remand the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action to the Proposing Official with instructions for further consideration; or
 - (d) Dismiss the Notice of Proposed Corrective Action, Notice of Proposed Adverse Action, or Notice of Summary Disciplinary Action.
- 1511.5 The Final Administrative Decision must be in writing, dated, and signed by the Deciding Official, and will:
- (a) Provide a concise summary of the action(s) being taken and the effective date of the action(s);
 - (b) Succinctly enumerate each independent cause for which the corrective or adverse action is being taken;
 - (c) Set forth a penalty for each enumerated cause;
 - (d) Demonstrate reasoned consideration of the relevant factors set forth in § 1504.2 for each independent action; and
 - (e) Articulate the employee's appeal rights, if any.
- 1511.6 In addition to the information specified in § 1511.5, each Final Administrative Decision will be accompanied by:

- (a) Copies of materials relied upon by the University in rendering its decision;
- (b) A notice of the employee's appeal rights, if any.

1511.7 The Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action will become final upon either the issuance of the Deciding Official's Final Administrative Decision, or the expiration of the fifteen (15)-day employee response period, whichever is later.

1511.8 The Final Administrative Decision will be served on the employee by electronic mail and by first class mail, postage prepaid, to the employee's address of record.

1511.9 A copy of the Final Administrative Decision, and all documents it incorporates, will be placed in the employee's Official Personnel File.

Section 1512, [RESERVED], is amended as follows:

1512 APPEAL RIGHTS

1512.1 An employee who disputes a Final Administrative Decision on a corrective or adverse action under this chapter may seek one (1) of the following remedies:

- (a) If the matter is covered by a grievance procedure negotiated between the University and a collective bargaining unit, the employee may elect to pursue a negotiated grievance in accordance with the applicable collective bargaining agreement;
- (b) For corrective actions, the employee may elect to pursue an administrative grievance pursuant to the provisions of this chapter within ten (10) days from the issuance date of the Final Administrative Decision;
- (c) For adverse actions, the employee may elect to appeal the Final Administrative Decision to the Office of Employee Appeals (OEA) within thirty (30) days of the effective date of the Final Administrative Decision; and

1512.2 An employee may elect only one (1) of the remedies specified in § 1512.1. Whenever a labor organization acts on behalf of the employee, the employee shall be deemed to have made his or her election of remedy, irrespective of whether the employee consented to the election.

1512.3 Neither administrative grievances nor mediation pursuant to the provisions of this chapter nor appeals to OEA shall delay implementation of any Final Administrative Decision under this chapter.

Section 1513, [RESERVED], is amended as follows:

1513 GRIEVANCES

- 1513.1 An employee may grieve a corrective action to modify, reverse, or dismiss a Final Administrative Decision if:
- (a) A provision of this chapter has been violated such that the Final Administrative Decision is arbitrary or capricious; and
 - (b) The employee has suffered or will suffer harm as a result of that violation, which is neither trivial nor speculative.
- 1513.2 Notwithstanding § 1512.1, no employee may submit a grievance to a Final Administrative Decision under this chapter if the action is:
- (a) Not subject to a grievance or appeal as set forth in this chapter;
 - (b) Taken to implement the lawful order of a court or other tribunal recognized by law; or
 - (c) Agreed to by the employee.
- 1513.3 For purposes of this chapter, an administrative grievance will be initiated with the Grievance Official.
- 1513.4 Grievances of corrective actions will be submitted to the Grievance Official within ten (10) days of the issuance of the Final Administrative Decision.
- 1513.5 A grievance will be deemed to have been filed when actually received by the Grievance Official. The burden of establishing the date of receipt will rest with the employee.
- 1513.6 Grievances may be filed with the Grievance Official by one of the following means:
- (a) By first class mail, postage prepaid, to the official's principal business address;
 - (b) By electronic mail; or
 - (c) By hand delivery to the official's principal business addresses.
- 1513.7 Each grievance must include the following:

- (a) The name, e-mail address, and phone number of the employee seeking the relief;
- (b) The name, e-mail address, phone number, and mailing address of the employee’s immediate supervisor;
- (c) A copy of the Final Administrative Decision that is the subject of the grievance;
- (d) A concise written statement of facts, including dates, that establishes why the Final Administrative Decision on the challenged corrective action should be reversed, modified or dismissed;
 - (1) The statement may include as supporting evidence written statements of witnesses, affidavits, or documents or any other form or depiction of information.
 - (2) The statement should include all information the employee deems relevant to the grievance, including information of which the employee has knowledge or reasonably should have knowledge.
- (e) The relief sought by the employee.

1513.8 Upon receipt, the Grievance Official will make a preliminary determination as to whether the grievance meets the criteria set forth in § 1513.7 above.

1513.9 The Grievance Official will make arrangement to interview the grievant and to review the record. Within twenty (20) working days of receipt of the grievance, the Grievance Official will issue a grievance decision and report based upon the totality of the facts that sustains, modifies or reverses the Final Administrative Decision.

Section 1514, [RESERVED], is amended as follows:

1514 MEDIATION

1514.1 A grievant may request mediation of their challenge to their corrective action, in writing, when presenting their grievance to the Grievance Official.

1514.2 The Grievance Official will forward the request for mediation to the Vice President for Human Resources who will designate an individual to serve as the mediator. The mediator will either be an attorney licensed to practice law in the District of Columbia or an individual trained in conducting mediation.

1514.3 The mediator will schedule the mediation and conduct the mediation proceedings in such a manner as to ensure a fair and equitable result. However, the mediation

process must be concluded within thirty (30) days from the date the mediator was designated by the Vice President for Human Resources

- 1514.4 If an amicable resolution of the grievance is reached through mediation, the terms of the resolution will be reduced to writing and signed by all parties, including the mediator. The written resolution will be binding on all parties and is not subject to review by any administrative body, court, or other tribunal.
- 1514.5 If the parties are unable to resolve the grievance through the mediation process, the grievance will be returned to the Grievance Officer to resume the grievance review. Grievances will be returned to the Grievance Officer by the mediator on either the date the mediator determines that no resolution can be reached or thirty (30) days from the date the mediator was designated by the Vice President for Human Resources, whichever is earlier.

Sections 1515 – 1525 are repealed.

Section 1599, DEFINITIONS, is amended as follows:

1599 DEFINITIONS

1599.1 As used in this chapter the following meanings apply:

Adverse action – a suspension of ten (10) work days or more, or demotion, or a termination.

Cause – a reason that is neither arbitrary nor capricious, such as misconduct or performance deficits, that warrants administrative action, including corrective and adverse actions. The classes of conduct and performance deficits outlined in § 1503 of this chapter constitute cause for corrective and adverse actions.

Conduct – the act, manner or process taken by an employee to carry out duties and responsibilities. This can include the failure to act when required to do so.

Corrective action – a written reprimand or a suspension of less than ten (10) workdays.

Days – calendar days unless otherwise specified.

Deciding Official – an employee's 2nd level manager, or a management official within the employee's chain of command who is designated by the Vice President for Human Resources, who issues a final decision on the proposed corrective action, proposed adverse action, or notice of summary disciplinary action.

Disciplinary action – a corrective or adverse action taken for cause to address an employee’s conduct or performance deficiencies.

Final Administrative Decision – a decision rendered by the Deciding Official on a proposed corrective or adverse action or on a summary disciplinary action.

Grievance Official — the Cabinet member to whom the Deciding Official reports, except if the Cabinet member is the Deciding Official, in which case the Grievance Official is the President..

Progressive Discipline Model – refers to the incremental steps to correct either misconduct or systemic performance deficits. Typically, the process may include verbal counseling, corrective action (to include written reprimands and suspensions of less than 10 days) and adverse action (suspensions of ten (10) days or more, demotions and terminations).

Proposing Official – an employee’s immediate supervisor, or a management official in the employee’s chain of command who is designated by the Vice President for Human Resources, who issues a written Notice of Proposed Corrective Action, Notice of Proposed Adverse Action or Notice of Summary Disciplinary Action.

Demotion – an involuntary adverse action that changes an employee to a lower grade level, typically with lower pay.

Removal or Termination – the involuntary separation of an employee from University service.

Supervisor – an individual who supervises another employee or his or her activities.

Summary disciplinary action – an action taken to immediately suspend or separate an employee pursuant to § 1510.

Suspension – the temporary placing of an employee in a non-duty, non-pay status.

Written Reprimand – a written, official censure of an employee that is placed in the employee’s Official Personnel Folder.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl. & 2017 Supp.)), and under the District of Columbia Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Official Code, §§ 1-601.1 et seq. (2016 Repl.)), hereby gives notice of the adoption of a new Chapter 19 (University of the District of Columbia Performance Management Program) of Title 8 (Higher Education), Subtitle B (University of the District of Columbia), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to create a regulatory framework for the University’s new Performance Management Program.

The substance of the proposed rule enacted herein was published on October 20, 2017 at 64 DCR 010584 for a thirty-day public comment period in accordance with D.C. Official Code § 2-505(a). No public comment was received during the public comment period. The rule was adopted by the Board as final on November 28, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 19, UNIVERSITY OF THE DISTRICT OF COLUMBIA PERFORMANCE MANAGEMENT PROGRAM, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is proposed as follows:

CHAPTER 19 UNIVERSITY OF THE DISTRICT OF COLUMBIA PERFORMANCE MANAGEMENT PROGRAM

- 1900 UNIVERSITY OF THE DISTRICT OF COLUMBIA PERFORMANCE MANAGEMENT PROGRAM**
- 1901 PERFORMANCE APPRAISAL PERIOD**
- 1902 PERFORMANCE PLANS**
- 1903 CRITICAL PERFORMANCE ELEMENTS**
- 1904 S.M.A.R.T. GOALS**
- 1905 INDIVIDUAL DEVELOPMENT PLAN**
- 1906 PERFORMANCE RATINGS**
- 1907 PERFORMANCE-BASED DISCUSSIONS: INITIAL PLANNING DISCUSSION TO DRAFT THE PERFORMANCE PLAN**
- 1908 PERFORMANCE-BASED DISCUSSION: MID-POINT PROGRESS DISCUSSION**
- 1909 PERFORMANCE-BASED DISCUSSION: ANNUAL PERFORMANCE EVALUATION**
- 1910 PERFORMANCE IMPROVEMENT PLAN**
- 1999 DEFINITIONS**

1900 UNIVERSITY OF THE DISTRICT OF COLUMBIA PERFORMANCE MANAGEMENT PROGRAM

1900.1 The purpose of this chapter is to set forth rules for the University's Performance Management Program.

1900.2 The provisions of this chapter apply to all University employees, except as follows:

- (a) Faculty (including Academic Chairs);
- (b) Employees serving a probationary period;
- (c) Employees serving on temporary, or time-limited appointments; and
- (d) The University Administration (President's Cabinet).

1900.3 Performance Management integrates the processes the University uses to:

- (a) Communicate and clarify institutional and individual work goals to employees;
- (b) Identify individual, and where applicable, team responsibilities and accountability for accomplishing work unit and institutional goals;
- (c) Identify and address developmental needs for individuals and, where applicable, teams;
- (d) Provide feedback to employees about performance expectations and work accountability;
- (e) Assess and improve individual, team, and institutional performance;
- (f) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and
- (g) Use the results of the Annual Performance Evaluation as a basis for appropriate personnel actions, including training, promotion, demotion, administrative action, or other types of personnel actions.

1900.4 The Performance Management Program implemented by this chapter will accomplish the following:

- (a) Establish work expectations in relation to institutional strategic goals;

- (b) Hold supervisors and employees accountable for performance, which will include a direct relationship between the performance evaluations received pursuant to this chapter and the receipt of any periodic salary increases;
- (c) Objectively evaluate an employee’s work performance based upon articulated criteria that have been made known to the employee prior to the performance evaluation;
- (d) Improve employee performance through developmental plans and continuous employee skill development;
- (e) Recognize an employee’s accomplishments and identify an employee’s deficiencies so that appropriate rewards or assistance can be provided; and
- (f) Tie employee performance to work unit and University outcomes.

1901 PERFORMANCE APPRAISAL PERIOD

1901.1 The Performance Appraisal Period begins October 1 and ends September 30 of the following year.

1902 PERFORMANCE PLANS

1902.1 A Performance Plan sets forth the performance expectations and development objectives that each employee is expected to accomplish during the Performance Appraisal Period.

1902.2 A Performance Plan includes the following:

- (a) Critical Performance Elements (Key Competencies);
- (b) S.M.A.R.T. Goals (Specific, Measurable, Attainable, Realistic, and Time Related); and
- (c) An Individual Development Plan.

1902.3 Modifications to the Performance Plan generally cannot be made during the final ninety (90) days before the end of the Performance Appraisal Period. However, if such a modification is necessary, the appraisal period can be extended to provide the employee with 90 days to demonstrate satisfactory performance. The employee must be advised of any extension of the appraisal period.

1902.4 Each supervisor must complete a Performance Plan outlining what is expected of each employee, as follows:

- (a) Within thirty (30) days of the beginning of each Performance Appraisal Period;
- (b) Within thirty (30) days of the effective date of an official detail if the detail is for a period of more than ninety (90) days;
- (c) Within thirty (30) days of the effective date of an appointment, reassignment, transfer, promotion or demotion to a new position or to a position with significantly different duties and responsibilities. Provided, however:
 - (i) If the appointment, reassignment, transfer, promotion or demotion takes effect more than ninety (90) days prior to the end of the Performance Appraisal Period, the new Performance Plan will take effect during the same Performance Appraisal Period;
 - (ii) If the appointment, reassignment, transfer, promotion or demotion takes effect within ninety (90) days of the end of the Performance Appraisal Period, the new Performance Plan will take effect at the beginning of the next Performance Appraisal Period, unless the performance appraisal period has been extended in accordance with §1902.3.

1902.5 A Performance Plan must be in place for at least ninety (90) days before an employee's performance is subject to an Annual Performance Evaluation.

1902.6 If an employee is reassigned, transferred, promoted, or demoted within ninety (90) days of the end of a Performance Appraisal Period, the employee's previous supervisor will perform the Annual Performance Evaluation for the portion of the Performance Appraisal Period during which the employee reported to the supervisor.

1903 CRITICAL PERFORMANCE ELEMENTS

1903.1 Critical Performance Elements identify key competencies or the necessary knowledge, abilities, skills and personal characteristics that must be demonstrated for satisfactory performance. These key competencies are so necessary for successful performance that failure to accomplish a Critical Performance Element will result in an Overall Performance Rating of Unsatisfactory performance.

1903.2 At the beginning of each Performance Appraisal Period, a supervisor will discuss with the employee how each Critical Performance Element relates to the employee's job.

1903.3 At the end of the Performance Appraisal Period, the supervisor will evaluate the employee's performance of each Critical Performance Element during the period.

1903.4 There are four (4) Critical Performance Elements applicable to non-supervisory employees:

- (a) **Job Knowledge** – the employee exhibits an understanding and knowledge of their profession and works to improve job knowledge through professional development or other related activities, approved by the supervisor if applicable, that benefit the University and are related to the employee’s job;
- (b) **Accountability** – the employee demonstrates personal responsibility for ensuring the efficient and accurate completion of work assignments;
- (c) **Customer Service** – the employee provides quality service; demonstrates consistent and continual adherence to prescribed University customer service goals/standards and treats all customers in a professional and courteous manner; and
- (d) **Communication** – the employee presents ideas and information verbally and in writing, in a clear, concise, and timely manner.

1903.5 There are four (4) Critical Performance Elements applicable to supervisors:

- (a) **Leadership** – the supervisor creates and nurtures a performance-based culture that supports efforts to realize the University’s missions and accomplish its goals; inspires, motivates and guides others; and partners with others to ensure goals are met.
- (b) **Strategic Planning and Operational Efficiency** – the supervisor contributes to the development, execution, and evaluation of the University’s strategic plan, and displays a keen awareness of and attention to short- and long-term goals, stakeholder interests, and opportunities for work process improvement.
- (c) **Management of Others** – the supervisor identifies potential in others and provides ongoing feedback to improve performance; encourages meaningful career development opportunities for their staff and conducts the full scope of performance management responsibilities to ensure a well-functioning team.
- (d) **Job Knowledge** – the employee exhibits an understanding and knowledge of their profession and works to improve job knowledge through professional development or other related activities, approved by the supervisor if applicable, that benefit the University and are related to the employee’s job.

1903.6 Up to two (2) additional non-supervisory Critical Performance Elements may be added for supervisors, if appropriate.

1904 S.M.A.R.T. GOALS

1904.1 S.M.A.R.T. Goals set forth performance expectations, results, expected outcomes, and deliverables with objective standards that are “Specific, Measurable, Attainable, Realistic, and Time-Related.” S.M.A.R.T. Goals are to be established for and accomplished during a Performance Appraisal Period.

1904.2 A Performance Plan includes a S.M.A.R.T. Goal for each Critical Performance Element that sets forth the specific expectations and responsibilities to be accomplished by the employee, with objective standards for measuring the quality, quantity, and/or timeliness of the work.

1904.3 At the beginning of each Performance Appraisal Period, a supervisor will discuss with the employee how each Critical Performance Element and associated S.M.A.R.T. Goal relates to the employee’s position.

1904.4 At the end of the Performance Appraisal Period, the supervisor will evaluate the employee’s performance of each Critical Performance Element as measured against the associated S.M.A.R.T. Goal.

1905 INDIVIDUAL DEVELOPMENT PLAN

1905.1 An individual development plan (IDP) is a tool to assist employees with career and professional development. Its primary purpose is to help employees reach short and long-term career goals. Supervisors will consider how well employees accomplish career and professional development goals when evaluating the Job Knowledge Critical Performance Element.

1905.2 At the beginning of the Performance Appraisal Period, a supervisor will prepare an IDP for each employee, identifying areas for growth and development. The IDP will be prepared in collaboration with the employee.

1905.3 The IDP is designed to encourage continuous learning and development.

1906 PERFORMANCE RATINGS

1906.1 The Overall Performance Rating reflects the evaluation of an employee’s actual performance of Critical Performance Elements, measured against the associated S.M.A.R.T. Goals, during the Performance Appraisal Period.

1906.2 The Overall Performance Rating shall be determined by adding together the numerical scores for each of the S.M.A.R.T. Goals for each Critical Performance Element, divided by the total number of Critical Performance Elements (to derive

an average numerical score). If any Critical Performance Element is rated as Unsatisfactory, the overall rating will be Unsatisfactory.

1906.3 The rating levels used to measure an employee's performance of each S.M.A.R.T. Goal will be as follows:

(a) Exceptional (Yields 3 points)

This is a level of rare, high quality performance. The quality and quantity of the employee's work substantially surpasses the "Meets Expectations" performance level. The impact of the employee's work is so significant that organizational objectives are exceeded. The accuracy and thoroughness of the employee's work is exceptionally reliable and application of technical knowledge and skill goes beyond what is expected for the job. The employee significantly improves the work processes for which he or she is responsible.

