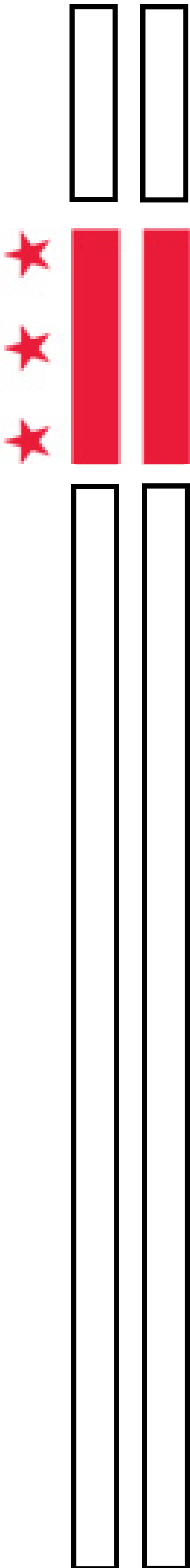

VOL. 64 – NO. 51 DECEMBER 22, 2017

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Law 22-33, Fiscal Year 2018 Budget Support Act of 2017
- D.C. Council schedules a public hearing on Bill 22-39, Community Use of School Facilities Task Force Establishment Act of 2017
- D.C. Council schedules a public oversight roundtable on the Implementation of Law 21-264, The Universal Paid Leave Act
- Department of Health establishes regulations on the practice of telemedicine
- D.C. Housing Authority establishes regulations on the Rental Assistance Demonstration Administrative Plan
- Department of Energy and Environment announces funding availability for the Anacostia River Sediment Project Document Review

Executive Office of the Mayor releases a Mayor's Order on Sexual Harassment Policy, Guidance and Procedures

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

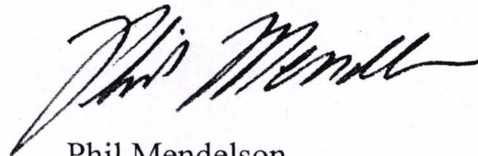
NOTICE

D.C. LAW 22-31

"Access to Emergency Epinephrine in Schools Clarification 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 22-414 on first and second readings September 19, 2017, and October 3, 2017, respectively. Following the signature of the Mayor on October 18, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-150 and was published in the October 27, 2017 edition of the D.C. Register (Vol. 64, page 10736). Act 22-150 was transmitted to Congress on October 24, 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 22-150 is now D.C. Law 22-31, effective December 7, 2017.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	24, 25, 26, 27, 30, 31
November	1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December	1, 4, 5, 6

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-32

"Public School Nurse Assignment 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 22-416 on first and second readings September 19, 2017, and October 3, 2017, respectively. Following the signature of the Mayor on October 18, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-151 and was published in the October 27, 2017 edition of the D.C. Register (Vol. 64, page 10738). Act 22-151 was transmitted to Congress on October 24, 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 22-151 is now D.C. Law 22-32, effective December 7, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 24, 25, 26, 27, 30, 31
November 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December 1, 4, 5, 6

COUNCIL OF THE DISTRICT OF COLUMBIA

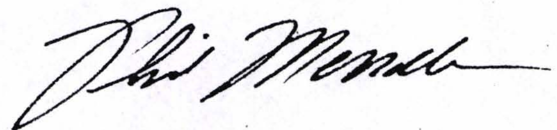
NOTICE

D.C. LAW 22-33

"Fiscal Year 2018 Budget Support 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 22-244 on first and second readings May 30, 2017, and June 27, 2017, respectively, pursuant to Section 404(e) of the Charter, the bill became Act 22-130 and was published in the August 11, 2017 edition of the D.C. Register (Vol. 64, page 7652). Act 22-130 was transmitted to Congress on October 30, 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 22-130 is now D.C. Law 22-33, effective December 13, 2017.



Phil Mendelson
Chairman of the Council

Days Counted During the Congressional Review Period:

October 30, 31
November 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December 1, 4, 5, 6, 7, 8, 11, 12

COUNCIL OF THE DISTRICT OF COLUMBIA

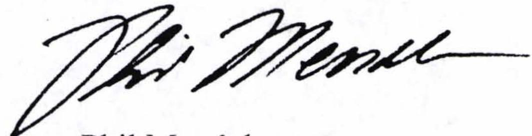
NOTICE

D.C. LAW 22-34

"Capitol Riverfront Business Improvement District 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 22-279 on first and second readings July 11, 2017, and October 3, 2017, respectively. Following the signature of the Mayor on October 23, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-153 and was published in the October 27, 2017 edition of the D.C. Register (Vol. 64, page 10758). Act 22-153 was transmitted to Congress on October 30, 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 22-153 is now D.C. Law 22-34, effective December 13, 2017.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	30, 31
November	1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December	1, 4, 5, 6, 7, 8, 11, 12

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-35

"DC HealthCare Alliance Recertification Simplification 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 22-194 on first and second readings September 19, 2017, and October 3, 2017, respectively, pursuant to Section 404(e) of the Charter, the bill became Act 22-169 and was published in the October 27, 2017 edition of the D.C. Register (Vol. 64, page 10929). Act 22-169 was transmitted to Congress on October 30, 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 22-169 is now D.C. Law 22-35, effective December 13, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	30, 31
November	1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December	1, 4, 5, 6, 7, 8, 11, 12

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-36

"General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization 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 22-430 on first and second readings September 19, 2017, and October 3, 2017, respectively. Following the signature of the Mayor on October 23, 2017, pursuant to Section 404(e) of the Charter, the bill became Act 22-152 and was published in the October 27, 2017 edition of the D.C. Register (Vol. 64, page 10740). Act 22-152 was transmitted to Congress on October 30, 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 22-152 is now D.C. Law 22-36, effective December 13, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October 30, 31
November 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30
December 1, 4, 5, 6, 7, 8, 11, 12

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-205

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 13, 2017

To declare, on an emergency basis, that the District-owned real properties located at 1220 Maple View Place, S.E., known for tax and assessment purposes as Lot 811 in Square 5800, 1648 U Street, S.E., known for tax and assessment purposes as Lot 884 in Square 5765, 1518 W Street, S.E., known for tax and assessment purposes as Lot 814 in Square 5779, and 1326 Valley Place, S.E., known for tax and assessment purposes as Lot 849 in Square 5799, are no longer required for public purposes and to authorize the disposition of the properties to the L'Enfant Trust for the purpose of rehabilitating the properties in accordance with historic preservation standards and developing workforce housing.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Historic Anacostia Vacant Properties Surplus Declaration and Disposition Authorization Emergency Act of 2017".

Sec. 2. (a) Notwithstanding the requirements of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et seq.*), the Council declares the real properties ("Properties") located at:

(1) Lot 811 in Square 5800;
(2) Lot 884 in Square 5765;
(3) Lot 814 in Square 5779; and
(4) Lot 849 in Square 5799

are no longer required for public purposes and authorizes the disposition of the Properties to the L'Enfant Trust, as approved by the Mayor; provided, that the land shall be transferred for the purpose of renovation in accordance with historic preservation standards for use as workforce housing.

(b)(1) Title to any property identified in subsection (a) of this section for which a certificate of occupancy has not been issued within 5 years of the date of transfer from the District to the L'Enfant Trust shall revert to the District.

(2) The District shall not assess or collect real property taxes for any property identified in subsection (a) of this section until a buyer at arm's length from the L'Enfant Trust purchases the property.

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(c) As a condition of transfer, the L'Enfant Trust shall:

(1) Renovate and develop the properties as workforce housing, in accordance with historic preservation standards;

(2) Subcontract 35% of the total adjusted project budget to Certified Business Enterprises;

(3) Include in each property's sales contract and deed of conveyance a provision that requires that the individuals who purchase each property shall qualify for workforce housing and occupy the premises as their primary residence for a minimum period of 3 years; and

(4) No later than December 31, 2018, partner with a Ward 8 homebuyers program that will conduct at least 2 informational sessions for Ward 8 residents who are also first-time homebuyers.

(d) For the purposes of this act, the term "workforce housing" means housing that must be owner-occupied by low- or moderate-income households whose total income does not exceed 120% of Area Median Income, as determined by the U.S. Department of Housing and Urban Development.

Sec. 3. To the extent the terms of this act conflict with the Historic Preservation of Derelict District Properties Act of 2016, effective March 11, 2017 (D.C. Law 21-223; 64 DCR 182), the terms of this act shall control.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 13,2017

ENROLLED ORIGINAL

A RESOLUTION

22-252

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Public School Nurse Assignment Act of 1987 to require that any public school currently receiving school nurse services above 20 hours per week continue at that existing level of service, or the level recommended by the Department of Health's risk-based assessment, whichever is greater, for the remainder of school year 2017-2018.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Public School Nurse Assignment Congressional Review Emergency Declaration Resolution of 2017".

Sec. 2. (a) In 1987, the Council passed the District of Columbia Public School Nurse Assignment Act of 1987, effective December 10, 1987 (D.C. Law 7-45; D.C. Official Code § 38-601 *et seq.*), to require the assignment of a registered nurse to each District of Columbia elementary and secondary public and public charter school for a minimum of 20 hours per week, beginning in 1989.

(b) In 2006, the Council's Committee on Health requested that the Department of Health and Children's National, the school nurse program contractor, transition to 40 hours of nurse coverage per week by supplementing registered nurses with licensed practical nurses.

(c) In April 2016, the Deputy Mayor for Education sent a letter to local education agency ("LEA") leaders announcing the Department of Health's new model for the school health services program as part of the broader Whole School, Whole Community, Whole Child ("WSCC") model developed by the Centers for Disease Control and Prevention ("CDC"). Under the new program, registered nurses will continue to provide clinical care for all children with special health care needs who require daily medications or treatment. Additional health professionals and community navigators will work with families, schools, and students' primary care providers to make sure students receive well-child exams and the preventive services they need to be healthy. However, the school nurse service levels will be reset for all schools at a minimum of 20 hours each week. Schools may receive more nursing coverage depending on the medical needs of student population based on a risk-based health needs assessment. This new model was to be implemented at the start of school year 2016-2017.

(d) On May 23, 2016, the Chancellor of the District of Columbia Public Schools ("DCPS") and Executive Director of the District of Columbia's Public Charter School Board sent a joint letter to the Director of the Department of Health, the Deputy Mayor for Education,

ENROLLED ORIGINAL

and the Deputy Mayor for Health and Human Services requesting that the new model be delayed to school year 2017-2018 and to request that the current system and nurse staffing levels be kept in place for the upcoming 2016-2017 school year. While they believed the new model held promise to improve the quality of health care delivery to students, they also believed this promise could only be realized if LEAs and schools had sufficient time to plan, adjust their own budgets and processes, and adequately communicate with families. They had been told to expect sharp reductions in the service house of school nurses at many schools.

(e) On June 7, 2016, the Director of the Department of Health responded to the May letter by announcing that the implementation of the new school health services model would be delayed until January 2017.

(f) On August 2, 2016, the Office of the State Superintendent of Education ("OSSE") sent a letter to LEA leaders regarding engagement with communities on the new model. OSSE also invited leaders to LEA engagement sessions on August 23, 2016 and September 19, 2016 to solicit additional feedback to support the planning process.

(g) After weeks of constituents contacting Councilmembers, the Department of Health, and schools expressing concern and confusion about the new school health services and the potential for a reduction in school nurse services, on October 5, 2016 and October 18, 2016, the Department of Health held community engagement sessions. This did not completely assuage concerns raised.

(h) On October 23, 2016, the Executive Director of the Public Charter School Board reiterated concerns regarding the implementation of the new school health services model mid-school year. According to his letter, schools still have not received staffing plans from the Department of Health and therefore do not know just how much school staff they will need to absorb if their service levels do change.

(i) On October 25, 2016, the Committee on Education held a public roundtable to discuss the new model. The hearing began at 2:33 p.m. and lasted until 8:03 p.m. The Committee on Education heard from many public witnesses, including staff from LEAs, about the concern regarding the new program. Many asked for the Council to introduce and pass legislation to increase the statutory minimum school nursing service level to 40 hours per week. Both the American Academy of Pediatrics and the CDC recommend having at least one full-time nurse in every school.

(j) The 2016 School Health Assessment completed by the DC Action for Kids stated 98% of schools that have current Department of Health nurses are staffed more than 20 hours a week. According to the Department of Health, as of October 25, 2016, 66 DCPS schools had full-time coverage, and 47 had part-time coverage of either 24 or 32 hours a week. For public charter schools, 30 had full-time coverage, and 27 had part-time coverage of 24 or 32 hours a week.

(k) For almost a decade, the District's public schools have been receiving over 20 hours of school nursing services. While the Department of Health's new school health program model may improve student health outcomes, there is nothing to suggest that efforts to add more allied health professionals to schools to help with care coordination and have community navigators to connect families with local assets could not continue without reducing school nurse hours.

ENROLLED ORIGINAL

During the roundtable, the Director of the Department of Health stated: "If we determine that all schools require 40 hours of coverage, all schools will receive 40 hours."

(l) There were significant concerns raised about a change to school nursing hours and the ability of the Department of Health to seamlessly transition and implement new staffing plans in January 2017. Further, there has been no true public campaign to inform students, parents, and school-based staff about what to expect under the new model. The National Institute of Health states that the broader WSCC model requires care consideration, planning, and full buy-in of school administrations to have effective implementation and sustainability. This was lacking among our public school communities in the District of Columbia.

(m) On September 19, 2017, the Council passed the Public School Nurse Assignment Emergency Amendment Act of 2017 (D.C. Act 22-147; 64 DCR 10455), to amend the District of Columbia Public School Nurse Assignment Act of 1987 to require that any public school currently receiving school nurse services above 20 hours per week continue at that existing level of service, or the level recommended by the Department of Health's risk-based assessment, whichever is greater, for the 2017-2018 school year. That emergency act, however, will expire as of November 12, 2017.

(n) Temporary legislation, the Public School Nurse Assignment Temporary Amendment Act of 2017 (D.C. Act 22-151; 64 DCR 10738), was signed by the Mayor on October 18, 2017. It is currently under congressional review and is projected to become law on December 12, 2017.

(o) This congressional review emergency act is needed to prevent a gap in the law.

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 Public School Nurse Assignment Congressional Review Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-254

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To confirm the appointment of Mr. Joe Coleman to the District of Columbia Commemorative Works Committee.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Commemorative Works Committee Joe Coleman Confirmation Resolution of 2017".

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

Mr. Joe Coleman
4001 Lane Place, N.E.
Washington, D.C. 20019
(Ward 7)

as a citizen member of the District of Columbia Commemorative Works Committee, established by section 412 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective April 4, 2001 (D.C. Law 13-275; D.C. Official Code § 9-204.12), replacing Tendani Mpulubusi El, for a term to end July 22, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-255

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To confirm the reappointment of Mr. Fred Hill to the Board of Zoning Adjustment.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2017".

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

Mr. Fred Hill
912 F Street, N.W.
Washington, D.C. 20004
(Ward 2)

as a member of the Board of Zoning Adjustment, established by section 8 of An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, approved June 20, 1938 (52 Stat. 799; D.C. Official Code § 6-641.07), for a term to end September 30, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-286

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To disapprove proposed Contract No. NFPHC-292 (CA22-0286) between the Not-for-Profit Hospital Corporation and Veritas of Washington LLC to provide hospital management and operator services for the United Medical Center.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Veritas of Washington LLC Contract No. NFPHC-292 Disapproval Resolution of 2017".

Sec. 2 Pursuant to section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council disapproves proposed Contract No. NFPHC-292 (CA22-0286) between the Not-For-Profit Hospital Corporation and Veritas of Washington LLC in the amount of $4,173,951.80 to provide hospital management and operator services for the United Medical Center.

Sec. 3. The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor and the Not-for-Profit Hospital Corporation.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-307

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 21, 2017

To confirm the appointment of Ms. Velma J. Speight to the Not-For-Profit Hospital Corporation Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Not-For-Profit Hospital Corporation Board of Directors Velma J. Speight Confirmation Resolution of 2017".

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

Ms. Velma J. Speight
2000 32nd Place, S.E.
Washington, D.C. 20020
(Ward 7)

as a member of the Not-For-Profit Hospital Corporation Board of Directors, pursuant to section 5115 of the Not-For-Profit Hospital Corporation Establishment Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 44-951.04), replacing Maria S. Gomez, for a term to end July 9, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-310

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 21, 2017

To declare the existence of an emergency with respect to the need to approve 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.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. CW40572 with Centric Group, LLC Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification Nos. 0004 and 0005 to Contract No. CW40572 with Centric Group, LLC dba Keefe Supply Company to provide the Department of Corrections ("DOC") with commissary services for inmates, and to authorize payment in the not-to-exceed amount of $1,300,000 for the goods and services received and to be received under the modifications.

(b) By Modification No. 0004, dated August 14, 2017, the Office of Contracting and Procurement, acting on behalf of the DOC, exercised Option Year 2 of Contract No. CW40572 to provide the DOC with commissary services for inmates for the period from October 1, 2017, through September 30, 2018, in the amount of $975,000.

(c) Modification No. 0005 is now necessary to increase the amount of Option Year 2 for the period from October 1, 2017, through September 30, 2018, in the amount of $325,000, which will increase the total contract amount for Option Year Two from $975,000 to $1,300,000.

(d) Council approval is required by section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)), because these modifications increase the unapproved value of the contract by more than $1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Centric Group, LLC, cannot be paid for goods and services provided in excess of $1 million for the contract period beginning October 1, 2017, through September 30, 2018.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. CW40572 with Centric Group, LLC Approval and Payment Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-311

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 21, 2017

To declare the existence of an emergency, with respect to the need to amend the Procurement Practices Reform Act of 2010 to provide the Department of Health Care Finance with independent procurement authority for the specific purpose of procuring services for the management and operation of the United Medical Center.

RESOLVED. BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Department of Health Care Finance Independent Procurement Authority Emergency Declaration Resolution of 2017".

Sec. 2. (a) This emergency legislation will amend 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)) ("PPRA"), to exempt the Department of Health Care Finance's ("Department") procurement of services for the management and operation of the United Medical Center from the PPRA, with the exception of sections 202, 401a, 415, and Title X of the act..

(b) This legislation would still require a competitive process, as determined by the Department, producing not less than 2 responsive proposals, but would allow the Department to otherwise truncate the process provided for in the PPRA.

(c) Additionally, this legislation would amend 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) ("SCBED"), to authorize the Director of the Department to waive the SCBED's subcontracting requirements for contracts for government-assisted projects in excess of $250,000 for a procurement solicited for the management and operation of the United Medical Center.

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 Department of Health Care Finance Independent Procurement Authority Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-316

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To reappoint Ms. Katharine Aiken Huffman to the Corrections Information Council Governing Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Corrections Information Council Governing Board Katharine Aiken Huffman Reappointment Resolution of 2017".

Sec. 2. The Council of the District of Columbia reappoints:

Ms. Katharine Aiken Huffman
2635 Woodley Place, N.W.
Washington, D.C. 20008
(Ward 3)

as a member of the Corrections Information Council Governing Board, established by section 11201a(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01(b)), for a term to end May 4, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the appointee, the chairperson of the Corrections Information Council Governing Board, and the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

22-317

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To appoint Councilmember Anita Bonds as the Council representative to the Commission on Aging.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Aging Councilmember Anita Bonds Appointment Resolution of 2017".

Sec. 2. The Council of the District of Columbia appoints:

Councilmember Anita Bonds
202 Bates Street, N.W.
Washington, D.C. 20001
(Ward 5)

as the Council representative to the Commission on Aging, established by section 401 of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24; D.C. Official Code § 7-504.01), to serve for a term to end October 28, 2020.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the appointee, the chairperson of the Commission on Aging, and the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

22-325

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Mr. Marvin Turner to the District of Columbia Sentencing Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Sentencing Commission Marvin Turner Confirmation Resolution of 2017".

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

Mr. Marvin Turner
2221 Ridge Place, S.E.
Washington, D.C. 20020
(Ward 8)

as a citizen member of the District of Columbia Sentencing Commission, established by section 2 of the Advisory Commission on Sentencing Establishment Act of 1998, effective October 16, 1998 (D.C. Law 12-167; D.C. Official Code § 3-101), for a term to end July 2, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-332

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Dr. Anika Simpson to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Anika Simpson Confirmation Resolution of 2017".

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

Dr. Anika Simpson
5017 Illinois Avenue, N.W.
Washington, D.C. 20011
(Ward 4)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-333

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Mr. Earl Fowlkes to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Earl Fowlkes Confirmation Resolution of 2017".

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

Mr. Earl Fowlkes
905 6th Street, S.W., Apt. 412
Washington, D.C. 20024
(Ward 6)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-335

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Commander Morgan C. Kane to the Police Complaints Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Police Complaints Board Commander Morgan C. Kane Second Confirmation Resolution of 2017".

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

Commander Morgan C. Kane
301 Tingey Street, S.E.
Washington, D.C. 20003
(Ward 6)

as the Metropolitan Police Department member of the Police Complaints Board, established by section 5 of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1104), for a term to end January 12, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-341

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to amend the Drug Paraphernalia Act of 1982 to permit persons to use, or possess with the intent to use, testing equipment or other objects used, intended, or designed for use in testing personal use quantities of controlled substances, and to allow community-based organizations to deliver or sell, or possess with intent to deliver or sell, testing equipment for that same purpose.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Controlled Substance Testing Emergency Declaration Resolution of 2017".

Sec. 2. (a) In September 1982, the Council passed the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code § 48-1101 *et seq.*), which classified testing equipment or other objects used, intended, or designed for use in testing controlled substances as drug paraphernalia, and subjected the use of such testing equipment to criminal penalties.

(b) Testing equipment can be used to determine whether licit or illicit drugs contain unknown adulterants such as fentanyl and fentanyl analogues.

(c) Fentanyl and fentanyl analogues are synthetic opioids that are far more potent than heroin or morphine, and lethal at much lower doses. Consuming even a miniscule amount can cause overdose and death.

(d) Fentanyl and its analogues are often added as a cutting agent to heroin or other drugs high in the supply chain. Moreover, many drug users are not aware that fentanyl analogues have been added to the drugs they consume. Experts believe the majority of East Coast heroin supply now includes adulterants such as fentanyl. Fentanyl is also increasingly being detected in the cocaine supply.

(e) In the past several years, overdose deaths involving synthetic opioids such as fentanyl have increased rapidly throughout the United States and Canada. In the United States, the synthetic opioid overdose death rate increased 72.2% from 2014 to 2015, with a total of 9,580 deaths in 2015. In the District, opioid overdose deaths increased 89.5%, from 114 in 2015 to 216 in 2016. And, in 2016, 64% of deaths involved fentanyl or its analogues.

ENROLLED ORIGINAL

(f) No test is infallible. Testing opioids, however, to ensure they do not contain fentanyl is a proven measure that can reduce mortality and harms to drug users. It also provides valuable information about trends in the drug supply that can be used to benefit public health.

(g) There is a need to allow for testing of opioids to reduce mortality. In 2016, however, the District arrested 634 individuals for possession of drug paraphernalia, which includes testing equipment.

(h) This emergency legislation will permit individuals in the District to use testing equipment to test personal use quantities of controlled substances, and will also allow community-based organizations to deliver or sell, or possess with intent to deliver or sell, testing equipment, for that same purpose.

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 Controlled Substance Testing Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-342

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to require that any proposed amendment to the terms medical necessity or medically necessary, as those terms are defined in section 3499.1 of Title 22A of the District of Columbia Municipal Regulations, be issued by the Department of Behavioral Health by rulemaking, to require the Department of Behavioral Health to issue rules to establish criteria to determine whether mental health rehabilitation services are medically necessary pursuant to section 3404.2 of Title 22A of the District of Columbia Municipal Regulations, and to subject such rules to Council approval.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Medical Necessity Review Criteria Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Department of Behavioral Health ("Department") uses medical necessity criteria to determine the appropriate level of service coverage for individuals seeking to obtain mental health rehabilitative services ("MHRS") from the Department.

(b) The Department is considering changes to the criteria it uses to determine whether MHRS are medically necessary. Behavioral health providers fear that such changes will lead to fewer consumers receiving treatment at a time when the public is demanding better protections for individuals suffering from behavioral health issues.

(c) Behavioral health providers have communicated that the Department is already applying new medical necessity rules in day programs which, in certain cases, has resulted in a 90% denial rate for requests for the authorization of behavioral health treatment.

(d) This emergency is necessary to clarify that the Department must issue rules if it seeks to change the definition of the terms medical necessity or medically necessary, as those terms are defined in section 3404.2 of Title 22A of the District of Columbia Municipal Regulations, and to require the Department to issue rules to establish criteria to determine whether mental health rehabilitation services are medically necessary.

ENROLLED ORIGINAL

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-345

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to authorize and provide for 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 the 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 Declaration Resolution of 2017".

Sec. 2. (a) The American Association of Collegiate Registrars and Admissions Officers ("Borrower"), a nonprofit corporation organized and existing under the laws of the District of Columbia, seeks to have District of Columbia revenue bonds issued and receive a loan of the proceeds for:

(1) 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., ("Building");

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

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

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

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

(6) Paying issuance costs and other related costs.

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

(c) H.R. 1, the Tax Cuts and Jobs Act, 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,

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including qualified 501(c)(3) bonds such as the District of Columbia revenue bonds. 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.

(d) Council approval of the bond resolution authorizing the issuance of up to $7 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 subsection (a) of 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 American Association of Collegiate Registrars and Admissions Officers Revenue Bonds Project Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-347

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to authorize and provide for 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 the 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 Declaration Resolution of 2017".

Sec. 2. (a) The Center for Strategic and International Studies, Inc. ("Borrower"), a nonprofit corporation organized and existing under the laws of the state of Delaware, seeks to have District of Columbia revenue bonds issued and receive a loan of the proceeds from the sale for the financing, refinancing, or reimbursing of all or a portion of the Borrower's costs of:

(1) 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);

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

(3) Paying cost of issuance and other related costs.

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

(c) H.R. 1, the Tax Cuts and Jobs Act, 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, including qualified 501(c)(3) bonds such as the District of Columbia revenue bonds. 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

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revenue bonds, the issuance date of the bonds needs to occur as soon as possible.

(d) Council approval of the bond resolution authorizing the issuance of up to $53 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 Center for Strategic and International Studies, Inc. Revenue Bonds Project Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-349

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need 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 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 Declaration Resolution of 2017".

Sec. 2. (a) Sidwell Friends School, a nonprofit corporation organized and existing under the laws of the District of Columbia, seeks to have District of Columbia revenue bonds issued and receive a loan of the proceeds for:

(1) The acquisition, rehabilitation, and renovation of 3720 Upton Street, N.W., (Lot 1825, Square 0818), including land and an existing building for school use and the rehabilitation and renovation of the Borrower's main campus located at 3825 Wisconsin Avenue, N.W., (Lot 0816, Square 1825) ("Facility");

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

(3) 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

(4) Paying costs of issuance and other related costs.

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

(c) On November 2, 2017, the United States House of Representatives released a draft of the Tax Cuts and Jobs Act (H.R. 1) which, if enacted as drafted, would amend the Internal Revenue Code of 1986. Among other changes that would affect state and local bonds, the Tax

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Cuts and Jobs Act, as currently proposed, would eliminate the ability to issue private activity bonds (including 501(c)(3) bonds) beginning with bonds issued after December 31, 2017.

(d) Given the severe uncertainty regarding the ability of the District to issue tax exempt revenue bonds for the benefit of the Borrower on any date after December 31, 2017, in order for the Borrower to finance, refinance, or reimburse the costs of the project, as described in subsection (a) of this section, with the loan of the proceeds of tax exempt District of Columbia revenue bonds, the issuance needs to occur as soon as possible.

(e) Council approval of the bond resolution authorizing the issuance of up to $25 million of District of Columbia revenue bonds would permit the revenue bonds to be issued promptly and enable the project described in subsection (a) of 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 Sidwell Friends School Revenue Bonds Project Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-351

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to authorize and provide for 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 Project Emergency Declaration Resolution of 2017".