(b) Exceeds Expectations (Yields 2 points)

Performance consistently exceeds normal standards in all critical areas for the position. Performance is sustained and uniformly high with thorough and on time results.

(c) Meets Expectations (Yields 1 point)

Performance at this level represents the range of accomplishments that are expected of all employees. The employee remains consistently on target to achieve. Problems are not frequent or significant enough to create serious adverse consequences and are dealt with effectively. The work product is usually accurate and delivered on time.

(d) Unsatisfactory (Yields 0 points)

The quality and quantity of the employee's work is unsatisfactory. The employee's work products fall short of requirements for the position. Tasks are not completed with the needed degree of accuracy or thoroughness. Products arrive late and/or often require major revisions because they are incomplete or inaccurate in content.

If any Critical Performance Element is rated as Unsatisfactory, the overall rating will be Unsatisfactory.

(e) N/A or Not Applicable

This employee either does not perform this type of work or there has been insufficient opportunity to observe the employee perform.

1906.4 “Exceptional” and “Unsatisfactory” ratings must be supported by a written justification.

1907 PERFORMANCE –BASED DISCUSSIONS: INITIAL PLANNING DISCUSSION TO DRAFT THE PERFORMANCE PLAN

1907.1 Each supervisor is required to develop a Performance Plan for each employee under their supervision, as outlined in §1902.

1907.2 The supervisor and employee must discuss the Critical Performance Elements set forth in §1903 and how they relate to the employee’s position; develop a S.M.A.R.T. Goal for each Critical Performance Element in accordance with §1904; and prepare an IDP in accordance with §1905.

1908 PERFORMANCE –BASED DISCUSSION: MID-POINT PROGRESS DISCUSSION

1908.1 The Mid-Point Progress Discussion is a formal meeting between a supervisor and employee to discuss the employee’s performance and development, which typically occurs at the midpoint of the Performance Appraisal Period (March 1-March 31).

1908.2 An Annual Performance Evaluation will not be based solely on a Mid-Point Progress Discussion. An employee’s performance during the entire Performance Appraisal Period will be considered to determine the extent to which the employee achieved the S.M.A.R.T. Goal for each Critical Performance Element.

1909 PERFORMANCE-BASED DISCUSSION: ANNUAL PERFORMANCE EVALUATION

1909.1 An Annual Performance Evaluation will be based on an employee’s performance during the entire Performance Appraisal Period to assess the extent to which the employee satisfied each Critical Performance Element as measured against the associated S.M.A.R.T. Goal.

1909.2 In preparation for the Annual Performance Evaluation, each employee must prepare and submit a self-evaluation to his or her supervisor as input into the performance evaluation process.

1909.3 Supervisors will consider employee self-evaluations in addition to other relevant considerations and must prepare the Annual Performance Evaluation within thirty (30) days of the end of the Performance Appraisal Period.

1909.4 Supervisors (who serve as Rating Officials) must prepare a recommended Annual Performance Evaluation (the average numerical score of the individual

recommended ratings for each S.M.A.R.T. Goal for each Critical Performance Element) with their manager (Approving Official) before finalizing the Annual Performance Evaluation and communicating it to the employee.

- 1909.5 The Rating Official discusses the recommended Annual Performance Evaluation with the employee.
- 1909.6 Should the employee disagree with the Annual Performance Evaluation, the employee may submit a written response within five (5) working days of receipt to the Approving Official for consideration.
- 1909.7 Within ten (10) working days of receipt of either the recommended Annual Performance Evaluation from the supervisor or receipt of the employee's written response to the supervisor's rating, the Approving Official will decide the final rating.
- 1909.8 A copy of the final written Annual Performance Evaluation will be provided to the employee.
- 1909.9 After completion of the performance management cycle, each supervisor will submit original signed Annual Performance Evaluations to the University's Office of Human Resources. The Office of Human Resources shall retain ratings for three (3) years.

1910 PERFORMANCE IMPROVEMENT PLAN

- 1910.1 The purpose of a Performance Improvement Plan (PIP) is to establish clarity, for both the employee and supervisor, about areas of performance that are deficit and in need of improvement. The PIP is a management tool for correcting such performance deficiencies and is not a form of discipline. It is used to monitor and measure deficient work product, processes and/or behaviors as efforts are undertaken to improve performance or modify behavior. The PIP also serves as the basis for further action if deficient performance continues.
- 1910.2 The PIP will be developed by the employee's immediate supervisor, and provide concrete, measurable actions and/or steps to be taken for the employee's performance to improve in specifically identified area(s).
- 1910.3 At the sole discretion of the supervisor, the PIP may be issued for a 30-, 60-, or 90-day period. A PIP may be extended in thirty (30)-day increments up to a maximum of ninety (90) days.
- 1910.4 Within fourteen (14) days of the conclusion of the PIP period, and in consultation with the University's Office of Human Resources, the supervisor will make a written determination as to whether the employee has met the requirements of the PIP. A copy of the supervisor's decision will be provided to the employee.

- 1910.5 If the employee receives a rating of “Meets Expectations” at the end of the PIP, no further action is required of the supervisor.
- 1910.6 An employee who successfully completes a PIP must maintain a rating of “Meets Expectations” throughout the next full Performance Appraisal Period. If the employee’s performance once again falls (at any time during the next Performance Appraisal Period) to a rating of “Unsatisfactory” for a Critical Performance Element and/or S.M.A.R.T. Goal for which a PIP has been previously issued, an adverse action may be initiated without another PIP, pursuant to the provisions of Chapter 15 of this title.
- 1910.7 If the employee fails to improve their performance deficiencies during the PIP and their performance remains “Unsatisfactory”, the supervisor, in consultation with the Vice President of Human Resources, must propose one of the following actions:
- (a) Demotion to a lower graded position with the appropriate reduction in salary if such a position is available; or
 - (b) Separation from the University.
- 1910.8 Adverse actions to demote or separate an employee who has failed to perform satisfactorily will be accomplished pursuant to the provisions of Chapter 15 (Progressive Discipline), except for at-will employees.

1999 DEFINITIONS

Annual Performance Evaluation – the average of the numerical scores assigned to each of the S.M.A.R.T. Goals for each of the Critical Performance Elements, which reflects how well an individual employee has accomplished the performance expectations established in the Performance Plan during the review period.

Approving Official – the second or next level of supervisor who reviews and approves the Annual Performance Evaluation, and in case of an employee appeal, decides the final rating.

Critical Performance Element – the key competencies or the necessary knowledge, abilities, skills and personal characteristics that must be demonstrated for satisfactory performance. These key competencies are so necessary for successful performance that failure to accomplish a Critical Performance Element will result in an Overall Performance Rating of Unsatisfactory performance. It is linked to the specific duties performed in a particular work unit but focused on the individual employee. A Critical Performance Element must be performed at least at

the “Meets Expectation” level in order for an employee to be retained in the position.

Individual Development Plan (IDP) - is a tool that identifies training and learning activities that will enhance an employee’s knowledge, skill, and abilities to perform current work duties, and can help prepare the employee for future career advancement opportunities. The IDP is used for developmental purposes and is considered as part of the evaluation of the Job Knowledge Critical Performance Element.

Performance Improvement Plan (PIP) - is a performance management tool designed to offer the employee an opportunity to demonstrate improvement in his or her performance.

Performance Management – the systematic process by which the University involves its employees, as individuals and members of a group, to ensure the accomplishment of University mission and goals.

Performance Appraisal Period - is the length of time covering the performance evaluation process, beginning on October 1 and ending on September 30.

Performance Plan – the formalized process of identifying and communicating the organizational, work unit and individual goals expected of the employee. The Performance Plan consists of Critical Performance Elements, S.M.A.R.T. Goals, and an Individual Development Plan.

Rating Official – the supervisor who evaluates employee performance and recommends the Annual Performance Evaluation Rating, which is approved by Approving Official.

Self-evaluation – the employee’s narrative description of accomplishments based on the established performance expectations.

S.M.A.R.T. Goals – the expression of performance expectations that consist of goals that are Specific, Measurable, Attainable, Realistic, and Time Related. A S.M.A.R.T. Goal will set forth the specific expectations and responsibilities to be accomplished by the employee and it includes standards for measuring the quality, quantity, and timeliness of the work performed.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRULEMAKING 41-2017-01 – DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.), hereby gives notice of its intent to adopt the following amendments to Chapter 41 (The District of Columbia Standard Offer Service Rules), of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (“DCMR”).

2. On June 30, 2017, the Commission published a Notice of Proposed Rulemaking on Chapter 3 (Consumer Rights and Responsibilities) of Title 15 DCMR, commonly referred to as the “Consumer Bill of Rights” (“CBOR”), inviting comments from interested persons.¹ In accordance to the notice, on July 31, 2017, the Potomac Electric Power Company (“Pepco”), filed comments contending that the Commission’s proposed rule for Subsection 327.35 “conflicts with current [Standard Offer Service (“SOS”)] rules and Pepco’s Commission-accepted Electricity Coordination Tariff (“Supplier Tariff”).”² Pepco suggested that if the Commission intends to keep its proposed language, “the SOS rules, Pepco’s Supplier Tariff, and Pepco’s Tariff would also require changes.”³ The Commission’s proposed rule under Subsection 327.35 requires a three (3) business day requirement transfer period from the electric utility to the competitive electricity supplier, upon Customer’s notification to switch. The Commission agrees with Pepco’s comments; therefore, this Proposed Rulemaking proposes to make Subsection 4105.9 consistent with the Commission’s Chapter 3, Subsection 327.35 proposed amendments.

3. The Commission shall take final rulemaking action not less than forty-five (45) days after publication of this notice in the *D.C. Register*.

Chapter 41, THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 4105, ESTABLISHMENT AND RE-ESTABLISHMENT OF STANDARD OFFER SERVICE: CUSTOMER SWITCHING RESTRICTIONS, is amended as follows:

4105.9 Notice of Transfers; Transfer of Service; Bill Calculation:

¹ 64 DCR 6128-6144 (June 30, 2017).

² *RM3-2014-01, Utility Consumer Bill of Rights (“RM3-2014-01”)*, Comments of Potomac Electric Power Company at 5, filed on July 31, 2017 (“Pepco’s Comments”).

³ Pepco’s Comments at 6.

- (a) Notice of Transfer into SOS: A customer who intends to transfer into SOS shall do so by notifying the Electric Company and the SOS Administrator or by canceling service with its Competitive Electricity Supplier.
- (b) Transfer into SOS: If the customer notifies the Electric Company and the SOS Administrator no later than three (3) business days after receiving the notice of an enrollment transaction from the competitive supplier, the Electric Company and the SOS Administrator shall transfer the customer on the customer's next meter read date. Otherwise, transfer will occur on the following meter read date. The Electric Company and the SOS Administrator shall accommodate the request to the greatest extent practicable.
- (c) Notice of Transfer out of SOS: Notice that a SOS customer will terminate SOS and obtain service from a Competitive Electricity Supplier shall be provided to the Electric Company and the SOS Administrator by the customer's Competitive Electricity Supplier pursuant to Chapter 3 of Title 15 of the District of Columbia Municipal Regulations; and
- (d) Transfer out of SOS: If the Competitive Electricity Supplier notifies the Electric Company and the SOS Administrator no later than three (3) business days after receiving the notice of an enrollment transaction from the customer, the Electric Company and the SOS Administrator shall transfer the customer on the customer's next meter read date. Otherwise, transfer will occur on the subsequent meter read date.

4. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Brinda Sedgwick-Westbrook, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. Copies of the proposed rules may be obtained by visiting the Commission's website at www.dcpssc.org, or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-5150.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to Section 4(d) of the District of Columbia Charitable Solicitation Act, approved July 10, 1957 (Pub. L. 85-87; D.C. Official Code § 44-1703(d) (2012 Repl.)) (“Charitable Solicitation Act”), and 16 DCMR § 1310, hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 13 (Charitable Solicitation) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to preserve the health, safety, and well-being of District organizations by immediately increasing the threshold that applies to the exemption from the requirement that charitable solicitors be registered with the District. The threshold is raised from \$1,500 in received solicitations to \$25,000 in received solicitations, as allowed by Section 4(d) of the Charitable Solicitation Act (D.C. Official Code § 44-1703(d)). The amendment also clarifies how the total yearly solicitations will be calculated.

This emergency rulemaking was adopted on October 1, 2017, to become effective immediately. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness and will expire on January 29, 2018.

The Director also hereby gives notice of her intent to adopt these amendments as a final rulemaking in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

To clearly show the changes being made to the DCMR, additions are shown in underlined text and deletions are shown in ~~strikethrough~~ text.

Chapter 13, CHARITABLE SOLICITATION, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 1301, EXEMPTION OF SMALL SOLICITATIONS, Subsection 1301.1, is amended to read as follows:

1301.1 Under the authority of § 4(d) of the Act [D.C. Official Code § 44-1703(d)~~(1981 Ed.)~~], any person or individual who, in connection with a solicitation, ~~does~~ did not actually receive contributions in excess of ~~fifteen hundred twenty-five thousand~~ twenty-five thousand dollars (\$ ~~1,500-25,000~~) during ~~a~~ the previous calendar year and who does not expect to receive contributions in excess of twenty five thousand dollars (\$25,000) during the current calendar year and who complies with the provisions of this section, shall be exempt from the provisions of §§ 4(a), 6, and 7 of the Act [D.C. Official Code §§ 44-1703(a), 44-1705, and 44-1706(2001 ed.)].

All persons desiring to comment on these proposed regulations should submit comments in writing to Matt Orlins, Director of Legislative and Public Affairs, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., Room 5100, Washington, D.C. 20024, or via e-mail at matt.orlins@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-312
December 12, 2017

SUBJECT: Appointment – Director, Homeland Security and Emergency Management 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.), and in accordance with section 2 of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes, approved August 11, 1950, 64 Stat. 438; Pub. L. 81-686; D.C. Official Code § 7-2202 (2013 Repl.), with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2016 Repl. and 2017 Supp.), and pursuant to the Homeland Security and Emergency Management Agency Christopher Rodriguez Confirmation Resolution of 2017, effective December 5, 2017, PR22-0584, it is hereby **ORDERED** that:

1. **CHRISTOPHER RODRIGUEZ** is appointed Director, Homeland Security and Emergency Management Agency, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2017-296, dated November 8, 2017.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to December 5, 2017.



MURIEL BOWSER
MAYOR

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

DISTRICT OF COLUMBIA COMMISSION ON THE ARTS AND HUMANITIES

NOTICE OF PUBLIC MEETING

Board of Commissioners

The Board of Commissioners of the District of Columbia Commission on the Arts and Humanities (CAH) will be holding a Full Commission Meeting on Thursday, December 14, 2017 at 3:30 p.m. The meeting will be held at RM 5403, 200 I St. SE, Washington D.C. 20003.

A final agenda will be posted to the CAH website at <http://dcarts.dc.gov/page/commissioner-meetings>. For further information, please contact the front desk at (202) 724-5613.

TENTATIVE AGENDA

- | | |
|-----------------------------------|---------------------------|
| 1. Call to Order | Chairperson |
| 2. Adoption of the Agenda | All Commissioners Present |
| 3. Adoption of Minutes | All Commissioners Present |
| 4. Chairperson’s Report | Chairperson |
| 5. Committee Reports | All Commissioners Present |
| 6. Executive Director’s Report | Executive Director |
| 7. New Business and Announcements | All Commissioners Present |
| 8. Adjournment | Chairperson |

BRIDGES PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT**

Bridges Public Charter School intends to enter into a sole source contract with Digidoc for a LPN Nurse placed within the school. This nurse is serving as an effective assistant specifically equipped for one students special disability needs.

- Bridges Public Charter School establishes the sole source with Digidoc intended for the high quality initiatives in nurse care that will lead to this special needs student achievement.

For further information regarding this notice, contact bids@bridgespcs.org no later than **4:00 pm Tuesday, December 26, 2017**.

CENTER CITY PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Furniture Purchase and Installation**

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

Center City PCS would like to engage one furniture representative to meet school Science furniture needs at six charter schools located in the District of Columbia. The goal is to enter into a contract with a professional and dynamic company that is able to meet ALL purchase, delivery, and installation requirements.

To obtain copies of full RFPs, please visit our website: www.centercitypcs.org/contact/request-for-proposal. The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person

Natasha Harrison
nharrison@centercitypcs.org

CENTER CITY PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****School A/C Purchase and Installation**

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

Center City PCS would like to install a system to provide air conditioning to a school auditorium space. The contract will be competitively bid with no special considerations other than credentials, quality of proposal, cost, and references.

To obtain copies of full RFPs, please visit our website: www.centercitypcs.org/contact/request-for-proposal. The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person

Natasha Harrison
nharrison@centercitypcs.org

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

SCHEDULE OF FEES

The DCRA Infraction Fine Increase Amendment Act of 2017, which was included in the Fiscal Year 2018 Budget Support Act of 2017 (published at 64 DCR 7652), requires that the District increase assessed fine amounts in accordance with the past year's Consumer Price Index (CPI). Pursuant to the new law, beginning January 1st, 2018, the fines for all infractions listed in §§ 3301 through 3313 of Title 16 of the District of Columbia Municipal Regulations, will increase by 1.7%. The new fine amounts as of Jan. 1 are listed in the table below under "Current Fine Amount". The CPI adjustment is tied to the September 2017 12-Month Consumer Price Index for All Urban Consumers (CPI-U) for the Washington Metropolitan Statistical Area, as published by the United States Bureau of Labor Statistics.

Fine Type	Previous Fine Amount	Current Fine Amount
Class 1		
For the first offense	\$2,000	\$2,034
For the second offense	\$4,000	\$4,068
For the third offense	\$8,000	\$8,136
For the fourth and subsequent offenses	\$16,000	\$16,272
Class 2		
For the first offense	\$1,000	\$1,017
For the second offense	\$2,000	\$2,034
For the third offense	\$4,000	\$4,068
For the fourth and subsequent offenses	\$8,000	\$8,136
Class 3		
For the first offense	\$500	\$509
For the second offense	\$1,000	\$1,017
For the third offense	\$2,000	\$2,034
For the fourth and subsequent offenses	\$4,000	\$4,068
Class 4		
For the first offense	\$100	\$102
For the second offense	\$200	\$203
For the third offense	\$400	\$407
For the fourth and subsequent offenses	\$800	\$814
Class 5		
For the first offense	\$50	\$51
For the second offense	\$100	\$102
For the third offense	\$200	\$203
For the fourth and subsequent offenses	\$400	\$407
Class 6		
For the first offense	\$10,000	\$10,170
For the second and subsequent offenses	\$20,000	\$20,340

D.C. BILINGUAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY17.18:

- Security/Traffic Services

Proposal Submission

A Portable Document Format (pdf) version of your proposal must be received by the school no later than **4:00 p.m. EST on Tuesday, December 26, 2017**. Proposals should be emailed to bids@dcbilingual.org

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

E.L. HAYNES PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****COMPENSATION PLAN - TNTP**

E.L. Haynes Public Charter School is partnering with TNTP in order to update our current teacher salary scale as we continue to evolve as a school. This work will complement our existing stakeholder engagement with plans to determine a new compensation plan for teachers by March and for other staff by May. As the unique holder of the national and local data necessary to conduct this process, TNTP will leverage their considerable experience and expertise to provide best practices and research, feedback, and advisory to E.L. Haynes central office staff.