Sec. 2. (a) 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 ("Borrower"), a nonprofit corporation organized and existing under the laws of the District of Columbia, seeks to have District of Columbia revenue bonds issued and receive a loan of the proceeds for:

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

(2) The payment of Issuance Costs for the bonds; and

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

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

(c) H.R. 1, the Tax Cuts and Jobs Act, 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, including qualified 501(c)(3) bonds such as the District of Columbia revenue bonds. The effective date of the elimination of the exemption under the proposed legislation is currently December 31,

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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.

(d) Council approval of the bond resolution authorizing the issuance of up to $55 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 subsection (a) of 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 National Academy of Sciences 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

22-355

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to authorize and provide for 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 the 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 Project Emergency Declaration Resolution of 2017".

Sec. 2. (a) The National Community Reinvestment Coalition, Inc. ("Borrower"), a nonprofit corporation organized and existing under the laws of the District of Columbia, seeks to have District of Columbia revenue bonds issued and receive a loan of the proceeds for the:

(1) Refinancing by the loan of the outstanding taxable debt of the Borrower that was incurred by the Borrower to finance the:

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

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

(2) Payment of Issuance Costs for the bonds; and

(3) Payment of certain expenditures associated with the bonds and their issuance to the extent financeable, including, without limitation, capitalized interest and contingency reserves.

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

(c) H.R. 1, the Tax Cuts and Jobs Act, 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, including qualified 501(c)(3) bonds such as the District of Columbia revenue bonds. The effective date of the elimination of the exemption under the proposed legislation is currently December 31,

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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.

(d) Council approval of the bond resolution authorizing the issuance of up to $121 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 subsection (a) of 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 National Community Reinvestment Coalition 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

22-358

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To approve an agreement to enter into a long-term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2016-LRSP-04A with 1164 Bladensburg LLC for program units at 1164 Bladensburg Road Apartments, located at 1164 Bladensburg Road, N.E.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2016-LRSP-04A Approval Resolution of 2017".

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

(b) In 2016, the DCHA participated in a Request for Proposals issued by the District of Columbia Department of Housing and Community Development. Of the total proposals received, 13 developers were chosen to work with DCHA and other District agencies to develop affordable housing and permanent supportive housing units for extremely low-income families making 0 to 30% of the area's median income, as well as the chronically homeless and individuals with mental or physical disabilities. Upon approval of the contract by the Council, DCHA will enter into an agreement to enter into a long-term subsidy contract ("ALTSC") with the selected housing providers under the LRSP for housing services.

(c) There exists an immediate need to approve the ALTSC with 1164 Bladensburg LLC under the DCHA's LRSP in order to provide long-term affordable housing units for extremely low-income households in the District for units located 1164 Bladensburg Road, N.E.

(d) The Council's approval authorizes an ALTSC between the DCHA and 1164 Bladensburg LLC, with respect to the payment of rental subsidy, and allow the owner to lease

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the rehabilitated units at 1164 Bladensburg Road Apartments and house the extremely low-income households with incomes at 30% or less of the area median income.

Sec. 3. Pursuant to section 451 of the District of Columbia House Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with 1164 Bladensburg LLC to provide operating subsidy in support of 13 affordable housing units in an initial amount not-to-exceed amount of $178,776 annually.

Sec. 4. Transmittal.

The Council shall transmit a copy of this copy of this resolution, upon its adoption, to the District of Columbia Housing Authority and the Mayor.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

22-359

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To declare the existence of an emergency with respect to the need to approve the District of Columbia Housing Finance Agency's Multifamily Pipeline for Tax-Exempt or Taxable Multifamily Housing Revenue Obligation Financing.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Multifamily Housing Pipeline Revenue Bond Obligation Financing Emergency Declaration Resolution of 2017".

Sec. 2. (a) Tax-exempt Private Activity Bonds (PABs) are issued by the District of Columbia Housing Finance Agency ("DCHFA"), and are an essential element to the financing, production, and preservation of affordable rental housing in the District of Columbia.

(b) PABs generate 4% Low-Income Housing Tax Credits ("LIHTCs"), which are a primary source of affordable housing finance equity in the District.

(c) PABs and 4% LIHTCs generate the critical capital needed to leverage the District's Housing Production Trust Fund.

(d) On November 16, 2017, the U.S. House Representatives passed H.R. 1, the Tax Cuts and Jobs Act (the "House Bill"), which includes a provision that would eliminate tax-exempt PABs after December 31, 2017.

(e) The elimination of tax-exempt PABs would end DCHFA's ability to leverage 4% LIHTCs for qualified multifamily rental housing.

(f) The DCHFA seeks to issue $954 million in Multi-Family Housing Revenue Bonds for the acquisition, rehabilitation, or construction of multifamily housing at the following addresses prior to the aforementioned House Bill's intended tax-exempt PAB elimination date of December 31, 2017:

(1) Woodmont Crossing, located in Ward 8 at 2327 Good Hope Road, S.E.;

(2) Delta Towers, located in Ward 5 at 808 Bladensburg Road, N.E.;

(3) MinnTex, located in Ward 7 at 1741 28th Street, S.E., and various addresses in the 3500 block of Minnesota Ave., S.E.;

(4) 555 E Street, S.W., located in Ward 6 at 555 E Street, S.W.;

(5) St. Elizabeth East Housing, located in Ward 8 at 1201 Oak Drive, S.E.;

(6) 1550 First Street, S.W., located in Ward 6 at 1542-1550 First Street, S.W.;

(7) 1736 Rhode Island Avenue, located in Ward 5 at 1736 Rhode Island Ave, N.E.;

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(8) Stanton Square, located in Ward 8 at 2390 Pomeroy Road, S.E.;
(9) Meadow Green Court Senior Housing, located in Ward 7 at 3605-3615 Minnesota Ave, S.E., and 3616 B Street, S.E.;
(10) The Yards Parcel L2, located in Ward 6 at 227 Tingey Street, S.E.;
(11) Liberty Place Apartments, located in Ward 6 at 881 3rd Street, N.W.;
(12) Capitol Vista, located in Ward 6 at various addresses in the 800 block of New Jersey Avenue, N.W., various addresses in the 100 block of H Street, N.W., and 807 2nd Street, N.W.;
(13) Park Southern Apartments, located in Ward 8 at 800 Southern Avenue, S.E.;
(14) Anacostia Gardens, located in Ward 7 at 3600 Ely Place, S.E.;
(15) Southern Avenue, located in Ward 8 at 306 Southern Avenue, S.E., and 4656 Livingston Road, S.E.;
(16) Bruce Monroe, located in Ward 1 at 3012 Georgia Avenue, N.W;
(17) Fort Totten, located in Ward 5 at various addresses in the 5200 block of First Place, N.E.;
(18) Worthington Woods, located in Ward 8 at various addresses in the 4400-4500 blocks of 3rd Street, S.E., and various addresses in the 4300 block of Livingston Terrace, S.E.;
(19) Ridgecrest Apartments, located in Ward 8 at various addresses in the 1900-2200 blocks of Savannah Street, S.E., and various addresses in the 1900 – 2100 blocks of Shipley Terrace, S.E.;
(20) Terrace Manor, located in Ward 8 at 3347 23rd Street, S.E.;
(21) Barry Farm Building 1A, located in Ward 8 at various addresses in the 2500 block of Firth Sterling Avenue, S.E., and various addresses in the 1100 block of Sumner Road, S.E.;
(22) Barry Farm Building 1B, located in Ward 8 at various addresses in the 2500 block of Firth Sterling Avenue, S.E., and various addresses in the 1100 block of Sumner Road, S.E.;
(23) Barry Farm Building 2, located in Ward 8 at various addresses in the 1100 block of Sumner Road, S.E., various addresses in the 2600 block of Firth Sterling Avenue, S.E., various addresses in the 1100 block of Eaton Road, S.E., and various addresses in the 1200 block of Eaton Road, S.E.; and
(24) Hill East, located in Ward 7 at 1900 C Street, S.E.

(g) On December 1, 2017, in accordance with the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code 42-2701.01 *et seq.*), ("DCHFA statute"), the DCHFA Board of Directors ratified DCHFA Resolution No. 2017-30, which approved the eligibility of the Agency's multifamily pipeline for tax-exempt or taxable multifamily revenue obligation financing.

(h) Under the DCHFA statute, the underlying proposal to issue the bonds approved by Resolution No. 2017-30 must be submitted to the Council for a 30 business day review period, which the Council may waive through affirmative approval prior to the end of that period. In view of the date, December 31, 2017, when federal legislation to eliminate tax-exempt PABs

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may take effect, the aforementioned 30 business day review period would not conclude until some point in Calendar Year 2018.

(i) Consequently, due to the need to make affordable housing units in the District available to its residents; provide opportunities for construction jobs to District residents; contribute to the overall social and economic improvement of the District; and mitigate the possible elimination of tax-exempt PABs on December 31, 2017, it is necessary to approve the issuance of bond financing for the housing projects identified in subsection (f) of this section.

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 District of Columbia Housing Finance Agency Multifamily Housing Pipeline Revenue Bond Obligation Financing Emergency Approval Resolution of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-360

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To approve, on an emergency basis, the District of Columbia Housing Finance Agency's Proposal for Multifamily Pipeline for Tax-Exempt or Taxable Multifamily Housing Revenue Obligation Financing.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Multifamily Housing Pipeline Revenue Bond Obligation Financing Emergency Approval Resolution of 2017".

Sec. 2. (a) Pursuant to section 207(b)(3) of the District of Columbia Housing Finance Agency Act, effective May 9, 1985 (D.C. Law 2-135; D.C. Official Code § 42-2702.07(b)(3)) ("Housing Finance Agency Act"), the Council approves the District of Columbia Housing Finance Agency's ("Agency") proposal for the issuance of revenue bonds in the aggregate principal amount not to exceed $954 million for the acquisition, rehabilitation, or construction of multifamily housing at:

(1) Woodmont Crossing, located in Ward 8 at 2327 Good Hope Road, S.E.;

(2) Delta Towers, located in Ward 5 at 808 Bladensburg Road, N.E.;

(3) MinnTex, located in Ward 7 at 1741 28th Street, S.E., and various addresses in the 3500 block of Minnesota Ave., S.E.;

(4) 555 E Street S.W., located in Ward 6 at 555 E Street, S.W.;

(5) St. Elizabeth East Housing, located in Ward 8 at 1201 Oak Drive, S.E.;

(6) 1550 First Street S.W., located in Ward 6 at 1542-1550 First Street, S.W.;

(7) 1736 Rhode Island Avenue, located in Ward 5 at 1736 Rhode Island Ave, N.E.;

(8) Stanton Square, located in Ward 8 at 2390 Pomeroy Road, S.E.;

(9) Meadow Green Court Senior Housing, located in Ward 7 at 3605-3615 Minnesota Ave, S.E., and 3616 B Street, S.E.;

(10) The Yards Parcel L2, located in Ward 6 at 227 Tingey Street, S.E.;

(11) Liberty Place Apartments, located in Ward 6 at 881 3rd Street, N.W.;

(12) Capitol Vista, located in Ward 6 at various addresses in the 800 block of New Jersey Avenue, N.W., various addresses in the 100 block of H Street, N.W., and 807 2nd Street, N.W.;

(13) Park Southern Apartments, located in Ward 8 at 800 Southern Avenue, S.E.;

(14) Anacostia Gardens, located in Ward 7 at 3600 Ely Place, S.E.;

(15) Southern Avenue, located in Ward 8 at 306 Southern Avenue, S.E., and 4656 Livingston Road, S.E.;

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(16) Bruce Monroe, located in Ward 1 at 3012 Georgia Avenue, N.W;

(17) Fort Totten, located in Ward 5 at various addresses in the 5200 block of First Place, N.E.;

(18) Worthington Woods, located in Ward 8 at various addresses in the 4400-4500 blocks of 3rd Street, S.E., and various addresses in the 4300 block of Livingston Terrace, S.E.;

(19) Ridgecrest Apartments, located in Ward 8 at various addresses in the 1900-2200 blocks of Savannah Street, S.E., and various addresses in the 1900 – 2100 blocks of Shipley Terrace, S.E.;

(20) Terrace Manor, located in Ward 8 at 3347 23rd Street, S.E.;

(21) Barry Farm Building 1A, located in Ward 8 at various addresses in the 2500 block of Firth Sterling Avenue, S.E., and various addresses in the 1100 block of Sumner Road, S.E.;

(22) Barry Farm Building 1B, located in Ward 8 at various addresses in the 2500 block of Firth Sterling Avenue, S.E., and various addresses in the 1100 block of Sumner Road, S.E.;

(23) Barry Farm Building 2, located in Ward 8 at various addresses in the 1100 block of Sumner Road, S.E., various addresses in the 2600 block of Firth Sterling Avenue, S.E., various addresses in the 1100 block of Eaton Road, S.E., and various addresses in the 1200 block of Eaton Road, S.E.; and

(24) Hill East, located in Ward 7 at 1900 C Street, S.E.

(b) The financing has been determined by the Agency, by enactment of an eligibility resolution dated December 1, 2017, to be for housing undertakings that meet the requirements of the Housing Finance Agency Act.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-361

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 12, 2017

To declare the existence of an emergency with respect to the need to amend the Personal Delivery Device Pilot Program Act of 2016 to extend the personal delivery device pilot program through December 31, 2018, and to provide that a registration, including a renewal, issued by the Director of the District Department of Transportation before December 31, 2017, shall be valid for one year from the date of registration, or renewal, unless the registration is revoked by the Director.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Personal Delivery Device Pilot Program Extension Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Personal Delivery Device Pilot Program Act of 2016 required the District Department of Transportation ("DDOT") to implement a personal delivery device pilot program ("pilot program") and authorized the operation of personal delivery devices ("PDD"), except within the Central Business District, pursuant to operational standards to be determined by DDOT.

(b) The pilot program is set to expire on December 31, 2017.

(c) Emergency legislation is needed to extend the pilot program through December 31, 2018, in order to give DDOT and PDD operators participating in the pilot program the opportunity to collect more data, which can be used to shape permanent legislation.

(d) Many registrations for the pilot program that were renewed in December 2017 are set to expire on December 31, 2017, when the pilot program was set to expire. This emergency legislation would clarify that registrations, including renewals, issued before December 31, 2017, shall be valid for one year from the date of registration, in order to allow current PDD operators to continue to participate in the pilot program.

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 Personal Delivery Device Pilot Program Extension Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

BILLS

B22-628 Revised Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2017

Intro. 12-11-17 by Chairman Mendelson at the request of the Attorney General and referred to the Committee on Judiciary and Public Safety

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B22-629 Swampoodle Park Designation Act of 2017

Intro. 12-13-17 by Councilmember Allen and referred to the Committee of the Whole

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B22-630 Security Breach Protection Amendment Act of 2017

Intro. 12-13-17 by Chairman Mendelson at the request of the Attorney General and referred to the Committee of the Whole with comments from the Committee on Judiciary and Public Safety

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B22-632 Redevelopment of the Center Leg Freeway (Interstate 395) Amendment Act of 2017

Intro. 12-14-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

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B22-635	Homeless Shelter Replacement Amendment Act of 2017 Intro. 12-15-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services
B22-638	Non-Profit Certified Business Enterprise Amendment Act of 2017 Intro. 12-19-17 by Councilmember Cheh and referred to the Committee on Business and Economic Development
B22-639	District Tax Independence Act of 2017 Intro. 12-19-17 by Councilmember Cheh and referred to the Committee on Finance and Revenue
B22-640	Rental Housing Commission Independence Clarification Amendment Act of 2017 Intro. 12-19-17 by Councilmembers Bonds, Nadeau, Silverman, and McDuffie and referred to the Committee on Housing and Neighborhood Revitalization

PROPOSED RESOLUTIONS

PR22-683	Compensation Agreement between the District of Columbia and the Office of the Attorney General and the American Federation of Government Employees, Local 1403, AFL-CIO (Compensation Unit 33) Approval Resolution of 201 Intro. 12-14-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development
PR22-684	Board of Psychology Joette James Confirmation Resolution of 2017 Intro. 12-14-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR22-685	Employer Assisted Housing Program Regulation Amendment Approval Resolution of 2017 Intro. 12-14-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-687	Commission on Health Equity Maranda C. Ward Appointment Resolution of 2017 Intro. 12-18-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR22-689	Sense of the Council in Support of Rejecting the TransCanada Eastern Panhandle Expansion Project Resolution of 2017 Intro. 12-19-17 by Councilmembers Cheh, Allen, Bonds, Gray, Evans, Todd, Grosso, Nadeau, R. White, Silverman, T. White, McDuffie, and Chairman Mendelson and Retained by the Council
PR22-690	Sense of the Council Against Sexual Assault Resolution of 2017 Intro. 12-19-17 by Councilmembers Bonds, Allen, Gray, Evans, Grosso, Todd, McDuffie, Nadeau, R. White, Silverman, Cheh, T. White, and Chairman Mendelson and Retained by the Council
PR22-691	Sense of the Council Opposing the Repeal of Net Neutrality Rules Resolution of 2017 Intro. 12-19-17 by Councilmembers Nadeau, Grosso, Silverman, Cheh, Allen, McDuffie, T. White, Todd, Gray, Bonds, R. White, Evans, and Chairman Mendelson and referred to the Committee on Government Operations

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

B22-39, the Community Use of School Facilities Task Force Establishment Act of 2017;
B22-223, the Public Restroom Facilities Installation and Promotion Act of 2017;
B22-502, the Field Access Equity Amendment Act of 2017; and
B22-613, the Ensuring Community Access to Recreational Spaces Act of 2017

Wednesday, January 10, 2018 at 11:00 AM
in Room 500 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, January 10, 2018, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-39, the Community Use of School Facilities Task Force Establishment Act of 2017; B22-223, the Public Restroom Facilities Installation and Promotion Act of 2017; B22-502, the Field Access Equity Amendment Act of 2017; and B22-613, the Ensuring Community Access to Recreational Spaces Act of 2017. The hearing will begin at 11:00 AM in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-39, the Community Use of School Facilities Task Force Establishment Act of 2017, would require the Department of General Services to establish a task force to promulgate recommendations regarding how the agency can best administer scheduling of after-hours use of school facilities by permitees and community members. B22-223, the Public Restroom Facilities Installation and Promotion Act of 2017, would establish a multi-agency working group to promulgate recommendations regarding the installion of public restroom facilities throughout the District, and require the Mayor to establish a financial incentive program where participating business would make their restrooms available to members of the public for free. B22-502, the Field Access Equity Amendment Act of 2017, would permit the Mayor to waive or reduce permits fees for the use of public recreational facilities where the applicant serves at least 65% District residents and shows that payment of the fee would cause them financial hardship. B22-613, the Ensuring Community Access to Recreational Spaces Act of 2017, would shift responsibility for review and approval of permits for use of DCPS facilities to DGS, require DGS to remit 75% of permit fees to the school where the permitted activity will take place, and require DGS to adhere to a specific heirarchy to determine priority of concurrent permit applications.

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

organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on January 24, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ANNOUNCES A PUBLIC HEARING ON

B22-0617, the "Marion S. Barry Summer Youth Employment Program Enhancement Amendment Act of 2017"

Wednesday, January 10, 2018, 10 a.m.
Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development, announces a public hearing on B22-0617, the "Marion S. Barry Summer Youth Employment Program Enhancement Amendment Act of 2017." The hearing will be held at 10 a.m. on Wednesday, January 10, 2018, in Room 412 of the John A. Wilson Building.

The purpose of B22-0617 is to strengthen the Marion S. Barry Summer Youth Employment Program by providing a streamlined certification process, age-appropriate program placements, additional program management, soft skills training for all participants, and comprehensive reporting requirements.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by 5:00 p.m. on Monday, January 8, 2018, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses.

If a witness is 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 Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, January 24, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

The District's Anacostia River Sediment Remediation Project; and PR22-449, the Sense of the Council Declaring 2018 the Year of the Anacostia Resolution of 2017

Thursday, January 11, 2018, at 11:00 a.m.
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Thursday, January 11, 2018, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on the District's Anacostia River sediment remediation project and PR22-449, the Sense of the Council Declaring 2018 the Year of the Anacostia Resolution of 2017. The hearing will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The District's Anacostia River sediment remediation project is being implemented by the Department of Energy and Environment. It has been underway since 2014, and DOEE is in the process of developing a remedial investigation report, a feasibility study, and a record of decision that will outline the District's plan for remediating the contaminated sediments of the River. PR22-449, the Sense of the Council Declaring 2018 the Year of the Anacostia Resolution of 2017, would declare 2018 the Year of the Anacostia..

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on January 25, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

Implementation of Law 21-264, The Universal Paid Leave Act

Wednesday, January 31, 2018, 10am
Hearing Room 500 John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Elissa Silverman, Chairperson of the Committee on Labor and Workforce Development, announces a public roundtable before the Committee on implementation of the Universal Paid Leave Amendment Act of 2016 (L21-264). The law establishes a paid leave system to provide partial wage replacement for District residents in need of leave from work due to serious family illness, personal medical leave, or care for a new child. A previous oversight roundtable was held on November, 20, 2017.

At this roundtable, the committee will review two quarterly reports due by Dec. 30, 2017, in addition to the status of other elements of implementation. D.C. Official Code §32–541.04(h) requires quarterly a "project plan that explains in detail the timeline, including specific dates by which milestones of the project will be accomplished, for the development of all software necessary to administer the paid-leave system." D.C. Official Code §32–541.04(i) requires quarterly "a requirements document that explains in detail the requirements needed in order to develop all software necessary to administer the paid-leave system established pursuant to this act." The roundtable will be held at 10a.m. on Wednesday, January 31, 2018, in Room 500 of the John A. Wilson Building.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by noon on Monday, January 29, 2018, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, February 14, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B22-634, Homeless Shelter Replacement Temporary Amendment Act of 2017 and **B22-637**, Master Development Plan Recognition Emergency Act of 2017 was adopted on first reading on December 19, 2017. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on January 9, 2018.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 22, 2017
Protest Petition Deadline:	February 5, 2018
Roll Call Hearing Date:	February 20, 2018
Protest Hearing Date:	April 11, 2018

License No.:	ABRA-108341
Licensee:	Black Coffee DC, LLC
Trade Name:	Black Coffee
License Class:	Retailer's Class "C" Restaurant
Address:	4885 MacArthur Boulevard, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 3 ANC 3D SMD 3D05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 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
New Class "C" Restaurant offering breakfast and American cuisine with alcoholic beverages. Total Occupancy Load of 100 and seating for 68 inside. Sidewalk Café with 20 seats.

HOURS OF OPERATION FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Saturday 6:00 am to 9:00 pm

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFÉ
Sunday through Saturday 8:00 am to 9:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 22, 2017
Protest Petition Deadline: February 5, 2018
Roll Call Hearing Date: February 20, 2018

License No.: ABRA-108308
Licensee: Bluefin Sushi To Go, LLC
Trade Name: Bluefin Sushi To Go
License Class: Retailer's Class "C" Restaurant
Address: 3073 Canal Street, N.W.
Contact: Andrew Kline: (202) 686-7600

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has requested to transfer the license to a new location under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 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 LICENSE CHANGE

Licensee requests to transfer license from 1515 Wisconsin Avenue, N.W., to a new location at 3073 Canal Street, N.W. Establishment is a Retailer's Class "C" Restaurant that serves sushi. The seating capacity is 16, and a Total Occupancy Load 23. The licensee currently has a Settlement Agreement with ANC 2E, Citizens Association of Georgetown and A Group of Five or More Individuals as approved by the Board on November 19, 2014.

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday – Thursday 9:00 am – 10:00 pm
Friday – Saturday 9:00 am – 11:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 22, 2017
Protest Petition Deadline: February 5, 2018
Roll Call Hearing Date: February 20, 2018
Protest Hearing Date: April 11, 2018

License No.: ABRA-108548
Licensee: Cucina Al Volo E Street, LLC
Trade Name: Cucina Al Volo E Street
License Class: Retailer's Class "C" Restaurant
Address: 1299 Pennsylvania Avenue, N.W.
Contact: Jeffery Jackson: 202-251-1566

WARD 2 ANC 2C SMD 2C01

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

NATURE OF OPERATION
New Restaurant, serving Italian cuisine. Total Occupancy Load is 220 with seating for 220. Summer Garden with 45 seats.

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALKCAFE
Sunday through Thursday 11 am – 11 pm, Friday and Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: December 22, 2017
Protest Petition Deadline: February 5, 2018
Roll Call Hearing Date: February 20, 2018
Protest Hearing Date: April 11, 2018

License No.: ABRA-108398
Licensee: Pisco Y Nazca Dupont LLC
Trade Name: Pisco Y Nazca Gastro Bar
License Class: Retailer's Class "C" Restaurant
Address: 1823 L Street, N.W.
Contact: Andrew Kline: 202-686-7600

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 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 4:30pm.**

NATURE OF OPERATION
New Restaurant, serving Spanish cuisine. Total Occupancy Load is 230, with seating for 230.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION
Sunday through Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

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 **Sunday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

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 22, 2017
Protest Petition Deadline: February 5, 2018
Roll Call Hearing Date: February 20, 2018
Protest Hearing Date: April 11, 2018

License No.: ABRA-108498
Licensee: BW3 LLC
Trade Name: TBD
License Class: Retailer's Class "C" Restaurant
Address: 400 K Street, N.W.
Contact: Andrew Kline: 202-686-7600

WARD 6 ANC 6E SMD 6E05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 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 4:30 pm.**

NATURE OF OPERATION
New Restaurant serving American style foods. Requesting an Entertainment Endorsement to provide live entertainment. Total Occupancy Load is 130 with seating for 99. Sidewalk Café with 30 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES
Sunday through Saturday 9 am – 12 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON SIDEWALK CAFE
Sunday through Saturday 9 am – 10 pm

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES
Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING

Placard Posting Date: December 22, 2017
Protest Petition Deadline: February 5, 2018
Roll Call Hearing Date: February 20, 2018

License No.: ABRA-102437
Licensee: KHP IV DC TRS, LLC
Trade Name: The Darcy Hotel
License Class: Retailer's Class "C" Hotel
Address: 1515 Rhode Island Avenue, N.W.
Contact: Michael Fonseca, Agent: (202) 625-7700

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 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 to increase the Total Occupancy Load of the Summer Garden from 40 to 140, with seating for 100.

HOURS OF OPERATION ON PREMISE
Sunday through Saturday 12 am – 12 am (24 hour operations)

HOURS OF OPERATION FOR SUMMER GARDEN
Sunday 10 am – 1am, Monday through Saturday 8 am - 1 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE AND FOR SUMMER GARDEN
Sunday 10 am - 1 am, Monday through Saturday 8 am - 1 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ 1
Sunday through Thursday 11 am - 11 pm, Friday and Saturday 11 am - 12 am

HOURS OF OPERATION FOR SIDEWALK CAFÉ 2
Sunday through Saturday 7 am - 10 pm

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ 2
Sunday through Saturday 8 am - 10 pm

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, FEBRUARY 7, 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

19644
ANC 4C

Application of Meenakshi Kankani, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.2 and the side yard requirements of Subtitle D § 307.1, and pursuant to Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle D § 304.1, to construct a rear deck addition to an existing one family dwelling in the R-1-B zone at premises 1315 Delafield Place N.W. (Square 2808, Lot 30).

WARD SEVEN

19679
ANC 7C

Application of MYS Land Investment, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot width and lot area requirements of Subtitle E § 201.1, and from the side yard requirements of Subtitle E § 307.1 to construct a new single-family dwelling in the RF-1 at premises 4932 Nannie Helen Burroughs Avenue N.E. (Square 5179, Lot 92).

WARD THREE

19682
ANC 3C

Application of Tom Henneberg and Lisa Hayes, 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 the non-conforming structure requirements of Subtitle C § 202.2(b), to construct a two-story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2608 36th Street N.W. (Square 1935, Lot 24).

WARD SIX

19683
ANC 6B

Application of Brian and Carolyn Wise, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5204 from the rear yard requirements of Subtitle E § 5104, and from the alley centerline setback requirements of Subtitle E § 5106, and pursuant to Subtitle X, Chapter 10, for area variances from the lot area requirements of Subtitle E § 201.1, and from the lot frontage requirements of Subtitle C § 303.3(a)-(b), to construct a two-story, one-family dwelling on an existing vacant alley lot in the RF-3 Zone at premises 213 3rd Street S.E. (Square 762, Lot 828).

WARD FIVE

19684
ANC 5E

Application of C&S Development, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions pursuant to the inclusionary zoning dimensional modifications of Subtitle C § 1002.2, and under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.5 to subdivide the existing lot into three new lots and construct three flats in the RF-1 Zone at premises 2610 4th Street N.E. (Square 3551, Lot 801).

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.*

BZA PUBLIC HEARING NOTICE
FEBRUARY 7, 2018
PAGE NO. 3

Do you need assistance to participate?

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

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

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

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

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

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

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

FREDERICK L. HILL, CHAIRPERSON

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 8, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 17-20 (Office of Planning – Text Amendments to Subtitles B, U, and K regarding the Daytime Care Use Category to address the need to establish and expand Child Development Centers)

THIS CASE IS OF INTEREST TO ALL ANCs

On October 20, 2017, the Office of Zoning received a report that served as a petition from the Office of Planning (OP) proposing text amendments to Subtitles B, U, and K of Title 11 DCMR to expand daytime care uses as a matter of right with no pre-established limitation on number of persons in high density residential, mixed-use, and other zone districts; in RA residential zones, daytime care uses would continue to be permitted by special exception but there would no longer be a limitation on number of persons. The overall goal of the proposed amendments is to increase the District's supply of child care services by limiting some of the barriers associated with development of child care facilities. According to the Office of Planning the District's growing population of infants and toddlers requires expansion of the number of child development centers and homes. On October 27, 2017, the Office of Zoning received a supplemental report from OP clarifying the proposed text amendment language in Subtitle U § 510 and Subtitle K § 913.2. At a public meeting on October 30, 2017, the Zoning Commission set down this case for a public hearing. However, the Commissioners noted the potential for the proposed text amendments to have broad reaching effects on residents within mixed use zones, and stressed the importance of OP collaborating with the Office of the State Superintendent of Education (OSSE) and the Department of Consumer and Regulatory Affairs (DCRA) in community outreach efforts prior to the public hearing. Both the OP report and the supplemental report served as the supplemental filing described in Subtitle Z § 501.

Since the petition only sought changes to the text of the Zoning Regulations, and not the zoning map, the Commission's decision to hear the petition did not change the *status quo*. Any building permit application that being reviewed during the pendency of this proceeding will be processed in accordance with the Zoning Regulations then in place unless or until the proposed amendments are adopted and become effective.

As always, the Commission reserves the right not to adopt any or all of the proposed text and testimony in support of retaining the existing rules will be received and considered.

The following amendments to the Zoning Regulations are proposed. New text is shown in **bold underlined text** and text to be deleted is shown in ~~strikethrough~~.

1. **Subtitle B § 200.2(i) is amended as follows:**

200 INTRODUCTION

200.2 When used in this title, the following use categories shall have the following meanings:

. . .

(i) Daytime Care:

(1) The non-residential licensed care, supervision, counseling, or training, for a fee, of individuals who are not related by blood, adoption, or marriage to the caregiver, and who are present on the site for less than twenty-four (24) hours per day;

(2) Examples include, but are not limited to: an adult day treatment facility, **child development center** ~~child care centers and programs~~, pre-schools, nursery schools, before-and-after school programs, child development homes, expanded child development homes, and elder care centers and programs;

(3) Exceptions: This use category does not include uses which more typically fall within the medical care or parks and recreation use categories. This use does not refer to home-based care given by parents, guardians, or relatives of the individuals requiring care **and uses** which ~~does~~ **do** not require a certificate of occupancy;

. . .

2. **Subtitle U § 301.1(m) is amended as follows:**

301 MATTER OF RIGHT USES (RF)

301.1 The following uses shall be permitted as a matter of right in an RF zone subject to any applicable conditions:

. . .

(m) Child/elderly development center located in a building that was built as a place of worship and that has been used continuously as a place of worship since it was built; ~~provided, that all of the play space required for the use by the licensing regulations shall be located on the same lot on which the center or facility is located;~~ and

. . .

3. **Subtitle U § 401.1(c) is amended as follows:**

401 MATTER-OF-RIGHT USES (RA)

401.1 The following uses shall be permitted as a matter of right in an RA zone subject to any applicable conditions:

. . .

(c) Child/Elderly development center or adult day treatment facility~~ provided, that the use shall be limited to no more than twenty-five (25) individuals not including staff~~;

4. Amend Subtitle U § 510.1(f) as follows.

510 MATTER-OF-RIGHT USES (MU-USE GROUP D)

510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:

. . .

(f) Daytime care uses~~ for no more than five (5) persons, not including resident supervisors or staff and their families, except a child development home or an expanded child development home shall be permitted as an accessory use incidental to the uses permitted in MU-Use Group D; provided:~~

~~(1) The dwelling unit in which the use is located shall be the principal residence of the caregiver; and~~

~~(2) The use otherwise shall meet the definition of a home occupation~~;

5. Amend Subtitle U § 511 by deleting Subtitle U § 511.1(c).

511 SPECIAL EXCEPTION USES (MU-USE GROUP D)

511.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section.

. . .

(c) **[DELETED]**~~Daytime care for six (6) and fifteen (15) persons, not including resident supervisors or staff and their families;~~

. . .

6. Amend § 512.1 and U § 515.1 by deleting U § 512.1(c) and U § 515.1(e) as follows:

512 MATTER-OF-RIGHT USES (MU-USE GROUP E)

512.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

. . .

(c) **[DELETED]**~~Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families~~;

. . .

515 MATTER-OF-RIGHT USES (MU-USE GROUP F)

515.1 The following uses shall be permitted in MU-Use Group E as a matter-of-right subject to any applicable conditions:

. . .

(e) **[DELETED]**~~Daytime care uses for not more than twenty (20) persons, not including resident supervisors or staff and their families~~;

. . .

7. Subtitle K is amended as follows:

Section 911, 911. USE PERMISSIONS (WR, §§ 911.2(f), 911.4(f), and 911.8(f), are amended as follows**:**

911.2 The uses in this section shall be permitted as a matter-of-right in the WR-2, WR-3, WR-4 and WR-5 zones, subject to any applicable conditions:

. . .

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

. . .

911.4 The uses in this section shall be permitted as a matter-of-right in the WR-7 zones, subject to any applicable conditions:

. . .

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

. . .

911.8 The uses in this section shall be permitted as a matter-of-right in the WR-8 zones, subject to any applicable conditions:

. . .

(f) Daytime care; ~~subject to the conditions of Subtitle K § 912.6;~~

. . .

Section 912, **CONDITIONAL USES (WR)**, is amended by deleting § 912.6 as follows:

912.6 **[DELETED]**~~Daytime care uses shall be permitted as a matter of right subject to the following conditions in the WR-2, WR-3, WR-4, WR-5, WR-7, and WR-8 zones:~~

~~(a) A daytime care use is permitted as a matter of right for no more than twenty five (25) persons not including resident supervisors or staff and their families;~~

~~(b) Any outdoor play area shall be located on the same lot as the daytime care use; and~~

~~(c) Daytime care uses not meeting the above conditions may be permitted by special exception subject to Subtitle K § 913.2(c) and the special exception criteria of Subtitle X, Chapter 9.~~

Section 913, SPECIAL EXCEPTION USES (WR), is amended by deleting § 913.2(c) as follows:

913.2 The following uses shall be permitted as a special exception WR-2, WR-3, WR-4, and WR-5 zones if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to any applicable provisions of each section:

. . .

~~(c) Daytime care uses not meeting the conditions of Subtitle K § 912.6 shall be permitted by special exception, subject to the following conditions:~~

~~(1) The facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance; and~~

~~(2) Any off-site play area shall be located so as to not endanger individuals traveling between the play area and the center or facility;~~

. . .

Proposed amendments to the Zoning Regulations and Map of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of Subtitle Z, Chapter 5.

How to participate as a witness.

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

statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

Time limits.

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

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

1. Organizations 5 minutes each
2. Individuals 3 minutes each

The Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

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

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, February 5, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 17-25 (23 I, LLC – Design Review @ Square 697N, Lots 804 and 7000)

THIS CASE IS OF INTEREST TO ANC 6D

On December 1, 2017, the Office of Zoning received an application from 23 I, LLC ("Applicant") for review and approval of an application for design review under the M and South Capitol Street Sub-Area requirements of § 616 of Subtitle I of the Zoning Regulations of 2016 (Title 11 DCMR) and the design review standards of Chapter 7 of Subtitle I and § 604 of Subtitle X.[1] The application was submitted pursuant to Subtitle X, Chapter 6 the Zoning Regulations of 2016.

The subject property is located at 950 South Capitol Street, S.E. (Lots 804 and 7000) ("Property"). The Property comprises the western portion of Record Lot 75 in Square 697N, which is bounded by I Street, S.E. to the north, Half Street, S.E. to the east, K Street, S.E. to the south, and South Capitol Street, S.E. to the west. Record Lot 75 is located in the D-5 Zone District and contains approximately 82,563 square feet of land area. Lot 804 contains approximately 29,375 square feet of land area, and Lot 7000 is an air rights lot. The Property is presently unimproved.

The Applicant proposes to develop the Property with the second phase of a two-phase project on Record Lot 75. The first phase has already been constructed as a residential building with ground floor retail on the east side of Record Lot 75 ("East Building"). The Property is proposed to be developed with a new residential building ("West Building") that will be physically connected to the East Building, in a manner that the Applicant asserts will constitute a single building for zoning purposes, in compliance with Subtitle B § 309.1 of the Title 11 DCMR ("Overall Building"). Though physically connected, the East Building and the West Building will be separated by a two-way private drive running north-south between K and I Streets ("Private Drive"), with the building connection constructed over the Private Drive. The Private Drive and its associated curb cuts were constructed part of the construction of the East Building, and the Private Drive will provide all parking and loading access for both the East Building and the West Building.

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[1] Although 11- DCMR § 604.8 states that Zoning Commission must find that the criteria of Subtitle X § 604.7 are met in a way that is superior to any matter-of-right development possible on the site, that standard only applies when a design review seeks the development flexibility available pursuant to 11-X DCMR § 603.1.

The West Building will have approximately 296,972 square feet of gross floor area and a maximum building height of 130 feet as measured from Half Street, S.E. The Overall Building will have approximately 708,801 square feet of gross floor area (8.58 FAR). The West Building's ground floor will contain residential amenity space. Approximately 300 residential units (plus or minus 10%) will be located on the floors above. Two penthouses will be located on the West Building, one containing residential amenity space and one containing mechanical equipment. Both penthouses will be 20 feet in height. Approximately 191 parking spaces (plus or minus 15%) will be located in a below-grade parking garage. One loading berth and one service-delivery space will be provided on the ground floor.

How to participate as a witness.

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR Subtitle Z § 404.1.

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

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

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in Subtitle Z § 406.3 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in Subtitle Z § 406.2 (a) through (i).

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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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 በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health ("Department"), pursuant to District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following new Section 4618 of Chapter 46 (Medicine) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), entitled "Telemedicine."

The adoption of Section 4618 is necessary to establish rules specific to the practice of telemedicine. The amendments to Section 4699 (Definitions) are necessary to explain the terms used in Section 4618.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 26, 2016 at 63 DCR 2253, and a Notice of Second Proposed Rulemaking for this section was published in the *D.C. Register* on July 7, 2017, at 64 DCR 006411. The Department received comments from the three entities: Children's National Health System (CNMC); the District of Columbia Association of Health Plans (DCAHP) and Kaiser Permanente (Kaiser). The Board of Medicine ("Board") considered the comments at the September 27, 2017 Board meeting.

CNMC proposed a number of changes to the proposed rule. CNMC suggested adding specific mention of Electronic Medical Records (EMR), video recording and consent to Subsection 4618.2(b), which lists the requirement of creating and maintain adequate medical records in accordance with the standards of care required of all medical treatment. The Board felt that such specificity was unnecessary, first, given the requirement for consent listed in Subsection 4618.2(a), and secondly, a belief that general references are better given the changing nature of technology. The second comment from CNMC asked that the phrase "and in compliance with HIPAA [Health Insurance Portability and Accountability Act] regulations and cyber-security protocol" be added to the end of Subsection 4618.10. The Board recognizes the need for compliance with HIPAA but decided to add reference to HIPAA law and regulations to Subsection 4618.2(c), which states the requirement of compliance with federal laws and regulations related to protected health information and medical records. Finally, CNMC asked that additional language be added to the definition of telemedicine to allow for the "provision of direct medical advice from licensee to licensee . . ." However, because the definition of telemedicine already includes the provision of services "with or without an intervening healthcare provider", the Board determined that such an amendment was unnecessary.

Kaiser and DCAHP also provided comments regarding the definition of telemedicine. Both suggested that audio-only telephone, electronic mail message (e-mail), online questionnaires, or facsimile transmissions (FAX) be excluded as telemedicine services. The Board declined to amend the definition, as the technology used may include such mechanisms, although the substance of the encounter has to be the practice of medicine in order to qualify as telemedicine.
Kaiser provided three additional comments. First, they recommended moving proposed Subsection 4618.8 adjacent to proposed Subsection 4618.3, as both are related to the

establishment of the physician-patient relationship, which the Board accepted. However, the Board declined to eliminate the term "real-time" from Subsection 4618.8. Similarly, the Board did not accept Kaiser's recommendation to eliminate the term "real-time" from the definition of interpretive services. The Board also declined to eliminate the term "Notice of privacy practices" from the definition section.

Based upon the review of the public comments, the Board made three minor changes to the proposed rulemaking: specifying the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) as two of the federal laws that must be complied with; re-ordering some sections for greater clarity; and correcting the numbering of the sections. No substantive changes to the proposed rulemaking published on July 7, 2017 have been made. These rules were adopted as final on October 23, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 46, MEDICINE, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

A new Section 4618, TELEMEDICINE, is added to read as follows:

4618 TELEMEDICINE

4618.1 In order to practice telemedicine for a patient located within the District of Columbia, a license to practice medicine in the District of Columbia is required, except as specified in §§ 3-1205.01 and 3-1205.02 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.). For any services rendered outside the District of Columbia, the provider of the services shall meet any licensure requirement of the jurisdiction in which the patient is physically located.

4618.2 In making medical decisions regarding a patient through the use of telemedicine, a physician shall adhere to the same standards of care as when making medical decisions in an in-person encounter with a patient. This includes, but shall not be limited to, the following:

(a) Obtaining and documenting patient consent, except when providing interpretive services;

(b) Creating and maintaining adequate medical records;

(c) Following requirements of the District of Columbia and federal laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), with respect to the confidentiality and disclosure of protected health information and medical records; and

(d) Adhering to requirements and prohibitions found in the Health Occupations Revision Act (D.C. Official Code §§ 3-1201.01 *et seq*.).

4618.3 A physician shall perform a patient evaluation to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options before providing treatment or prescribing medication for a patient utilizing the appropriate standards of care, except when performing interpretive services.

4618.4 If a physician-patient relationship does not include a prior in-person interaction with a patient, the physician may use real-time telemedicine to allow a free exchange of protected health information between the patient and the physician to establish the physician-patient relationship and perform the patient evaluation.

4618.5 When providing interpretive services, the physician shall ensure that there is no clinically significant loss of data from image acquisition through transmission to final image display.

4618.6 A District of Columbia-licensed physician may rely on a patient evaluation performed by another District of Columbia-licensed physician if the former is providing coverage for the latter.

4618.7 In order to deliver services or treatment through telemedicine, a licensed practitioner shall have the current minimal technological capabilities to meet all standard of care requirements.

4618.8 Adequate security measures shall be implemented to ensure that all patient communications, recordings and records remain confidential.

4618.9 All relevant patient-physician, communications, including those done via an electronic method such as email or other electronic messaging system, shall be documented and filed in the patient's medical record.

4618.10 Patients shall be informed of alternate forms of communication between the patient and a physician for urgent matters.

4618.11 All licensees shall continue to be subject to the requirements of the Health Occupations Revision Act (D.C. Official Code, §§ 3-1201 *et seq*.), and the District of Columbia Municipal Regulations (17 DCMR §§ 4600 *et seq.*).

Section 4699, DEFINITIONS, Subsection 4699.1, is amended to add the definitions as follows:

In-person - Within the physical sight and presence of another person or persons.

Interpretive Services - Official readings of images, tracings, or specimens through telemedicine. Interpretive services include remote, real-time

monitoring of a patient being cared for within a health care facility or home-based setting.

Notice of privacy practices - A written statement that complies with all District and Federal laws.

Physician - A licensed physician.

Physician-patient relationship - A relationship between a physician and a patient in which there is an exchange of an individual's protected health information for the purpose of providing patient care treatment or services.

Real-time - A system in which information is provided in such a way as to allow near immediate feedback.

Telemedicine - The practice of medicine by a licensed practitioner to provide patient care, treatment or services, between a licensee in one location and a patient in another location with or without an intervening healthcare provider, through the use of health information and technology communications, subject to the existing standards of care and conduct.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

Rental Assistance Demonstration

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of the adoption of the following new Chapter 57 (Rental Assistance Demonstration Administrative Plan) and the following amendments to Chapter 61 (Public Housing: Admission and Recertification), Chapter 64 (Low Rent Housing: Public Housing Transfer Policy), and Chapter 89 (Informal Hearing Procedures for Applicants and Participants of the Housing Choice Voucher and Moderate Rehabilitation Program) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to implement a Rental Assistance Demonstration Program while minimizing the impact on affected current Public Housing Tenants.

The proposed rulemaking was published in the *D.C. Register* on October 27, 2017, at 64 DCR 011078. This rulemaking was adopted as final at the Board of Commissioners regular meeting on December 5, 2017. The final rules will become effective upon publication of this notice in the *D.C. Register*.

Title 14 DCMR, HOUSING, is amended as follows:

CHAPTER 57 RENTAL ASSISTANCE DEMONSTRATION ADMINISTRATIVE PLAN

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5702 Implementation of Policies
5703 Waiver of Rules
5704 Rules Governing Administration of Section 8 Program
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5706 Selection of and Assignment to RAD Properties
5707 Eligibility
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5711 Notification and Attendance
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5749 Mandatory Transfers
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5751 Family Right to Move
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5763 Annual Inspection
5764 Reasonable Accommodations: Introduction
5765 Reasonable Accommodations: Application of Reasonable Accommodations Policy
5766 Reasonable Accommodations: Person with a Disability
5767 Request for Reasonable Accommodations
5768 Request for Reasonable Accommodations by RAD/PBV Participants and Applicants
5769 Occupancy of Accessible Unit
5770 Grievances
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5772 Recertification/Lease Renewal
5773 Barring Policy
5774 Vehicle Policy
5775 Achieving Your Best Life Program in RAD Covered Projects
5776 Resident Participation
5799 Definitions

5700 RAD-CONVERTED HOUSING: GENERAL PROVISIONS

5700.1 This Chapter 57 of Title 14 DCMR supplements the Section 8 Administrative Plan and sets forth rules which govern the operation of housing converted under the Rental Assistance Demonstration ("RAD") from public housing to housing funded by long-term, project-based Section 8 rental assistance contracts in the District of Columbia (hereinafter "RAD properties" or "RAD Covered projects"), under the authority of the District of Columbia Alley Dwelling Act of 1934 (D.C. Official Code §§ 5-101 to 5-116 (2012 Repl.)).

5700.2 The rules set forth in this Chapter 57 shall reflect the requirements of Federal law as detailed by HUD in the Code of Federal Regulations; as well as the Violence Against Women Act ("VAWA"), as amended (42 USC §§ 13981 *et seq.*); the Fair Housing Act (42 USC §§ 3601, *et seq.*); and the Privacy Act of 1974 (5 USC § 552a); as well as the requirements of the Consolidated and Further Continuing Appropriations Act of 2012, approved November 18, 2011 (Pub. L. No. 112-55), as amended by the Consolidated Appropriations Act, 2014, approved January 17, 2014 (Pub. L. No. 113-76), the Consolidated and Further Continuing Appropriations Act, 2015, approved December 6, 2014 (Pub. L. No. 113-235), and Division L, Title II, Section 237 of the Consolidated Appropriations Act, enacted December 18, 2015 (Pub. L. No. 114-113), collectively, the "RAD Statute."

5700.3 In implementing these rules, DCHA is committed, wherever practicable, to ensuring that the residents' transition from public housing to project-based voucher-funded housing is as seamless as possible and that the residents of a project maintain, to the extent practical and possible, those rights that they had as public housing residents.

5701 AMENDMENT OF RULES

5701.1 Any revision or amendment of this Chapter 57 shall be consistent with the provision of the District of Columbia Administrative Procedures Act (D.C. Official Code §§ 2-501 *et seq*. (2016 Repl.), except as provided for in this section.

5701.2 The rules under this Chapter 57 may be amended by DCHA as follows:

(a) By publication as a notice in the D.C. Register where amendments are required pursuant to Federal law and regulation, and where the Federal regulation has been issued pursuant to the Federal Administrative Procedure Act; or

(b) Where Federal regulation provides any discretionary element to DCHA in adopting a policy, amendments shall be published as rules.

5701.3 Any amendment to the rules pursuant to § 5701.2 shall be posted in all appropriate management offices of RAD Covered projects.

5702 IMPLEMENTATION OF POLICIES

5702.1 Whenever the policies established under this Chapter 57 require DCHA to provide additional procedural details affecting tenants of RAD Covered projects, the details provided by DCHA shall be consistent with the policies established by HUD, the rules under this Chapter 57, and other provisions of law. Action by DCHA to implement the policies shall be in accordance with this section.

5702.2 The following areas of policy established in this subtitle may be supplemented for implementation purposes by DCHA:

(a) Section 5720 of this title, relating to the actual utility allowance established for particular property, and any subsequent revision of such allowances, consistent with the policies in § 5720;

(b) Section 5721 of this title, relating to the actual excess utility charges established for major electrical appliances and for checkmeter charges, and any subsequent revision of the allowances, consistent with the policies in § 5721;

(c) Section 5756 of this title, relating to changes in the standard form dwelling lease which may be required to implement the policies of this subtitle, and any subsequent revision of those chapters or HUD regulations or provisions of Federal law, consistent with the policies in § 5756 or HUD regulations; and

(d) Section 5760 of this title, relating to charges to the tenant for costs of repair or other services in accordance with a standard schedule of charges or time required for maintenance activity, consistent with the policies in § 5760.

5702.3 DCHA issuances in areas of policy listed in § 5702.2 shall be as follows:

(a) The issuance or other proposed action shall be developed in accordance with the policies of this subtitle and HUD regulations and guidance;

(b) DCHA shall provide a thirty (30) day written notice of the proposed issuance or action to all affected tenants, setting forth the proposed action or modification, the reasons for the proposed action or modification, and provide the tenant an opportunity to present written comment. The notice shall be as follows:

(1) Delivered directly or mailed to each tenant; or

(2) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the management office of the affected property, if any; and

(3) Delivered to all members of the tenants' association of the affected property; and

(c) DCHA shall take into consideration any comments received during the thirty (30) day comment period prior to the proposed issuance or action becoming effective.

5703 WAIVER OF RULES

5703.1 Upon determination of good cause, the Executive Director of DCHA may waive any provision of this subtitle, subject to statutory limitations of Federal and District law. Each waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds on which the waiver is based.

5704 RULES GOVERNING ADMINISTRATION OF SECTION 8 PROGRAM

5704.1 The District of Columbia Housing Authority pursuant to requirements and funding from the U.S. Department of Housing and Urban Development administers rental allowance programs under Section 8 of the Housing Act of 1937.

5704.2 HUD requires each public housing authority that manages a Section 8 program to adopt an administrative plan setting forth how it implements the requirements of the Section 8 program and any allowable local policies adopted for that program.

5704.3 The adopted plan for the District of Columbia is the District of Columbia Housing Authority's Administrative Plan for the Section 8 Certificate and Housing Voucher Programs. Copies of the plan are available for review at the District of Columbia Housing Authority, Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002 and on the District of Columbia Housing Authority's website.

5705 [RESERVED]

5706 SELECTION OF AND ASSIGNMENT TO RAD PROPERTIES

5706.1 Applicants that wish to reside in a RAD Covered Project must apply to either of the Public Housing Waiting Lists, in accordance with the procedures set forth in Chapter 61 of this Title 14.

5706.2 All vacant RAD units shall be assigned to applicants on the Public Housing Waiting Lists, in accordance with the preferences and procedures set forth in Chapter 61 of this Title 14, except where alternative requirements or procedures are provided in this Chapter 57.

5706.3 For applicants that elect to apply to the First Available Waiting List in accordance with Subsection 6101.6, such applicant shall be considered for a vacancy at any public housing project or RAD Covered Project.

5706.4 For applicants that elect to apply to Site-Based Waiting Lists in accordance with Subsection 6101.7, such applicants shall be permitted to select from both public housing projects and RAD Covered Projects.

5706.5 For applicants applying to Private Mixed Finance Projects, participant selection and assignment shall be in accordance with Section 6113 of this Title 14.

5707 ELIGIBILITY

5707.1 The procedures for collecting required information, determining eligibility, and briefing applicants shall be governed by Sections 6106 and 6107 of this Title 14, except as otherwise provided in this Chapter 57. Applicants to Private Mixed Finance Projects shall also be subject to any additional eligibility requirements specified under Section 6113 of this Title 14.

5707.2 DCHA shall consider an applicant eligible for selection for a RAD unit if the applicant meets the following criteria:

(a) Qualifies as a Family, as defined in Section 5705 of this chapter;

(b) Annual income does not exceed the income limits for admission under Section 5708 of this chapter;

(c) Family meets applicant family selection criteria under Section 6109 of this Title 14;

(d) Family size meets the occupancy standards established by DCHA under Section 5709 of this chapter; and

(e) Family provides all required information and signs all required documentation, including proof of citizenship or eligible immigrant status.

5708 INCOME LIMITS

5708.1 To be eligible for admission to the RAD program, an applicant's annual household income shall be within the income limits for low income families, as established by HUD.

5708.2 HUD establishes low income limits based on eighty percent (80%) of the area median income, very low income limits based on fifty percent (50%) of the area median income, and extremely low income limits based on thirty percent (30%) of the area median income.

5708.3 Income limits shall be applied at the time of eligibility determinations by the Client Placement Division.

5708.4 Based on HUD regulations, DCHA shall ensure that actual admission of eligible low income families from the waiting lists is as follows: at least seventy-five percent (75%) shall be families with extremely low incomes at the time of commencement of occupancy.

5709 SUBSIDY STANDARDS / VOUCHER SIZE

5709.1 The Voucher size is used to determine the maximum rent subsidy for a Family assisted in the HCVP.

5709.2 The following requirements apply when DCHA determines Voucher size under the subsidy standards:

(a) The subsidy standards shall provide for the lowest number of bedrooms needed to house a Family without overcrowding;

(b) The subsidy standards shall be consistent with space requirements under the Housing Quality Standards contained in § 5321;

(c) The subsidy standards shall be applied consistently for all families of like size and composition;

(d) A child who is temporarily away from the home because of placement in foster care is considered a member of the Family in determining the Voucher size;

(e) A live-in aide, approved by DCHA, shall be counted in determining the Voucher size;

(f) Foster children and adult wards shall be included in the determination of the Voucher size; and

(g) The Voucher size for any Family consisting of a single person shall only be a one (1)-bedroom.

5709.3 DCHA shall assign one (1)-bedroom for the Head of Household and/or a Spouse and an additional bedroom for each two (2) persons within the household with the following exceptions:

(a) Children of the opposite gender shall be allocated separate bedrooms once one of the children is over the age of five (5) or if one of the children will turn five (5) within the initial term of the voucher.

(b) Children of the same gender shall be allocated one (1) bedroom. Beginning at age thirteen (13), if there is a difference of five (5) years or more, children of the same gender shall have separate bedrooms.

(c) Adult Family members shall not be allocated a bedroom with a minor.