In support of this partnership and in order to meet the necessary deliverable, E.L. Haynes Public Charter School will provide funding to TNTP, not to exceed \$25,000 in order to support a benchmarked and well researched teacher compensation scale.

If you have questions or concerns regarding this notice, please contact our Procurement Officer:

Kristin Yochum
E.L. Haynes Public Charter School
kyochum@elhaynes.org

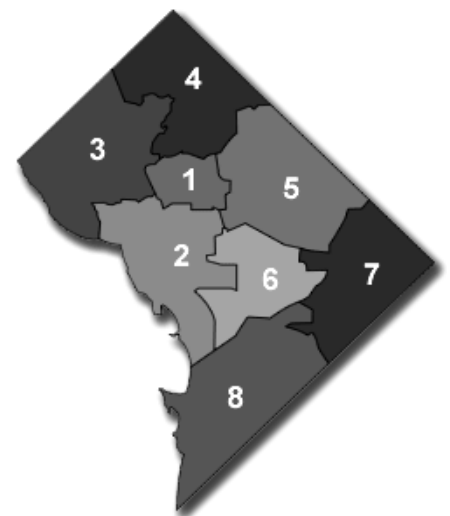
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	44,093	2,880	608	145	170	11,131	59,027
2	30,086	5,661	215	165	154	10,611	46,892
3	37,483	6,378	338	143	150	10,836	55,328
4	48,601	2,225	519	87	166	8,888	60,486
5	51,730	2,318	580	113	223	9,286	64,250
6	54,902	7,031	472	246	231	13,316	75,198
7	47,442	1,279	421	51	165	6,464	55,822
8	45,726	1,372	437	51	174	7,168	54,928
Totals	359,063	29,144	3,590	1,001	1,433	77,700	471,931
Percentage By Party	76.08%	6.18%	.76%	.21%	.30%	16.46%	100.00%

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF NOVEMBER 30, 2017

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.dcboe.org>



**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,397	33	8	3	3	245	1,689
22	3,669	382	28	13	13	954	5,059
23	2,848	217	42	13	10	761	3,891
24	2,604	251	25	14	13	778	3,685
25	3,737	427	44	16	12	1,079	5,315
35	3,498	222	48	13	8	823	4,612
36	4,110	240	54	8	16	1,002	5,430
37	3,344	157	47	12	11	801	4,372
38	2,842	126	45	17	14	730	3,774
39	4,040	194	65	7	15	917	5,238
40	3,815	185	80	9	17	981	5,087
41	3,505	207	65	7	17	999	4,800
42	1,788	80	26	4	11	452	2,361
43	1,778	70	24	4	7	363	2,246
137	1,118	89	7	5	3	246	1,468
TOTALS	44,093	2,880	608	145	170	11,131	59,027

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	918	175	6	9	12	541	1,661
3	1,622	369	16	8	10	637	2,662
4	1,885	476	5	10	9	718	3,103
5	2,069	598	13	14	11	762	3,467
6	2,290	827	17	17	16	1,233	4,400
13	1,286	230	4	2	5	408	1,935
14	2,853	471	26	18	9	941	4,318
15	2,933	396	30	17	15	870	4,261
16	3,382	422	27	20	17	941	4,809
17	4,701	619	29	20	15	1,461	6,845
129	2,323	404	14	10	13	890	3,654
141	2,355	304	14	11	13	648	3,345
143	1,469	370	14	9	9	561	2,432
TOTALS	30,086	5,661	215	165	154	10,611	46,892

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,246	393	15	4	6	555	2,219
8	2,401	626	27	6	8	775	3,843
9	1,161	493	6	8	8	487	2,163
10	1,847	411	21	6	13	679	2,977
11	3,295	863	38	30	22	1,212	5,460
12	485	181	0	5	4	207	882
26	2,820	337	19	8	6	812	4,002
27	2,417	246	23	9	3	567	3,265
28	2,486	474	40	10	10	763	3,783
29	1,324	226	10	8	8	403	1,979
30	1,277	207	11	4	6	295	1,800
31	2,395	299	16	7	12	565	3,294
32	2,692	290	25	5	11	560	3,583
33	2,874	283	22	4	4	657	3,844
34	3,673	425	34	12	9	1,070	5,223
50	2,108	276	14	5	7	485	2,895
136	831	90	6	1	3	261	1,192
138	2,151	258	11	11	10	483	2,924
TOTALS	37,483	6,378	338	143	150	10,836	55,328

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,255	66	32	5	9	385	2,752
46	2,808	93	31	7	11	503	3,453
47	3,372	136	43	9	15	758	4,333
48	2,797	129	27	5	7	548	3,513
49	883	43	13	3	5	195	1,142
51	3,300	509	20	8	10	617	4,464
52	1,240	148	9	1	4	233	1,635
53	1,244	74	21	1	4	244	1,588
54	2,328	97	24	2	4	441	2,896
55	2,417	77	17	1	11	426	2,949
56	3,103	96	34	8	13	630	3,884
57	2,430	68	34	6	12	473	3,023
58	2,265	64	19	4	4	344	2,700
59	2,604	87	29	7	7	425	3,159
60	2,161	72	24	4	10	614	2,885
61	1,564	53	15	1	6	284	1,923
62	3,130	128	22	3	5	386	3,674
63	3,664	130	56	1	20	662	4,533
64	2,343	68	21	6	6	355	2,799
65	2,693	87	28	5	3	365	3,181
Totals	48,601	2,225	519	87	166	8,888	60,486

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,363	193	64	9	14	961	5,604
44	2,789	238	27	7	18	650	3,729
66	4,452	89	45	4	15	574	5,179
67	2,825	102	23	4	9	417	3,380
68	1,903	160	20	7	6	392	2,488
69	2,081	70	19	1	10	284	2,465
70	1,444	79	25	0	5	210	1,763
71	2,379	71	26	5	10	329	2,820
72	4,280	139	38	8	24	712	5,201
73	1,950	91	23	6	8	357	2,435
74	4,592	257	59	10	23	976	5,917
75	3,847	213	44	18	21	820	4,963
76	1,581	87	20	6	6	354	2,054
77	2,863	124	28	3	13	505	3,536
78	2,920	95	43	9	11	474	3,552
79	2,026	74	21	3	12	354	2,490
135	3,021	177	39	11	13	616	3,877
139	2,414	59	16	2	5	301	2,797
TOTALS	51,730	2,318	580	113	223	9,286	64,250

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,389	552	45	28	16	1,201	6,231
18	4,760	361	44	16	22	1,072	6,275
21	1,159	58	8	6	1	249	1,481
81	4,588	361	44	12	18	917	5,940
82	2,555	252	32	10	7	582	3,438
83	5,218	731	36	31	26	1,381	7,423
84	1,951	405	19	5	10	528	2,918
85	2,623	485	18	12	9	726	3,873
86	2,186	255	21	11	7	444	2,924
87	2,662	280	16	3	16	581	3,558
88	2,102	290	20	6	4	490	2,912
89	2,517	620	20	15	10	747	3,929
90	1,560	239	10	6	10	450	2,275
91	3,987	395	33	14	19	915	5,363
127	4,128	317	41	22	18	856	5,382
128	2,430	208	27	10	10	596	3,264
130	769	301	6	1	3	272	1,350
131	2,759	739	18	24	18	875	4,444
142	1,570	182	14	14	7	434	2,218
TOTALS	54,148	7,031	472	246	231	13,316	75,198

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,419	83	20	4	2	259	1,787
92	1,585	33	12	1	5	226	1,862
93	1,568	39	17	2	5	223	1,854
94	1,935	58	19	0	6	259	2,277
95	1,649	46	12	1	2	262	1,972
96	2,342	64	16	0	13	332	2,767
97	1,395	43	14	1	6	209	1,668
98	1,890	41	20	4	7	252	2,214
99	1,510	51	18	4	8	246	1,837
100	2,374	46	16	2	7	282	2,727
101	1,586	28	14	3	5	173	1,809
102	2,306	53	19	1	12	288	2,679
103	3,447	78	38	2	9	480	4,054
104	3,058	82	30	1	19	434	3,624
105	2,395	71	20	5	8	369	2,868
106	2,799	59	19	1	11	373	3,262
107	1,747	61	13	1	8	218	2,048
108	1,073	28	6	0	2	127	1,236
109	964	39	4	0	1	99	1,107
110	3,707	102	23	7	10	413	4,262
111	2,444	62	33	3	7	380	2,929
113	2,199	56	20	4	7	266	2,552
132	2,050	56	18	4	5	294	2,427
TOTALS	47,442	1,279	421	51	165	6,464	55,822

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,207	63	17	1	10	317	2,615
114	3,460	132	34	4	21	571	4,222
115	2,822	67	25	5	9	608	3,536
116	4,125	98	43	5	14	631	4,916
117	2,089	48	19	2	10	342	2,510
118	2,740	78	31	3	13	409	3,274
119	2,689	111	28	2	11	452	3,293
120	1,887	34	14	2	3	232	2,172
121	3,378	78	28	3	5	465	3,957
122	1,787	45	23	0	9	240	2,104
123	2,324	160	25	12	20	385	2,926
124	2,597	70	23	1	7	363	3,061
125	4,466	107	37	3	14	706	5,333
126	3,807	130	46	6	15	709	4,713
133	1,292	43	8	0	1	176	1,520
134	2,202	50	26	1	6	297	2,582
140	1,854	58	10	1	6	265	2,194
TOTALS	45,726	1,372	437	51	174	7,168	54,928

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 10/31/2017 and 11/30/2017

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	359,702	29,246	3,591	988	1,445	77,730	472,702
Board of Elections Over the Counter	17	1	1	1	0	6	26
Board of Elections by Mail	68	8	3	0	0	44	123
Board of Elections Online Registration	133	15	0	0	2	29	179
Department of Motor Vehicle	440	52	5	0	7	190	694
Department of Disability Services	2	0	0	0	0	0	2
Office of Aging	0	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	0
Department of Corrections	0	0	0	0	0	0	0
Department of Human Services	9	0	0	0	0	4	13
Special / Provisional	0	0	0	0	0	0	0
All Other Sources	113	10	0	1	1	48	173
+Total New Registrations	779	85	9	2	10	321	1,206

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	186	17	2	0	1	45	251
Administrative Corrections	2	2	0	0	0	0	4
+TOTAL ACTIVATIONS	188	19	2	0	1	45	255

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	325	40	6	1	1	83	456
Moved Out of District (Deleted)	0	0	0	0	0	1	1
Felon (Deleted)	0	0	0	0	0	0	0
Deceased (Deleted)	2	0	0	0	0	0	2
Administrative Corrections	1,338	170	14	10	7	257	1,796
-TOTAL DEACTIVATIONS	1,665	210	210	11	8	341	2,255

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P
+ Changed To Party	235	63	16	27	11	170
- Changed From Party	-176	-59	-8	-5	-26	-225
ENDING TOTALS	359,063	29,144	3,590	1,001	1,433	77,700

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #6, Ward 2 Polling Place.

The public is advised that the proposed voting area for Precinct #6 will be changed from:

**Georgetown Community Library
3260 R Street, N.W.
“Large Meeting Room”**

and moved to:

**Duke Ellington High School
3500 R Street, N.W.
“Gallery”**

The relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #24, Ward 1 Polling Place.

The public is advised that the proposed voting area for Precinct #24 will be changed from:

**Mary's Center
2355 Ontario Road, N.W.
"Multi-Purpose Room"**

and moved to:

**Marie Reed Elementary School
2201 18th Street, N.W.
"Multi-Purpose Lounge"**

The relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board's final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #59, Ward 4 Polling Place.

The public is advised that the proposed voting area for Precinct #59 will be changed from:

**Coolidge Senior High School
6315 5th Street, N.W.
“Gymnasium”**

and moved to:

**Takoma Community Center
300 Van Buren Street, N.W.
“Multi-Purpose Room”**

The relocation was proposed because the Board learned that the facility would not be available for use on the dates requested due to scheduled renovation of the facility.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #91, Ward 6 Polling Place.

The public is advised that the proposed voting area for Precinct #91 will be changed from:

Friendship Public Charter School Chamberlain Campus
1345 Potomac Avenue, S.E
“Multi-Purpose Room”

and moved to:

Watkins Elementary School
420 12th Street, S.E.
“Multi-Purpose Room”

The relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**Public Notice of Proposed Polling Place Relocation**

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #92, Ward 7 Polling Place.

The public is advised that the proposed voting area for Precinct #92 will be changed from:

**Zion Baptist Church-Eastland
1234 Kenilworth Avenue, N.E.
“Church Hall”**

and moved to:

**Kenilworth Recreation Center
4321 Ord Street, N.E.
“Gymnasium”**

The relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**Public Notice of Proposed Polling Place Relocation**

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #113, Ward 7 Polling Place.

The public is advised that the proposed voting area for Precinct #113 will be changed from:

**East River Washington Senior Wellness Center
3001 Alabama Avenue, S.E.
“Multi-Purpose Room”**

and moved to:

**Hillcrest Recreation Center
3100 Denver Street, S.E.
“Gymnasium”**

The relocation was proposed because the facility is not fully accessible under the Americans with Disabilities Act (ADA).

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**Public Notice of Proposed Polling Place Relocation**

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #129, Ward 2 Polling Place.

The public is advised that the proposed voting area for Precinct #129 will be changed from:

**Martin Luther King Jr. Library
901 G Street, N.W.
“Main Lobby”**

and moved to:

**First Congregational United Church of Christ
945 G Street, N.W.
“Multi-Purpose Room”**

The relocation was proposed because the Board learned that the facility would not be available for use on the dates requested due to scheduled renovation of the facility.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**Public Notice of Proposed Polling Place Relocation**

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating Precinct #136, Ward 3 Polling Place.

The public is advised that the proposed voting area for Precinct #136 will be changed from:

**Leading Age
2519 Connecticut Avenue, N.W.
“Conference Room”**

and moved to:

**All Souls Episcopal Church
2300 Cathedral Avenue, N.W.
“Church Hall”**

The relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**Public Notice of Proposed Early Voting Site Relocation**

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its December 6, 2017 meeting in relocating the Ward 7 Early Voting Site.

The public is advised that the proposed Early Voting Site for Ward 7 will be changed from:

**Benning(Dorothy Height) Neighborhood Library
3935 Benning Road N.E.
“Large Meeting Room”**

and moved to:

**Deanwood Recreation Center
1350 49th Street, N.E.
“Gymnasium”**

The relocation was proposed due to limited space at the current site and the completed renovations at the new site.

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, January 8, 2018** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, January 10, 2018. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DEPARTMENT OF HEALTH CARE FINANCE**PUBLIC NOTICE****MEDICAID FEE SCHEDULE UPDATES FOR THE HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES (EPD)**

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in Sections 988 and 4209 of Title 29 of the District of Columbia Municipal Regulations, announces changes to the Medicaid reimbursement rates for EPD waiver services. The changes to the rates will become effective on January 15, 2018.

The EPD reimbursement rates are adjusted to reflect the annual rate changes to the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code 2-220.01 et seq. (2012 Repl.)).

The new rates for EPD Waiver services will be included in the Medicaid Fee Schedule located on the DHCF website at

<https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload>.

If you have any questions, please contact Andrea Clark, Reimbursement Analyst, Office of Rates Reimbursement and Financial Analysis, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, or email at andrea.clark@dc.gov or (202) 724-4096.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-101**

July 21, 2017

Mr. David Haynes

RE: FOIA Appeal 2017-101

Dear Mr. Haynes:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly responded to a request for records you made under the DC FOIA.

Background

On February 22, 2017, you submitted a request under the DC FOIA to MPD seeking “copies of all forms PD10-A, PD10-B and PD196A Payer’s Receipt marked for ‘Traffic Accident Report,’ including all supporting documentation . . .”

On May 16, 2017, MPD responded by granting your request in part and denying it in part. Pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”), MPD denied your request in part by redacting “the payer’s name, name of driver, name of collection agent, requester’s name, and the name of MPD personnel who processed the request.”

On appeal, you challenge the redactions made by MPD, stating “[t]he documents that I received in response to the FOIA request were incomplete and overly redacted.” Specifically, you challenge the redaction of the names of those who requested reports – stating that “[a] request for a public document does not create an expectation of privacy.” Additionally, you assert that MPD’s response is incomplete, because they only produced 231 accident reports for the year-long period. You posit that the production is incomplete, and that the incompleteness is evident because you feel it unlikely that 3 of the 7 precincts received a total of only 4 requests over a year.

MPD provided this Office with a response to your appeal on July 20, 2017.¹ In its response, MPD reasserts that the redaction of personal identifiers of persons in the report, including the names of the requesters of the reports, was appropriate under Exemption 2. Further, MPD has stated that it is “presently conducting an additional search for responsive documents.” MPD did not provide a description of the search conducted thus far.

¹ A copy of MPD’s response is attached for your reference.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

MPD provided you with a document responsive to your request in its May 16, 2017 letter. On appeal, you have asserted that the responsive document was facially incomplete, because several of the precincts had extremely low representation. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot

Mr. David Haynes
Freedom of Information Act Appeal 2017-101
July 21, 2017
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suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, MPD has not described the search it conducted or asserted that it was adequate. Instead, MPD has indicated that it is conducting a new search for responsive records. MPD did not indicate where the records would most likely be located or which repositories were searched as part of the initial production. This Office agrees that the uneven distribution of reports across precincts suggests that the original search may have been inadequate.

The test is not whether any additional documents might conceivably exist, but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the letter MPD provided this Office in response to your appeal, we find that the search it conducted was not adequate. On appeal, MPD has chosen to voluntarily conduct an additional search. This representation, in conjunction with the minimal description MPD provided of its original search, renders this matter appropriate for remand.