(d) A bedroom shall not be assigned to an unborn child; and

(e) A live-in aide approved by DCHA shall be allocated an individual bedroom.

5709.4 Considerations to persons attending school away from home shall be in accordance with DCHA policies regarding absent Family members under § 5318.

5709.5 In determining the Voucher size for a particular Family, DCHA may grant an exception to the subsidy standards set forth in this § 5709 if DCHA determines that the exception is justified by the age, sex, gender identity, health, or disability of one (1) or more of the Family members.

5709.6 For a single person who is not elderly, disabled, or a remaining Family member as explained in § 5317.8, an exception cannot override the regulatory limit of a one (1) bedroom unit.

5709.7 The Family shall request any exceptions to the Voucher sizes in writing to DCHA. The request shall explain the need or justification for a larger Family unit size, and shall include appropriate documentation. Family requests based on health-related reasons shall be verified by a knowledgeable professional source (such as a doctor or health professional).

5709.8 DCHA shall notify the Family of its determination within thirty (30) days of receiving the Family's request for an exception. If a participant Family's request is denied, the notice shall inform the Family of their right to an informal hearing under Sections 5730 through 5747 of this chapter.

5710 BRIEFING

5710.1 The purpose of the briefing is to fully inform the applicant Family about the RAD Project-Based Program.

5710.2 DCHA shall give each Family accepted into the RAD Project-Based Program an oral briefing and provide the Family with a briefing packet containing written information about the RAD Project-Based Program.

5201.3 Families may be briefed individually or in groups. At the briefing, DCHA shall ensure effective communication in accordance with the requirements of relevant sections of the following federal and local statutes:

(a) Section 504 of the Rehabilitation Act (29 USC §§ 701, *et seq*.);

(b) The D.C. Language Access Act (D.C. Official Code §§ 2-1931, *et seq*. (2016 Repl.));

(c) The Fair Housing Act (42 USC §§ 3601, *et seq*.);

(d) The D.C. Human Rights Act (D.C. Official Code §§ 2-1401.01, *et seq*. (2016 Repl.)); and

(e) The Americans with Disabilities Act (42 USC §§ 12101, *et seq*.).

5710.4 DCHA shall ensure that the briefing site is accessible to individuals with disabilities. Applicants with disabilities may request that DCHA provide other reasonable accommodations when conducting briefings.

5710.5 The Head of Household shall be required to attend the briefing. DCHA will encourage other adult Family members to participate in the briefing. All adult

Family members are responsible for complying with RAD Project-Based Program rules even if they do not attend the briefing. The Head of Household is responsible for the conduct of all Family members, guests, and others under his or her control.

5710.6 Families that attend group briefings and still need individual assistance shall be referred to an appropriate DCHA staff person.

5711 NOTIFICATION AND ATTENDANCE

5711.1 The RAD Program shall notify Families in writing, by first class mail or hand delivery, of their eligibility for assistance at the time that they are invited to attend a briefing. The notice shall identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

5712 ORAL BRIEFING

5712.1 Each briefing shall provide information on the following subjects:

(a) How the RAD Project-Based Program works;

(b) Family and owner responsibilities;

5713 BRIEFING PACKET

5713.1 Documents and information provided in the briefing packet shall include the following:

(a) A description of the method used to calculate the Housing Assistance Payment (HAP) for a Family, including:

(1) How DCHA determines the payment standard for a Family;

(2) How DCHA determines Total Tenant Payment (TTP) for a Family; and

(3) Information on the payment standard and utility allowance schedule;

(b) An explanation of how DCHA determines the maximum allowable rent for an assisted unit;

(c) The HUD-required Lease Addendum which shall be included in the lease.

(d) A statement of DCHA policy on providing information about families to RAD Covered Project owners;

(e) DCHA subsidy standards including when and how exceptions are made;

(f) The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*;

(g) Information on federal, state, and local equal opportunity laws and a copy of the housing discrimination complaint form;

(h) Information on an applicant or participant's rights under VAWA, including the right to confidentiality and the exceptions;

(i) Notice that if the Family includes a person with disabilities, the Family may request a list of available accessible units available in the RAD Project-Based Program;

(j) The Family Obligations under the Program;

(k) The grounds on which DCHA may terminate assistance or a lease for a Family because of Family action or failure to act;

(l) RAD Project-Based informal hearing procedures including when DCHA and the owner of the RAD Covered Project are required to offer a Family the opportunity for an informal hearing, and how to request a hearing;

(m) The publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a Family shall avoid and the penalties for program abuse.

5714 APPROVAL OF REQUEST FOR TENANCY

5714.1 Prior to approving the assisted tenancy at a RAD property, DCHA shall ensure that all required actions and determinations have been completed. These actions include ensuring:

(a) That the unit is eligible;

(b) That the unit has been inspected by DCHA and meets the HQS;

(c) That the lease offered by the owner is approvable and contains the following:

(1) The initial lease terms and the renewal term;

(2) Who is responsible for payment of utilities;

(3) The names of the occupants; and

(4) The required Tenancy Addendum;

(d) That the rent to be charged by the owner for the unit is reasonable in accordance with Section 5717 of this Chapter 57;

(e) Where the Family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the Family, that the share of rent to be paid by the Family is set in accordance with Subsection 5717.2 of this Chapter 57;

(f) That the owner is an eligible owner, has been neither disapproved by DCHA nor debarred by HUD, and has no prohibited conflicts of interest; and

(g) That the unit is accessible when the tenant has a disability.

5714.2 DCHA shall complete its determination within ten (10) business days of receiving all required information listed in § 5212 of this Title 14.

5714.3 If the terms of the Request for Tenancy Approval (RTA) or the proposed lease are changed for any reason, including but not limited to negotiation with DCHA, DCHA shall obtain corrected copies of the RTA and proposed lease.

5714.4 Corrections to the RTA or the proposed lease shall only be accepted as hard copies, in person, by mail, by fax, or electronically to an authorized DCHA email address.

5714.5 If DCHA determines that the tenancy cannot be approved for any reason, the owner and the Family shall be notified in writing and given the opportunity to address any reasons for disapproval. DCHA's notice shall instruct the owner and Family of the steps that are necessary to approve the tenancy.

5714.6 If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), DCHA shall attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy shall be approved.

5715 SEPARATE AGREEMENTS

5715.1 Owners and tenants may execute agreements for services, appliances (other than for range and refrigerator), and other items outside those which are provided under the lease if the agreement is in writing and approved by DCHA.

5715.2 Any appliance, service, or other item which is routinely provided to nonsubsidized tenants as part of the lease (such as air conditioning, dishwasher, or

garage) or are permanently installed in the unit cannot be put under separate agreement and shall be included in the lease. For there to be a separate agreement, the tenant shall have the option of not utilizing the service, appliance, or other item.

5715.3 DCHA is not liable for unpaid charges for items covered by separate agreements and nonpayment of these agreements cannot be cause for eviction.

5715.4 If the tenant and owner have come to an agreement on the amount of Charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they shall be allowed. Costs for seasonal items can be spread out over twelve (12) months.

5715.5 Copies of all separate agreements shall be provided to DCHA.

5716 HOUSING ASSISTANCE PAYMENT CONTRACT EXECUTION

5716.1 Owners who have not previously participated in the voucher program shall attend a meeting with DCHA in which the terms of the Tenancy Addendum and the HAP contract shall be explained. DCHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCVP.

5716.2 The owner and the assisted Family shall execute the dwelling lease, and the owner shall provide a copy to DCHA with signatures. DCHA shall ensure that both the owner and the assisted Family receive copies of the dwelling lease.

5716.3 The owner and DCHA shall execute the HAP contract with notarized signatures. DCHA shall not execute the HAP contract until the owner has submitted IRS form W-9. DCHA shall ensure that the owner receives a copy of the executed HAP contract.

5717 RENT CALCULATIONS

5717.1 Initial Contract Rent. The amount to DCHA must not exceed the lowest of:

(a) An amount determined by DCHA, not to exceed one hundred ten percent (110%) of the applicable fair market rent for the unit bedroom size minus any utility allowance; or

(b) The reasonable rent as determined in accordance with 24 CFR § 983.302; or

(c) The rent requested by the owner.

5717.2 Tenant Rent. Notwithstanding provisions which may appear elsewhere in this subtitle, each tenant shall pay, as Tenant Rent**,** the greater of the following:

(a) Income-based rent as the greater of one twelfth (1/12) of thirty percent (30%) of adjusted income; or

(b) One twelfth (1/12) of ten percent (10%) of the annual income. The value of any assets or imputed income from assets shall not be used in the calculation of income based rent. Actual net income from assets greater than the threshold described above shall be included in the determination of adjusted income;

(c) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(d) The minimum rent, as determined in accordance with Subsection 5717.3.

5717.3 Minimum Rent. Based on information provided pursuant to Subsections 5717.1, 5717.2, and this subsection, rent charged shall be the lesser of:

(a) An amount based on a percentage of household income pursuant to Subsections 5717.2 (a) or (b); or

(b) $0, for families which DCHA has determined do not have any adjusted income, as defined in Section 5799, as determined by DCHA at certification or recertification.

5718 EARNED INCOME DISREGARD

5718.1 Definitions. The following definitions apply for purposes of this section.

(a) Baseline income. The annual income immediately prior to implementation of the disallowance described in Subsection 5718.3 of this section of a person who is a member of a qualified family.

(b) Disallowance. Exclusion from annual income.

(c) Previously unemployed includes a person who has earned, in the twelve months prior to employment, no more than would be received for ten hours of work per week for fifty weeks at the established minimum wage.

5718.2 Qualified family. A family residing in public housing:

(a) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(b) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(c) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance -- provided that the total amount over a six (6)-month period is at least five hundred dollars ($ 500).

5718.3 Disallowance of earned income

(a) Initial twelve (12)-month exclusion. During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from the annual income of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

(b) Phase-in of rent increase. Upon the expiration of the twelve (12)-month period defined in paragraph (a) of this subsection and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least fifty percent (50%) of any increase in income of such family member as a result of employment over the family member's baseline income.

(c) Maximum two (2)-year disallowance. The disallowance of increased income of an individual family member as provided in paragraph (a) or (b) of this subsection is limited to a lifetime twenty-four (24)-month period. It applies for a maximum of twelve (12) months for disallowance under paragraph (a) of this subsection and a maximum of 12 months for disallowance under paragraph (b) of this subsection, during the 24-month period starting from the initial exclusion under paragraph (a) of this subsection.

(d) No rent phase in. Upon the expiration of the Earned Income Disregard, the rent adjustment shall not be subject to rent phase-in. Instead, rent will automatically rise to the appropriate level.

5718.4 Inapplicability to admission. The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

5719 CHANGES IN RENT

5719.1

(a) Rent Phase-In. If a tenant's monthly rent increases by more than the greater of ten percent (10%) or twenty-five dollars ($25) purely as a result of conversion, the rent increase will be phased in over a period of five (5) years.

(b) Five Year Phase-in Formula:

(1) Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – twenty percent (20%) of difference between most recently paid TTP or flat rent and the Calculated RADTTP

(2) Year 2: Year 2 annual recertification and any interim recertification prior to Year 3 annual recertification – twenty-five percent (25%) of difference between most recently paid TTP and the Calculated RAD TTP

(3) Year 3: Year 3 annual recertification and any interim recertification prior to Year 4 annual recertification – thirty-three percent (33%) of difference between most recently paid TTP and the Calculated RAD TTP

(4) Year 4: Year 4 annual recertification and any interim recertification prior to Year 5 annual recertification – fifty percent (50%) of difference between most recently paid TTP and the Calculated RAD TTP

(5) Year 5 annual recertification and all subsequent recertifications – Full Calculated RAD TTP

(c) Once the Calculated RAD TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

5719.2 Any changes in Tenant Rent shall be stated in a special supplement to the lease, which shall, upon issuance, become a part of the dwelling lease. The special

supplement to the lease shall constitute the tenants thirty (30) days' written notice of an increase in Tenant Rent. The family shall be provided a copy of the special supplement to the lease.

5719.3 All changes in Tenant Rent, whether after an interim or regular recertification, shall be implemented in accordance with 14 DCMR §§ 6118, 6119, and this chapter.

5719.4 In properties where utilities and other essential services are supplied to the tenant by DCHA, Tenant Rent payable to DCHA under the dwelling lease shall be the same as total tenant payment.

5719.5 Tenant Rent shall be computed after both annual income and adjusted income have been verified.

5719.6 The tenant shall receive retroactive credit to credit an administrative error.

5719.7 Tenants occupying property for a portion of a month at the time of move-in shall be charged a pro-rata share of the full monthly rate determined by DCHA.

5719.8 Allowances and special deductions:

(a) In properties where tenants are responsible for paying for their own utility bills, the utility allowance shall be subtracted from the total tenant payment to determine the Tenant Rent payable to DCHA. If the Tenant Rent resulting from the subtraction of the utility allowance from the total payment is negative, DCHA shall send a monthly check in the amount of the difference to the tenant.

(b) At Redeveloped Properties or Service Rich Properties, as defined in 14 DCMR Section 6113, which an Association Fee is assessed, residents at such properties may be required to pay an amount calculated to equal the Association Fee attributable to the unit and shall be granted an allowance reflecting the Association Fee payment. The allowance shall be subtracted from the Tenant Rent to determine the tenant payment as follows:

(1) Any utility allowance shall be deducted from the Tenant Rent first. The allowance for the Association Fee shall be deducted from any remaining positive amount. If the deduction of the utility allowance results in a negative rent there shall be no charge for an Association Fee and no deduction for the Association Fee allowance. If the deduction of the Association Fee allowance results in a negative amount, the required Association Fee payment from the tenant and its associated allowance shall be reduced so that the Tenant Rent is zero.

(2) If the tenant fails to pay the Association Fee on time, the fee shall be converted to rent, not to exceed thirty percent (30%) of adjusted income, when added to the monthly rent, for the month in which the fee was paid.

(3) If the Association Fee is paid after entry of judgment as part of the payment required to avoid eviction, the fee shall be recorded as the Association Fee, and the ledger shall be updated to reflect the tenant's payments.

5720 UTILITY ALLOWANCE

5720.1 DCHA shall establish on a project basis, in accordance with Federal regulations, appropriate utility allowances for tenants with individual utility meters.

5720.2 Allowances shall be based on average consumption levels and information provided by the D.C. Public Service Commission regarding rates approved for utility companies supplying electricity or gas to those dwelling units.

5720.3 Average consumption level calculations shall take into account major equipment provided by DCHA at the project or property and shall make allowance for minor equipment normally provided by the tenant, except that items provided by the tenant listed in § 5721.1 of this chapter shall not be considered in development of average consumption calculations.

5720.4 As utility rates in the District of Columbia are revised, DCHA shall revise its utility allowances when there is a rate change that, by itself or together with prior rate changes not adjusted or, results in a change of 10 percent (10%) or more from the rates on which the current allowance was based for a specific utility. When DCHA revises a utility allowance, it shall do the following:

(a) Provide notice to tenants regarding increases or decreases in Tenant Rent due to revised utility allowances;

(b) Make Tenant Rent increases effective at the start of the first month following thirty (30) days' notice to the tenant, and make Tenant Rent decreases effective at the start of the first month following the change in utility allowance; and

(c) Prepare and execute a special supplement to the dwelling lease, with an explanation of the reason(s) for the change.

5720.5 Actual charges billed directly to the tenant shall be his or her responsibility, regardless of whether the charges are above or below the utility allowance approved by DCHA.

5720.6 The DCHA shall also establish appropriate utility allowances, on a project basis, for tenants with checkmeters where DCHA pays the utility supplier but individual units have checkmeters that measure consumption rates for the unit.

5720.7 The DCHA shall be authorized to obtain records of tenants' utility consumption and related charges billed data from utility companies for tenants with individual utility meters who pay for their own electricity or gas.

5721 EXCESS UTILITY CHARGES

5721.1 Tenants who do not pay for their own electricity shall be charged reasonable amounts for electricity consumed as a result of major electrical appliances which are not provided by DCHA. Major electrical appliances include the following:

(a) Clothes dryer(s);

(b) Food freezer(s);

(c) Additional refrigerator/freezer(s);

(d) Air conditioner(s);

(e) Washing machine(s); and

(f) Dish washers.

5721.2 Excess utility charges for air conditioners shall only be applied during the months of May, June, July, August and September, with an opportunity for exceptions based on unseasonably cool weather.

5721.3 Excess utility charges and any revisions to these charges, shall be established by DCHA on the basis of the provisions of § 5720 of this chapter, including consumption calculations.

5721.4 It is the responsibility of the tenant to obtain the approval of DCHA prior to the installation of any electrical appliance listed in § 5721.1. Excess utility charges shall be incurred at the start of the month following installation. DCHA shall prepare and execute a special supplement to the lease to reflect excess utility charges.

5721.5 Excess utility charges required under §§ 5721.1 and 5721.7 shall not become due and collectible until the first (1st) day of the second month following the month in which the charge is incurred.

5721.6 Upon receipt of a report from a tenant indicating an appliance is inoperable in his or her unit, DCHA shall assess the applicable charge until such time as the appliance in question is removed from the dwelling unit.

5721.7 Tenants who do not pay for their own utilities, but who occupy a unit with a checkmeter system for individual units, shall be charged reasonable amounts for utility consumption in excess of the appropriate utility allowance established by DCHA for that unit.

5721.8 Where DCHA converts a specific property to a checkmeter system, there shall be a transition period of at least six (6) months during which no excess utility charges shall be charged against the tenant. During this transition period, DCHA shall do the following:

(a) Advise the tenant of the amounts which would be charged, based on checkmeter readings;

(b) Advise tenants with high utility consumption rates on methods for reducing their usage; and

(c) Give specific thirty (30) day notice to the tenant of the effective date after which utility charges shall be assessed. DCHA shall prepare and execute a special supplement to the lease to implement excess utility charges related to checkmeter systems.

5722 SECURITY DEPOSITS

5722.1 Each new tenant household shall be required to make a security deposit to DCHA prior to the execution of the dwelling lease.

5722.2 The security deposit shall be a flat fee assessment as follows:

(a) Fifty dollars ($50) - elderly family households; or

(b) One hundred dollars ($100) - family households.

5722.3 The security deposit shall be due in full at the time of the execution of the dwelling lease.

5722.4 The security deposit shall be retained by the Project Owner until the tenant vacates the unit.

5722.5 Whenever a tenant is relocated from one (1) RAD Covered Project unit to another, the tenant may choose to have the security deposit transferred to the new unit and dwelling lease agreement.

5722.6 If the unit from which the tenant is transferring has tenant-caused damages, or there are other unpaid charges due from the tenant, the Project Owner may deduct those amounts due as provided in § 5723 of this chapter, and require a new security deposit from the tenant prior to execution of a new lease for the unit to which the tenant is moving.

5723 REPAYMENT OF SECURITY DEPOSITS AND MOVE-OUT INSPECTIONS

5723.1 The amount of the security deposit to be refunded shall be based on the following:

(a) Actual unpaid repair costs for damages to the premises beyond normal wear and tear;

(b) Total rent delinquency charges;

(c) Total unpaid service charges; and

(d) Proper notice by the tenant to the Project Owner of intent to vacate in accordance with § 5723.5 of this chapter.

5723.2 If the security deposit is insufficient to cover those charges, the tenant shall be billed for the difference.

5723.3 If there are no charges, or if the charges are less than the security deposit, the difference shall be refunded to the tenant.

5723.4 In order to determine the amount of security deposit to be returned to the tenant, the Project Owner shall conduct a move-out inspection with the departing tenant.

5723.5 When tenants have provided thirty (30) days' notice of intent to vacant their unit, the Project Owner shall notify the tenant in writing of the date and time of the move-out inspection at least ten (10) days before the intended inspection.

5723.6 If it is discovered that repairs to the unit are needed due to the tenant's abuse or neglect, the Project Owner shall assess the tenant for the cost of the repairs.

5723.7 At the time of the move-out inspection, the tenant shall be required to furnish a forwarding address for the purposes of either forwarding the tenant's refund check, or a bill for additional monies due. The Project Owner shall provide a written statement of deficiencies, and the amount of the charge for repair, to the tenant, and shall refund any security deposit due within forty-five (45) days of termination of tenancy.

5723.8 A tenant vacating a unit shall be eligible for a refund if that tenant has a credit balance after any charges have been deducted from the tenant's account.

5723.9 Tenants who vacate a unit without giving proper notice of intent to vacate shall relinquish any right to possession of the unit or the security deposit.

5723.10 The Lessee shall return all keys and other entry devices whenever the unit is vacated. Failure to return keys or other entry devices will result in a charge in accordance with a schedule of charges as posted in the property management office.

5724 RENT COLLECTION

5724.1 Rental payments and excess utility or other charges where applicable, for each month shall be due on the first (1st) day of each month. A payment received by the tenth (10th) day of the month shall not be considered delinquent.

5724.2 Current rent shall be the amount charged monthly as Tenant Rent to a tenant for the use and occupancy of a specified dwelling unit.

5724.3 The Project Owner shall advise the tenant in writing of any other charge(s) being assessed and the amount due as follows:

(a) Excess utility charges shall be assessed as provided in § 5714 of this chapter;

(b) Charges for services performed and for maintenance charges as a result of tenant damage (as provided in § 5753 of this subtitle) shall be due and payable the first day of the second month following completion of repairs or performance of service, provided the tenant was provided one (1) month notice of the charge prior to the due date; and

(c) Court costs shall be due and payable at the time the tenant is required to pay the amount which made the court charge necessary.

5724.4 All payments shall be submitted by the tenant to the location designated by DCHA, and shall be made only by check or money order.

5724.5 Rent payments, or excess utility or other charges where applicable, received after the tenth (10th) day of the month shall be considered delinquent, and a late charge of 5% of the amount due shall be assessed against the tenant. No more than one (1) late charge shall be assessed each month.

5725 RETURNED CHECKS

5725.1 Tenants whose checks are returned for insufficient funds shall be assessed a fifteen dollar ($15) returned check fee, and shall be required to make payment within five (5) working days, from the date of the returned check notice, for the

amount outstanding. This payment shall be in the form of a "money order" or "cashier's check."

5725.2 Each tenant having two (2) checks returned, within a twelve (12) month period, for insufficient funds, shall be required to submit all future payments in the form of a "cashier's check" or "money order."

5726 RETROACTIVE RENT

5726.1 Retroactive rent charges, determined in accordance with § 5719 of this subtitle, shall be due in full within thirty (30) days of notification.

5726.2 Partial payments of amounts due may be authorized by the Project Owner if it is determined that the tenant's failure to promptly report the change(s) in income, which resulted in the retroactive rent, was not willful.

5727 ABATEMENT OF RENT

5727.1 In the event that a unit is rendered uninhabitable and repairs are not made as provided for in § 5758, the Project Owner shall abate the tenant's total tenant payment in proportion to the seriousness of the damage and loss in value as a dwelling.

5727.2 No abatement of rent shall occur if the tenant fails to cooperate with workmen seeking to make the repairs, rejects alternative accommodations, or if the damage was caused by the tenant, the tenant's household, or guests.

5727.3 Evidence that a unit was uninhabitable under § 5758, and that abatement is required, may include a vacate order by a District Housing Inspector, or other substantial documentation.

5728 [RESERVED]

5729 [RESERVED]

5730 GRIEVANCE POLICY

5730.1 The rules of procedure outlined in Sections 5730 through 5747 shall govern conferences and hearings resulting from complaints filed by individual participants and applicants for housing in a RAD Covered Project, including RAD units within any Private Mixed Finance Project except as otherwise specified in a regulatory and operating agreement or RAD control agreement.

5730.2 The procedures shall provide a means for review of grievances through administrative means short of taking action through the appropriate judicial proceeding, but in no way waive the complainant's right to judicial proceedings.

5730.3 The grievance procedure shall not be used to review complaints or grievances related to initiating or negotiating changes to existing policies set forth in this chapter, class grievances, or disputes between residents that do not involve the Project Owner or contract administrator.

5731 FILING A COMPLAINT

5731.1 Any resident of or applicant for a RAD Covered Project may file with DCHA or the Project Owner a complaint requesting an administrative determination of his or her rights for any dispute he or she may have with respect to a Project Owner's action or failure to act in accordance with the individual's lease or the contract administrator's action or failure to act in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

5731.2 The complaint shall be mailed or personally presented either orally or in writing to the DCHA Office of Fair Hearings or to the office of the property in which the complainant resides during normal office hours, but not later than thirty-five (35) calendar days after the DCHA or Project Owner's act or failure to act that constitutes the basis for the grievance. For complaints concerning termination of assistance by DCHA, complainants shall request an informal hearing within thirty-five (35) calendar days of the date of the issuance of the recommendation for termination of assistance by DCHA.

5731.3 The complaint shall state the particular grounds on which it is based and the action or relief requested. Upon request, DCHA or office of the property in which the complainant resides will assist a complainant in putting his or her complaint in writing.

5731.4 Upon receipt of the complaint, the DCHA Office of Fair Hearings or the office of the property in which the complainant resides shall provide the complainant with a receipt indicating a complaint was filed and information explaining the complainant's right to a fair hearing and outlining the RAD Grievance Procedures. If the complaint is filed at the office of the property in which the complainant resides, that office shall provide a copy of the complaint to OFH.

5732 INFORMAL SETTLEMENT OF COMPLAINTS

5732.1 Except for complaints filed by applicants that have already participated in an informal conference pursuant to Section 6107 or for complaints concerning termination of assistance, within three (3) business days of receipt of the complaint, the Project Owner shall schedule a conference with the complainant to informally discuss the complaint with the objective of reaching a settlement without a formal hearing.

5732.2 The Project Owner shall convene the informal settlement conference within ten (10) business days of the date the complaint was filed.

5732.3 If a settlement is reached, within ten (10) business days of the conference, the terms of the settlement shall be put in writing by the Project Owner, signed by each party. A copy of the settlement shall be given to the complainant and DCHA, who shall retain a copy for the complainant's DCHA file.

5732.4 If a settlement cannot be reached, the Project Owner shall prepare and serve on the complainant a written answer to the complaint within ten (10) business days of the conference with the complainant. The answer shall specify the following:

(a) The Project Owner's proposed disposition of the complaint and the specific reasons therefore;

(b) The right of the complainant to a hearing, and the procedure for requesting a hearing; and

(c) The time allowed to request a hearing.

5732.5 The answer shall be served upon the complainant as follows:

(a) Where the complainant is a resident, by personally serving the answer on the complainant or leaving a copy at the dwelling unit with a person of suitable age, or posting on the door of complainant's unit if no one is at home; or

(b) Where the complainant is an applicant, by sending the answer by first class mail, postage prepaid, to complainant's address as it appears in the records of DCHA.

5733 REQUEST FOR HEARING

5733.1

(a) If after the informal settlement conference the complainant is not satisfied with the proposed disposition of his or her complaint, he or she may submit in person or by mail a written request for a hearing. Upon request, DCHA or the Project Owner will assist a complainant in putting his or her request for a hearing in writing. The written request shall be provided:

(1) To the Office of Fair Hearings (OFH); or

(2) To the OFH through the office of the property in which the complainant resides. A complaint form will also be available to residents at the OFH and at the office of the property in which the complainant resides.

(b) On determinations of ineligibility for applicants for RAD Covered Projects, applicants may submit a written hearing request in person to the OFH or by mail to the OFH. The notice will include the complaint form by which families can request a hearing and return it to DCHA. The complaint form will also be available to applicants and residents at the OFH.

(c) For a determination to terminate assistance, DCHA shall provide the resident with written notice of the determination to terminate assistance within thirty days (30) days of the determination. The notice shall include the complaint form by which residents can request a hearing. The written hearing request shall be provided to the OFH.

5733.2 A complainant's request for a hearing shall be in writing and shall be filed as follows:

(a) If the complainant is a resident, within seven (7) business days from the date the answer is served;

(b) If the complainant is an applicant, within ten (10) business days from the date the answer is mailed; or

(c) If the complainant's hearing request concerns a determination to terminate assistance, within thirty-five (35) calendar days from the date of the issuance of the recommendation for termination of assistance by DCHA.

5733.3 If the complainant does not request a hearing within the time specified in §§ 5733.2(a)-(b), the Project Owner's disposition of the complaint under § 5732.4 shall become final. If the complainant does not request a hearing within the time specified in § 5733.2(c), DCHA's determination to terminate assistance shall become final. This shall not constitute a waiver of the complainant's right to contest DCHA's or Project Owner's actions in an appropriate judicial proceeding.

5733.4 For hearing requests made pursuant to § 5733.1(c), once a timely request for a hearing has been filed, the Housing Assistance Payments (HAP) will continue to the Project Owner in accordance with the current HAP contract in effect at the time of the request for a hearing until a final determination has been made in accordance with this chapter.

5733.5 Upon receipt of a request for a hearing, OFH shall assign a hearing officer to the complaint from the pool of hearing officers selected pursuant to § 5734.1, on a rotating basis to the extent possible.

5733.6 Within fifteen (15) business days, OFH shall schedule a hearing time, date and place, reasonably convenient to both the complainant and DCHA, and shall notify the complainant and DCHA.

5733.7 Within thirty (30) days of the date the hearing is scheduled, OFH shall convene the hearing, unless rescheduled for good cause.

5733.8 Requests to reschedule a Hearing shall be subject to the following conditions:

(a) Either party may request to reschedule an Informal Hearing any time prior to the first scheduled Informal Hearing date or prior to any subsequent hearing date, only if the requesting party can demonstrate good cause and if delay will not result in harm or prejudice to the other party.

(b) Notwithstanding the paragraph above, OFH will reschedule a Hearing as a reasonable accommodation if the complainant can demonstrate that a disability prevented them from rescheduling within the prescribed time periods.

5734 SELECTION OF HEARING OFFICERS

5734.1 The DCHA shall select six (6) impartial, disinterested members of any bar in good standing to be available to serve as hearing officers.

5734.2 If the complainant objects to the hearing officer, DCHA and the complainant shall attempt to agree upon another member of the pool of hearing officers.

5734.3 If DCHA and the complainant cannot agree, DCHA shall select any individual to serve as a member of the hearing panel, the complainant shall select any individual to serve as a member of the panel and these two (2) individuals shall select a third member. The choice of the individuals who comprise the hearing panel shall not be limited to the six (6) member pool of hearing officers.

5734.4 If the individuals selected by DCHA and the complainant cannot agree on a third member, such a member shall be selected by an independent arbitration organization as provided in 24 CFR § 966.55(b)(1)(2002).

5734.5 Any individual who made or approved the decision under review or a subordinate of that individual may not serve as a hearing officer pursuant to § 5734.1 or as a member of a hearing panel pursuant to § 5734.3 or § 5734.4.

5735 AUTHORITY OF HEARING OFFICERS

5735.1 The hearing officer shall have all powers necessary to conduct a fair and impartial hearing, including the following:

(a) To administer or direct the administration of oaths and affirmations;

(b) To examine witnesses and direct witnesses to testify;

(c) To rule upon offers of proof and receive relevant evidence;

(d) To regulate the course of the hearing and the conduct of the parties, other participants, and their counsel;

(e) To arrange a conference for settlement or to simplify the issues by agreement of the parties;

(f) To consider and rule upon procedural requests; and

(g) To take any action authorized by this chapter.

5735.2 The hearing officer shall have the power to grant appropriate relief not in conflict with controlling law and regulations, including the following:

(a) Rental abatements;

(b) Monetary damages;

(c) Relocation of residents to other DCHA owned or operated housing units;

(d) The ordering of repairs and/or accessibility features by DCHA;

(e) Remanding to a program specialist for further review or recalculation;

(f) Granting a voucher or voucher extension;

(g) Participant recertification;

(h) Adjustment to total tenant payment;

(i) Reversal of termination; and

(j) Scheduling continuances and rescheduling.

5735.3 Temporary relocation of residents to public housing units available to the agency shall be authorized and may be ordered if the hearing officer finds that the unit is so seriously deficient that it poses a significant threat to the health or safety of the resident.

5735.4 If DCHA does not take immediate action to correct the threat and fails to demonstrate that suitable public housing is available, the hearing officer may

order DCHA to relocate the resident temporarily to a suitable private housing unit, providing DCHA fails to demonstrate that suitable housing is available.

5736 EX PARTE COMMUNICATIONS

5736.1 The hearing officer shall not consult any person, or party on any fact at issue except after notice and opportunity for all parties to participate.

5736.2 No employee, or agent, of the District of Columbia government engaged in the investigation and prosecution of a case shall participate or advise in the proposed decision in that case except as a witness or counsel in the hearing or other public proceedings.

5737 RIGHTS OF COMPLAINANTS

5737.1 The complainant shall be afforded a fair hearing providing the basic safeguards of due process, which shall include the following:

(a) The right to be represented by legal counsel or another person chosen as a representative; at their own expense, provided that if the family has not notified DCHA in writing at least three business days in advance of their intention to be represented, the hearing officer shall grant any request from DCHA for a continuance;

(b) The right to a private hearing, unless the complainant requests a public hearing;

(c) The opportunity to examine, before the hearing, documents, records, and regulations of DCHA that are relevant to the hearing. Any document not so made available after a request for the document has been made by the complainant may not be used as evidence by DCHA at the hearing. For hearings requested pursuant to § 5733.1(c), DCHA shall make such documents available to the complainant, or its representative for review and/or copying either within twenty-one (21) calendar days of the request or seven (7) calendar days prior to the Informal Hearing date, whichever is sooner;

(d) When requested, DCHA shall provide to the complainant, at no charge, fifty (50) pages of documents, records, and unpublished regulations of DCHA relevant to the hearing. A reasonable charge of not more than twenty five cents (25¢) per page may be assessed for reproducing material in excess of fifty (50) pages requested by the complainant. If the documents are provided electronically or on a CD, DCHA is authorized to charge for the cost of the CD and the total number of pages produced electronically;

(e) The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied on by DCHA, and to confront and cross-examine all witnesses on whose testimony or information DCHA relies;

(f) The right to a decision based solely upon the facts presented at the hearing;

(g) The right to arrange, in advance, and at his or her expense, to receive a transcript of the hearing;

(h) The right to request a reasonable accommodation for a disability.

5738 NONPAYMENT OF RENT: ESCROW DEPOSIT REQUIRED

5738.1 Before a hearing is scheduled in any grievance involving the amount of rent claimed due by the Project Owner, the complainant shall pay to the Project Owner an amount equal to the amount of the rent due and payable as of the first of the month preceding the month in which the act or failure to act took place.

5738.2 The complainant shall thereafter deposit the same amount of the monthly rent in the escrow account designated by the Project Owner monthly when due until the complaint is resolved as a result of the hearing.

5738.3 The failure to make the payments shall result in the termination of the grievance procedure and the Project Owner's proposed disposition of the complaint pursuant to Subsection 5732.4 will become final.

5738.4 Failure to make payment shall not constitute a waiver of any right the complainant may have to contest the Project Owner's disposition of the complainant's grievance in an appropriate judicial proceeding.

5739 FAILURE TO APPEAR

5739.1 If either party fails to appear at a hearing, the hearing officer may do the following:

(a) Postpone the hearing for up to five (5) business days;

(b) With the consent of both parties, reschedule the hearing for a later date;

(c) Make a determination that the complainant has waived his or her right to a hearing, if the complainant fails to appear. The waiver shall not constitute a waiver of complainant's right thereafter to contest DCHA's action in an appropriate judicial proceeding;

(d) Grant an exception if the party is able to document an emergency situation that prevented them from attending or requesting a postponement of the hearing or if requested as a reasonable accommodation for an individual with a disability.

5740 HEARING PROCEDURES

5740.1 At the hearing, the complainant shall make a showing of entitlement to the relief sought. If in the opinion of the hearing officer the complainant fails to do so, the hearing officer may render a decision in favor of DCHA without further presentation of evidence.

5740.2 The moving party has the burden of proof to justify its position by a preponderance of the evidence.

5740.3 Both parties to the hearing may present evidence and arguments in support of their positions, controvert evidence and cross-examine all witnesses for the other side.

5740.4 The hearing shall be conducted informally by the hearing officer, and oral or documentary evidence relevant to the facts and issues raised by the complaint and answer may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.

5740.5 The hearing officer shall require DCHA, the complainant, counsel, and other participants or spectators to conduct themselves in an orderly manner.

5740.6 Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the hearing or in a decision adverse to the interest of the disorderly party and granting or denial of the relief sought, as appropriate.

5741 TRANSCRIPT OF PROCEDURES

5741.1 Normally, verbatim transcripts shall not be made of the proceedings. However, if either party desires a transcript, the party shall do the following:

(a) Secure, at his or her own expense, the services of a qualified transcriber service, subject to the approval of the hearing officer;

(b) Pay all costs incurred directly to the reporting firm; and

(c) Furnish a copy of the transcript to the hearing officer for his or her certification and incorporation into the record of the proceedings.

5741.2 Either party may, at his or her own expense, make a tape recording of the proceeding upon disclosure to the hearing officer and the other party.

5742 DECISION OF THE HEARING OFFICER

5742.1 The hearing officer shall prepare a written decision, together with the reasons therefor, within ten (10) business days after the close of the hearing. Copies of the decision shall be mailed to the complainant, DCHA and the OFH.

5742.2 The decision of the hearing officer shall be binding on DCHA, which shall take all actions, or refrain from actions, necessary to carry out the decision, unless the Executive Director or an official delegated by the Executive Director does the following:

(a) Determines that the complaint does not concern a DCHA act or failure to act as prescribed by the complainant's lease or DCHA rules, policies or regulations, that adversely affect the complainant's rights, duties, welfare or status;

(b) Determines that the decision of the hearing officer is contrary to applicable federal or District of Columbia law or regulations or requirements of the Annual Contributions Contract between HUD and DCHA; or

(c) Determines that the decision of the hearing officer exceeds the authority of the hearing officer under the DCHA hearing procedures.

5742.3 The Executive Director or designee of the Executive Director shall make the determination within the time provided in § 5745.1, and promptly notify all parties to the hearing of his or her determination.

5743 BRIEFS IN SUPPORT OF OR TAKING ISSUE WITH THE DECISION OF THE HEARING OFFICER

5743.1 Any party may file a brief with OFH in support of or in opposition to the hearing officer's proposed decision within ten (10) business days after service of the decision;

5744 EFFECT OF DECISION

5744.1 A decision of the hearing officer which is in favor of the Project Owner or DCHA, or denies the complainant his or her requested relief in whole, or in part, shall not constitute a waiver of, or affect in any manner whatever, rights the complainant may have to a trial de novo in judicial proceedings which may be later brought in the matter.

5744.2 In *de novo* judicial proceedings, neither party shall be limited to invoking against the other the grounds originally relied on in the administrative proceedings.

5745 DECISION OF THE EXECUTIVE DIRECTOR OF DCHA

5745.1 Within seven (7) business days after expiration of the time for filing briefs as provided in § 5743, the Executive Director of DCHA, upon consideration of the record, together with any briefs, shall make a determination of the enforceability of the hearing officer's decision as provided in §§ 5742.2 (a), (b), and (c).

5745.2 The Executive Director of DCHA may modify or set aside, in whole or in part, the decision of the hearing officer.

5745.3 In any case in which the Executive Director of DCHA proposes to modify or set aside all or any part of the hearing officer's decision, the Executive Director shall serve on each party a proposed decision, including findings of fact and conclusions of law.

5745.4 The parties shall be given fourteen (14) days from the date of receipt of the Executive Director's proposed decision to file exceptions. Each party may request oral argument when submitting exceptions.

5745.5 A final decision shall be made by the Executive Director of DCHA within fourteen (14) days after exceptions to the proposed decision have been filed, and an oral argument held, if requested. Copies of the final decision shall be served on all parties.

5745.6 A final decision issued by the Executive Director of DCHA may be appealed by filing a Petition for Review with the District of Columbia Court of Appeals.

5746 NOTICE TO VACATE PREMISES

5746.1 If the complaint relates to a notice to correct or vacate, or a notice to vacate, served on the tenant and there has been a determination by the hearing examiner or Executive Director in favor of the Project Owner, the Project Owner shall not be required to serve the tenant with a new notice to correct or vacate, or notice to vacate, and may take any appropriate action against the tenant based on the notice in any appropriate legal forum. Acceptance of rent during the time period of the hearing or thereafter shall not waive DCHA's right to proceed on the notice.

5746.2 If suit is brought against the tenant(s), the tenant may be required to pay court costs or attorney fees as ordered by the Court.

5747 RECORDS

5747.1 The Central Grievance Files shall be maintained in a central location by the Office of Fair Hearings and shall be made promptly available to interested

members of the public for inspection and copying pursuant to procedures established by the OFH.

5747.2 Subject to § 5737.1(d), a reasonable charge of not more than twenty-five cents (25¢) per page may be assessed for copying any document in the Central Grievance Files.

5748 TRANSFER POLICY

5748.1 It shall be the policy of the District of Columbia Housing Authority (DCHA) to transfer Families from one dwelling unit to another to alleviate conditions of hardship caused by physical conditions or to address changed family circumstances. Transfers may result from actions mandated by DCHA or result from requests by Families. To facilitate such transfer, DCHA may offer units in its traditional public housing or in its RAD inventory, excluding RAD units within any Private Mixed Finance Project. Notwithstanding the foregoing, Families residing within any Private Mixed Finance Project may also be transferred within or between any Private Mixed Finance Project in accordance with any applicable regulatory and operating agreement or RAD control agreement.

5748.2 It is DCHA's policy that transfers will be made without regard to race, color, national origin, sex, religion, or familial status. Families can be transferred to accommodate a disability.

5748.3 Transfers will be processed by the Office of the Director of Property Management Operations. Families may apply to their property manager for a transfer, but all paperwork, verifications and unit assignments shall be processed by the Office of the Director of Property Management Operations. Applications for transfer must be made in writing, must state the reason(s) for requesting the transfer, and must provide any supporting documentation. Families may use the "Tenant Request for Transfer" form available in each property management office or at the DCHA central office.

5748.4 Mandatory Transfers and Priority Transfer Requests shall take precedence over new admissions. New admissions shall take precedence over Standard Transfer Requests. DCHA shall assign vacant units that it does not need to house Mandatory Transferees or Priority Transfer Requests, using a ratio of five units for initial occupancy by applicants on the Public Housing Waiting Lists, to one unit for a Family from the DCHA Transfer Waiting List.

5748.5 Upon acceptance of the new dwelling unit, the Lessee must execute a new lease agreement. All causes of action of any nature whatsoever available to DCHA or the Project Owner at the previous dwelling unit shall be actionable by DCHA or the Project Owner of the previous dwelling unit after transfer, whether such transfer is a Mandatory Transfer or a Tenant Request for Transfer. This regulation

does not waive any statute of limitations otherwise applicable to such claims.

5748.6 Sections 5748 through 5751 govern all transfers initiated by DCHA or requested by participating Families in RAD Covered Projects.

5749 MANDATORY TRANSFERS

5749.1 The DCHA may initiate Mandatory Transfers for households in order to alleviate certain housing conditions. The following represent examples of such conditions:

(a) To relocate Families that are living in dwelling units with conditions that represent an emergency or a threat to life, health, or safety (*e.g*., fire, flood, no water) as determined by DCHA, another governmental entity, or as a result of a judicial proceeding;

(b) To place households in units of the correct size when authorized members of a Family (*i.e*., household members listed on lease or certified by the DCHA) are under-occupying (assigned dwelling units are too large for the household) or over-occupying (assigned dwelling units are too small for the household) their assigned dwelling units in relation to the occupancy standards as set forth in Section 5709 of this chapter;

(c) To relocate households to alleviate threat of attack by criminal elements as verified and documented by the DCHA Police Department or any other police department or law enforcement agency authorized to operate in the District of Columbia;

(d) To permit Property Owner to make significant repairs, modernize, rehabilitate, or demolish dwelling unit(s) or apartment building(s);

(e) To relocate households to facilitate the future rehabilitation of a dwelling unit;

(f) To permit occupancy of a unit with accessibility feature by a transferring Family or eligible applicant with a verified need for such a unit;

(g) To alleviate any other conditions of hardship as determined by DCHA or to effectuate DCHA goals and/or objectives.

5749.2 Families subject to a Mandatory Transfer shall receive a "Notice of Mandatory Transfer." The Notice shall include the following:

(a) Statement of the reason for the transfer;

(b) Location of the new dwelling unit;

(c) Statement regarding how the move will be financed; and

(d) The specific date by which the move must occur.

5749.3 Families subject to a Mandatory Transfer will receive one offer of transfer. The offer of transfer shall be for a dwelling unit meeting the needs of the household in accordance with DCHA occupancy standards and, if the household includes a member with a disability, a dwelling unit that has features appropriate for the disability or one that is adaptable.

5749.4 Applications for a transfer must be made to the Property Manager of the Family's RAD Covered Project, but all paperwork verification and unit assignments shall be made by the Office of the Director of Property Management Operations, except in the case of a Family request for a transfer as a reasonable accommodation of a disability in which case the request will be processed by the Office of the ADA/504 Coordinator and the Client Placement Division.

5749.5 DCHA shall, at its sole discretion, elect to either bear the cost of a Mandatory Transfer by providing funds to the affected household or to move the household with its own resources, which may include the use of DCHA staff and/or a moving contractor.

5749.6 A Family that receives a written offer of a new dwelling unit and refuses the offer without good cause shall be issued a Notice to Quit or Cure. The good cause standard applicable to new admissions shall apply to transfers.

5749.7 DCHA shall relocate to a vacant, non-accessible unit, within six (6) months, the remaining household members occupying a unit with accessibility features after the death, or relocation for any other reason, of the disabled household member who required the accessibility features of such Unit.

5749.8 The decision to initiate a Mandatory Transfer pursuant to this chapter may be made only after review and approval by a supervisor in the Office of the Director of Property Management Operations.

5750 TRANSFER REQUEST BY TENANT

5750.1 DCHA will approve transfer requests for Families that are in compliance with the terms and conditions of their leases and have resided in their dwelling units for at least one year. Families with a disabled household member that request reasonable accommodation transfers and families requesting a transfer pursuant to VAWA, as described below, are not subject to the one-year limitation.

5750.2 A Family is compliant with the terms and conditions of its lease if:

(a) Current on rent payments and/or on any repayment agreement, consent

judgment agreement, or settlement agreement;

(b) Current with recertification process;

(c) Is not subject to a citation for any lease violation;

(d) Has a good housekeeping record as evidenced by a housekeeping inspection; and

(e) Is not subject to a Notice to Correct or Vacate or a Notice to Vacate.

5750.3 Each member of the Family must be compliant with the terms and conditions of the lease.

5750.4 DCHA may deny requests for transfers by Families that are not compliant with the terms of their leases. Exceptions to the requirement that Families requesting transfers be lease compliant may be made for life threatening conditions or for tenants seeking transfers to units with accessible features.

5750.5 Transfers processed under this section will not take priority over Mandatory Transfers or new admissions, except as provided under Subsection 5748.4.

5750.6 DCHA shall acknowledge receipt of each Tenant Request for Transfer. The date of acknowledgment shall serve as the Tenant Request for Transfer date, which will be used by DCHA to determine the Family's place on the Transfer Waiting List.

5750.7 DCHA shall notify the Family, in writing, in no more than thirty (30) days from the date of acknowledgment, what action it has taken with regard to the Tenant Request for Transfer, *e.g.*, approval, disapproval, or further review of the Request is required. If further review is necessary due to a lack of supporting documentation, DCHA shall notify the Family, in writing, of what additional documentation is required. Once such documentation is received, DCHA shall notify the Family, in writing, no more than thirty (30) days from the date of receipt, what action it has taken with regard to the Tenant Request for Transfer.

5750.8 Although DCHA approves a Tenant Request for Transfer, a unit may not be immediately available. When a unit is available, DCHA shall issue the Family a "Notice of Transfer Assignment." The Notice will direct the Family when and where to report to inspect the new dwelling unit.

5750.9 The Family must be compliant with the terms and conditions of the lease at the time that its name reaches the top of the Transfer Waiting List. If the Family is not compliant with the terms and conditions of the lease as outlined in Subsection 5750.2, DCHA may withdraw the Family's transfer approval.

5750.10 If the Family accepts the new dwelling unit, the Family shall execute a Notice of Lease Termination at the property from which he/she is moving, upon completion of the arrangement for transfer to the new location.

5750.11 Upon acceptance of the new dwelling unit, the Family must execute a new lease, which, if applicable, accepts liability for any outstanding conditions related to the prior lease agreement.

5750.12 In addition to the requirements specified in § 5748.5, families requesting a transfer shall bear the cost of moving to the new dwelling unit. The new dwelling unit shall not be held for more than fifteen (15) calendar days from the date of the unit availability. If a Family, who has an approved transfer, does not move into the new dwelling unit within fifteen (15) calendar days from the date of the unit's availability, the unit offer shall be withdrawn and the Family's name shall be removed from the Transfer Waiting List.

5750.13 If a Family refuses a transfer offer to the property of his/her own choice without good cause, the Family's name shall be removed from the Transfer Waiting List and DCHA shall send the Family a notice of such action. If a Family did not identify a property, he/she may be offered up to two locations. If the Family refuses the first, his/her name may be returned to the Transfer Waiting List to await the availability of another unit. If the Family rejects the second assignment, his/her name will be removed from the Transfer Waiting List and DCHA shall send the Family a notice of such action.

5750.14 All actions or inactions by DCHA under this section are subject to the Family Grievance Procedure that is outlined in Sections 5730 *et seq*.

5750.15 The following conditions shall represent Priority Transfer Requests. Families who are approved for a Priority Transfer Requests will be transferred based on the hierarchy set forth in Subsection 5748.4 and on the date that the "Family Request for Transfer" was acknowledged by the DCHA:

(a) Families that have a verified and approved reasonable accommodation for a fully accessible unit or a unit with accessible features and that do not currently reside in a unit that provides the approved reasonable accommodation;

(b) The Family or a member of the Family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move; or

(c) DCHA has terminated the HAP contract with the Property Owner.

5750.16 The following conditions shall dictate DCHA's priority for Standard Transfer Requests. Families who are approved for a Voluntary Transfer will be transferred based on the hierarchy set forth below and on the date that the "Family Request for Transfer" was acknowledged by the DCHA:

(a) First priority will be given to situations of a life threatening medical or public safety nature. These situations may include serious medical conditions, crimes, instances of violence not covered under Subsection 5749.1(c), hate crimes, or other situations which endanger a Family or household member's life from something other than the condition of the unit or the building. These life-threatening conditions must be documented and verified.

(b) Second Priority shall be given to Families with an approved reasonable accommodation transfer who do not qualify for a Mandatory Transfer under Subsection 5749.1(c). These transfers would include transferring Families to accessible or adaptable dwelling units or sites where conditions are documented to be more favorable for their disabilities than the unit or site from which they are seeking to transfer.

(c) Third Priority shall be given to Families that are over or under housed. These transfers would permit Families to reside in dwelling units of the correct size for household members listed on their lease or those recognized by the DCHA as a result of its recertification process. To determine whether a dwelling unit is too small or too large, DCHA shall use the occupancy standards outlined at Section 5709 of this chapter. If DCHA approves a Family's request for transfer, the household must transfer as one unit. The DCHA will not split families.

(d) Fourth Priority shall be given to issues of convenience as described by Families requesting transfers.

5751 FAMILY RIGHT TO MOVE

5751.1 The Family may terminate its assisted lease at any time after the first year of occupancy, subject to the terms of the lease. The Family must provide a thirty (30)-day written notice of intent to vacate to the Property Manager of the RAD Covered Project (with a copy to DCHA), in accordance with the lease.

5751.2 Prior to or at the time of submitting a written notice of intent to vacate in accordance with Subsection 5751.1, the Family may request the opportunity for continued tenant-based rental assistance in the form of a tenant-based voucher under the Housing Choice Voucher Program. To request a tenant-based voucher, the Family must submit a written request to the Property Manager of the RAD Covered Project. Requests for continued tenant-based assistance will only be

accepted from Families that meet the eligibility requirements of Subsection 5751.3.

5751.3 Tenants are eligible for continued tenant-based assistance, pursuant to Subsection 5751.2, only if:

(a) By the date requested for lease termination, the Family will have resided continuously in a RAD unit for at least one calendar year; and

(b) On the date of request for continued tenant-based assistance pursuant to Subsection 5751.2, the Family is compliant with the terms and conditions of its lease, in accordance with Subsections 5750.2 – 5750.4.

5751.4 If, on the date of receipt of a request submitted pursuant to Subsection 5751.2, (i) the Family is deemed eligible, in accordance with Subsection 5751.3, and (ii) a tenant-based voucher is available, DCHA shall offer the Family a tenant-based voucher. Notwithstanding the foregoing, subject to applicable federal requirements, if DCHA has already issued seventy-five percent (75%) of its total turnover vouchers in any single calendar year to Families of RAD units, DCHA shall place the Family on the RAD tenant-based voucher transfer list governed in accordance with Subsection 5751.6.

5751.5 If, at the time of receipt of a request submitted pursuant to Subsection 5751.2, (i) the Family is deemed eligible, in accordance with Subsection 5751.3, and (ii) a tenant-based voucher is not available, DCHA shall place the Family on the transfer list governed in accordance with Subsection 5751.6.

5751.6 Families requesting continued tenant-based assistance shall be prioritized based on the date on which the Family submitted its request for continued tenant-based assistance pursuant to § 5751.2. Families on the RAD/PBV tenant-based voucher transfer list shall take priority over all other applicants for tenant-based vouchers. Notwithstanding the foregoing, subject to applicable federal requirements, once DCHA has issued seventy-five percent (75%) of its total turnover vouchers to Families of RAD units in any single calendar year, the priority given to Families placed on the RAD tenant-based voucher transfer list shall be governed by Chapter 76 of this title.

5751.7 If, at the time a Family reaches the top of the RAD tenant-based voucher transfer list, (i) a voucher is available and (ii) the Family has priority over all other applicants for tenant-based vouchers, based on the provisions of Subsection 5751.6, DCHA shall offer the Family a tenant-based voucher.

5751.8 When DCHA is required to offer a Family a tenant-based voucher pursuant to Sections 5748 through 5752, DCHA shall provide written notice of its offer to the Family. The Family must submit a written acceptance of the tenant-based voucher to DCHA within thirty (30) days of the notice of offer. Failure to submit a written

acceptance of the voucher to DCHA within thirty (30) days of the notice of offer shall result in the Family being placed back on the RAD tenant-based voucher transfer list with a priority date set to the date of expiration of the notice of offer.

5751.9 If a Family timely accepts an offer to receive a tenant-based voucher, DCHA shall issue the Family a tenant-based voucher. Notwithstanding, if at the time of acceptance, the Family is not compliant with the terms and conditions of its lease, in accordance with Subsections 5750.2 – 5750.4, DCHA may rescind its offer to issue a tenant-based voucher.

5751.10 Once issued, a tenant-based voucher shall expire one hundred eighty (180) days from the date of its issuance.

5751.11 If a Family locates a dwelling unit it wishes to lease, it shall be processed by DCHA as a new lease-up, including the following:

(a) Provision of a lease-up packet;

(b) Inspection of the new unit for compliance with HQS; and

(c) Approval of the lease-up package and the lease terms, including the gross rent and the contract rent, subject to a rent reasonableness determination.

5751.12 If the tenant-based voucher expires before the Family initiates the lease-up process, pursuant to Subsection 5751.11:

(a) The Family may continue its lease where it is currently leasing, provided that:

(1) The Family has not yet given notice to terminate its lease to the owner; or

(2) The Family has delivered to the owner a notice rescinding the Family's earlier termination notice with a copy of such notice simultaneously delivered to DCHA; and

(3) The HAP Contract has not otherwise been terminated by DCHA.

(b) The Family is not required to provide new lease-up or other documents to DCHA, and the owner shall continue to receive Housing Assistance Payments as if the Participant had never requested the continued tenant-based assistance.

(c) The Family's prior Total Tenant Payment continues in effect.