Redactions Under Exemption 2

In the documents provided to you, MPD made redactions of "the payer's name, name of driver, name of collection agent, requester's name, and the name of MPD personnel who processed the request." These redactions were presumably made pursuant to Exemption 2 and in accordance with the mandate under DC FOIA that any reasonably segregable portion of a public record be disclosed. *See* D.C. Official Code § 2-534(b). On appeal, you challenge one specific category of names that was redacted: the names of the requesters of documents. In support of this, without legal citation, you assert that "[a] request for a public document does not create an expectation of privacy." Your appeal does not assert any public interest in the release of this class of names, but instead hinges on the absence of a privacy interest. As for MPD, it has not explained what privacy interests are associated with the names of individuals it previously redacted.

Since MPD is re-evaluating the redactions it previously made, we decline to rule on those redactions at this juncture, with the exception of the redactions of corporate entities. It is clear that corporate entities that paid for reports should not be redacted pursuant to Exemption 2, because corporations cannot hold a privacy interest under FOIA. *FCC v. AT&T, Inc.*, 131 S. Ct. 1177, 1182 (2011). Upon completing its current review, MPD shall issue you a letter articulating the privacy interests it believes are protected by any redactions made to the second production (e.g., the privacy interest associated with the name of an individual requesting an accident report.).

Conclusion

Based on the foregoing, we affirm in part and remand in part the MPD's decision. Within 10 business days, MPD shall complete its second search and provide you with a new decision letter describing the search and the results thereof. If responsive records are located, MPD may redact or withhold such records consistent with this decision and as appropriate under DC FOIA. If no further responsive records are located, MPD shall issue you a letter of denial that includes a specific description of the search it conducted.

Mr. David Haynes
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This constitutes the final decision of this office. Your appeal is hereby dismissed; however, you are free to file a separate appeal challenging any aspect of MPD's forthcoming substantive responsive.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-102**

July 25, 2017

VIA REGULAR MAIL

Mr. Victor Perry

RE: FOIA Appeal 2017-102

Dear Mr. Perry:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“D.C. FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly redacted documents it provided you in response to your D.C. FOIA request.

Background

You sent a FOIA request to MPD for records related to money that MPD confiscated or seized from you on two specific dates at two specific locations. MPD responded to your request by providing you with responsive records. Portions of the records that pertain to individuals other than yourself were redacted to protect the individuals’ privacy in accordance with D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C).

Subsequently you appealed MPD’s response, arguing that you are unable to view all pertinent information because it has been redacted and that you are entitled to an unredacted version of the documents as they pertain to you. You also inquire whether MPD keeps property and money separated when an individual is booked, and how money can be returned to you. Finally, you appear to challenge the adequacy of MPD’s search, indicating that although both of your cases are dated, you believe that information can be researched and obtained. If other amounts are discovered beyond what is listed on the documents MPD has disclosed, you would like to be informed of such discrepancies.

Upon receipt of your appeal, this Office notified MPD and asked the agency to formally respond and to provide us with unredacted copies of the documents you received for our *in camera* review. In its response,¹MPD asserts that it appropriately redacted the names and personal identifiers of persons listed in the property records that were not related to you, as well as the name of the person who conducted the search for responsive records. Releasing these names, according to MPD, would constitute an invasion of personal privacy, and you have not asserted a public interest that would overcome the privacy interests.

¹ A copy of MPD’s response is attached.

Mr. Victor Perry
Freedom of Information Act Appeal 2017-102
July 25, 2017
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With respect to the questions you posed in your FOIA request, MPD advised that you should direct them to MPD's Office of Risk Management, which handles claims.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this appeal is whether the redactions MPD made to the documents it released to you were appropriate under D.C. Official Code §§ 2-534(a)(2) ("Exemption 2") and (a)(3)(C) ("Exemption 3"). Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Exemption 3(C) provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the record. Ordinarily when a District agency withholds records under Exemptions 2 and 3 we conduct a balancing test in accordance with case law to determine if the withholding was proper. A balancing test is not necessary here. As you state in your appeal, "I feel that I am entitled to an unredacted version of my documents as it pertains to me." Since you are not challenging the redactions MPD made to information about individuals other than yourself, privacy interests are not relevant. Rather, the issue before this Office is whether MPD properly redacted information related to you.

Your FOIA request resulted in MPD producing 12 pages of documents. Eight pages are part of arrest packets in which MPD redacted only portions of your social security and driver's license numbers. MPD indicated in its response to you that it redacted part of your Social Security number for security purposes, and that if you want a copy of the records with your complete Social Security number shown² you can obtain it from MPD's FOIA Office. We find these redactions to be reasonable in light of identity theft and other security issues.

² MPD did not mention that it redacted your driver's license number, but we assume it did so for

Mr. Victor Perry
Freedom of Information Act Appeal 2017-102
July 25, 2017
Page 3

The remaining 4 pages that MPD disclosed to you are receipt and disposition of property records. The first entry on the page dated July 10, 2009, relates to you. MPD redacted the address and the items that were received from you. MPD also redacted the written response to the phrase "If found, state by whom and address." These redactions were improper. The address and list of items pertain solely to you, as evident from the right side of the page where only your name is listed.

On the page that states "Book #1641" at the top, the first entry relates to you and is also dated July 10, 2009. MPD made one redaction to the address. It is unclear whether this is your home address or the address where an incident took place. Regardless, we see no reason for its redaction since it applies solely to you. The last entry on the page also relates only to you, and nothing was redacted.

On the page that states "Book #747" at the top, the second entry relates to you and two other individuals. MPD properly redacted the names and information pertaining to the other individuals. The fourth entry relates solely to you, and nothing was redacted.

On the last page, dated October 21, 1998, the last entry relates to you. The only thing redacted was a signature, presumably of an MPD employee who received the property. It is unclear whether you are challenging this redaction. Nevertheless, we find that there is a *de minimis* privacy interest in an individual's signature, and you have not asserted a public interest that would outweigh this privacy interest.

Conclusion

Based on the foregoing, we affirm in part and remand in part MPD's decision. Within 5 business days, MPD shall release to you portions of the redacted documents in accordance with the guidance in this decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

the same security purposes.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-103**

July 25, 2017

VIA ELECTRONIC MAIL

Nicholas R. Barnaby

RE: FOIA Appeal 2017-103

Dear Mr. Barnaby:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you challenge the Metropolitan Police Department’s (“MPD”) response to your request for records under the DC FOIA.

Background

On May 12, 2017, you submitted a request, on behalf of your client, under the DC FOIA to MPD seeking “Any and all records or information concerning any reward(s) made by or claimed from MPD or the D.C. government that relate to MPD’s investigation into the July 13, 1990 homicide of Ronald Jones, Jr.” On May 25, 2017, MPD denied your request, citing to D.C. Official Code §§ 2-534(a)(3)(A).

On appeal you challenge MPD’s response. Your appeal asserts that MPD has not adequately articulated how the release of records would interfere with an enforcement proceeding, as is required by the exemption cited in its denial.

MPD provided this Office with a response to your appeal on July 18, 2017.¹ In its response, MPD proffered that it had originally denied the appeal because it believed a “post-conviction appeal was in progress” that could be interfered with if the records were released. Despite its initial denial, on appeal MPD asserts that no responsive documents exist and that MPD is not withholding any records. MPD asserts that the homicide unit conducted a search for responsive documents by checking: all paper files and storage areas assigned to the unit, all administrative electric mailboxes assigned to the unit, and the archives of those mailboxes, along with all electronic files of the unit contained on the MPD network. MPD’s response indicates that the search of these repositories conducted on appeal did not yield responsive documents.

Discussion

¹ A copy of MPD’s response is attached for your reference.

Mr. Nicholas R. Barnaby
Freedom of Information Act Appeal 2017-103
July 25, 2017
Page 2

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Since MPD asserts that it has not withheld any responsive records from you, the primary issues in this appeal are whether more records exist and if MPD conducted an adequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Your request related to a homicide investigation. MPD indicated that its homicide unit conducted searches of its paper and electronic files, including email. MPD further asserts that the searches

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Freedom of Information Act Appeal 2017-103
July 25, 2017
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did not locate any responsive documents, such that MPD is not withholding any documents from your client. This Office accepts MPD's representations.

We note that it was inappropriate of MPD to initially assert an exemption in its denial letter when it was not withholding any documents. This suggests that MPD never conducted an initial search. However, under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on MPD's response to your appeal, we find that MPD has now conducted an adequate search for records relating to an event that transpired almost 30 years ago.

Conclusion

Based on the foregoing, we affirm the MPD's revised response and hereby dismiss your appeal. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-104**

July 26, 2017

VIA ELECTRONIC MAIL

Mr. Scott Taylor
Sinclair Broadcast Group

RE: FOIA Appeal 2017-104

Dear Mr. Taylor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of the Chief Medical Examiner (“OCME”) improperly withheld records responsive to your request under the DC FOIA.

Background

On May 26, 2017, you submitted a request to the OCME for autopsy reports of an individual who was the victim of a homicide in July 2016. OCME responded on May 30, 2017, and informed you that because you had not met the requirements of D.C. Official Code §§ 5-1412(b), (c), OCME would be withholding all responsive records pursuant to D.C. Official Code §§ 5-534(a)(2) and (a)(6).

In the instant appeal, you do not address OCME’s citation to D.C. Official Code D.C. Official Code § 5-1412, which governs access to records maintained by the Chief Medical Examiner.¹ In regard to the autopsy report, your appeal states, “We make our appeal based on the following: . . . The Autopsy Report and Ballistic Report would confirm the caliber of weapon used by the killers of [the decedent].” Your appeal also quotes D.C. Official Code § 2-532, which provides that “Any person has a right to inspect, and at his or her discretion, to copy any public record of a public body, except as otherwise expressly provided by § 2-534 . . .” Your appeal makes no attempt to address the applicability of § 2-534 to the autopsy report.

On July 12, 2017, this Office notified OCME of your appeal and asked for a response. OCME responded on July 13, 2017.² In its response, OCME reasserted that withholding the records was

¹ Your initial request failed to provide written authorization from the decedent’s next-of-kin, a subpoena, or a court order designating you as a person with a “legitimate interest,” as required under D.C. Official Code § 5-1412(c); 28 DCMR 5005.3.

² OCME’s response is attached to this decision.

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proper pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”)³ and D.C. Official Code § 5-1412⁴ under D.C. Official Code § 2-534(a)(6) (“Exemption 6”).⁵ OCME’s response cites to FOIA Appeal 2009-13 and FOIA Appeal 2017-19, previous DC FOIA appeal decisions which concluded that the release of autopsy reports would constitute an unwarranted invasion of privacy and that death does not extinguish an individual’s privacy rights.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 2

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Just as an individual has a substantial privacy interest in the individual’s personally identifiable information, a decedent has a substantial privacy interest in the medical findings contained in the decedent’s autopsy report. Indeed, this issue has been addressed in FOIA Appeal 2009-13 and FOIA Appeal 2017-19, where it was recognized that autopsy reports were properly withheld under DC FOIA pursuant to Exemption 2, and that a decedent still maintains privacy

³ Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

⁴ D.C. Official Code § 5-1412 limits disclosure of documents maintained by OCME.

⁵ Exemption 6 exempts from disclosure information specifically protected by other statutes.

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July 26, 2017
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rights in death, as recognized by the federal Health Insurance Portability and Accountability Act. You have offered no legal authority to upset this precedent of protecting the private details of an individual's medical files.

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. Your appeal articulates no public interest for the release of the autopsy report of the decedent, outside of the statement "The Autopsy Report and Ballistic Report would confirm the caliber of weapon used by the killers of" the decedent. This is not a cognizable public interest under DC FOIA. The "public interest" in DC FOIA has a narrow meaning, limited to furthering the statutory purpose of DC FOIA.

This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

Your speculation that the release of the autopsy report "would confirm the caliber of weapon" used to kill the decedent does not constitute a public interest under DC FOIA. The caliber of the weapon has no bearing on OCME's performance of its statutory duties. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that OCME has properly withheld the requested autopsy records under Exemption 2.

Exemption 6

Because we conclude that the documents were properly withheld pursuant to Exemption 2, and because your appeal does not acknowledge Exemption 6 or articulate a reason that it is not applicable to the records you seek, we need not address whether the information is also protected under Exemption 6. This Office will note that you have not attached to the request or the appeal any written authorization from the decedent's next-of-kin, a court order, or a subpoena. Under applicable law such documentation would indicate that you have a "legitimate interest" in obtaining copies of an autopsy report. *See D.C. Official Code § 5-1412; 28 DCMR 5005.3.*

Conclusion

Based on the foregoing, we affirm OCME's decision and hereby dismiss your appeal. This constitutes the final decision of this Office.

Mr. Scott Taylor
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July 26, 2017
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If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Mikelle L. DeVillier, General Counsel, OCME (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-105**

July 26, 2017

VIA ELECTRONIC MAIL

Mr. Scott Taylor
Sinclair Broadcast Group

RE: FOIA Appeal 2017-105

Dear Mr. Taylor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested from MPD under DC FOIA.

Background

On May 26, 2017, you submitted a request to MPD for “Body cams of every Officer at scene of [decedent] shooting on July 10th, 2016 and body cams of every Officer at Hospital interviewing [decedent]. Plus any video of Security Cameras from the scene that the Police collected during their investigation.”

MPD responded to you on May 30, 2017, denying your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD’s denial indicates that the requested footage “pertains to an open investigation by the Metropolitan Police Department.”

On appeal, you challenge MPD’s denial of your FOIA request and assert your belief that “releasing the records would only enhance the opportunity for new tips and evidence to flow into MPD and aid in solving the murder.” In support of this, you claim “[t]hese types of records are released across the Nation [sic] in other jurisdictions and lead to solving crimes with help from the public after viewing said records.” Your appeal goes on to ask without explanation, “[w]e question does picking and choosing what body cam video is released putting [sic] the public at risk in unsolved murders?” You cite no legal authority on appeal, asserting instead that “there appears to be no enforcement proceedings or on-going investigation at this time,” and that “release of the records would not interfere with enforcement or an on-going investigation due to the fact [sic] there hasn’t been an arrest of any suspect for the past 11 months.”

Mr. Scott Taylor
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The MPD responded to your appeal in a letter to this Office¹ in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i). In support of this position, MPD proffered that the investigation is still ongoing and that release of the records could “adversely affect the contemplated prosecution of the person or persons who committed the offence.” MPD’s response further states that “[r]elease of the videos would inform any suspects or witnesses on how to tailor their statements so as to avoid culpability.”

On July 21, 2017, you requested that this Office supplement your appeals with your belief that “it’s not an open investigation due to the fact DC Police [sic] released the Shot Spotter data thru [sic] a . . . [a third party FOIA request] earlier this year. It is now considered a closed or cold case via DC Code due to the release of those ShotSpotter records thru [sic] the Police Department [sic] to a secondary anonymous FOIA requester.” You did not provide a citation to any District law that would support this assertion. Your July 21, 2017 correspondence contained an attached July 12, 2017 denial letter from MPD stating that “the requested records pertain to an open investigation by the Metropolitan Police Department.”² Your July 21, 2017 correspondence concluded by asking that all requests relating to this shooting “be filled and handed over. . .”

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law

¹ MPD’s response is attached for your reference.

² The withholding of records relating to the July 12, 2017 denial letter is addressed in FOIA Appeal 2017-112.

Mr. Scott Taylor
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enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

On appeal you argue without legal authority that there is no enforcement proceeding here because an arrest has not been made. Specifically, you state "there appears to be no enforcement proceedings or on-going investigation at this time," and that "release of the records would not interfere with enforcement or an on-going investigation due to the fact [sic] there hasn't been an arrest of any suspect for the past 11 months." The standard you describe for whether an enforcement proceeding is ongoing does not comport with the law. *See Antonelli v. U.S. Parole Comm'n*, No. 93-0109, slip op. at 3-4 (D.D.C. Feb. 23, 1996) (reiterating that courts repeatedly find "lengthy, delayed or even dormant investigations" covered by Exemption 7(A)); *Butler v. DOJ*, No. 86-2255, 1994 WL 55621, at *24 (D.D.C. Feb. 3, 1994) (stating that agency "leads" were not stale simply because they were several years old given that indictee remained at large), *appeal dismissed voluntarily*, No. 94-5078 (D.C. Cir. Sept. 8, 1994); *Afr. Fund v. Mosbacher*, No. 92-289, 1993 WL 183736, at *4 (S.D.N.Y. May 26, 1993) (finding that documents that would interfere with lengthy or delayed investigation fall within protective ambit of Exemption 7(A)); *see also Davoudlarian v. DOJ*, No. 93-1787, 1994 WL 423845, at *2-3 (4th Cir. Aug. 15, 1994) (unpublished table decision) (holding that records of open investigation of decade-old murder remained protectable). The time elapsed in this investigation, roughly a year, is not long enough to support your contention that there is no ongoing enforcement proceeding. *E.g. Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (affirming records as properly withheld for investigation of Jimmy Hoffa's 1975 disappearance.).

Similarly meritless is your contention in your July 21, 2017 correspondence that the records are "now considered a closed or cold case via DC Code due to the release of those ShotSpotter records thru [sic] the Police Department [sic] to a secondary anonymous FOIA requester." It is unclear to what District laws you are referring, as you do not specify. The FOIA request you referenced was for "Shotspotter data for July 9, 2016 & July 10, 2016 District 3 and District 5." Your request for a specific investigative file by name is different than a broader request for gunshot data on two dates in two different areas of the District. As a result, MPD's granting of that request in no way indicates that the investigation at issue is "a closed or cold case." Indeed, MPD's repeated assertions that the matter is ongoing overcome your unsupported conclusions that it is not.

Here, the records you seek were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has clearly met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

Disclosure of the records requested could reveal the direction of the investigation and allow suspects to avoid detection, arrest, and prosecution. *See FOIA Appeal 2016-94*. Here, MPD has proffered that "[r]elease of the videos would inform any suspects or witnesses on how to tailor their statements so as to avoid culpability." While your appeal is based on your belief that "releasing the records would only enhance the opportunity for new tips and evidence to flow into MPD and aid in solving the murder," this belief does not overcome the purpose of Exemption

Mr. Scott Taylor
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3(A)(i), which is to protect releasing investigatory details that could interfere with law enforcement efforts. As a result, we find that MPD properly withheld the investigatory records from disclosure pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-106**

July 14, 2017

VIA ELECTRONIC MAIL

Ms. Barbara Donaldson

RE: FOIA Appeal 2017-106

Dear Ms. Barbara Donaldson:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") closed your FOIA request on FOIAXpress as "Granted in Full" but did not provide you with any responsive documents.

DCRA responded to your appeal stating that your request was not actually closed despite its characterization in FOIAXpress. DCRA further asserted that it has provided you with all the documents responsive to your request and that you agreed to withdraw your appeal. You responded by email to this Office affirming DCRA's assertion.