(d) The Family shall not be eligible for another Tenant-Based voucher for

twenty-four (24) months from the issuance of the expired voucher.

5752 OWNER TERMINATION OF TENANCY

5752.1 The Project Owner may not terminate a participant's tenancy except on the following grounds:

(a) Serious or repeated violation of the terms and conditions of the valid, written lease;

(b) Violation of federal or local law that imposes obligations on the participant in connection with the occupancy or use of the premises, when such obligations are contained in the lease or the D.C. Housing Code;

(c) Criminal activity or alcohol abuse pursuant to Subsections 5752.4 and 5757.9; or

(d) Other good cause pursuant to Subsection 5752.5.

5752.2 The Project Owner may only terminate a participant's tenancy and evict the participant from the unit by instituting a court action.

5752.3 Nonpayment by DCHA is not grounds for termination of tenancy.

(a) The participant is not responsible for payment of the portion of the rent to Project Owner covered by DCHA's payment under the HAP contract between the Project Owner and DCHA.

(b) DCHA's failure to pay the HAP to the Project Owner is not a violation of the lease between the participant and the Project Owner.

5752.4 Evicting Participants for Criminal Activity

(a) The Project Owner may terminate tenancy for any of the following types of criminal activity:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including Project Owner staff residing on the premises);

(2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or

(3) Any violent criminal activity on or near the premises by a tenant, household member, or guests, or any such activity on the premises by any other person under the participant's control.

(4) Any drug-related criminal activity on or near the premises.

(b) The Project Owner may terminate tenancy if the participant is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees; or

(2) Violating a condition of probation of parole imposed under Federal or District of Columbia law.

(c) The Project Owner may terminate tenancy, and evict by judicial action, a participant for criminal activity by any household member in accordance with this section if the Project Owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

(d) The Project Owner may terminate tenancy if any member of the household has engaged in abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

5752.5 "Other Good Cause" for Termination of Tenancy

(a) The Project Owner may not terminate the tenancy for "other good cause" during the initial lease term unless the Project Owner is terminating the tenancy based on the participant's action or failure to act.

(b) "Other good cause" for termination of tenancy by the Project Owner may include, but is not limited to, the following:

(1) Failure by the participant to accept the offer of a new lease or revision after the initial lease term; or

(2) A family history of disturbances of neighbors or destruction or property, or of living or housekeeping habits resulting in damage to the unit or premises.

(3) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by the Project Owner's staff.

(c) "Other good cause" for termination of tenancy by the Project Owner does not include:

(1) The Project Owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(2) A business or economic reason for termination of tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental rate).

5752.6 Notice of Termination of Tenancy

(a) Project Owner Notice of Grounds for Termination

The Project Owner must give the participant written notice that specifies the grounds for termination of tenancy.

(1) The tenancy does not terminate before the Project Owner has given this notice, and the notice must be given before commencement of the eviction action.

(2) The notice of grounds for termination may be included in, or may be combined with, any Project Owner eviction notice to the tenant.

(a) If the Project Owner determines that a Participant is in violation of the Dwelling Lease, except for lease violations predicated on criminal activity as described in §§ 5752.4(a)-(c), the Participant shall be issued a thirty (30)-day notice to correct or vacate, stating in writing the violation(s) which provides the basis for the termination, the Participant's right to cure the violations, and instructions on how to cure the violations.

(1) The notice shall inform the Participant of his or her right to file an administrative complaint in accordance with Sections 5730 through 5747 of this title; and

(2) If a Participant has filed a complaint, in accordance with Sections 5730 through 5747 of this title, in response to service of a notice to correct or vacate and has not prevailed, the Participant shall be subject to legal action through the judicial process to gain possession of the unit (eviction).

(3) The Project Owner shall issue a thirty (30)- day notice to vacate to the Participant, for lease violations, predicated on criminal activity that threatens the resident's health, safety or right to peaceful

enjoyment of the Development or drug related criminal activity on or off the Leased Premises or the Development.

(5) The Project Owner will not issue a thirty (30)-day notice to correct or vacate, or notice to vacate, where the Project Owner has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.

(6) Project Owner shall give DCHA a copy of any eviction notice to the tenant.

(7) Project Owner shall promptly notify DCHA when a Project Owner institutes legal action to gain possession of the dwelling unit (eviction).

(c) DCHA will provide adequate written notice of termination of the lease.

5752.7 Termination of Tenancy Decisions

(a) If the law and regulation permit the Project Owner to take an action, but do not require action to be taken, the Project Owner may take or not take the action in accordance with the Project Owner's standards for eviction. The Project Owner may consider all of the circumstances relevant to a particular eviction case, such as:

(1) The seriousness of the offending action;

(2) The effect on the community of denial or termination or the failure of the Project Owner to take such action;

(3) The extent of participation by the leaseholder in the offending action;

(4) The effect of denial of admission or termination of tenancy on household members not involved in the offending activity;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the Project Owner's action on the integrity of the program.

(a) The Project Owner may require a participant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants terminations.

(b) In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the Project Owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully. The Project Owner may require the participant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(c) The Project Owner's termination of tenancy actions must be consistent with fair housing and equal opportunity provisions of 24 CFR § 5.105, and with the provisions of protections of victims of domestic violence, dating violence, or stalking in 25 CFR part 5, subpart L.

5752.8 Participants who refuse to vacate their unit after appropriate notice shall be subject to legal action to gain possession of the dwelling unit (eviction).

5752.9 Participants shall be solely responsible for the protection, care and disposition of the possessions belonging to the Participant, all household members, guests and all others during, and after an eviction. For the purposes of this subsection, "others" shall be defined as any person under the Participant's control or on the Leased Premises with Participant's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Participant.

5753 DCHA TERMINATION OF ASSISTANCE

5753.1 DCHA may terminate program assistance for the Participant for any grounds authorized in accordance with HUD requirements.

5753.2 Upon notification that the Project Owner has instituted a legal action to gain possession of the dwelling unit, DCHA shall determine if the Participant has committed serious or repeated violations of the lease. If DCHA determines that a Participant has committed serious or repeated violations of the lease, DCHA shall issue a determination to terminate assistance.

5453.3 Pursuant to 24 CFR § 983.258, Housing Assistance Payments shall continue until the Tenant Rent of a new admission to a RAD Covered Project equals the rent to the owner. The cessation of housing assistance payments at such point will not

affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within one hundred eighty (180) days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR § 983.211.

5453.4 In any case where DCHA decides to terminate assistance to the Participant, DCHA shall give the Participant a thirty (30) day written termination notice which states:

(a) The reasons for the termination;

(b) The effective date of the termination;

(c) The Participant's right to request an informal hearing; and

(d) The Family's responsibility to enter into a new unassisted lease and pay the full rent to the Project Owner if they remain in the unit.

5754 VOLUNTARY TERMINATION OF TENANCY

5754.1 The Participant may terminate tenancy at any time after the first year of occupancy by giving advance written notice of intent to vacate to the Project Owner (with a copy to DCHA) in accordance with the lease.

5754.2 Termination of Tenancy by Participant requires that the Participant, all household members, guests as well as all others defined as any person under the Participant's control or on the Leased Premises with Participant's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Participant(hereinafter referred to collectively as "others"), vacate the Leased Premises on or before the date specified in Participant's written notice.

5754.3 Participant may terminate tenancy by giving:

(a) At least thirty (30) days' notice;

(b) The notice must be in writing;

(c) On forms approved by DCHA completed with the assistance of DCHA if necessary; and

(d) Submitted to the Project Owner.

5754.4 The Participant shall leave the Leased Premises in as clean and good condition as Participant received at the start of Lessee's occupancy; wear and tear excepted; and return all keys and all other entry devices to the Project Owner.

5754.5 If the Participant is no longer in occupancy of the unit or is deceased, a remaining household member, or another adult identified in § 5754.5(c) below, must notify the Authority of the Participant's death or departure within fourteen (14) days of the date the Participant vacates the Leased Premises or dies. Within thirty (30) days thereafter, or within fourteen (14) days of the Project Owner's issuance of a Notice to Vacate the premises, whichever is later, in order to sustain continued occupancy for the remaining household members at the Leased Premises, the remaining household member or other adult must submit a written application to become head of household. Details on the application process and exclusions from this rule are as follows:

(a) This subsection does not apply if the head of household vacates the unit pursuant to the issuance of a notice to correct or vacate or a notice to vacate. In such circumstances, the remaining family members must vacate the unit. If the remaining family members do not vacate the unit, they shall be deemed unauthorized occupants;

(b) The applicant to be made Participant, and if applicable, the other remaining Household Members must be eligible for continued occupancy and not be in serious violation of the material terms of the Dwelling Lease. DCHA will screen the application in accordance with federal law and regulations as well as DCHA's admissions and occupancy policies and regulations. Applicant(s) will be notified in writing of the disposition of the application:

(1) If the application is approved, the new Participant shall enter into a new lease agreement with the Project Owner within seven (7) working days of the date of approval of the application;

(2) Any balance on the rental account existing prior to a remaining household member becoming the Participant is the responsibility of the newly designated Participant as head of household. Any obligations for rent, causes of action arising under the original Lease, stipulations of settlement, consent judgments, judgments, or repayment agreements of the prior Participant shall be deemed part of the new Dwelling Lease and tenancy and shall be the responsibility of the new Participant designated as head of household and actionable against such new Participant; or

(3) If the applicant and other remaining Household Members are not approved to continue to occupy the Leased Premises, and such remaining members do not vacate, they will be deemed

unauthorized occupants and thus occupying premises without the consent of DCHA and the Project Owner and shall be subject to eviction by the Project Owner. The applicant may file a grievance regarding the denial of his or her application in accordance with DCHA's grievance procedures; and

(c) If there are no remaining adult household members, or none who are able to serve as head of household, but the unit continues to be occupied by household members who are minor children and/or adults unable to serve as head of household, then an adult who is not listed on the lease may apply to become Participant and Head of Household. The following shall apply under these circumstances:

(1) The applicant to be Participant must produce evidence of a care giving relationship with the remaining minor children or disabled adults. Such documentation may include, but is not limited to, court order; notarized authorization from the children's legal guardian; school or medical records; public benefit records; and sworn statements from medical, legal, or social service professionals;

(2) Where the remaining family members are minors, the applicant to be Lessee must either (i) obtain Custodial Power of Attorney; or (ii) commence legal proceedings to obtain legal guardianship or custody of the minor children. So long as such proceeding is pending, and the applicant has produced evidence of a caregiving relationship, and meets DCHA's other screening criteria, DCHA shall consider the applicant to be eligible to be Participant and Head of Household;

(3) In the case of (c)(2), above, the applicant's eligibility to be Participant and Head of Household is contingent on legal proceedings pending or being resolved in favor of the applicant. If a court of competent jurisdiction denies the applicant's petition for custody or guardianship, no appeal is pending, and the appeal period has expired, DCHA will determine the applicant ineligible to be Head of Household and DCHA and the Project Owner may issue a Notice to Vacate. In that event, another remaining adult household member may submit an application to be Participant and Head of Household within thirty (30) days of the issuance of the Notice, and the DCHA will process such application in accordance with the requirements of this section; and

(4) Where more than one adult have competing claims to become Participant and Head of Household as caregivers of the remaining minor children, DCHA shall follow the ruling of a court of

competent jurisdiction regarding the custody or guardianship of the children.

5754.6 The Participant shall be liable for rent until the earlier of the time the Project Owner has taken possession of the Unit, or such time as all of the following are completed:

(a) The proper written notice has been given;

(b) The required vacate forms are completed with the assistance of DCHA if necessary;

(c) The keys are turned in; and any other entry devices; and

(d) Participant and all household members, guests as well as all others defined as any person under the Participant's control or on the Leased Premises with Participant's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Participant (hereinafter referred to collectively as "others"), have vacated the Leased Premises.

5755 DWELLING LEASE: LEASE PROVISIONS

5755.1 Each Dwelling Lease shall be administered in accordance with the provisions stipulated, and kept current at all times.

5755.2 Required Information. Each family admitted for occupancy in RAD Covered Project shall enter into a written dwelling lease with the Project Owner prior to occupancy of the leased premises. The lease must specify the following:

(a) The names of the Project Owner and the tenant;

(b) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

(c) The term of the lease (initial term and any provision for renewal);

(d) The amount of the Tenant Rent to the Project Owner. The rent to the Project Owner is subject to change during the term of the lease in accordance with HUD requirement;

(e) A statement that the Project Owner may charge the tenant a late fee of up to 5% of the amount due of any amount of unpaid rent due by the tenant;

(f) A specification of what services, maintenance, equipment, and utilities are to be provided by the Project Owner;

(g) The composition of the household as approved by the Project Owner (family members and any DCHA-approved live-in aide). The family must promptly inform the Project Owner of the birth, adoption, or court-awarded custody of a child. The family must request Project Owner approval to add any other family member as an occupant of the unit; and

(h) HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

5755.3 Term of Lease and Renewal.

(a) The initial lease term must be for at least twelve (12) months.

(b) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(1) For automatic renewal for successive definite terms (*e.g.*, month-to-month or year-to-year); or

(2) For automatic indefinite extension of the lease term.

(c) The term of the lease terminates if any of the following occurs:

(1) The Project Owner terminates the lease for good cause;

(2) The tenant terminates the lease;

(3) The Project Owner and the tenant agree to terminate the lease;

(4) DCHA terminates assistance for the family.

5756 CHANGES TO THE LEASE

5756.1 DCHA shall add names to the lease after initial occupancy only in accordance with Section 6117 of this title. Any person using or occupying the Leased Premises not in compliance with Section 6117 of this title is an unauthorized occupant without tenancy or other rights under the Dwelling Lease, including any person using or occupying the Leased Premises without approval from DCHA.

5756.2 Changes to the Dwelling Lease shall be made only in writing and shall be signed by the Lessee, and an authorized representative of DCHA, except the following changes, which may be executed unilaterally by DCHA:

(a) Any change in rent, either an increase or decrease, shall be stated in a special supplement which shall, upon issuance, become part of the lease;

(b) Changes to implement excess utility charges;

(c) Any revision to reflect change in family composition other than head of household, consistent with Subsections 5755.2 and 5756.1;

(d) Changes to implement Subsection 5752;

(e) Late charges assessed pursuant to Subsection 5724.5;

(f) Special supplements to a lease executed pursuant to Subsection 5756.6;

(g) Changes in the amount of security deposit provided in Section 5722;

(h) Changes in DCHA's policies, rules and regulations, following a thirty (30)-day comment period; and

(i) Charges assessed pursuant to the Schedule of Charges posted in the Property Manager's Office.

5756.3 The DCHA shall provide the Lessee with a copy of any changes to the Dwelling Lease made in accordance with Subsection 5756.2.

5756.4 Unless a shorter time period is provided, a new Dwelling Lease shall be executed, within thirty (30) days whenever the following conditions occur:

(a) The status of the head of household is altered pursuant to Subsection 5752 of this title 14; or

(b) When a family is transferred from one dwelling unit to another.

5756.5 Any Lessee wishing to vacate his or her unit shall do so in accordance with Sections 5748 to 5752 (*See* RAD Transfers) of this title. Lessees wishing to vacate prior to the end of the month shall be liable for the entire month's rent.

5756.6 Lessees who execute a new lease as a result of a transfer from one unit to another, or as a result of any other requirement for a new lease, shall remain liable for any delinquent rent or other charges relating to the prior lease. The DCHA may unilaterally execute a special supplement to the new lease which assesses the amount due under the prior lease.

5757 LESSEE RIGHTS AND RESPONSIBILITIES

5757.1 Lessees shall be responsible for their actions and the actions of household members, guests, and any person under the Lessee’s control or on the Leased Premises with Lessee’s consent.

5757.2 Lessees are responsible for maintaining their units in accordance with the provisions of the lease, including but not limited to, the following responsibilities:

(a) To comply with all obligations imposed upon Lessees by applicable provisions of building and other District of Columbia housing codes materially affecting health and safety;

(b) To keep the premises (and such other areas as may be assigned for his or her exclusive use) in a clean and safe condition;

(c) To dispose of all ashes, garbage, rubbish, and other waste from the premises in a sanitary and safe manner;

(d) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appurtenances, including elevators;

(e) To refrain from, and to cause his or her household, guests and Others, to refrain from, destroying, defacing, and/or damaging/removing any part of the premises or project; including but not limited to storing, hanging or leaving household or other personal property of any type, including clothes, on the exterior of the Leased Premises unless the area is specifically designated for that purpose by the Project Owner. "Others" is defined as any person under the Lessee's control or on the Leased Premises with Lessee's consent, including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Lessee (hereinafter referred to collectively as "Others”;

(f) Not to assign the lease or to sublease the premises;

(g) Lessee shall have no other primary residence;

(h) Not to provide accommodations for boarders or lodgers;

(1) Each guest shall not stay overnight for more than ten (10) consecutive days without the prior written permission of the Project Owner;

(2) Each guest shall not stay overnight for more than thirty (30) non-consecutive days within a twelve (12) month period without the prior written permission of the Project Owner; and

(3) The Project Owner may deny permission for longer stays for the following reasons;

(i) Persons who have been barred from the property pursuant to Section 5773;

(ii) Persons who are on a lifetime sex offender list;

(iii) Persons fleeing prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the laws of the place from which the individual flees;

(iv) Persons whose past conduct has disturbed the peaceful enjoyment of RAD Covered Project residents;

(v) Persons who have damaged RAD Covered Project property; and

(vi) Persons with current restraining orders to stay away from the unit or the property;

(i) To use the premises solely as a private dwelling for the Lessee and the Lessee's household as identified in the lease, and not to use or permit its use for any other purpose;

(j) To abide by necessary and reasonable rules, regulations and policies, issued by the Project Owner for the benefit and well-being of the housing project and the Lessees, which shall be posted in the Development office and incorporated by reference in the lease;

(k) To pay reasonable charges (other than normal wear and tear) for the repair of damages to the premises, project building, facilities or common areas caused by the Lessee, household members, guests and any Others under the Lessee's control or on the Leased Premises with Lessee's consent;

(l) To conduct himself or herself, and cause other persons who are on the premises with his or her consent to conduct themselves, in a manner which will not disturb his or her neighbors peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition; including but not limited to:

(1) By taking precautions to prevent fires and not using portable heating device unless they been provided by the Project Owner;

(2) By not disabling any fire alarm device or causing a false fire alarm;

(3) By not storing excess amounts of personal property; and

(4) By not removing or tampering with any smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;

(m) To keep no dogs, cats or other animals in or on the premises, unless specifically permitted by the Project Owner in writing;

(n) Not to place fixtures, or fences in or about the premises without the prior written permission of the Project Owner. No repairs or alterations to the Leased Premises may be made, including, but not limited to, painting, wallpapering, doors, gates, window bars, carpets, storage sheds, and antenna or satellite dishes, without the prior written approval of the Project Owner. Upon completion, any such repairs or alterations, made with or without prior written consent, become part of the Leased Premises. If the Lessee changes locks, installs an alarm or security system, or adds locks to the dwelling unit, he or she shall notify the Project Owner and shall make duplicate keys available to and/or provide the Project Owner with access codes in order for the Project Owner to gain emergency access; and

(o) Not to permit anyone who is currently barred from the Leased Premises or DCHA Housing Property pursuant to Section 5773 to occupy, stay overnight, or visit the Leased Premises, or to invite them to the Leased Premises or anywhere else on the DCHA Housing Property at any time for any purpose, unless authorized in writing by the Project Owner in advance. Any person not identified in Subsection 5773.2 as an authorized person may be subject to the issuance of a Bar Notice for the period of time specified in the Bar Notice. The Project Owner will post a list of barred individuals in the property management office.

5757.3 The Lessee shall have the right to the exclusive use of the Leased Premises, including the dwelling unit identified in the lease and in the case of a townhouse, row house or single family home, all buildings or additional areas provided for the exclusive use of the Lessee, including the yard and any outbuildings, subject to the restrictions and obligations contained in the lease.

5757.4 At those properties where there is a defined front or rear yard assigned to the Lessee for his or her exclusive use, the Lessee shall be responsible for maintaining the individually defined lawn areas around his or her respective dwelling unit, cutting the grass, and keeping his or her lawn free of trash and garbage.

5757.5 Lessees who do not maintain these areas shall be given forty-eight (48) hour notice by the Project Owner to correct unsightly lawn areas. Lessees who fail to comply within forty-eight (48) hours of being notified by the Project Owner shall be in violation of the lease.

5757.6 Lessees shall report immediately to the Project Owner of any need for repairs to the Leased Premises or of any unsafe conditions in the common areas or the grounds surrounding the Leased Premises. Notification of repairs shall be in writing or by a telephone call to the Project Owner's Control Center and the Lessee shall obtain a control number for each repair. The number for the Control Center can be obtained from the Management office or the Central Office. Lessees in Developments managed by companies under contract with the Project Owner will provide notice as reasonably required by the management companies

5757.7 Lessees shall take reasonable steps to conserve energy and water and avoid unreasonable use of water, gas and/or electricity including but not limited to non-routine washing of vehicles or any other unreasonable use of utilities.

5757.8 Lessees shall not have waterbeds on the Leased Premises without prior written approval of the Project Owner, which approval may be withheld in the Project Owner's sole discretion.

5757.9 Lessee is responsible for all actions or inactions of all guests, household members, and all others on the property with the consent of Lessee and/or the consent of household members. The aforementioned parties, including the Lessee, are obligated to the following:

(a) To not engage in the manufacture, sale, or distribution of any alcoholic beverages or openly consume alcoholic beverages in any common areas in the Development or otherwise consume alcoholic beverages in a manner that impairs the physical environment of the Development or may be a threat to the health, safety or right to peaceful enjoyment of the Development by other residents, service providers, or Project Owner staff;

(b) To not engage in:

(1) Any criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the Development;

(2) Violent criminal activity or possess any unregistered or illegal firearm or ammunition for a firearm;

(3) Drug-related criminal activity on or near the premises, which is grounds for termination of tenancy.

(c) The Project Owner may evict a family if the Project Owner determines that a household member is illegally using a drug or when the Project Owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(d) Lessee shall not flee to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the laws of the place from which the individual flees or violate a condition of probation or parole imposed under federal or state law.

5758 PROJECT OWNER RESPONSIBILITIES

5758.1 DCHA shall be responsible for maintenance and repair of dwelling units in accordance with the provisions of the lease, including the following responsibilities:

(a) To maintain the premises and the project in decent, safe and sanitary condition;

(b) To comply with the requirements of the District of Columbia Housing Code, the District of Columbia Property Maintenance Code, lead safety standards, the Air Quality Amendment Act, Housing Quality Standards and appropriate regulations materially affecting health and safety;

(c) To make necessary repairs to the premises;

(d) To keep project buildings, facilities and common areas, not otherwise assigned to the tenants for maintenance and upkeep, in a clean and safe condition;

(e) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by DCHA;

(f) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish and other waste removed from the premises by the tenant; and

(g) To supply running water, hot water and heat at appropriate times of the year, according to the District of Columbia Housing Code and District of Columbia Property Maintenance Code, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or where heat or hot water is operated by an installation within the exclusive control of the tenant and supplied by a direct utility connection.

(h) Conform with the Rental Housing Act, including regarding Notices to Correct or Vacate;

(i) Conform with the District of Columbia Human Rights Act;

(j) Conform with the Fair Housing Act, the Rehabilitation Act, and the Americans with Disabilities Act;

(k) Conform with the applicable rights of tenants enumerated in The Tenant Bill of Rights Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20147; D.C. Official Code§§ 42-3531.09(8) & 42-3502.22(b)(1))

5759 REPAIR PROCEDURE

5759.1 Upon receipt of a repair request from a tenant, or in the case of a Project Owner initiated repair, the Project Owner shall inspect the unit to determine the repair required. If the repair cannot be completed during the first visit, repairs shall be scheduled for a later time, within a reasonable time period.

5759.2 When repair work is completed, the tenant shall be required to sign a Project Owner form indicating that the work was performed and indicating whether the repair work was satisfactory or unsatisfactory.

5759.3 In the event the premises are rendered uninhabitable, as determined by the Project Owner, as a result of damages to the premises that create a hazard to life, health, or safety of the occupant, the following steps shall be taken:

(a) The tenant shall immediately notify the Project Owner of the damage;

(b) The Project Owner shall be responsible for repair of the unit within a reasonable time; provided, that if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant; and

(c) The Project Owner shall offer standard alternative accommodations, if available, in circumstances where necessary repair cannot be made within a reasonable time.

5760 CHARGE TO THE TENANT FOR REPAIRS AND SERVICES

5760.1 Charges shall be assessed against the tenant for repairs to the dwelling unit beyond normal wear and tear, for damage caused by the tenant, members of the tenant's household, or guests.

5760.2 Where inspection of the unit indicates tenant-caused damage, DCHA shall advise the tenant of such finding, the reason why tenant cause was determined, and that the tenant shall be assessed repair costs.

5760.3 Repairs shall be performed in accordance with § 5759 of this chapter. After completion of repairs, DCHA shall determine the reasonable cost of the repair and shall notify the tenant in writing of the charge to be assessed in accordance with § 5724 of this title and of the tenant's right to contest the assessment under the DCHA grievance procedures set forth in Sections 5730 *et seq*.

5760.4 The reasonable cost of repair shall be determined based on cost of materials and cost of labor. Cost of labor shall be the actual time spent on repairs, or the maximum time allowed under DCHA maintenance standards, whichever is less.

5760.5 Charges to tenants for other DCHA services, such as tenant lockouts, shall be determined on the same basis as § 5760.4.

5760.6 In the event of a fire caused intentionally or by the neglect or negligence of the Lessee, household members, guests or Others, Lessee is subject to the following:

(a) Lessee is responsible for the payment of the lesser of the:

(1) Costs for the repair of the fire damage; or

(2) The insurance deductible, if any, afforded by any insurance policy held by DCHA and applicable to the damages caused by the fire at the Leased Premises or Development;

(b) DCHA may terminate the Lease for any fire on the Leased Premises caused intentionally or negligently by the Lessee or Others that has resulted in a risk to the health or safety of any person or in damage to property.

5761 RIGHT TO ENTER DWELLING

5761.1 The Project Owner shall, upon written notice to the Lessee of at least forty-eight (48) hours, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections or maintenance, making improvements or repairs, taking photographs or otherwise recording and documenting the condition of the unit or repairs, or to show the Leased Premises for releasing.

5761.2 The Project Owner shall enter the Leased Premises at any time without advance notice when it has reasonable cause to believe that an emergency exists, or when the Lessee has agreed to such entry.

5761.3 In the event that the Lessee and all adult household members are absent from the premises at the time of entry, the Project Owner shall leave on the premises a written statement specifying the date, time and purpose of entry prior to leaving the premises.

5761.4 If the Lessee changes or adds the following to the dwelling unit, he or she shall notify the Project Owner and shall make duplicate keys, entry codes, or any applicable access to the dwelling available to the Project Owner, within one (1) business day of the change:

(a) Any locks, and/or;

(b) Any entry devices, including but not limited to any and all security devices.

5762 MOVE-IN AND MOVE-OUT INSPECTIONS

5762.1 The Project Owner shall conduct a move-in inspection with the new tenant the same day as the Dwelling Lease is signed for occupancy. DCHA and the tenant shall sign the unit inspection form certifying the condition of the unit, and the equipment provided with the unit, at the end of the inspection.

5762.2 The Project Owner shall conduct a move-out inspection within twenty-four (24) hours of becoming aware that a tenant has vacated a unit or with the tenant on the day the tenant is scheduled to vacate.

5762.3 Tenants shall be asked to explain the nature and cause of any damage to the premises not documented during prior unit inspections.

5762.4 The tenant and Project Owner shall sign the unit inspection form certifying the condition of the unit, equipment in the unit and assigning tenant responsibility for repair as provided in § 5760 of this chapter.

5762.5 The Project Owner shall furnish the vacated tenant with a statement of total charges for any damages within ten (10) working days after completion of the repairs.

5763 ANNUAL INSPECTION

5763.1 Each occupied unit shall be inspected annually by the Project Owner. A written notice of inspection shall be given to the tenant at least forty-eight (48) hours in advance.