We acknowledge that your appeal has been withdrawn and will not be issuing a substantive decision in this matter.

Sincerely,

Mayor's Office of Legal Counsel

cc: Patrice Lancaster, FOIA Officer, DCRA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-107**

July 27, 2017

Ms. Pamela Johnson

RE: FOIA Appeal 2017-107

Dear Ms. Johnson:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia's Department of Human Resources ("DCHR") failed to respond to your request for certain records.

Background

In April 2017, you submitted a request under the DC FOIA to DCHR seeking:

- 1) DC government's regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator, for the above listed position numbers;
- 2) Each approved Position Number's history in reference to type of appointment (term, regular or temp. etc); when created, amended, cancelled and/ re-issued;
- 3) The approved Job Requisitions associated with each Position Number;
- 4) If the initial job requisition with associated position number was cancelled, please provided [sic] the request from DCHR to cancel with justification and, include the new and approved job requisition with its position number that replaced the cancelled job requisition.
- 5) Name of DC government employees selected --date hired between 2014 thru 2017-- for each position number stated above.

On June 5, 2017, DCHR began responding to your request by providing a spreadsheet that contained information responsive to parts 2 and 5 of your request.

On July 13, 2017, you filed this appeal, asserting that DCHR failed to respond to parts 1, 2, and 3. Your appeal noted that you requested assistance from DCHR with parts 1, 2, and 4 of your request.

Ms. Pamela Johnson
Freedom of Information Act Appeal 2017-107
July 27, 2017
Page 2

On July 21, 2017, DCHR provided you with a final decision letter granting your request. DCHR's final decision letter indicates that searches for parts of your request yielded no responsive documents.

On July 27, 2017, DCHR provided this Office with a response to your appeal.¹ In its response, DCHR explained its position in regards to each of the 5 parts of your request. For the first part of your request, DCHR indicated that it provided you with a document that is the agency's only memorialization regarding the process requested. For the second part of your request, DCHR indicated that it provided "the extent of the information that can be searched through PeopleSoft" – and that appointment type is not maintained in that file. For the third part of your request, DCHR indicated that position numbers are not matched to requisitions, and that they are housed in two separate databases – Peoplesoft and Jobsience. For the fourth part of your request, DCHR indicated, again, that because position numbers and requisition numbers are not linked in the same database, no responsive record exists that contains both of them. Lastly, for the fifth part of your request, DCHR reaffirmed that the June 5, 2017 transmitted spreadsheet fulfilled that part of the request.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Part 1 – Adequacy of Search

Part 1 of your request sought "DC government's regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator, for the above listed position numbers." Since DCHR asserts that it has not withheld any responsive records from you, the primary issues in this appeal are your belief that more records exist and your contention that DCHR conducted an inadequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual

¹ A copy of DCHR's response is attached for your reference.

Ms. Pamela Johnson
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evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, a DCHR attorney proffered that on July 27, 2017, she provided you with a recently drafted instruction. DCHR’s attorney asserted that while the document is not squarely in line with your request, it represents the agency’s only memorialization of the process that you specified. This Office accepts DCHR’s representation, as the attorney who provided it is in a position to be familiar with the agency’s “regulations, procedures and/or process (including agencies involved in the process) for generating to approval, from the Office the City Administrator . . .” Under applicable FOIA law, the test is not whether any additional documents might conceivably exist, but whether DCHR’s search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the letter DCHR provided this Office in response to your appeal, we find that DCHR conducted an adequate search for Part 1 of your request.

Parts 2-5 -- Creating New Records

The remaining 4 parts of your request seek information as opposed to records. A proper request under DC FOIA “shall reasonably describe the desired record(s).” 1 DCMR § 402.4. Parts 2-5 of your request do not reasonably describe a record, i.e. a document, memorandum, or correspondence. To wit, your request states “I would like the following information . . .” By its own terms, your request does not describe records, but instead pieces of information that you would like to know, and which you believe exists in certain formats. DCHR is obligated under DC FOIA to search all record repositories likely to contain a responsive record; it has no obligation to create a new record or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no

Ms. Pamela Johnson
Freedom of Information Act Appeal 2017-107
July 27, 2017
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duty either to answer questions unrelated to document requests or to create documents.”). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). DCHR was obligated here to identify responsive records existing at the time your request was made, and to provide them to you after reviewing them for applicable exemptions.

This Office’s jurisdiction is limited to the review of documents withheld by a District agency. D.C. Official Code § 2-537(a). Here, DCHR granted your request and is not withholding any responsive documents. In accordance with 1 DCMR § 402.5, DCHR made “every reasonable effort . . . to assist in the identification and location of requested records.” In specific, the agency conducted a query and generated a spreadsheet for you. It appears that you believe DCHR is not answering questions to your satisfaction or providing you with spreadsheets and information that you believe should exist. We have reviewed the agency’s responses, however, and conclude that it has met its statutory obligations under DC FOIA and provided you with all available, responsive records.

Conclusion

Based on the foregoing, we affirm DCHR’s decision and hereby dismiss your appeal. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Leah Brown, Attorney-Advisor, DCHR (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-108**

July 28, 2017

VIA ELECTRONIC MAIL

Mr. Harold Christian

RE: FOIA Appeal 2017-108

Dear Mr. Christian:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of the Chief Financial Officer ("OCFO") failed to respond to your June 23, 2017 request for certain records.

After you filed your appeal, OCFO informed our Office that it responded to your request on July 20, 2017. Since your appeal was based on OCFO's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCFO sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Y.L. Mills, Assistant General Counsel, OCFO (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-109**

August 1, 2017

Mr. Vaughn Bennett

RE: FOIA Appeal 2017-109

Dear Mr. Bennett:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Energy and Environment ("DOEE") failed to respond to a request you made under the DC FOIA.

Background

On June 16, 2017, you submitted a request under the DC FOIA to DOEE seeking:

copies of any Department of Energy and Environment (DOEE) documents or records, from January 2010 to June 16, 2017, that contain information regarding 2504 and 2520 10th Street NE, Washington, D.C., (Dahlgreen Courts) . . . This request includes, but is not limited to any and: All letters, applications, reports, inspections, clearance reports, notes, memoranda, certificates, accreditations, permits, administrative orders, financial records, budgets or other documents, which include, summarize, or relate to lead-based paint, lead-based paint hazards or lead-safe practices at Dahlgreen Courts.

DOEE did not respond to your request. Subsequently, you appealed to this Office asserting that your request had been constructively denied. On appeal, you challenge the adequacy of DOEE's search as you believe responsive documents exist that have not been provided to you. You further argue that "[u]nless the requested information specifically falls within one of these categories, and DOEE chooses to assert the exemption, the record must be released."

DOEE responded to your appeal in a July 31, 2017, letter to this Office.¹ DOEE's response explained that it has initiated a search of its Lead-Safe and Healthy Housing Division which has returned a voluminous number of documents which it is currently reviewing. Additionally, DOEE attached a *Vaughn* index to its response. DOEE has represented that it has not yet begun reviewing these 509 files for release. Lastly, DOEE provided a signed declaration from an Environmental Protection Specialist of the Lead Enforcement and Compliance Branch of the

¹ DOEE's response is attached. Please note that DOEE issued a consolidated response for this appeal, and the related FOIA Appeal 2017-110.

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Lead-Safe and Healthy Housing Division in the DOEE, which stated that “[t]he Lead-Safe and Healthy Housing Division (LSHHD) is the only likely repository in DOEE for the records requested under FOIA Appeal No. 2017-109. Records from LSHHD are cross-checked with DOEE Central Records and the Office of Enforcement and Environmental Justice (OEEH) to ensure completeness.”

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

There are two primary issues in this appeal: (1) the constructive denial of your request; and (2) the adequacy of DOEE’s search.

Constructive Denial

You submitted your request to DOEE on June 16, 2017. DOEE failed to provide you with responsive records within the 15 days prescribed by D.C. Official Code § 2-532(c)(1). Further, based on the record before this Office, it appears that DOEE did not seek an extension to respond to your request by “written notice . . . setting forth the reasons for extension and expected date for determination,” as contemplated by D.C. Official Code § 2-532(d)(1). As a result, this Office finds that DOEE constructively denied your request. D.C. Official Code § 2-532(e).

Upon receipt of this appeal, DOEE began conducting a search and is presently in the process of reviewing responsive records and making appropriate redactions. Because your appeal is based on a lack of initial response from DOEE, this Office would normally order the search be completed and dismiss this matter at moot. However, because of the volume of records that need to be reviewed by DOEE, and the relatively preliminary stage of this review, we believe it is appropriate to offer DOEE guidance now instead of waiting for it to complete the remainder of its production to you. Accordingly, we will analyze the adequacy of DOEE’s search as it has been represented to us to date.

Adequacy of Search

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DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* An agency can demonstrate that these determinations have been made by a “reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched” *Id.* Conducting a search in the record system most likely to be responsive is not by itself sufficient; “at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.* (internal quotations omitted).

Here, DOEE has identified the Lead-Safe and Healthy Housing Division as the only record repository likely to contain records responsive to your request. The search that DOEE conducted of the Lead-Safe and Healthy Housing Division has identified “509 records consisting of 5,466 pages” that may be responsive and need to be reviewed. DOEE has certified that it has searched all record repositories likely to contain records responsive to your request, and as a result, we find that DOEE’s search on appeal is adequate.

Conclusion

Based on the foregoing, we remand this matter to DOEE. Within 10 days from the date of this decision, DOEE shall: (1) begin reviewing responsive records for applicable exemptions; and (2) begin producing documents to you on a rolling basis.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Mr. Vaughn Bennett
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Sincerely,

Mayor's Office of Legal Counsel

cc: Ibrahim Bullo, FOIA Officer, DOEE (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-110**

August 1, 2017

Mr. Vaughn Bennett

RE: FOIA Appeal 2017-110

Dear Mr. Bennett:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Energy and the Environment ("DOEE") failed to respond to a request you made under DC FOIA.

Background

On June 16, 2017, you submitted a request under the DC FOIA to DOEE seeking, from an enumerated list of email addresses, "copies of any Department of Energy and Environment (DOEE) emails, from January 2010 to June 16, 2017, that contain information regarding 2504 and 2520 10th Street NE, Washington, D.C., (Dahlgreen Courts)."

DOEE did not respond to your request. Subsequently, you appealed to this Office asserting that your request had been constructively denied. On appeal, you challenge the adequacy of DOEE's search as you believe responsive documents exist that have not been provided to you. You further argue that "[u]nless the requested information specifically falls within one of these categories, and DOEE chooses to assert the exemption, the record must be released."

DOEE responded to your appeal in a July 31, 2017 letter to this Office.¹ DOEE's response explained that it has initiated a search which has returned a voluminous number of documents which it is currently reviewing. Attached to DOEE's response is an appendix which describes the email search initiated by DOEE. In response to an inquiry from this Office today, DOEE has initiated an additional search with new search terms. Lastly, DOEE attached a *Vaughn* index to its response.² DOEE has represented that it has already released to you approximately 800 pages of documents, of which 20 pages were redacted.

¹ DOEE's response is attached. Please note that DOEE issued a consolidated response for this appeal and the related FOIA Appeal 2017-109.

² Please note that DOEE erroneously conducted a search for Department of Consumer and Regulatory Affairs email records, and some of these records appear in the *Vaughn* index. DOEE is only responsible for providing records maintained by DOEE, such that if you desire emails from a DCRA employee's account you must make that request to DCRA.

Mr. Vaughn Bennett
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Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

There are four primary issues in this matter: (1) the constructive denial of your request; (2) the adequacy of DOEE’s search; (3) the redactions for non-responsiveness made by DOEE; and (4) the redactions made pursuant to an exemption under DC FOIA.

Constructive Denial

You submitted your request on June 16, 2017. DOEE failed to provide the requested records within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). Further, based on the record before this Office, it appears that DOEE did not seek an extension to respond to your request by “written notice . . . setting forth the reasons for extension and expected date for determination,” as contemplated by D.C. Official Code § 2-532 (d)(1). As a result, this Office finds that DOEE constructively denied your request. D.C. Official Code § 2-532(e).

Upon receipt of this appeal, DOEE conducted a search and is presently in the process of reviewing responsive records and making appropriate redactions. Because your appeal is based on a lack of initial response from DOEE, this Office would normally order the search be completed and dismiss this matter at moot. However, because of the volume of records that need to be reviewed by DOEE and the relatively preliminary stage of this review, we believe it is appropriate to offer DOEE guidance now, instead of waiting for it to complete the remainder of its production to you.

Adequacy of Search

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

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‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* An agency can demonstrate that these determinations have been made by a “reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched . . .” *Id.* Conducting a search in the record system most likely to be responsive is not by itself sufficient; “at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.* (internal quotations omitted).

Here, DOEE initiated a search upon learning of the appeal. In its response, DOEE has identified the terms used to conduct its search of emails. Your request was for records “that contain information regarding 2504 and 2520 10th Street NE, Washington, D.C., (Dahlgreen Courts).” Today, this Office inquired about the absence of the addresses or “Dahlgreen Courts” in the search terms. In response, DOEE indicated that it had initiated a new email search with the terms “Dahlgreen Courts,” “Dahlgreen,” “2504 10th” and “2520 10th”. As a result, until this search has been completed, we find that DOEE has not conducted an adequate search. DOEE shall complete this search, review responsive documents, and begin production to you within 10 business days.

Redactions and Withholdings For Non-Responsiveness

DOEE’s response indicates that it has withheld or redacted 731 pages of records because portions of them are “Non-Responsive” to your request. This Office asked for clarification on this – noting to DOEE that if an email chain was determined to be responsive, then all subsequent emails that retransmitted the responsive email would also be a responsive record. DOEE indicated that some of the responsive records redacted in this way are large datasets that contain information that would be subject to other exemptions, and which DOEE assumed you would not be interested in because they are unrelated to the property you identified.

The practice of withholding ‘Non-Responsive’ documents, while a reasonable conservation of energy, is not permissible under DC FOIA. Once a record has been identified as responsive, it must be released in its entirety, unless an exemption applies. This was made clear in a recent

Mr. Vaughn Bennett
Freedom of Information Act Appeal 2017-110
August 1, 2017
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ruling that disavowed the practice of withholding or redacting a record on the basis that it is “Non-Responsive.” To wit:

The statute thus sets forth the broad outlines of a process for agencies to follow when responding to FOIA requests: first, identify responsive records; second, identify those responsive records or portions of responsive records that are statutorily exempt from disclosure; and third, if necessary and feasible, redact exempt information from the responsive records. The statute does not provide for withholding responsive but non-exempt records or for redacting non-exempt information within responsive records.

In light of the Supreme Court’s instruction that FOIA’s exemptions are “explicitly made exclusive and must be narrowly construed,” *Milner*, 562 U.S. at 565 (internal citations and quotation marks omitted), we do not see how [agency’s] non-responsive redactions here can be squared with the statute. Those redactions find no home in FOIA’s scheme. Rather, once an agency identifies a record it deems responsive to a FOIA request, the statute compels disclosure of the responsive record—i.e., as a unit—except insofar as the agency may redact information falling within a statutory exemption.

Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review, 830 F.3d 667, 677 (D.C. Cir. 2016)

Under DC FOIA, once a document is identified as responsive, the entire document is subject to release, albeit portions that are exempt may be redacted. This Office recognizes the volume of responsive documents and the amount of time it would take to properly review and redact all of the documents at issue here. Further, this Office recognizes that the requester may very well have no desire to receive heavily redacted documents that are not related to the requester’s interest but are still technically responsive to his request.

With that being said, in light of the provisions in 1 DCMR § 402.5,³ this Office encourages DOEE and you to discuss possibly refining your request and clarifying if there are portions of responsive documents that you do not desire. If there is information that will take many hours to redact and which you have no interest in receiving, then that should be established so that DOEE can focus its resources on reviewing and providing documents that you actually want. Further, to the extent that fulfilling the voluminous request in its entirety is burdensome, DOEE may have the right to charge fees to recoup costs. *See* D.C. Official Code § 2-532(b-3) (“No agency or public body may require advance payment of any fee unless . . . the agency or public body has determined that the fee will exceed \$250.”); 1 DCMR § 408.

³ 1 DCMR 402.5 states, “Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.”

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To restate, once a record has been identified as responsive it is impermissible to redact or withhold the record on the basis that portions of it are 'Non-Responsive'; such records must be reviewed, redacted, and released unless you explicitly agree that you are not interested in them. DOEE shall review all records withheld or redacted in such a manner, and provide to you all non-exempt portions of such records.

Redactions For Exemptions

Upon request, DOEE provided this Office with the approximately 20 pages of documents that it had provided to you redacted. We have reviewed those documents *in camera*. Summarily, we agree with DOEE's assertions of D.C. Official Code § 2-534(a)(2) to redact the names and personally identifiable information of persons identified in the documents. Similarly, we agree with DOEE's assertions of deliberative process privilege, D.C. Official Code § 2-534(a)(4), as the email chain reviewed appears to be the sort of back and forth discussion between government employees contemplated by the privilege. As a result, we affirm DOEE's redactions that were made pursuant to an exemption.

Conclusion

Based on the foregoing, we remand this matter to DOEE. Within 10 days from the date of this decision, DOEE shall: (1) complete conducting its second search for responsive documents; (2) review responsive records for redactions consistent with this decision; and (3) begin a rolling production of documents.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ibrahim Bullo, FOIA Officer, DOEE (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-111**

August 1, 2017

Mr. A.H. Mosrie

RE: FOIA Appeal 2017-111

Dear Mr. Mosrie:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On June 10, 2017, you submitted a request under the DC FOIA to MPD seeking documents relating to a 1968 homicide investigation. On June 23, 2017, MPD responded to your request stating that it had conducted a search and no records were located.

On appeal you challenge MPD’s denial, asserting that you are a former MPD officer who created records in the 1968 homicide investigation; therefore, you believe responsive documents should exist that have not been disclosed to you. MPD provided this Office with a response to your appeal on July 26, 2017.¹ In its response, MPD asserts that its homicide unit staff conducted a search of all relevant electronic archives and storage areas and no responsive records were located. MPD further asserts that “the investigative file was purged in 1994 [in] accordance with the retention schedule.”

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

¹ A copy of MPD’s response is attached for your reference.

Mr. A.H. Mosrie
Freedom of Information Act Appeal 2017-111
August 1, 2017
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The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is your belief that responsive records exist; therefore, we consider whether or not MPD conducted an adequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, MPD identified the relevant locations where records responsive to your request would be found if they existed: the paper and electronic files of the homicide unit staff. MPD further indicated that it conducted a search of these locations; however, no responsive records were located. Additionally, MPD asserted that the retention period for the records you seek ended in 1994, and the records were purged. Although you contend that MPD has failed to disclose responsive records that you believe should exist, under applicable FOIA law the test is not whether any additional documents might conceivably exist, but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on MPD's description of its search, which it provided us in response to your appeal, we find that the search MPD conducted was adequate.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-112**

August 4, 2017

VIA ELECTRONIC MAIL

Mr. Scott Taylor
Sinclair Broadcast Group

RE: FOIA Appeal 2017-112

Dear Mr. Taylor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested from MPD under DC FOIA.

Background

On June 28, 2017, you submitted a request to MPD for “the ShotSpotter data and audio in connection to the shots fired in . . . [a] murder investigation on July 10th, 2016. We would like the audio 10 minutes before the shots fired up till 15 min after the shots were fired.”

MPD responded to you on July 12, 2017, denying your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD’s denial indicates that the requested records “pertain to an open investigation by the Metropolitan Police Department.”

On appeal, you challenge MPD’s denial of your FOIA request and assert your belief that “We found the attached ShotSpotter data . . . on line [sic] that indicates part of our FOIA Request . . . was filled PREVIOUSLY thru [sic] an anonymous request last month and is now posted on line [sic] thru [sic] a FOIA request.” Your appeal further posits that “it’s not an open investigation due to the fact DC Police [sic] released the Shot Spotter data thru [sic] a . . . [a third party FOIA request] earlier this year. It is now considered a closed or cold case via DC Code due to the release of those ShotSpotter records thru [sic] the Police Department [sic] to a secondary anonymous FOIA requester.” You did not provide a citation to any District law that would support this assertion. Your appeal concluded by asking that all requests related to this shooting “be filled and handed over. . .”

Mr. Scott Taylor
Freedom of Information Act Appeal 2017-112
August 4, 2017
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MPD responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i).¹ In support of this position, MPD proffered that its investigation into the murder at issue is ongoing and that release of the requested records could “adversely affect the contemplated prosecution of the person or persons who committed the offense.” MPD further states that “[r]eleased records would inform any suspects or witnesses on how to tailor their statements so as to avoid culpability.”

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

On appeal, you argue that the records are “now considered a closed or cold case via DC Code due to the release of those ShotSpotter records thru [sic] the Police Department [sic] to a secondary anonymous FOIA requester.” You do not indicate the District law on which you rely, nor do we know of any such law providing that the release of certain ShotSpotter data indicates the closure of a criminal investigation. The FOIA request you referenced was for “Shotspotter data for July 9, 2016 & July 10, 2016 District 3 and District 5.” MPD’s granting of that separate request does not indicate that the investigation at issue is “a closed or cold case.” MPD asserts that the matter is ongoing, and we have no reason to conclude otherwise.

¹ MPD’s response is attached for your reference.

Mr. Scott Taylor
Freedom of Information Act Appeal 2017-112
August 4, 2017
Page 3

The records you seek here were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

We note that MPD typically releases generalized ShotSpotter data;² however, you are requesting data contained in a specific investigative file. Essentially you are seeking the theories or conclusions of MPD investigators as to which, if any, ShotSpotter data they have connected to the particular homicide in question. As a result, what you are asking for is materially distinct from the request for longitudinal data over a two-day period in two police districts, which MPD previously released.

While your appeal is based on your belief that the case is closed or cold, this belief does not overcome the purpose of Exemption 3(A)(i), which is to protect releasing investigatory details that could interfere with law enforcement efforts. *See* FOIA Appeals 2016-94, 2017-104, 2017-105. MPD maintains that disclosing the records you requested could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In specific, MPD states that “[r]eleased records would inform any suspects or witnesses on how to tailor their statements so as to avoid culpability.” In light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.

Conclusion

Based on the foregoing, we affirm MPD’s decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

² *See, e.g.*, FOIA Appeals 2015-68 and 2017-88.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-113**

July 28, 2017

VIA ELECTRONIC MAIL

Mr. Gianluca Pivato

RE: FOIA Appeal 2017-113

Dear Mr. Pivato:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537, on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your request for certain records.

After you filed your appeal, DCRA advised you that your request is continuous in nature and that the agency will be providing you with responsive documents. You then informed DCRA that you wish to withdraw your appeal.

We acknowledge that your appeal has been withdrawn and will not be issuing a substantive decision in this matter.

Sincerely,

Mayor's Office of Legal Counsel

cc: Adrienne Lord-Sorenson, Assistant General Counsel, DCRA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-114**

August 1, 2017

VIA ELECTRONIC MAIL

Mr. Alastair Gee

RE: FOIA Appeal 2017-114

Dear Mr. Gee:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that Department of Human Services ("DHS") failed to respond to your May 22, 2017 request for certain records.

This Office contacted DHS on July 26, 2017, and asked for its response to your appeal. DHS informed us that it responded to your request on July 31, 2017. Since your appeal was based on DHS' failure to respond to your request, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DHS sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert C. Warren, Jr., Assistant General Counsel, DHS (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-115**

August 7, 2017

VIA ELECTRONIC MAIL

Neil Wolfe
The Light Reports

RE: FOIA Appeal 2017-115

Dear Mr. Wolfe:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Office of the Chief Medical Examiner (“OCME”) improperly denied you access to records you requested under the DC FOIA.

Background

On July 14, 2017, you submitted a request to the OCME for, among other things,¹ copies of the death certificate and the complete autopsy report as well as any evidence used in determining the cause and time of death of a named decedent. OCME responded on July 21, 2017, informing you that because you had not met the requirements of D.C. Official Code § 5-1412(b) and (c),² OCME was withholding all responsive records pursuant to D.C. Official Code § 2-534(a)(2).

You appealed OCME’s denial, stating, “It appears as if this FOIA [request] has been closed without providing the information requested.” We therefore interpret your appeal to be challenging OCME’s withholding of responsive records under D.C. Official Code § 2-534(a)(2).

This Office notified OCME of your appeal on July 28, 2017, and OCME responded on July 31, 2017.³ In its response, OCME affirmed its position that it properly withheld the records pursuant

¹ You also requested records that OCME advised you it does not maintain. These records do not appear to be part of your appeal.

² This statute governs access to records maintained by the Chief Medical Examiner. D.C. Official Code § 5-1412(c) provides that a person with a legitimate interest may obtain copies of a death record if the person meets certain conditions. The conditions are set forth in 28 DCMR § 5005.3, and OCME represents that you have not met any of them (i.e., OCME has not received any subpoena, court order, or next-of-kin authorization directing it to release the decedent’s autopsy report to you).

³ OCME’s response is attached.

Mr. Neil Wolfe
Freedom of Information Act Appeal 2017-115
August 7, 2017
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to D.C. Official Code § 2-534(a)(2) (“Exemption 2”),⁴ applicable case law, and previous DC FOIA appeal decisions concluding that the release of autopsy reports would constitute an unwarranted invasion of privacy and that death does not extinguish an individual’s privacy rights.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Just as an individual has a substantial privacy interest in the individual’s personally identifiable information, a decedent has a substantial privacy interest in the medical findings contained in the decedent’s autopsy report. This issue has been addressed in FOIA Appeals 2009-13, 2017-19, and 2017-104, where it was determined that: (1) autopsy reports were properly withheld under DC FOIA pursuant to Exemption 2; and (2) a decedent still maintains privacy rights in death, as recognized by the federal Health Insurance Portability and Accountability Act.

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-

⁴ Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

Mr. Neil Wolfe
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773. Neither your initial request to OCME nor your appeal to the Mayor articulates a public interest in the decedent's autopsy report. In the context of public records laws, a record is deemed to be of "public interest" if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Id. at 1492-93.

Disclosing the decedent's autopsy and other death-related records would not reveal any information about OCME's conduct. On the other hand, OCME has established that there is more than a *de minimis* privacy interest associated with the decedent's records. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck*, 997 F.2d at 1494. As a result, we find that OCME properly withheld the records you requested under Exemption 2.

Conclusion

Based on the foregoing, we affirm OCME's decision and hereby dismiss your appeal. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Mikelle L. DeVillier, General Counsel, OCME (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-116**

August 11, 2017

VIA ELECTRONIC MAIL

Ms. Jacqueline Belletomasini

RE: FOIA Appeal 2017-116

Dear Ms. Belletomasini:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of Human Rights (“OHR”) improperly withheld records you requested from OHR under DC FOIA.

Background

On July 20, 2017, you submitted a request to OHR for a copy of the contents of a “white three-ring binder submitted to [an OHR employee] in December 2016...” On July 24, 2017, OHR informed you that it would process your FOIA request after OHR issues final rulings in your pending discrimination cases.¹

On appeal, you challenge OHR’s response and clarify that you are only seeking copies of documents that you personally submitted to OHR because you did not retain copies for yourself.

OHR responded to your appeal in a letter to this Office in which it reasserted its position that the records you seek are protected from disclosure until your pending discrimination cases are resolved.² In support of its position, OHR proffered that the records you seek are protected from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) as the responsive documents are investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. OHR also asserted that personal information in the records is protected pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption (2)”) and D.C. Official Code § 2-1402.52(c) through D.C. Official Code § 2-534(a)(6)(A). Additionally, OHR claimed that pursuant to 4 DCMR §§ 723.1 and 723.2, documents in a complaint file cannot be disclosed until after final resolution of the complaint. Finally, OHR contended that your FOIA appeal potentially interferes with OHR’s enforcement

¹ You submitted two FOIA requests involving different cases; however, only one request is at issue in this appeal.

² OHR’s response is attached for your reference.

Ms. Jacqueline Belletomasini
Freedom of Information Act Appeal 2017-116
August 11, 2017
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duties, and such interference is punishable by fine and imprisonment pursuant to D.C. Official Code § 2-1402.64(a).

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Here, many issues can be disposed of by addressing OHR’s interpretation of your appeal. Based on your request for the contents of an unspecified white three-ring binder, it appears that OHR interpreted your request as seeking OHR’s investigative file in your discrimination case.³ OHR’s response to your appeal is predicated on its interpretation that you are seeking the investigative file; however, your appeal clarifies that you are only seeking copies of documents that you submitted to OHR in December of 2016. Even if the documents you submitted have been incorporated into OHR’s investigatory file, OHR has not articulated and we cannot contemplate any harm to the enforcement proceeding that would occur by providing you with copies of your own documents. As a result, it is inappropriate for OHR to invoke Exemption 3(A)(i) to withhold the documents that you submitted. If OHR maintains the documents that you submitted, you are entitled to a copy of them. *See* D.C. Official Code § 2-502(18) (defining a “public record” as any “documentary materials... retained by a public body”).

The protection of privacy interests under Exemption (2) and D.C. Official Code § 2-1402.52(c) is not applicable here for similar reasons, as the only privacy interest at issue is yours. Regarding OHR’s assertion that the records must be withheld pursuant to 4 DCMR §§ 723.1 and 723.2, we note that regulations do not control FOIA disclosures. *See* D.C. Code § 2-534(a)(6) (stating that other statutes, not regulations, can prevent FOIA disclosure). While 4 DCMR §§ 723.1 and 723.2 are instructive to prevent harm to an ongoing enforcement proceeding and protect privacy interest, as discussed above those concerns are not at issue here because the only documents you are seeking are those that you previously provided to OHR.

Finally, OHR’s contention that your FOIA appeal may constitute criminal misconduct pursuant D.C. Official Code § 2-1402.64(a) is troubling. By itself, your attempt to exercise your right to submit an administrative appeal to the Mayor in accordance with D.C. Official Code 2-537 demonstrates no misconduct. Further, we would be reluctant to conclude that exercising FOIA

³ OHR’s response to your appeal also references another FOIA request you submitted for the records in a separate discrimination case; however, that request is not at issue in this appeal.

Ms. Jacqueline Belletomasini
Freedom of Information Act Appeal 2017-116
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appeal rights could ever be considered to “willfully resist, prevent, impede or interfere with” OHR’s enforcement of the District’s Human Rights Act.

Conclusion

Based on the foregoing, we remand OHR’s decision. Within 10 days from the date of this decision, OHR shall disclose to you copies of the records you provided to OHR in December 2016, to the extent that OHR has maintained a copy of them.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Ebony M. Robinson-Scott, General Counsel, OHR (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-117**

August 11, 2017

VIA ELECTRONIC MAIL

Mr. Darin Warner

RE: FOIA Appeal 2017-117

Dear Mr. Warner:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested from MPD under DC FOIA.

Background

On July 19, 2017, you submitted a request to MPD for records related to an unsolved 1980 homicide. On the same day, MPD denied your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD’s denial indicated that the unsolved homicide case is considered an open investigation. Additionally, MPD stated that certain responsive records were purged in accordance with MPD’s retention schedule.

On appeal, you challenge MPD’s denial of your FOIA request, declaring that 37 years have passed since the crime occurred. Further, you assert that release of the records would bring closure to the victim’s family and potentially allow a private investigator to conduct an investigation.

MPD responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i).¹ In support of this position, MPD proffered that its investigation into the murder is ongoing and that release of the requested records could adversely affect its enforcement efforts by informing any suspects or witnesses on the direction of the investigation and enabling them to conform testimony to escape culpability.

Discussion

¹ MPD’s response is attached for your reference.

Mr. Darin Warner
Freedom of Information Act Appeal 2017-117
August 11, 2017
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It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

On appeal, you argue that due to the age of the case, responsive records should be disclosed to provide closure to the family and potentially aid an independent investigation. The records you seek here were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

Your belief that the case is cold does not overcome the purpose of Exemption 3(A)(i), which is to protect releasing investigatory details that could interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still “prospective” law enforcement proceeding.) MPD maintains that disclosing the records you requested could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.²

² Although MPD’s application of Exemption 3(A)(i) is appropriate, we note that this exemption, like others, is discretionary. Due to the age of the case, MPD may determine that the benefits of disclosure outweigh the potential harm to the ongoing law enforcement proceeding. MPD, as the agency responsible for the ongoing investigation, is in the best position to assess the potential impact of disclosure. Therefore, MPD may elect to disclose or continue to withhold its

Mr. Darin Warner
Freedom of Information Act Appeal 2017-117
August 11, 2017
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Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

investigative records related to the unsolved homicide.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-118**

August 16, 2017

VIA ELECTRONIC MAIL

Anonymous Requestor

RE: FOIA Appeal 2017-118

Dear Anonymous Requestor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). Your appeal is based on the failure of the Office of the Deputy Mayor for Public Safety and Justice (“ODMPSJ”) to respond to a June 24, 2017, request you submitted to ODMPSJ for email records relating to the Democratic National Committee and the Profiling Project.

Upon receiving your appeal on August 2, 2017, this Office notified ODMPSJ and requested that it provide us with a response. ODMPSJ did not provide a response.

Your appeal was based on ODMPSJ’s failure to respond to your request, and ODMPSJ has subsequently not responded on appeal.

ODMPSJ failed to provide you with a response within the 15 days prescribed by D.C. Official Code § 2-532(c)(1). Further, based on the record before this Office, it appears that ODMPSJ did not seek an extension to respond to your request by “written notice . . . setting forth the reasons for extension and expected date for determination,” as contemplated by D.C. Official Code § 2-532(d)(1). Lastly, ODMPSJ did not assert an exemption to justify withholding records at any point. As a result, this Office finds that ODMPSJ constructively denied your request pursuant to D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation to this Office for the reasons for such denial, this Office finds ODMPSJ to be improperly withholding the records. *See* 1 DCMR § 412.5 (“Within five (5) days . . .of receipt of its copy of the FOIA appeal the agency shall file a response . . .”).

In light of the above, within 15 business days of the date of this decision, ODMPSJ shall: (1) search for responsive documents;¹ (2) review responsive documents for redactions pursuant to

¹ Please note that ODMPSJ is only required to search for records that your request reasonably describes – e.g. emails from parties that you have identified. 1 DCMR § 402.4. ODMPSJ is not required to answer the parts of your request that amount to interrogatories, would require the creation of new records, or are so broad as to not “permit the identification and location of the record by the agency without an unreasonable amount of effort . . .” *See* 1 DCMR § 402.5;

Anonymous Requestor
Freedom of Information Act Appeal 2017-118
August 16, 2017
Page 2

D.C. Official Code § 2-534(b); and (3) begin providing you with responsive documents on a rolling basis.²

If you wish to assert a substantive challenge ODMPSJ's subsequent responses made pursuant to this decision, you may do so by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Helder Gil, Chief of Staff, ODMPSJ (via email)

Zemansky v. United States Environmental Protection Agency, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36.

² Please note that because of the size and scope of this request, you may be required to pre-pay for these services. *See* D.C Official Code § 2-532(b-3); 1 DCMR § 408.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-119**

August 16, 2017

VIA ELECTRONIC MAIL

Anonymous Requestor

RE: FOIA Appeal 2017-119

Dear Anonymous Requestor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the D.C. Fire and Emergency Medical Services Department ("FEMS") failed to respond to your request for certain records.

Background

On June 21, 2017, you submitted a request under the DC FOIA to FEMS seeking: "the audio recordings from the early morning of July 10, 2016 between the hours of 2AM and 7AM. I would like the recording of all communications on the DC EMS. . . . If recordings aren't available, I would be interested in logs of responses during that time frame: who was dispatched, to where etc."

On August 2, 2017, you filed this appeal, asserting that FEMS failed to respond your request. This Office notified FEMS of the appeal.

On August 3, 2017, FEMS provided this Office with a response to your appeal.¹ In its response, FEMS explained that it is not withholding records and that it had not denied your request, but instead rerouted it to the Office of Unified Communication ("OUC"), "which maintains audio recordings of all communications regarding the D.C. EMS." FEMS stated that the department "does not possess any records/recordings responsive to the information being requested . . ."

Since your appeal was based on FEMS' lack of response and FEMS has since responded, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to FEMS' substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

¹ A copy of FEMS's response is attached for your reference.

**Anonymous Requestor
Freedom of Information Act Appeal 2017-119
August 16, 2017
Page 2**

Respectfully,

Mayor's Office of Legal Counsel

cc: Angela Washington, Information and Privacy Officer, FEMS (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-120**

August 16, 2017

VIA ELECTRONIC MAIL

Anonymous Requestor

RE: FOIA Appeal 2017-120

Dear Anonymous Requestor:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), asserting that the Metropolitan Police Department ("MPD") improperly withheld records you requested.

Background

On June 15, 2017, you submitted a FOIA request to MPD for all arrest records from 2014 to 2017 in a spreadsheet format. MPD responded by providing you with links to websites where daily arrest reports for each police district are posted. You emailed MPD challenging its response because the information available was not in a spreadsheet format. MPD maintained that it had satisfied its obligation under FOIA by publically posting the information online.