5763.2 Tenant-caused damage discovered during this inspection shall be assessed to the tenant after completion of the repairs in accordance with § 5760 of this chapter.

5764 REASONABLE ACCOMMODATIONS: INTRODUCTION

5764.1 The District of Columbia Housing Authority (DCHA) is committed to operating all of its housing programs in a fair and impartial way. In addition to requiring fairness and impartiality without regard to race, color, sex, sexual orientation,

family responsibilities, national or ethnic origin, religion, age, personal appearance, familial status, marital status, political affiliation, source of income, matriculation and place of residence or business and other classes protected under the D.C. Human Rights Act, DCHA is committed to providing programs in a way that does not discriminate against individuals with disabilities.

5764.2 A Reasonable Accommodation is a change, modification, alteration or adaptation in a policy, procedure, practice, program, or facility that provides a person with a disability the equal opportunity to participate in or benefit from, a program (housing or non-housing) or activity.

5765 REASONABLE ACCOMMODATIONS: APPLICATION OF REASONABLE ACCOMMODATIONS POLICY

5765.1 This chapter applies to individuals with disabilities in the following programs provided by the DCHA:

(a) Applicants of all Rental Assistance Demonstration (RAD) and Project Based Voucher Programs (PBV);

(b) Participants in the RAD and PBV Programs; and

(c) Participants in all other programs or activities receiving Federal financial assistance that are conducted or sponsored by the DCHA, its agents or contractors including all non-housing facilities and common areas owned or operated by the DCHA.

5766 REASONABLE ACCOMMODATIONS: PERSON WITH A DISABILITY

5766.1 Disability shall be defined as in § 5705 of this chapter and in the Americans with Disability Act, 42 USC § 12102.

5766.2 The definition of disability does not include any individual who is an alcoholic whose current use of alcohol prevents the individual from participating in the public housing program or activities, or whose participation, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

5767 REQUESTS FOR REASONABLE ACCOMMODATIONS

5767.1 A person with a disability may request a reasonable accommodation at any time during the application process or participation in the RAD/PBV Programs of DCHA. All requests must be reduced to writing by the individual, any person identified by the individual, or by the Project Owner or DCHA staff member to whom the request is made.

5767.2 Reasonable accommodation methods or actions that may be appropriate for a particular program and individual may be found to be inappropriate for another program or individual. The decision to approve or deny a request for a reasonable accommodation is made on a case by case basis and takes into consideration the disability and the needs of the individual as well as the nature of the program or activity in which the individual seeks to participate. The following provisions apply to Requests for Reasonable Accommodations:

(a) All applicants will be provided the Request for a Reasonable Accommodation Form with the application, and upon request.

(b) All participants will be provided the Request Form again at the time of recertification, and upon request.

(c) DCHA will respond in writing to all requests for reasonable accommodation.

(d) All decisions to grant or to deny reasonable accommodations will be communicated in writing and in the form requested by the individual.

5767.3 Examples of reasonable accommodations may include, but are not limited to:

(a) Making a unit, part of a unit or public and common use element accessible for the head of household or a household member with a disability that is on the lease;

(b) Permitting a family to have a service or assistance animal necessary to assist a family member with a disability;

(c) Allowing a live-in aide to reside in an appropriately sized RAD Covered Project unit;

(d) Transferring a participant to a larger size unit to provide a separate bedroom for a person with a disability;

(e) Transferring a participant to a unit on a lower level or a unit that is completely on one level;

(f) Making documents available in large type, computer disc or Braille;

(g) Making interpreters available to meet with staff or at resident meetings;

(h) Installing strobe type flashing lights and other such equipment for a family member with a hearing impairment; or

(i) Permitting an outside agency or family member to assist a participant or an applicant in meeting screening criteria or meeting essential lease obligations;

5768 REQUEST FOR REASONABLE ACCOMMODATION BY RAD/PBV PARTICIPANTS AND APPLICANTS

5768.1 Requested accommodations will not be approved if one of the following would occur as a result:

(a) A violation of District of Columbia and/or federal law;

(b) A fundamental alteration in the nature of the RAD/PBV program;

(c) An undue financial and administrative burden on owner of the RAD/PBV property;

(d) A structurally unfeasible alteration; or

(e) An alteration requiring the removal or alteration of a load-bearing structural member.

5768.2 All requests for reasonable accommodation shall be reduced to writing on the reasonable accommodation form by the participant, applicant, any person identified by the individual, or by the Project Owner or DCHA staff member to whom the request is made. This form includes various forms of reasonable accommodations as well as the general principles of reasonable accommodation. The reasonable accommodation form shall be submitted to DCHA's Office of the 504/ADA Coordinator for processing.

5768.3 The 504/ADA Coordinator shall request documentation of the need for a Reasonable Accommodation as identified on the Request for Reasonable Accommodation form as well as suggested reasonable accommodations to assist the participant in the opportunity to fully enjoy the dwelling unit or non-housing program.

5768.4 The following may provide verification of a participant's disability and the need for the requested accommodation:

(a) Physician;

(b) Licensed health professional;

(c) Professional representing a social service agency; or

(d) Disability agency or clinic.

5768.5 The participant will be notified in writing of the final reasonable accommodation determination by the ADA/504 Coordinator. If the accommodation is approved, the participant will be notified of the projected date for implementation. If the accommodation is denied, the participant will be notified of the reasons for denial.

5768.6 All recommendations that have been approved by the ADA/504 Coordinator will be forwarded to the Office of the Deputy Executive Director for Operations, in consultation with the PBV/RAD property owner, for implementation. All requests for reasonable accommodation that are approved by the Office of the Deputy Executive Director for Operations will promptly be implemented or begin the process of implementation.

5768.7 If a request for a reasonable accommodation is denied pursuant to the reasons provided in § 5768.1, DCHA will seek to provide the individual with a disability an alternative opportunity to fully participate in the program or activity provided by DCHA.

5768.8 DCHA shall not require a participant with a disability to accept a transfer in lieu of providing a reasonable accommodation. However, if a RAD/PBV participant with a disability requests dwelling unit modifications that involve structural changes, including, but not limited to widening entrances, rooms, or hallways, and there is a vacant, comparable, appropriately sized UFAS compliant unit in that participant's project or an adjacent project, DCHA may offer to transfer the participant to the vacant unit in his/her project or adjacent project in lieu of providing structural modifications. However, if that participant rejects the proffered transfer, DCHA shall make modifications to the participant's unit unless doing so would be structurally impracticable or would result in an undue administrative and financial burden.

5768.9 If the participant accepts the transfer, DCHA will work with the participant to obtain moving expenses from social service agencies or other similar sources. If that effort to obtain moving expenses is unsuccessful within 30 days of the assignment of the dwelling unit, DCHA shall pay the reasonable moving expenses. Nothing contained in this paragraph is intended to modify the terms of DCHA's Tenant and Assignment Plan and any participant's rights thereunder.

5768.10 Reasonable Accommodations will be made for applicants during the application process. All applications must be taken in an accessible location. Applications will be made available in accessible formats. Interpreters and readers will be made available upon request.

5769 OCCUPANCY OF ACCESSIBLE UNIT

5769.1 DCHA has RAD/PBV units designated for persons with mobility, sight and hearing impairments referred to as accessible units.

5769.2 DCHA will offer these accessible units to families in the following order:

(a) First: Current occupant of public housing or RAD/PBV unit who has a disability that requires the special features of that unit;

(b) Second: An eligible qualified applicant on the public housing waiting list who has a disability that requires the special features of the unit; and

(c) Third: If there are no eligible qualified applicants on the public housing waiting list, an applicant who does not have a disability will be offered the unit. DCHA will require that the applicant who does not have a disability agree to sign a lease that requires the applicant to move to an available non-accessible unit when either a current participant or applicant needs the special features of the unit.

5769.3 A Reasonable Accommodation Waiting List will be created and maintained by date and time of request pursuant to the order of families created by § 5769.2.

5769.4 The first qualified current participant in sequence on the list of participants seeking reasonable accommodations will be offered a unit of the appropriate size with the special features required. If more than one unit of the appropriate size and type is available, the first unit offered will be the first unit that is ready for occupancy.

5769.5 Upon inspection of the offered unit, the participant or applicant will be required to sign a Letter of Acceptance/Rejection of an Accessible Unit. DCHA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection and the reason for the rejection.

5769.6 A current participant will receive two (2) offers of accessible units before his/her name is moved to the end of the Reasonable Accommodation Waiting List.

5769.7 An applicant will receive two (2) offers of accessible units before his/her name is removed from the Public Housing Waiting List.

5770 GRIEVANCES

5770.1 The RAD/PBV applicant or participant complainant may file a complaint in accordance with DCHA's grievance procedure (Sections 5730 *et seq.*) following a decision by the ADA/504 Coordinator.

5770.2 Rental Assistance Demonstration participant and applicant complainant may file a complaint in accordance with DCHA's grievance procedure (Sections 5730 through 5747) following a decision by the ADA/504 Coordinator.

5770.3 An applicant or participant may, at any time, exercise their right to appeal a DCHA decision through HUD or the Department of Justice.

5771 SERVICE OR ASSISTANCE ANIMALS

5771.1 Participants in DCHA programs, including RAD/PBV projects, with disabilities are permitted to have service animals, if such animals are necessary as a reasonable accommodation for their disabilities. RAD/PBV participants or applicants, who need a service animal as a reasonable accommodation must request the accommodation in accordance with the reasonable accommodation policy set forth in this chapter.

5771.2 Participants at any PBV/RAD property who are approved to have a service animal as a reasonable accommodation may keep the animal provided they comply with the following requirements:

(a) Register the animal with the property manager;

(b) Update the registration for the animal annually;

(c) Provide proof the animal has been vaccinated in accordance with applicable local law;

(d) Execute a lease addendum providing for the proper care and maintenance of the animal and the unit occupied by the animal in accordance with the RAD/PBV project rules; and

(e) Continuously provide the proper maintenance and care for the animal and assure that the animal does not otherwise impair the peaceful enjoyment of the property by other residents.

5771.3 DCHA requires that a PBV/RAD participant or applicant with a service animal provide written certification:

(a) From a third party, such as a health care provider, that the participant or a member of his or her family is a person with a disability and that an animal of the type proposed is reasonably necessary to meet the needs of the person with disabilities; and

(b) From a third party knowledgeable about the service animal, such as a trainer or veterinarian, that:

(i) The animal has the capability and individualized training, where necessary, such as for a Seeing Eye dog, to work for the benefit of the person with a disability;

(ii) The animal is a domesticated animal and does not pose a risk of serious bites or lacerations.

5772 RECERTIFICATION/LEASE RENEWAL

5772.1 Thirty (30) days before the date for recertification/lease renewal for a participant in the RAD/PBV Program, the PBV/RAD property owner or manager will provide a notice along with a package to the family to initiate the recertification/lease renewal process.

5772.2 If requested as a reasonable accommodation by an individual with a disability, the PBV/RAD property owner or manager shall provide the notice of recertification/lease renewal in an accessible format.

5772.3 The PBV/RAD property owner or manager shall also mail the notice to a third party if requested as a reasonable accommodation for an individual with disabilities. This accommodation will be granted upon verification that it accommodates the participant's disability.

5772.4 The recertification/lease renewal package will include a Notice of Rights and Opportunities which will include a description of the following:

(a) The right of a participant to request a reasonable accommodation for any member of the family who has a disability in order to allow the individual with a disability to better use the residence and DCHA's facilities and programs;

(b) The right to file a grievance in accordance with DCHA's Rental Assistance Demonstration Program; and

(c) The right of participants to request a grievance or informal hearing, as appropriate, in matters such as reasonable accommodations or any issue in which the participant feels that DCHA or the PBV/RAD property owner or manager has unfairly modified his/her rights, welfare, or status and about which the participant has been unable to resolve with the property manager, the ADA/504 Coordinator or the department involved.

5772.5 Where personal interviews are required as part of the recertification/lease renewal process, individuals with disabilities who are unable to come to PBV/RAD property manager's offices, will be granted an accommodation by conducting the recertification/lease renewal interview at the individual's home or by mail, upon verification that the accommodation requested meets the need presented by the disability.

5772.6 If the family does not cancel a recertification/lease renewal interview scheduled at the PBV/RAD property manager's offices or is not at home at the time of a

scheduled home visit, PBV/RAD Property manager may initiate action to terminate the family's assistance. However, an exception may be granted if the family is able to document an emergency situation that prevented them from canceling or attending the interview or if requested as a reasonable accommodation for an individual with a disability.

5773 BARRING POLICY

5773.1 The Project Owner has the right to refuse entrance or access to any of its properties to any person not authorized under the meaning of § 5773.3.

5773.2 Definitions. For the purposes of this section, the following definitions shall apply:

(a) "DCHA property" is defined as RAD Covered Projects and related facilities that are either

(1) Owned, operated, or managed by DCHA; or

(2) Assisted in development or administration by DCHA.

(b) "A resident's guest" is any individual who is an invitee of, and can identify by name and unit number, an individual who is a member of a household under lease with the Project Owner, and such individual is available and willing to accept the guest and responsibility for the actions of the guest.

5773.3 No person may enter upon a DCHA property unless that person is authorized to be on the property. The only persons authorized to be on a DCHA property are:

(a) Residents of the property;

(b) Members of the resident's household;

(c) A resident's guests, except as provided in § 5773.6;

(d) Persons authorized under § 5773.4;

(e) Organizations with a license to use a portion of a property for specified purposes, and including the invitees of a licensee;

(f) Persons employed by or doing business with the property owner at the property;

(g) Persons engaged in the legal or law enforcement community who are engaging in activities directly related to civil or criminal matters, such as

process servers, investigators, attorneys or other individuals legitimately on a property for such purpose; and

(h) Persons authorized after consultation with the Resident Council as provided under Subsection 5773.4 below.

5773.4 Any person, not otherwise authorized under § 5773.3, seeking access to a DCHA property for legitimate business or social purposes shall be admitted as follows:

(a) Any such person or organization shall submit a written request to the property management office of the respective DCHA property to which the person is seeking access.

(b) The property owner, in consultation with the Resident Council of the respective property, shall review the request and respond to the request in writing within ten (10) business days of the request stating approval or disapproval of the request. If the property owner has not responded within ten (10) business days, the request is deemed approved.

5773.5 Any person not identified in § 5773.3 as an authorized person may be subject to the issuance of a Bar Notice for the period of time specified in the Bar Notice, not to exceed five years.

5773.6 Resident's guests may be subject to the issuance of a Temporary or Extended Bar Notice barring them from a specified development pursuant to the following:

(a) Any resident's guest who engages in any activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents or employees of the DCHA property or who violates DCHA policy may be barred for a temporary or extended period of time as specified in paragraphs (b) and (c) below.

(b) A Temporary Bar Notice shall remain in effect for the first infraction for sixty (60) days, the second infraction for six (6) months, and the third infraction for one (1) year for the following infractions:

(1) Entering DCHA property without presenting identification or properly signing the visitor log, unless identified as a guest by the resident they are visiting;

(2) Being on DCHA property at a location or unit not specified on the guest pass or visitor log, unless the person is on the most direct route to or from such location, or accompanied personally by the resident being visited;

(3) Residing as an unauthorized occupant in a DCHA property dwelling unit; or

(4) Engaging in excessively loud or disruptive conduct or otherwise disturbing the peace of residents or employees of the DCHA property.

(c) An Extended Bar Notice shall remain in effect for five (5) years for the following:

(1) Persons issued more than four (4) bar notices for activities identified in § 5773.6(b);

(2) Engaging in conduct that is dangerous to the health or safety of residents or employees of a DCHA property;

(3) Engaging in activities involving illegal drugs, violence, weapons, theft, assault, and serious damage to property; and

(4) Persons evicted from DCHA property on the basis of such person's criminal or illegal activity.

(d) Nothing contained in this chapter shall prevent a guest of a DCHA property resident from access or entry to the resident's dwelling unit for legitimate business or social purposes except as they may have been barred as provided in §§ 5773.6(b) or (c).

5773.7 Bar Notices issued to unauthorized persons under § 5773.5 or to guests under § 5773.6 may only be issued to bar such individuals from a particular DCHA property. Bar Notices may not be issued to bar persons from public streets or sidewalks, or from private property adjoining DCHA property.

5773.8 Bar Notices shall be served on persons pursuant to the following:

(a) Personal delivery or attempted delivery in writing of Bar Notices shall be made to each person barred from a DCHA property.

(b) The Bar Notice shall identify the basis for the issuance of the Bar Notice and the time period for which the person is barred from DCHA property. The Bar Notice shall reflect the date, method and manner of delivery upon the barred person. The Bar Notice does not have to be delivered to the person on DCHA property.

(c) A copy of the Bar Notice issued to a guest will be provided to the resident, if the guest has identified the unit number and name of the resident. A

resident may file a grievance pursuant to the provisions of Sections 5730 through 5747 of this chapter if a guest of the resident has been barred.

5773.9 Bar Notices shall only be issued by the following persons:

(a) Members of the DCHA Office of Public Safety including sworn officers and special police officers;

(b) Members of the Metropolitan Police Department;

(c) Members of cooperative law enforcement task forces as may be authorized by the Chief of DCHA Office of Public Safety; or

(d) Private security providers contracted by DCHA or DCHA's agent.

5773.10 Bar Notices and Barring Policy information shall be made available as follows:

(a) The DCHA Office of Public Safety shall keep copies of all Bar Notices and records of the expiration dates thereof;

(b) A copy of the Barring Policy, as set forth in this chapter, shall be provided to each applicant upon signing a lease for a unit at a DCHA property;

(c) A copy of the Barring Policy, as set forth in this chapter, shall be provided to the Resident Council for the property; and

(d) A copy of the Barring Policy, as set forth in this chapter, shall be available at the management office for each DCHA property.

5773.11 The issuance of a Bar Notice requires the following:

(a) The barred person must immediately leave the DCHA property from which the person was barred and not return to that DCHA property for the period the Bar Notice remains in effect.

(b) Should the barred person fail to leave the DCHA property after the issuance of the Bar Notice, or later return to the DCHA property noted on the Bar Notice at any time while the Bar Notice is in effect, the person may be arrested for "unlawful entry" pursuant to D.C. Official Code § 22-3302 (2012 Repl.) as amended.

5773.12 Any barred person may submit a written request for a temporary lift of an Extended or Temporary Bar Notice to the Chief of the DCHA Office of Public Safety.

(a) The written request shall state the specific location and time period during which the barred person is seeking access, and the reason for the request of the temporary lift, including any documentation of a request for a reasonable accommodation.

(b) A temporary lift shall be for a period of not more than eight hours during one calendar day.

(c) A barred person may only be granted two (2) temporary lifts during any calendar year of the imposition of a Bar Notice.

(d) Any barred person who commits a subsequent infraction on DCHA property during a period of a temporary lift shall be prohibited from requesting additional requests for temporary lifts during the remaining term of the Bar Notice.

(e) The Chief of DCHA Office of Public Safety will review the request of temporary lift and respond in writing within ten (10) days of the submission.

5774 VEHICLE POLICY

5774.1 All RAD Covered Projects are private property and parking is prohibited unless approved by the owner. In addition, the owner has the right to tow any unauthorized vehicle on RAD Covered Projects as provided in this chapter.

5774.2 Definitions.

(a) "Abandoned Vehicle" shall mean any motor vehicle, trailer, or semi-trailer that:

(1) Is inoperable and left unattended on public property for more than seventy-two (72) hours;

(2) Has remained illegally on public property for more than 72 hours;

(3) Has remained on public property for more than 72 hours and is:

(i) Not displaying current valid registration; or

(ii) Displaying registration of another vehicle;

(4) Has remained on RAD Covered Project for more than 72 hours and is inoperable in that one or more of its major mechanical components, including, but not limited to, engine, transmission, drive train or wheels, is missing or not functional unless such

vehicle is kept in an enclosed building completely shielded from view of individuals on the adjoining properties; or

(5) Has remained unclaimed on RAD Covered Project for 72 hours after proper notice as provided for in Subsection 5774.6 below.

(b) "Junk Vehicle" shall mean any motor vehicle, trailer, or semi-trailer that is wrecked, dismantled, or in irreparable condition.

(c) "Nuisance Vehicle" shall mean any motor vehicle, trailer, or semi-trailer that is a danger to the public health, safety, and welfare of residents or employees including, but not limited to, vehicles that are on cinder blocks/bricks, harbors rats, snakes or other vermin, have open and accessible interior or trunk, or exhibits broken windows, torn sheet metal, or exposed sharp metal.

(d) "RAD Covered Project" shall mean all property, including parking lots, sidewalks, or internal driveways or streets, that is a part of DCHA's RAD Project-Based Program.

(e) "Public Property" shall mean all property, including public streets, alleys, parking lots or other real property owned by the District of Columbia government.

5774.3 Vehicles on Public Property.

(a) If the RAD Covered Project owner observes an Abandoned, Nuisance, or Junk Vehicle on a public street or other public property, the owner of the RAD Covered Project may contact the District of Columbia Department of Public Works, Abandoned and Junk Vehicle Division to have the vehicle removed from public property within the RAD Covered Project.

(b) Owners of a RAD Covered Project may not remove an Abandoned, Nuisance or Junk Vehicle located on Public Property. Only the District of Columbia Department of Public Works may remove such vehicles.

5774.4 Stolen Vehicles. If the owner of the RAD Covered Project determines that a vehicle is stolen, whether on RAD Project-Based Property or Public Property, the owner may notify the Metropolitan Police Department of the stolen vehicle or may request that DCHA's Office of Public Safety report the vehicle stolen on the requisite Metropolitan Police Department report form.

5774.5 Removal of Vehicles from RAD Covered Projects.

(a) If the owner of a RAD Covered Project determines that a vehicle is a Nuisance Vehicle located on the RAD Covered Project, the owner may immediately remove the vehicle from the RAD Covered Project.

(b) If the owner determines a vehicle is an Abandoned or Junk Vehicle located on a RAD Covered Project for more than seventy-two (72) hours, a Notice of Infraction may be issued and a Warning Notice to Remove the Vehicle affixed to the vehicle.

(c) The Notice of Infraction may be issued and Warning Notice may be affixed by DCHA's Office of Public Safety, Metropolitan Police Department or other authorized appropriate District of Columbia officials.

(d) The owner of the Abandoned or Junk Vehicle will have seventy-two (72) hours to remove the vehicle from the RAD Covered Project.

(e) Prior to initiating towing procedures, the owner of a RAD Covered Project will attempt to identify and contact the owner of the vehicle via telephone. In the event the RAD property owner is able to contact the vehicle owner, the RAD property owner will advise the owner of the following:

(1) The owner's vehicle is parked on a RAD Covered Project;

(2) The owner's timely removal of the vehicle is necessary to avoid the vehicle being towed;

(3) The vehicle was issued a Notice of Infraction for being parked on a RAD Covered Project; and

(4) The process for recovering the vehicle if towed from the RAD Covered Project.

5774.6 Towing of Vehicles.

(a) The owner of the RAD Covered Project will make two attempts to contact the owner of a vehicle that has been issued a Notice of Infraction for being parked on DCHA's Property as provided for above. The attempts will be no less than twenty-four (24) hours apart.

(b) If the owner of the RAD Covered Project is unable to contact the owner of a vehicle after two attempts, the property owner will proceed with the removal of the vehicle from the RAD Covered Project.

(c) If the vehicle is not removed from the RAD Covered Project within seventy-two (72) hours of the issuance of the Notice of Infraction and

Warning Notice, the owner of the RAD Covered Project will have the vehicle removed by contacting either:

(1) The District of Columbia Department of Public Works, Abandoned and Junk Vehicle Division; or

(2) A tow crane operator licensed with the District of Columbia.

5775 ACHIEVING YOUR BEST LIFE PROGRAM IN RAD COVERED PROJECTS

5775.1 Achieving Your Best Life ("AYBL"), governed by rules found at 14 DCMR §§ 9800 *et seq.*, is a program that allows public housing residents in the District to increase earned income and to prepare to purchase a home or rent in the private market without government assistance.

5775.2 When a public housing project coverts under RAD, those tenants who have already entered into an AYBL contract as required under 14 DCMR § 9817 will remain in the AYBL program until the AYBL contract terminates. The regulations enumerated at 14 DCMR §§ 9800 *et seq.* will continue to govern these residents' participation in the ABYL program, even though DCHA will no longer be functioning as landlord for the property.

5775.3 Until the AYBL contract terminates, monthly tenant rent shall be reduced by the amount paid that month by a household member into an AYBL account.

5775.4 Residents of units funded by project-based voucher assistance are not eligible for admission to the ABYL program.

5776 RESIDENT PARTICIPATION

5776.1 The RAD Project-Based Property Owner shall recognize a legitimate resident organization and will give reasonable consideration to concerns raised by a legitimate resident organization.

5776.2 "Legitimate resident organization" is defined as a resident organization that:

(a) Has been established by the residents of a RAD Project-Based Property;

(b) Meets regularly;

(c) Operates democratically;

(d) Is representative of all residents in the RAD Project-Based Property; and

(e) Is completely independent of the property owner, management, and their representatives.

5776.3 Protected activities. Property owners must allow residents and resident organizations to conduct the following activities, and residents will not need prior permission to conduct them.

(a) Distributing leaflets in lobby areas;

(b) Placing leaflets at or under residents' doors;

(c) Distributing leaflets in common areas;

(d) Initiating contact with residents;

(e) Conducting door-to-door surveys of residents to ascertain interest in establishing a resident organization and to offer information about resident organizations;

(f) Posting information on bulletin boards;

(g) Assisting resident to participate in resident organization activities;

(h) Convening regularly scheduled resident organization meetings in a space on site and accessible to residents, in a manner that is fully independent of management representatives. In order to preserve the independence of resident organizations, management representatives may not attend such meetings unless invited by the resident organization to specific meetings to discuss a specific issue or issues; and

(i) Formulating responses to Project Owner's requests for:

(1) Rent increases;

(2) Partial payment of claims;

(3) The conversion from project-based paid utilities to resident-paid utilities;

(4) A reduction in resident utility allowances;

(5) Converting residential units to non-residential use, cooperative housing, or condominiums;

(6) Major capital additions; and

(7) Prepayment of loans;

(j) Other reasonable activities related to the establishment or operation of a resident organization.

5776.4 Meeting space.

(a) Property owners must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:

(1) Residents or a legitimate resident organization and used for activities related to the operation of the legitimate resident organization; or

(2) Residents seeking to establish a legitimate resident organization or collectively address issues related to their living environment.

(b) Resident and resident organization meetings must be accessible to people with disabilities.

(c) Property owners may charge a reasonable, customary, and usual fee for the use of such facilities, if approved by HUD.

5776.5 Funding.

(a) Property owners will provide twenty-five dollars ($25) per occupied unit annually for resident participation, of which at least fifteen dollars ($15) per occupied unit shall be provided to the legitimate resident organization.

(b) These funds must be used for:

(1) Resident education;

(2) Organizing around tenancy issues; or

(3) Training activities.

(c) In the absence of a legitimate resident organization, property owners must make resident participation funds available to residents for organizing activities. Residents must make requests for these funds in writing to the project owner. These requests will be subject to approval by the property owner.

5776.6 Resident Organizers.

(a) Property owners will allow resident organizers to assist residents in establishing and operating resident organizations.

(b) Resident organizers are residents or non-residents who assist residents in establishing and operating a resident organization, and who are not employees or representatives of current or prospective property owners, managers, or their agents.

5776.7 Property Owner Responsibilities.

(a) When requested by residents, a property owner shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident organization.

(b) A property owner shall provide the residents or any legitimate resident organization with current information concerning the owner's policies on tenant participation in management.

(c) In no event shall a property owner recognize a competing resident organization once a legitimate resident council has been established. Any funding of resident activities and resident input into decisions concerning the property shall be made only through the officially recognized resident organization.

(d) If requested, a property owner shall negotiate with the legitimate resident organization on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the property owner and the resident organization.