On August 2, 2017, you appealed MPD's response, arguing that the information on the websites MPD provided is not easy to work with or analyze; therefore, MPD should provide the data in your requested format pursuant to 5 U.S.C. § 552(a)(3)(B)¹ and D.C. Official Code § 2-532(a-1). You asserted that MPD's database software can readily query and assemble the data into your requested format.

This Office notified MPD of your appeal. On August 10, 2017, MPD responded that its information technology staff could not determine if the format was feasible based on instruction in your request; therefore, MPD reserved its position on appeal until you provide specific instructions or a sample template for the records.² MPD's response noted that fees may be applicable to producing the requested format.

Discussion

¹ While cases construing the federal FOIA statute may be instructive to construe DC FOIA, the federal FOIA statute itself is not instructive or controlling to DC FOIA.

² A copy of MPD's statement is attached.

Anonymous Requestor
Freedom of Information Act Appeal 2017-120
August 16, 2017
Page 2

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The issue raised by your appeal is whether MPD is obligated to provide records in a different format after it has posted the information online. D.C. Official Code § 2-532(a-1) states that records will be provided “in any form or format requested by the person, provided that the person shall pay the costs of reproducing the record in that form or format.”³ However, agencies are not required to satisfy formatting requests if they lack technological capacity. *See, e.g., Milton v. DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (holding that an agency did not have to produce telephone conversation because it lacked the technological capacity to redact exempt portions of the recordings); *LaRoche v. SEC*, 289 F. App’x 231, 231 (9th Cir. 2008) (explaining that agency was not required to create new documents to satisfy FOIA request when it could not readily reproduce records sought in searchable electronic format requested).

Here, you assert that the data and format you seek are readily reproducible by MPD’s current database software. MPD has not addressed whether it has the technological capacity to produce the arrest data in the desired format because it claims it cannot determine specifically what data or format you seek. After reviewing the instructions provided in your request and appeal, it appears a reasonable interpretation of your request is that you are seeking the same data available in the daily public arrest reports aggregated into a CSV or Excel spreadsheet format. Therefore the responsive data fields would be: the arrest’s number, date, and location; the PSA; the offender’s last name, first name, and date of birth; an offense description; and the last name of the arresting officer. Presumably, each data field would have its own column in a spreadsheet; however, an appropriate format would be however MPD’s database software generates CSV or Excel files.

Based on MPD’s limited response, it is unclear if a spreadsheet produced by querying MPD’s database would require additional review for information exempt from disclosure under FOIA (e.g. arrest information regarding juveniles). Further, approximately four years of arrest records likely involves a voluminous amount of data. Consequently, as noted in MPD’s response there may be fees applicable to producing your request.

³ This differs from the corresponding section of federal FOIA, 5 U.S.C. § 552(a)(3)(B), which states that records will be produced “in any form or format requested by the person *if the record is readily reproducible by the agency in that form or format.*” (emphasis added)

Conclusion

Based on the foregoing, we remand MPD's decision. MPD shall: (1) contact you to verify the format of the records sought and (2) begin providing you with non-exempt responsive records in a spreadsheet format, subject to redaction, on a rolling basis, within 10 business days from the date of this decision.⁴

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

⁴ If MPD determines that fees for review and production will exceed \$250, MPD may require advance payment before disclosing records pursuant to D.C. Official Code § 2-532(b-3)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-121**

August 10, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos

RE: FOIA Appeal 2017-121

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of Contracting and Procurement ("OCP") failed to respond to your July 6, 2017 request for certain records.

After you filed your appeal, OCP advised our Office that it responded to your request on August 8, 2017.¹ Since your appeal was based on OCP's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCP sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

¹ Attached is a copy of OCP's correspondence to this Office.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-122**

August 10, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos

RE: FOIA Appeal 2017-122

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of Contracting and Procurement ("OCP") failed to respond to your July 5, 2017 request for certain records.

After you filed your appeal, OCP advised our Office that it responded to your request on August 4, 2017.¹ Since your appeal was based on OCP's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCP sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

¹ Attached is a copy of OCP's correspondence to this Office.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-123**

August 3, 2017

VIA ELECTRONIC MAIL

Rose Santos

RE: FOIA Appeal 2017-123

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that District's Department of Human Resources ("DCHR") failed to respond to your request for certain records.

This Office contacted DCHR today and asked for its response to your appeal. DCHR informed us that upon receiving your request electronically through the FOIAXpress portal, DCHR transferred it to the District's Office of Contracting and Procurement ("OCP") because OCP maintains the records you are seeking, not DCHR. DCHR also sent you an email message today advising you of the same.

We consider your appeal to be moot since you submitted it on the basis that DCHR failed to respond to your request, and the agency has now responded to you by indicating that it does not possess responsive records.

Your appeal is hereby dismissed. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Leah N. Brown, Attorney Advisor, DCHR (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-124**

August 10, 2017

VIA ELECTRONIC MAIL

Rose Santos

RE: FOIA Appeal 2017-124

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of Contracting and Procurement ("OCP") failed to respond to your June 16, 2017 request for certain records.

After you filed your appeal, OCP advised our Office that it responded to your request on August 9, 2017.¹ Since your appeal was based on OCP's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCP sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

¹ Attached is a copy of OCP's correspondence to this Office.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-125**

August 3, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos

RE: FOIA Appeal 2017-125

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that Department of Health Care Finance ("DHCF") failed to respond to your request for certain records.

This Office contacted DHCF today and asked for its response to your appeal. DHCF informed us that upon receiving your request electronically through the FOIAXpress portal, DHCF transferred it to the District's Office of Contracting and Procurement ("OCP") because OCP maintains the records you are seeking, not DHCF. DHCF also sent you an email message today advising you of the same.

We consider your appeal to be moot since you submitted it on the basis that DHCF failed to respond to your request, and the agency has now responded to you by indicating that it does not possess responsive records.

Your appeal is hereby dismissed. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Kevin H. O'Donnell, FOIA Officer and Attorney Advisor, DHCF (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-126**

August 10, 2017

VIA ELECTRONIC MAIL

Rose Santos

RE: FOIA Appeal 2017-126

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of Contracting and Procurement ("OCP") failed to respond to your June 16, 2017 request for certain records.

After you filed your appeal, OCP advised our Office that it responded to your request on August 10, 2017.¹ Since your appeal was based on OCP's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCP sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

¹ Attached is a copy of OCP's correspondence to this Office.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-127**

August 10, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos

RE: FOIA Appeal 2017-127

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of Contracting and Procurement ("OCP") failed to respond to your June 16, 2017 request for certain records.

After you filed your appeal, OCP advised our Office that it responded to your request on August 9, 2017.¹ Since your appeal was based on OCP's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response OCP sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

¹ Attached is a copy of OCP's correspondence to this Office.

**DISTRICT OF COLUMBIA PUBLIC LIBRARY
BOARD OF LIBRARY TRUSTEES
Meeting Schedule
2018**

Month	Meeting	Date	Time	Location
January 2018	Board of Library Trustees Meeting	Wednesday, January 24	6:00 p.m.	West End Library 2301 L Street, NW
March 2018	Board of Library Trustees Meeting	Wednesday, March 28	6:00 p.m.	Administrative Office @ 1990 K Street, NW or Shaw Library (Watha T. Daniels) 1630 7th St. NW
May 2018	Board of Library Trustees Meeting	Wednesday, May 23	6:00 p.m.	Palisades Library 4901 V St. NW
July 2018	Board of Library Trustees Meeting	Wednesday, July 25	6:00 p.m.	Administrative Office @ 1990 K Street, NW or Shaw Library (Watha T. Daniels) 1630 7th St. NW
September 2018	Board of Library Trustees Meeting	Wednesday, September 26	6:00 p.m.	Capitol View Library 5001 Central Ave. SE
November 2018	Board of Library Trustees Meeting	Wednesday, November 28	6:00 p.m.	Administrative Office @ 1990 K Street, NW or Shaw Library (Watha T. Daniels) 1630 7th St. NW

Note: According to the Bylaws, the Board of Trustees shall hold six (6) regular meetings each year. The schedule of the regular Board meetings shall be proposed by the President of the Board and approved by the Board. Notices of regular meetings (including the Annual Meeting) shall be sent to each member of the Board at least five (5) calendar days before the meeting.

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING**

LARUBY Z. MAY, BOARD CHAIR

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at 9:00 a.m. on Wednesday, December 13, 2017. The meeting will be held at the United Medical Center, 1310 Southern Ave., SE, Washington, DC 20032 in the Auditorium. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation’s website (www.united-medicalcenter.com).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**
November 16, 2017
- V. CONSENT AGENDA**
 - A. Dr. Julian R. Craig, Chief Medical Officer
 - B. Dr. Mina Yacoub, Medical Chief of Staff
- VI. EXECUTIVE MANAGEMENT REPORT**
David Boucree, Interim Chief Executive Officer
- VII. COMMITTEE REPORTS**
 - Patient Safety and Quality Committee
 - Finance Committee
- VIII. PUBLIC COMMENT**
- IX. OTHER BUSINESS**
 - A. Old Business
 - B. New Business
- X. ANNOUNCEMENTS**

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
NOTIFICATION OF PROPOSED NEW SCHOOL NAME

The District of Columbia Public Schools (“DCPS”) hereby gives notice of a proposed change to the name of the Benjamin G. Orr Elementary School, located in the Fairlawn community at 2200 Minnesota Avenue, SE, Washington, DC 20020. Effective January 15, 2018, the school will be named **Lawrence E. Boone Elementary School**.

The current administration of Orr Elementary School has submitted a formal request on behalf of the school community to change the name of the school. DCPS proposes changing the name at the request of the school community to recognize a former principal of Orr Elementary School, Lawrence E. Boone. Lawrence E. Boone served as the first African-American principal when the school moved to its current location to serve a growing African-American student population in the community. Mr. Boone was born in Washington, D.C. and raised in the nearby Barry Farm community. After graduating from Paul L. Dunbar High School, he enrolled at Houston-Tillson College on a track scholarship. To help to support his family upon his father’s untimely death, he transferred to Miner’s Teachers College in Washington, D.C., where he majored in Elementary Education. Following his graduation from Miner Teachers College, Mr. Boone served as a teacher and Assistant Principal at Randle Highlands Elementary School. In 1973, Mr. Boone moved to become the Principal at Orr, where he served until his retirement in 1996. Mr. Boone died on July 18, 2013.

DCPS has engaged the school community through a community survey and broad communication with students, families and stakeholders.

Pending a comment period of 30 days, the name will go into effect January 15, 2018. For further information and/or to submit public commentary, please contact the DCPS Office of Family and Community Engagement at ofpe.info@dc.gov or 202-719-6613.

RICHARD WRIGHT PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Facility Partner**

Richard Wright PCS is seeking a qualified partner to help us secure a long-term facility. Proposals are due no later than December 29, 2017. The complete RFP can be obtained by emailing marco.clark@richardwrightpcs.org. Please indicate 'Facilities Partner RFP' in the subject line.

**DISTRICT DEPARTMENT OF TRANSPORTATION
OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS
OFFICE OF THE CHIEF TECHNOLOGY OFFICER**

**Notice of Second Meeting to Review Permitting Process for
Small Cell Facilities on Streetlight Poles in the District of Columbia**

The Office of Public-Private Partnerships (OP3), Office of the Chief Technology Officer (OCTO) and the District Department of Transportation (DDOT) have established a permitting process for interested parties to install small cell facilities on streetlight poles in the District. The OP3, OCTO and DDOT will hold a second meeting at **1100 4th Street, SW, Washington, DC 20024 in Room E200 on December 18, 2017 at 2:00 p.m.** at which time the permitting process and a required Master License Agreement to participate in the program will be discussed.

For additional information and to receive the Master License Agreement, please contact:

Seth W. Miller Gabriel
Executive Director, Office of Public-Private Partnerships
Office of the City Administrator
1350 Pennsylvania Ave, NW
Suite 533
Washington, DC 20004
(202) 724-6683
seth.millergabriel@dc.gov

A copy of the Master License Agreement may also be found online at: <https://octo.dc.gov/page/small-cells>.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19557 of Commonwealth of Australia, pursuant to 11 DCMR Subtitle X, Chapter 2, to replace an existing chancery use by demolishing the existing Australian chancery building and replacing it with a new chancery building in the MU-15 zone at premises 1601 Massachusetts Avenue N.W. (Square 181, Lot 162).

HEARING DATE: September 13, 2017

DECISION DATE: September 13, 2017

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 306 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code § 6-1306 (2012 Repl.)) and Chapter 2 of Subtitle X of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after having held a public hearing on November 13, 2017, hereby gives notice that it took final action not to disapprove the application of the Commonwealth of Australia (“Applicant”) to replace an existing chancery use by demolishing the existing chancery building and replacing it with a new chancery building in the MU-15 zone at premises 1601 Massachusetts Avenue N.W. (Square 181, Lot 162) (the “Subject Property”).

A notice of proposed rulemaking was published in the August 11, 2017 edition of the *D.C. Register*. (64 DCR 8140.) In accordance with Subtitle Y § 402.1, the Board provided written notice to the public more than 40 days in advance of the public hearing. On July 7, 2017, the Office of Zoning (“OZ”) provided notice of the filing of the application to the United States Department of State, the District of Columbia Office of Planning (“OP”) Advisory Neighborhood Commission (“ANC”) 2B, whose boundaries encompass the Subject Property, the Single Member District Commissioner for ANC 2B05, the District Department of Transportation (“DDOT”), Historic Preservation Review Board (“HPRB”), and the Councilmember for Ward 2.

OZ scheduled a public hearing on the application for September 13, 2017 and provided notice of the hearing by mail to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property, as well as to the Department of State. Notice of the hearing was published in the *D.C. Register* on July 28, 2017. (64 DCR 7240.)

Background

The Subject Property has been used for chancery purposes since the mid-1960s. The Board approved the existing chancery building in BZA Order Nos. 8340 and 8665, dated September, 1965 and April, 1966, respectively. In February 1974, the Board approved an addition to the existing chancery building and construction of a penthouse that exceeds one-third of the total roof area in BZA Order No. 11590.

The Applicant proposes to demolish the existing building at the Subject Property and replace it with a new chancery building, which will contain chancery office space, conference and meeting rooms, consular services, and accessory space for other ancillary uses to the chancery use. The replacement chancery building's height, density, and lot occupancy will be generally consistent with that of the existing chancery building. The new building will have a floor area ratio ("FAR") of 4.32 FAR, which is 1.04 FAR less than the existing structure's density, and maintain the existing building height of 90 feet. The new chancery building will have a lot occupancy of approximately 86.3%. There will be a 1.83-foot side yard along the public alley on the west side of the Site and a 0.83-foot side yard on the east side of the Site, whereas side yards currently do not exist at the Subject Property.

The proposed chancery design features a flat roof and also includes a penthouse, which is set back at least 1:1 from the north, east, and south exterior walls. The main portion of the mechanical penthouse is proposed to be 9' 11" in height above the roof upon which it is located, but is set back 5' 11" from the west wall abutting the alley. The proposed rooftop also supports extensive solar and green roof elements.

In addition, the project will relocate the existing parking garage, which is accessed from Massachusetts Avenue, N.W. and the existing exit on 16th Street, N.W., to the adjacent public alley. The existing curb cuts will be eliminated accordingly. The new, proposed below-grade garage will include 91 vehicle parking spaces. The proposed project will also provide one loading berth, one loading platform, and one service/delivery loading space, which will be accessed from the alley. A sally port to screen vehicles prior to entering the building will be located adjacent to the garage entrance ramp, also along the alley. Bicycle parking and shower/changing facilities will be provided in amounts consistent with the Zoning Regulations; however, the long-term bicycle parking spaces will be provided in a covered shelter on the Site adjacent to the building.¹

Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application. The provision further dictates who is to make the relevant finding for certain factors. The factors and relevant findings are as follows:

¹ The proposed project does not comply with the Zoning Regulations for the requirements for FAR in Subtitle G § 602, height in Subtitle G § 603, side yard in Subtitle G § 606, penthouse setback in Subtitle C § 1502, loading in Subtitle C § 901, and bicycle parking in Subtitle C § 805. The Board, in addition to not disapproving the location of chanceries in certain zones, has the authority to hear requests for special exception or variances required for chancery applications, but the Board must evaluate these requests exclusively using the six criteria cited in the Foreign Missions Act. (11-X DCMR § 203.7; *See Embassy of the People's Republic of Benin v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 310 (D.C. 1987).)

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

In a letter dated July 20, 2017, the Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Commonwealth of Australia in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 32.)

2. Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

The existing structure is non-contributing to the Massachusetts Avenue and 16th Street Historic Districts. Pursuant to 11-X DCMR § 203.6, this application was referred to the chair of the Historic Preservation Review Board on July 7, 2017 to report as to whether the substantive criteria of this factor was met. (Exhibit 19.) No report was received.

The Office of Planning (“OP”), which includes the Historic Preservation Office, concluded that the new building’s design provided “a general level of compatibility with the neighborhood context while providing a contemporary design vocabulary that expresses the Australian heritage and landscape.” (Exhibit 44.) In addition, OP found that the public space design related well to the surrounding context by providing a high percentage of greenery, limited paving, and reestablishing the double tree canopy on Massachusetts Avenue. Finally, the Applicant provided for the record an evaluation that demonstrated the compatibility of the proposed design with the character of the 16th Street and Massachusetts Avenue Historic Districts. (Exhibit 41D.) Based on the evidence and testimony in the record, the Board finds this criterion is met.

3. The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

The Board concurs with the findings reached by the District Department of Transportation (“DDOT”) that the impacts of the replacement of the chancery building to the surrounding vehicle network will be minimal. (Exhibit 45.) In addition, the Board credits the findings in the OP report that the Applicant will provide adequate vehicle parking spaces in a below-ground garage. (Exhibit 44.) Further, parking access and loading functions would take place off the alley, in conjunction with security screening, and long-term bicycle parking for 27 spaces would be provided north of the site under a canopy cover. The Board also credits OP’s finding that this

site is adequately served by public transportation and is within one mile of three Metrorail stations: Farragut West, Farragut North, and Dupont Circle. (Exhibit 44.)

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in this case. (Exhibit 32.)

4. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

After consulting with Federal agencies authorized to perform protective services, the Department of State determined that the subject site and area are capable of being adequately protected. (Exhibit 32.)

5. The municipal interest, as determined by the Mayor.

OP, on behalf of the Mayor of the District of Columbia, determined that approving Application No. 19557 was in the municipal interest. (Exhibit 44.) OP found that the proposed replacement of the chancery building, though it does not meet the Zoning Regulations for FAR, height, side yard, loading, bicycle parking, and penthouse setback, would not create an adverse impact on the surrounding neighborhood to harm the public good or the intent of the Regulations. OP also made the following specific findings regarding the areas of zoning relief required.

The current design proposes a height of about 90 feet and a FAR of 4.39. The height and density, though they exceed what is permitted in the MU-15 Zone under Subtitle G §§ 602 and 603, are contextually appropriate with the surrounding historic elements in the historic district, particularly at Scott Circle.

With regard to side yard, the east and west walls would be set back 1.83 feet from the property lines, due to the location of the foundation walls and the structural support systems for these walls, though a 15-foot side setback is required in the MU-15, where a side yard is provided, pursuant to Subtitle G § 606. The proposed setback should not have an adverse impact on any abutting property, including the adjacent public alley and 16th Street, N.W.

In addition, although Subtitle C § 901 requires two 30-foot loading berths, two loading platforms and one 20-foot service delivery space, the proposed chancery will provide one 30-foot loading berth, one space for a 20-foot van and a 100 square foot loading platform. Based on the past operations of the chancery with one 30-foot loading berth, additional loading facilities prescribed by the regulations are not necessary for the chancery's needs.

Subtitle C § 805 states that required long-term bicycle parking spaces must be located within the building of the use requiring them; however, the chancery proposes to locate the bicycle parking

spaces under a covered shelter on the north side of the building. Although the bicycle parking spaces will not be located within the building, the number of long term bicycle parking spaces provided meets the number of long term spaces required by the Zoning Regulations and are located in a convenient and secure location on the Site and adjacent to the building. The location of the bicycle parking spaces outside of the building allows for Embassy staff to screen all people who enter the building, as they cannot easily screen bicycles in the same manner, thus posing a security risk.

The chancery's mechanical penthouse is proposed to be 9' 11" in height above the roof upon which it is located and exceeds the 1:1 setback required by Subtitle C § 1502 on the north, east, and south sides; however, it is set back 5' 11" from the west wall abutting the alley, not meeting the 1:1 setback requirement. The location of the mechanical penthouse is driven by the location of the building core, which is set off to the west side of the building because of the atrium and skylights in the center portion of the building and other unique programmatic needs of the use. The elevator penthouse exceeds the height of the other portions of the mechanical penthouse by 4.5 feet but exceeds the 1:1 setback from all sides. The proposed setback is the result of the unique programmatic needs of this use, and satisfies the intent of the Regulations, which is to reduce visibility from public space.

6. The federal interest, as determined by the Secretary of State.

The Department of State determined that there is federal interest in this project. Specifically, the Department of State acknowledged the Government of the Commonwealth of Australia's assistance in addressing the United States' land use needs in Canberra. Such cooperation was essential for successfully achieving the Federal Government's mission for providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide. (Exhibit 32.)

Great Weight

The Board 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 issues and concerns raised in the written report of the affected ANC, which is ANC 2B. The ANC submitted a resolution dated August 21, 2017, indicating that at its regularly scheduled, duly noticed public hearing on August 9, 2017, with a quorum present, the ANC voted 7-0-0 in support of the project as proposed. (Exhibit 38.) The ANC noted that the Applicant's proposal for public space improvements along Massachusetts Avenue, N.W. would cause the sidewalks to narrow to six feet in some spaces, while ANC 2B's public space guidelines request that sidewalks within the neighborhood have a width of at least ten feet. Nevertheless, the ANC stated that it supports the public space portion of the application "because the applicant will be providing a car drop-off woonerf on its own property, inviting the public to walk on embassy grounds where the path is more than ten feet wide and not on the six foot wide

sidewalk.” Since the ANC express no unresolved issue or concern, there is nothing to give great weight to.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, the Board has decided not to disapprove the application. Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED, AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 41B1-41B2.**

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Peter G. May, and Marcel C. Acosta to Not Disapprove; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 4, 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 § 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,

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HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19583 of Jemal’s East 451 LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500, to construct a 13-story hotel in the D-4-R zone at premises 601 K Street, N.W. (Square 451, Lot 23, 24, 25, 823, 822).

HEARING DATES: October 11, 2017 and November 29, 2017²

DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3 – original, Exhibit 38 – revised.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on November 7, 2017, at which a quorum was present, the ANC voted 5-0-0 to support the application, contingent upon “receipt of a letter from Douglas Development [the Applicant] agreeing to restrictions on hours for the rooftop bar, and to communicate that support in writing to the Board of Zoning Adjustment.” (Exhibit 40.) In its prehearing statement (Exhibit 34) and at the public hearing,

¹ The Applicant amended the application by removing from the original application the following requests for relief: a variance for loading under Subtitle C § 901.1, a variance for court under Subtitle I § 207.1, a special exception for front build-to line under Subtitle I § 203.1, and a special exception for rear yard under Subtitle I § 205 based on the Applicant’s revised self-certification form. (Exhibit 38.)

² The hearing in this application was postponed from October 11, 2017 to November 29, 2017 at the Applicant’s request. (Exhibits 30, 31.)

the Applicant expressed its commitment to meeting the conditions noted in the ANC report to limit operating hours and restrict loud rooftop music in an effort to minimize impacts of the use.

The Office of Planning (“OP”) submitted a timely report dated November 17, 2017 recommending approval of the amended application. In its report, OP indicated that the Applicant would have to address the 4.5 floor area ratio (“FAR”) minimum residential requirement for the D-4-R zone and the affordable housing requirement for the habitable penthouse space under Subtitle C § 1505. (Exhibit 36.) At the hearing the Applicant testified that it will satisfy the affordable housing component with a contribution to the Affordable Housing Trust Fund and meet the 4.5 FAR residential requirement with credits / off-site development.

The District Department of Transportation (“DDOT”) submitted a timely report dated November 17, 2017 indicating that it had no objection to the grant of the application. (Exhibit 37.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500, to construct a 13-story hotel in the D-4-R zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C §§ 1500 and 1500.3(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 39A1-39A3 – REVISED ARCHITECTURAL DRAWINGS (Parts 1, 2, and 3) - AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall restrict the hours of operation of the restaurant, bar, or lounge so that the hours end no later than midnight on weekdays (Sunday through Thursday for Alcoholic Beverage Regulation Administration (“ABRA”) licensing purposes) and 2:00 AM on weekends (Friday and Saturday for ABRA licensing purposes).

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2. The Applicant shall not allow excessive noise, per the ABRA regulations, on the rooftop at any time.

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 5, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

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ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19601 of 443 Ridge, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 205.4, to permit a rear addition to an existing one-family dwelling in the RF-1 Zone at premises 443 Ridge Street N.W. (Square 513, Lot 908).

HEARING DATES: November 8, and November 29, 2017 ¹

DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 5, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 39.)

The Office of Planning ("OP") submitted a timely report dated October 13, 2017, in support of the application. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a timely report, dated October 13, 2017, expressing no objection to the approval of the application. (Exhibit 30.)

Two letters of support for the application from the adjacent neighbors were submitted to the record. (Exhibit 42.)

¹ This case was administratively postponed from the public hearing of October 25, 2017, to that of November 8, 2017. (Exhibits 32 and 33.) The Board heard the case on November 8, 2017, but continued the hearing to that of November 29, 2017, to allow the Applicant to provide requested additional documentation, which was filed. (Exhibits 39-42.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 205.4, to permit a rear addition to an existing one-family dwelling in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5201 and 205.4, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 41.**

VOTE: 3-0-2 (Frederick L. Hill, Carlton E. Hart, and Lesylleé M. White to APPROVE;
Zoning Commission member not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 1, 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

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IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19607 of Great American Bistro LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance under Subtitle U § 301, to operate a new full-service restaurant in the RF-1 zone at premises 1545 New Jersey Avenue N.W. (Square 510E, Lot 800).

HEARING DATE: November 29, 2017²
DECISION DATE: November 29, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated July 14, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on September 19, 2017, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 17.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with amended relief and with three conditions. (Exhibit 44.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application.³ (Exhibit 41.)

¹ The Zoning Administrator memo that accompanied the application listed the relief as a variance from the expansion of a nonconforming use (Subtitle C § 204.3). (Exhibit 8.) However, the Office of Planning (“OP”), after consultation with DCRA, determined that the relief cited in the ZA memo is not applicable to the situation and recommended that the request be evaluated as a use variance under Subtitle U § 301 with conditions. (Exhibit 40.) The Applicant testified that it agreed with OP’s interpretation. The Board accepted the amendment to the application and the caption has been amended accordingly.

² This case was administratively postponed from the public hearing of November 1, 2017 to that of November 29, 2017. (Exhibits 32 and 33.)

Petitions in support of the application as well as letters of support from the Bates Area Civic Association and a neighbor were submitted to the record. (Exhibits 10-12, 38 and 43.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for a use variance under Subtitle U § 301, to operate a new full-service restaurant in the RF-1 zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a use variance from 11 DCMR Subtitle U § 301, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 AND THE FOLLOWING CONDITIONS:**

1. Hours of operation shall not exceed 6:00 AM to 10:00 PM Sundays through Thursdays, and 6:00 AM to 11:00 PM Fridays and Saturdays.
2. Trash shall be collected in dumpsters on the 4th Street side of the building; Dumpsters shall be visually screened, subject to Public Space approval, and shall be emptied a minimum of three times per week.
3. No music shall be permitted outside of the building. Any music on the interior of the building, either recorded or live, shall not be louder than 55 dBA when measured at the exterior building face.

³ DDOT raised various public space issues and asked that the Applicant meet with DDOT to bring the property into compliance. (Exhibit 41.)

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 6, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT

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DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19610 of Granite LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the penthouse regulations of Subtitle C § 1500.3(d), to permit the second floor of the existing two-story penthouse to be used as habitable space in the D-6 Zone at premises 730 15th Street N.W. (Square 221, Lot 800 & 809).

HEARING DATE: November 8, 2017¹

DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 13, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report, dated October 13, 2017, in support of the application. (Exhibit 33.) The District Department of Transportation ("DDOT") submitted a timely report, dated October 13, 2017, expressing no objection to the approval of the application. (Exhibit 35.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the penthouse regulations of Subtitle C § 1500.3(d), to permit

¹This case was administratively postponed from the public hearing of October 25, 2017, to that of November 8, 2017. (Exhibits 34 and 36.) The Board heard the case on November 8, 2017, but scheduled the decision for November 29, 2017, to allow the Applicant to provide requested information, which was filed. (Exhibit 40.)

the second floor of the existing two-story penthouse to be used as habitable space in the D-6 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle C § 1500.3(d), the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 32.**

VOTE: 4-0-1 (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Michael G. Turnbull (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 4, 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

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IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19611 of 909 Webster Street Partners, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 320.2, to convert an existing residential building to a three-unit apartment house in the RF-1 Zone at premises 909 Webster Street, N.W. (Square 3020, Lot 22).

HEARING DATE: November 29, 2017¹

DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 13, 2017, at which a quorum was present, the ANC voted 7-1-1 to support the application, with one condition. (Exhibit 37.) The ANC's proposed condition – that the Applicant use a permeable surface for the proposed parking area - was adopted by the Board and is reflected in this order.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 34.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

¹ The hearing in the application was administratively rescheduled from November 1, 2017 to November 29, 2017. (Exhibit 29.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 320.2., to convert an existing residential building to a three-unit apartment house in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 320.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 – ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall use a permeable surface for the proposed parking area.

VOTE: **4-0-1** (Frederick L. Hill, Peter A. Shapiro, Carlton E. Hart, and Lesylleé M. White to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 1, 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

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SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION 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 CONDITION IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19615 of Gabriela Maglione, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 513.1(n), and pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the separation from residential use requirement of Subtitle U § 513.1(a)(2), to permit a dog grooming business on the ground floor of an existing commercial building in the MU-4 Zone at premises 1408 9th Street N.W. (Square 366, Lot 801).

HEARING DATE: November 29, 2017

DECISION DATE: November 29, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 7.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 2F and to owners of property located within 200 feet of the site.² The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a timely report recommending conditioned approval of the application. The ANC’s report and accompanying resolution indicated that at a regularly scheduled, properly noticed public meeting on October 4, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application with three conditions. (Exhibit 17.)

The Office of Planning (“OP”) submitted a timely report, dated November 17, 2017, in support of the application, recommending approval of amended relief with five conditions. (Exhibit 35.)

¹ The original application requested special exception relief, but after consulting with DCRA, the Office of Planning (“OP”) determined that additional variance relief was required. Based on OP’s recommendation, the Applicant amended the application to add an area variance from the horizontal separation from residential use provisions of Subtitle U § 513.1(a)(2). (Exhibits 38 and 42.) The Board accepted the amendment and the caption has been amended accordingly.

² The Board granted the Applicant’s request to waive the 21-day deadline for pre-hearing submissions and notice requirements for the additional variance relief (Exhibit 42) which resulted from OP determining that the Zoning Administrator memorandum was missing a variance and communicating the issue to the Applicant. Also, a letter of authorization was submitted for the Applicant to represent the property owner. (Exhibit 39.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 36.)

Letters in support from the 2nd floor resident and the 3rd floor residents in the building were submitted to the record. (Exhibits 11, 37, and 16.) A petition of support for the application with 33 signatures was submitted to the record. (Exhibits 12A-12B.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for a variance from the separation from residential use requirement of Subtitle U § 513.1(a)(2), to permit a dog grooming business on the ground floor of an existing commercial building in the MU-4 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 513.1(a)(2), the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 513.1(n). No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 513.1(n), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and

conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5 AND WITH THE FOLLOWING CONDITIONS:**

1. No more than eight dogs shall be on the premises at any one time.
2. No animal boarding shall be permitted.
3. All pet waste shall be stored inside except on collection days.

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 1, 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

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APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19620 of Petit Scholars West End LLC dba Petit Scholars @ RIA, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 401.1(c), to permit a child development center with greater than 25 individuals in the MU-4 Zone at premises 2066 Rhode Island Avenue N.E. (Square 4219, Lot 823).

HEARING DATE: November 29, 2017
DECISION DATE: November 29, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 22, 2017, from the Zoning Administrator (“ZA”), certifying that the required relief is a special exception pursuant to Subtitle U § 401.1(c) to allow a child development center with greater than 25 individuals. (Exhibit 3.) In the Office of Planning (“OP”) report dated November 17, 2017, OP raised the issue that the relief cited applies to RA zones, while the Subject Property is located in the MU-4 Zone. (Exhibit 44.) OP further noted that, while uses permitted within the RA zones are generally permitted in MU zones, OP “believes relief under U § 512.1(c), daytime care (a use category which encompasses a child development center) would be more appropriate.” (Exhibit 44.)

Because OP was unable to confirm with the ZA whether the relief under Subtitle U § 512.1(c) would be appropriate for this application, the Applicant did not amend the relief originally requested and the Board voted on the relief cited in the ZA memorandum. The Board of Zoning Adjustment (“Board”) indicated, however, that the application had also met the criteria of Subtitle U § 512.1(c) and that, should the ZA determine that to be the correct relief, the Applicant has met the special exception standard under that provision as well.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on September 20, 2017, at which a quorum was present, the ANC voted 4-0 to support the application. (Exhibit 25.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with two conditions. (Exhibit 44.) The Board adopted OP’s recommended conditions regarding the maximum number of children and operating hours. As discussed previously in this Order, OP also indicated that special exception relief under Subtitle U § 512.1(c) would be more appropriate for this application. (Exhibit 44.) Though the Applicant did not amend the relief requested based on OP’s recommendation, the Board agreed with OP that the application meets the special exception criteria under Subtitle U § 512.1(c).

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the relief requested with one condition. (Exhibit 45.) The Board adopted DDOT’s proposed condition regarding installation of a bicycle parking rack.

Eleven letters of support were submitted to the record. (Exhibits 12, 15-24.) At the public hearing on November 29, 2017, Audrey Reese provided testimony in support of the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 401.1(c), to permit a child development center with greater than 25 individuals in the MU-4 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and U § 401.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 AND WITH THE FOLLOWING CONDITIONS:**

1. The child development center shall have a maximum of 39 children.
2. The child development center shall not exceed the operating hours of 7:00 a.m. to 6:00 p.m. on Monday through Friday.
3. The Applicant shall install one inverted U-rack for short-term bicycle parking.

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VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 4, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 19631 of E ST, LLC, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use requirements of Subtitle U § 301.1(d) and Subtitle U § 301.1(e), and pursuant to Subtitle X, Chapter 10, for area variances from the lot occupancy requirements of Subtitle E § 304.1, from the height requirements of Subtitle E § 5002.1, from the lot occupancy requirements of Subtitle E § 5003.1, from the rear yard requirements of Subtitle E § 306.1, and from the side yard requirements of Subtitle E § 307.1, to construct an accessory dwelling unit and convert the existing three-unit apartment house to a flat in the RF-1 Zone at premises 602 E Street S.E. (Square 876, Lot 65).

HEARING DATE: November 29, 2017

DECISION DATE: November 29, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated July 20, 2017, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibit 3.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on October 10, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 30.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application. In its report, OP recommended amendments to the requested relief that were accepted by the Applicant and the Board. (Exhibit 39.) The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 38.)

¹ The Zoning Administrator memo lists the relief from Subtitle U § 301.1(d) as a variance and cited special exception relief from Subtitle U § 301.1(c). (Exhibit 3.) At the hearing, the Applicant and the Board accepted the Office of Planning’s recommendation that the relief from Subtitle U § 301.1(d) be considered as a special exception instead and that the special exception from U § 301.1(c) be revised to a special exception from U § 301.1(e). The caption has been amended accordingly.

Four letters of support for the application from neighbors, including the adjacent owner and the owner of the property that abuts at the rear, and from the Historic Preservation Committee of the Capitol Hill Restoration Society were submitted to the record. (Exhibits 14-17, 41.) Testimony in support of the application was given by Julijana Budjevac, Lawrence Helm, and Cecelia Rodgers. A letter of opposition to the application was submitted from the Zoning Committee of the Capitol Hill Restoration Society. (Exhibit 40.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the lot occupancy requirements of Subtitle E § 304.1, from the height requirements of Subtitle E § 5002.1, from the lot occupancy requirements of Subtitle E § 5003.1, from the rear yard requirements of Subtitle E § 306.1, and from the side yard requirements of Subtitle E § 307.1, to construct an accessory dwelling unit and convert the existing three-unit apartment house to a flat in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle E §§ 304.1, 5002.1, 5003.1, 306.1, and 307.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the use requirements of Subtitle U § 301.1(d) and Subtitle U § 301.1(e). No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U §§ 301.1(d) and 301.1(e), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

VOTE: **4-0-1** (Peter A. Shapiro, Frederick L. Hill, Lesylleé M. White, and Carlton E. Hart, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 1, 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

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