(e) The property owner and resident organization shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

5799 DEFINITIONS

5799.1 When used in this subtitle, the following terms and phrases shall have the meaning ascribed:

Adjusted Income - is annual income less the following amounts:

(a) Four hundred eighty dollars ($ 480) for each dependent;

(b) Four hundred dollars ($ 400) for any elderly family;

(c) For any family that is not an elderly family but has a handicapped member other than the head of household or spouse, handicapped assistance expenses in excess of three percent (3%) of annual income, but this allowance shall not exceed the employment income received by family members who are eighteen (18) years of age or older as a result of the assistance to the handicapped or disabled person;

(d) For any elderly family, one of the following:

(1) That has no handicapped assistance expenses, an allowance for medical expenses equal to the amount by which the medical expenses exceed three percent (3%) of annual income;

(2) That has handicapped assistance expenses greater than or equal to three percent (3%) of annual income, an allowance for handicapped assistance expenses computed in accordance with paragraph (c) of this definition, plus an allowance for medical expenses that is equal to the family's medical expenses; or

(3) That has handicapped assistance expenses that are less than three percent (3%) of annual income, an allowance for combined handicapped assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent (3%) of annual income; and

(4) Child care expense.

Annual Contributions Contract (ACC) - The written grant agreement between HUD and a PHA under which HUD agrees to provide funding for a program (*e.g.*, public housing or Housing Choice Vouchers (HCV)) under the Act, and the PHA agrees to comply with HUD requirements for the program.

Annual Income - For purposes of determining annual income for families who are applicants and participants in the RAD Covered Project, DCHA shall follow HUD requirements as enumerated in 24 CFR § 5.609, as amended.

Applicant/Applicant Family - a person or a family that has applied for housing assistance as a familial unit.

Contract Administrator - HUD or DCHA (under an Annual Contributions Contract with HUD) that executes a HAP Contract with a Project Owner.

Contract Rent - The total amount of rent specified in the HAP Contract as payable to the Project Owner for a unit occupied by an eligible family. In PBV, the contract rent is referred to as "Rent to Owner."

Days - calendar days, unless otherwise specified (where a specified number of days ends on a weekend or a holiday, the prescribed period shall end on the next working day following the weekend or holiday).

DCHA - the District of Columbia Housing Authority.

Dependent - a member of the family household (excluding foster children) other than the family head of household or spouse who is under eighteen (18) years of age or is a disabled person or handicapped person, or is a full time student.

Disability – Disability will be defined according to 42 USC § 12102.

Displaced Person- a person(s) displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Dwelling Lease - a written agreement between a tenant and owner of the RAD Covered project for the use and occupancy of a specific dwelling unit.

Elderly Family - a family whose head or spouse, or whose sole member, is at least sixty-two (62) years of age, or a person with a disability, and may include two (2) or more elderly persons or persons with disabilities or living together, or one (1) or more elderly persons or persons with disabilities living together, or one (1) or more persons living with another person who is determined to be essential to his or her care or wellbeing.

Emergency Category- Applicants in this category are those who are:

(a) Involuntarily displaced and not living in standard, permanent replacement housing (including applicants that are homeless (no fixed address), living in transitional housing, or living in a licensed shelter for the homeless); or the applicant will be involuntarily displaced within no more than six months from the date of any preference status certification by the family or verification of the family's status (An applicant may not qualify for this preference if he/she: (1) refused to comply with applicable polices for locally or federally assisted housing program(s), including notice of a mandatory transfer issued by DCHA or failure to comply with procedures with respect to the occupancy of under occupied or

overcrowded public housing units; or (2) failed to accept a transfer to another housing unit in accordance with a court decree or HUD-approved desegregation plan; or (3) was displaced as a result of a DCHA initiated eviction; or (4) voluntarily left public housing in an effort to avoid the public or assisted housing waiting lists by claiming he/she is now in an emergency category status.);

(b) Living in substandard housing as determined by a certified inspector pursuant to the building and/or housing codes of the District of Columbia (or other applicable jurisdiction), at the time of preference verification;

(c) Paying more than fifty percent (50%) of income for rent for at least ninety (90) days at the time of the preference verification. (Applicant family may not qualify for this preference if it is paying more than fifty percent (50%) of income for rent because the applicant's housing assistance was terminated as a result of the applicant family's failure to comply with local or federal housing program policies and procedures or if the applicant is paying more than 50% as a result of a DCHA initiated eviction);

(d) Involuntarily displaced as a victim of recent or continuing domestic violence, *i.e.*, actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household;

(e) Involuntarily displaced by recent or continuing hate crimes, *i.e.*, actual or threatened physical violence or intimidation that is directed against a person or his/her property and that is based on the person's race, color, religion, sex, national origin, disability, sexual orientation, or familial status; or

(f) Involuntarily displaced as a result of inaccessibility of a housing unit or a member of applicant family has mobility or other impairment that makes the member unable to use critical elements of the unit.

Family - the following person or persons:

(a) Two (2) or more persons who are either related by blood, marriage or operation of law, or give evidence of a stable relationship which has existed over a period of time;

(b) An elderly family as defined in this chapter (including disabled or handicapped persons);

(c) A single person who is a displaced person as defined in this chapter.

(d) The remaining member(s) of a HMA tenant family; or

(e) A single person who is not an elderly family or a displaced person as defined in this chapter, where approved by HUD pursuant to 24 CFR, part 912.3.

The term "Family" does not include a non-immigrant student alien (and related family members) as defined by HUD pursuant to § 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 USC § 1101(a)(15)(i).

Fair Market Rent (FMR) - The cost in a particular housing market area of privately owned, decent, safe and sanitary rental housing. HUD establishes and publishes in the Federal Register FMRs for dwelling units of varying sizes for each metropolitan area. FMRs are gross rent estimates, *i.e*., they include the cost of tenant-paid utilities. See 24 CFR part 888 subpart A.

First Available Unit - An Applicant with an application date earlier than an Applicant on a Site-Based Waiting List at a development with an available unit shall be selected from the waiting list for a unit at that property. For example, an eligible Applicant with an application date of March 1, 2008 who has selected the "First Available Unit Option" shall be selected from the waiting list before any eligible Applicant on the Site-Based Waiting List with an application date and time after March 1, 2008. (This assumes that the selection is for the appropriate bedroom size and any other relevant unit features).

Full Time Student- a person who is carrying a subject load that is considered full time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Assistance Expenses for Participants with Disabilities- reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a family member with a disability and that are necessary to enable a family member (including the family member with a disability) to be employed; provided, that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Head of Household- the family member who is held responsible and accountable for the family (and whose name is identified as responsible on the dwelling lease).

Housing Assistance Payment (HAP) - The payment made by the Contract Administrator to the Project Owner of an assisted unit as provided in the HAP Contract. Where the unit is leased to an eligible household, the payment is the difference between the contract rent for a particular assisted unit and the tenant rent payable by the family.

Housing Choice Voucher Program (HCVP) – a program that provides tenant-based rental assistance pursuant to Section 8 of the Housing Act of 1937.

Housing Quality Standards (HQS) - Standards set forth in 24 CFR § 982.401 that must be met by all units in the HCV program before assistance can be paid on behalf of a household. The HQS in 24 CFR § 982.401 apply to Project-Based Voucher units, in accordance with 24 CFR § 983.101. Generally, Voucher Agencies must conduct HQS inspections of PBV projects not less than biennially during the term of the HAP Contract.

HAP Contract - The contract entered into by the Project Owner and the contract administrator that sets forth the rights and duties of the parties with respect to the Covered Project and the payments under the contract.

HUD - the U.S. Department of Housing and Urban Development.

Leased Premises - Leased Premises includes the Lessee's dwelling unit as specified in the lease and any other buildings or areas that are provided for the exclusive use of the Lessee.

Lessee - The "Lessee" is the individual(s) that sign(s) the Lease with the owner of the RAD Covered project. Each Lessee is individually, jointly and severally responsible for performance of all obligations under the lease including, but not limited to, the payment of rent and other charges, as defined herein. No individual, other than the signatory to the lease, is deemed to be a Lessee or have any rights of a Lessee.

Low Rent Housing - housing owned by DCHA under the United States Housing Act of 1937.

Lower Income Family- a family whose annual income does not exceed eighty percent (80%) of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.

Medical Expenses - those medical expenses, including medical insurance premiums, that are anticipated during the twelve (12) month period for which annual income is computed, and that are not covered by insurance.

Mixed Finance Project – A project developed under 24 CFR § 905.604.

Net Family Assets- the value of equity in real property, savings, stocks, bonds and other forms of capital investments, excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted as part of annual income.) In determining net family assets, HMA shall include the value of any assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two (2) years preceding the date of application for admission or reexamination, as applicable, in excess of the consideration received therefore. In the case a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Notice to Correct or Vacate – a written thirty (30)-day notice of termination of the tenancy that advises the Tenant that he/she is in violation of the Lease or DC Housing Code, specifies the violation(s) that form the basis of the notice, and specifies how the Tenant can cure the violations within the time period set forth in the notice.

Notice to Vacate – a written thirty (30)-day notice of termination of the tenancy that specifies the basis for termination of the tenancy, and specifies the time period by which the Tenant must vacate the premises.

Participant (participant family) - A family that has been admitted to a DCHA program and is currently assisted in the program.

Person with a Disability - a person with a disability as defined by this section.

Prepayment - The satisfaction (*i.e.*, payment in full) of the underlying mortgage prior to its maturity date. Prepayment is one of the eligibility triggering events for RAD conversion under Section III of this Notice.

Private Mixed Finance Project – A Mixed Finance Project whose owner is not substantially controlled by DCHA or a wholly-owned subsidiary of

DCHA. For the purposes of this definition, "substantial control" is defined as greater than fifty percent (50%) voting power.

Priority Applicant- an applicant for admission to housing who meets the criteria of § 6105 of this title.

Project - For purposes of determining a RAD transaction, a "project" is a structure or group of structures that in HUD's determination are appropriately managed as a single asset. In determining whether a combination of structures constitute a project, HUD will take into account types of buildings, occupancy, location, market influences, management organization, financing structure or other factors as appropriate. For a RAD PBV conversion, the definition of "project" in 24 CFR § 983.3 continues to apply for all references to the term in 24 CFR § 983.

Project-Based Voucher (PBV) - A component of a PHA's HCV program, where the PHA attaches voucher assistance to specific housing units through a PBV HAP Contract with an owner. Unlike a tenant-based voucher, the PBV assistance remains attached to the unit when the family moves, and assists the next eligible family to move into the PBV unit. The PBV program is administered by HUD's Office of Public and Indian Housing.

Project Owner - For purposes of Sections 5700 through 5775, the term Project Owner refers to the owner of the Covered Project, including but not limited to any owner pursuant to a HAP Contract. For purposes of HAP Contracts, an Owner is a private person, partnership, or entity (including a cooperative), a non-profit entity, a PHA or other public entity, having the legal right to lease or sublease the dwelling units subject to the HAP Contract.

Public Housing - see Low Rent Housing.

Public Housing Advisory Board (Resident Advisory Board) - District of Columbia Public Housing Advisory Board, established by Mayor's Order 86-1.

Public Housing Agency (PHA) - any HUD-approved entity that administers programs under the Housing Act of 1937, which could include public housing and HCVs. In addition to this general definition, the term PHA, as used in this Notice, refers to the owner of a First Component Converting Project (even if the project is a Mixed Finance Project and the PHA does not own ACC units).

Public Housing Project - Per 24 CFR § 905.108 the term ''public housing'' means low-income housing, and all necessary appurtenances thereto, assisted under the Act, other than assistance under 42 USC § 1437f of the

Act (Section 8). The term ''public housing'' includes dwelling units in a Mixed Finance Project that are assisted by a PHA with public housing Capital Fund assistance or Operating Fund assistance. When used in reference to public housing, the term ''project'' means housing developed, acquired, or assisted by a PHA under the Act, and the improvement of any such housing. Each public housing project has a project identification number in the Public and Indian Housing Information Center (PIC), though a PHA may propose to convert individual sites within the public housing project.

RAD Covered Project - The post-conversion property, including but not limited to buildings, the common areas of the buildings and grounds associated with all the buildings, with assistance converted from one form of rental assistance to another under the Rental Assistance Demonstration.

Resident - a lessee under the dwelling lease.

Site-Based Waiting Lists - An Applicant who has applied to be placed on the Site-Based Waiting List at multiple developments will be selected from those respective lists by date and time of application. (This assumes that the selection is for the appropriate bedroom size and any other relevant unit features).

Tenant - a lessee under the dwelling lease.

Tenant Rent - the amount payable monthly by a tenant as rent to the owner of the RAD converted project under a dwelling lease as defined in 24 CFR part 5. Where all utilities and other essential housing services are supplied the tenant by the owner, Tenant Rent shall be the same as total tenant payment. Where some or all utilities and other essential housing services are not supplied to the tenant by the owner, and the cost is billed directly to the tenant, Tenant Rent shall be the amount of the total tenant payment less applicable utility allowances. Tenant rent shall be reduced by any amount paid that month by a household member into an Achieving Your Best Life (AYBL) escrow account, until the AYBL contract terminates. *See* 14 DCMR § 5775.

TTP - The total tenant payment as calculated pursuant to 24 CFR part 5.

Uniform Federal Accessibility Standards (UFAS) - Construction standards with minimum requirements for accessibility for dwelling units constructed or substantially altered with the assistance of federal funds as detailed at 24 CFR part 8 and the addendums thereto.

Utility Allowance - As defined in 24 CFR part 5, the amount that a PHA or Project Owner determines is reasonable for tenant-paid utility costs. In the

case where the utility allowance exceeds the Total Tenant Payment (as defined at 24 CFR § 5.613), the tenant is reimbursed in the amount of such excess.

Chapter 61, PUBLIC HOUSING: ADMISSION AND RECERTIFICATION, Sections 6101 through 6111, and Section 6113, are amended to read as follows:

6101 APPLICATION FOR ASSISTANCE

6101.1 DCHA maintains the following waiting lists:

(a) Public Housing Waiting Lists:

(1) First Available Waiting List; and

(2) Site-Based Waiting List;

(b) Housing Choice Voucher Program Wait List – including applicants for tenant-based voucher assistance and project-based voucher assistance under the Partnership Program (operated in accordance with the rules set forth in Chapter 93 of this Title 14); and

(c) Moderate Rehabilitation Program Wait List.

6101.2 Each Applicant seeking public housing assistance owned, operated or administered by DCHA, or rental assistance through the Housing Choice Voucher Program, Moderate Rehabilitation Program, or the Rental Assistance Demonstration must submit a completed application with DCHA.

6101.3 Applications must be returned to DCHA via the methods as determined by DCHA at the time of the opening of the waiting list(s) pursuant to Section 6104.

6101.4 An Applicant may apply for one, some or all of the programs that DCHA owns and operates or administers.

6101.5 If an Applicant applies for public housing, the Applicant shall select to be on either the First Available Waiting List or the Site-Based Waiting list.

6101.6 If an Applicant for public housing chooses to be on the First Available Waiting List then his or her application shall be considered for a vacancy at any public housing or RAD Covered Project.

6101.7 If an Applicant for public housing chooses to be on the Site-Based Waiting List, Applicants shall select up to three (3) individual public housing or RAD Covered Projects where they wish to reside.

6101.8 As part of the Housing Choice Voucher and Moderate Rehabilitation Programs application process, Applicants shall be given the opportunity to select the Housing Choice Voucher Program and/or the Moderate Rehabilitation Program for housing assistance.

6101.9 A review of all applications shall be conducted by DCHA based on the data contained in the application. This review is limited to determining the completeness of the application.

6101.10 Only completed applications will be accepted by DCHA for processing.

6101.11 If DCHA determines that an application is incomplete, DCHA shall return the incomplete application to the Applicant to the address listed on the application and advise the Applicant that the application is incomplete and what missing information is required to complete the application.

6101.12 Once the completed application is submitted to DCHA, the Applicant shall receive a confirmation of receipt either electronically, in person or via first class mail.

6101.13 DCHA shall record the date and time that the completed application was received.

6101.14 Applicants shall be placed on the DCHA waiting list(s) based on date and time of their completed application and any program preferences selected on the application pursuant to Sections 6102, 6103, 6105, and 6111 of this chapter.

6101.15 A person with a disability may request a reasonable accommodation at any time during the application process pursuant to Chapter 74 of Title 14.

6102 APPLICATION PROCESS AND REVIEW

6102.1 Upon receipt of a completed application, DCHA shall place the Applicant on the selected waiting list(s) based on the date and time that the application was received, the type and unit size required based on occupancy guidelines and applicable Special Programs and/or allocations, and any preference(s) established by DCHA.

6102.2 Each Applicant shall be assigned a unique Client Identification Number (CIN) for identification purposes.

6102.3 Placement on DCHA's waiting list(s) does not guarantee the family admission to public housing, RAD, the Housing Choice Voucher Program, or the Moderate Rehabilitation Program.

6102.4 Periodically, as vacancies occur or are anticipated at DCHA owned and operated public housing projects or at RAD Covered Projects, or as Housing Choice

Vouchers become available or units become available in the Moderate Rehabilitation Program, Applicants near the top of the applicable waiting list(s) shall be interviewed in order to obtain and verify any and all information necessary to make an eligibility determination in accordance with Sections 6106, 6107, 6108, and 6109.

6102.5 Public housing and Moderate Rehabilitation Applicants who have been deemed eligible shall be placed in the selection pool.

6102.6 DCHA shall review the application for any current debt owed to any public housing authority, Project Owner, or Housing Choice Voucher programs via the HUD Enterprise Income Verification system "EIV" or any other income or debt verification source.

6102.7 If a current debt is found, DCHA shall notify the Applicant of the debt amount, to whom it is owed and the consequences of an unresolved debt at the time of the eligibility determination.

6102.8 If the current debt is unresolved at the time of the eligibility determination the Applicant may be deemed ineligible.

6102.9 The Applicant shall be allowed to submit mitigating circumstances to demonstrate an Applicant's suitability to receive housing assistance.

6102.10 Applicants in the public housing selection pool shall be offered housing units that meet their occupancy and accessibility needs as the appropriately sized units become available.

6102.11 Eligible Applicants for the Housing Choice Voucher Program are offered a voucher as vouchers become available pursuant to Chapter 76.

6102.12 Eligible Applicants for the Moderate Rehabilitation Program shall be placed in a selection pool and offered a unit as units become available pursuant to Chapter 76.

6102.13 The determination of eligibility and the process for the ultimate determination of ineligibility, including the informal conference and the option to request a review by an independent third party reviewer, are found in Section 6107 of this chapter.

6103 MAINTENANCE OF THE WAITING LIST(S)

6103.1 The waiting list(s) shall be maintained to ensure that Applicants are referred to appropriate developments, unit types (for example for public housing, RAD, Mixed Population, General Population or accessible) and sizes or housing programs.

6103.2 Applicants are responsible for updating their application when there are changes in the family composition, income, address, telephone number, and acceptance of housing assistance. Failure to update the application timely may result in a delay in housing, being deemed eligible for housing or the Applicant being changed to inactive status from the waiting list(s).

6103.3 DCHA shall update its waiting list(s) periodically and to meet the needs of those requiring housing assistance, as needed. When this occurs, DCHA will send update forms to the affected Applicants.

(a) The request for an update to a housing application shall provide a deadline by which the Applicant must respond and shall state that failure to respond shall result in the Applicant's being withdrawn from the waiting list(s) or changed to inactive status.

(b) Applicants must complete an update form electronically, by telephone or mail, or by any other means established by DCHA within the time frame specified in the request for update package. Once the update is received the appropriate changes shall be made to the Applicant's file and the Applicant shall maintain their application date and time.

6103.4 Applicants who do not return the completed update form within the specified time frame shall have their waiting list status changed to inactive:

(a) An Applicant whose status is inactive will not be actively considered for DCHA housing assistance.

(b) If an inactive Applicant submits a completed update form at any time after the expiration of the specified update time frame, then the Applicant shall be restored to an active status on the waiting list based on the Applicant's original application date and time provided that the Applicant was deemed inactive after October 1, 2003.

6103.5 Changes in an Applicant's circumstances while on any of DCHA's waiting list(s) may affect the family's qualification for a particular development, bedroom size or entitlement to a preference. When an Applicant reports a change that affects their placement on the waiting list(s), the waiting list(s) shall be updated accordingly.

6103.6 When selecting Applicants from the Public Housing Waiting Lists, DCHA shall use the Applicant's family composition and any reasonable accommodations requests to determine the appropriate bedroom size and unit characteristics.

6103.7 Applicants on the wait list(s) who have requested a fully accessible unit, a unit with accessible features or any other reasonable accommodation through the reasonable accommodation process, must meet all requirements of the

accommodation prior to being deemed eligible. All reasonable accommodations shall be verified and approved by the Office of the ADA/504 Coordinator prior to a unit offer.

6103.8 Applicant families with members with disabilities who have verified and approved reasonable accommodations for fully accessible units or units with accessible features shall receive priority for those units that are designated as fully accessible units or designed with specific accessibility features.

6103.9 The only other system for assigning priority to eligible public housing Applicants is date and time of application, unless otherwise specified in this chapter under, for example, Sections 6111, 6112 or 6113.

6103.10 Applicants housed in public housing, RAD, Housing Choice Voucher or Moderate Rehabilitation programs do not qualify for the "homeless" preference category and shall have the preference removed.

6103.11 Selection for Public Housing and RAD:

(a) Applicants seeking housing assistance in the public housing or RAD programs shall choose either the First Available Unit Waiting list or the Site-Based Waiting list.

(b) Applicants shall not be placed on the First Available Unit waiting list and the Site-Based Waiting List at the same time. Applicants who select both shall be listed only on the Site-Based Waiting lists that the Applicant selected.

(c) Applicants who do not select developments on the Site-Based Waiting List or the First Available Waiting Unit Waiting List shall be placed automatically on the First Available Unit Waiting list.

(d) Applicants shall only be listed at developments that have bedroom size and unit characteristics for which the family is authorized to occupy based on family composition and any reasonable accommodation requests.

(e) Applicants may select up to three (3) developments on the Site-Based Waiting list. An Applicant who has selected multiple developments on the Site-Based Waiting List, and has the earliest application date and time, shall be offered the first available unit of their site(s) selection.

(f) An Applicant who has selected the Site-Based Waiting List may not change his/her development selection after the application is received unless there is a change in their family circumstances that would require a change in bedroom size or unit characteristics. However, if the site selected can accommodate the required change, DCHA shall not approve a

change in the site selection. The Applicant shall maintain his/her original application date and time for the newly selected site.

(g) An Applicant on the Site-Based Waiting List may elect to voluntarily remove their selection from the Site-Based Waiting List to the First Available Waiting List and maintain their original application date and time.

(h) Any Applicant on the First Available Waiting List may not change their selection from the First Available Waiting List to the Site-Based Waiting List.

6104 TEMPORARY CLOSURE OF THE WAITING LIST

6104.1 If the number of families on the Public Housing Waiting Lists or Housing Choice Voucher Program Waiting List is such that there is no reasonable prospect that additional applicants for specific units types or sizes can be housed within the next twelve (12) months, the Executive Director, DCHA may approve action to do the following:

(a) Suspend the taking of further applications for certain unit types, unit sizes, or projects developed for special purposes; and

(b) Limit application taking to certain specified periods of the year.

6104.2 When action is taken to suspend, limit or reopen the taking of applications, DCHA shall make known to the public through publication of notice in the *D.C. Register* and in newspaper(s) of general circulation, minority media, and other suitable means the following:

(a) The nature of the action; and

(b) The effective date of the action.

6104.3 Action to suspend, limit or reopen the taking of applications shall not take effect without at least ten (10) calendar days advance notice to the public in accordance with Subsection 6104.2.

6104.4 Notwithstanding the suspension of application taking, DCHA may continue to take applications from priority applicants eligible for priority placement on the waiting list pursuant to Subsection 6105.2 of this chapter.

6105 PREFERENCES FOR PUBLIC HOUSING

6105.1 At the time of application, applicants self-certify their preference. Verification of a preference is not required until an applicant reaches the top of the waiting list.

Applicants will be required to provide verification that they meet the preference as part of the eligibility determination process.

6105.2 The granting of a preference does not guarantee admission to public housing. Preferences are used merely to establish the order of placement on the waiting list. Every applicant for public housing or the Housing Choice Voucher Program must also meet DCHA's Applicant Selection Criteria outlined in Section 6109 below.

(a) Preferences:

(1) Mixed Population Properties

(i) The following admission preference system will be applied in the selection of otherwise eligible applicants from Public Housing Waiting Lists (based on the time and date of application) for a public housing or RAD unit offered in mixed population properties:

Preference #1: Elderly Families and/or Families with a household member with disability

Preference #2: Near Elderly Families

Preference #3: All Other Families

(ii) No individual shall be considered a person with disabilities, for purposes of eligibility for public housing or RAD under this Title, solely on the basis of any current drug or alcohol dependence.

(2) General Population Properties - the following applicant admission categories, including percentages, will be applied to the selection of otherwise eligible applicants from the Public Housing Waiting Lists (based on the time and date of application) for public housing or RAD units offered in general population properties:

Category #1: Working Families (50% Annually)

Category #2: All Other Families (40% Annually)

(3) Emergency Category - Up to ten percent (10%) (not to exceed one hundred (100) units) annually of all applicants housed in the general and/or mixed-population properties will be selected from qualified applicants in the Emergency Category. Emergency Category is defined in 14 DCMR Section 5705.

(b) If there are no applicants on the waiting list that qualify for the Emergency Category, otherwise eligible applicants will be selected for admission.

(c) The admission systems described above will work in combination with requirements to match the characteristics of applicant families to the type of units available, including units for targeted populations, *e.g.*, elderly, disabled. The ability to provide public housing for qualified applicants will depend on the availability of appropriately sized public housing or RAD units.

6105.3 The DCHA shall select families from the waiting list in the Emergency Category by date and time of application, except when a situation is a federally or locally declared natural disaster or civil disturbance, in which case the Executive Director has the discretion to waive date and time of application in selection. Any determination by the Executive Director to waive the date and time of application must be in writing stating the maximum number of applications that will be selected under these provisions or any limits on time for the waiver, with such waiver being approved for form and legal sufficiency by General Counsel and published in the *D.C. Register*.

6105.4 The preferences for admission to the Housing Choice Voucher Program are found in the DCHA's Administrative Plan for the Section 8 Certificate and Housing Voucher Programs.

6106 ELIGIBILITY

6106.1 DCHA shall consider an applicant eligible for selection for public housing or the Housing Choice Voucher Program if the applicant meets the following criteria:

(a) Qualifies as a family, as defined in Section 5999 of this chapter;

(b) Annual income does not exceed the income limits for admission under Section 6108 of this chapter;

(c) Family meets applicant family selection criteria under Section 6109 of this chapter;

(d) Family size meets the occupancy standards established by DCHA under Section 6110 of this chapter; and

(e) Family provides all required information and signs all required documentation, including proof of citizenship or eligible immigrant status.

6106.2 DCHA shall consider an applicant eligible for selection for a RAD unit if the applicant meets the criteria set forth in Section 5707 of this Title 14.

6106.3 For applicants near the top of the waiting list, the Client Placement Division will mail written notice to the last address provided in order to obtain information needed for a determination of eligibility. The letter will state:

(a) The date and time of the eligibility interview;

(b) The location where the eligibility interview will be held; and

(c) The documents the applicant should bring to the eligibility interview.

6106.4 A family or applicant may make one request to reschedule an eligibility interview for the convenience of the applicant up to thirty (30) days after the scheduled eligibility interview date. However, DCHA will reschedule an eligibility interview as a reasonable accommodation if the applicant can demonstrate that a disability prevented them from rescheduling within the prescribed time period.

6106.5 If an applicant does not respond to notice of an eligibility interview and does not request an alternate appointment in advance of the scheduled interview date, then the applicant shall be deemed inactive on the waiting list for the type housing assistance offered. If the applicant informs DCHA that the applicant remains in need of the housing assistance at any time after the scheduled interview date, then the applicant shall be restored to active status on the waiting list for the relevant type of housing assistance with the applicant's original application date. The applicant shall be scheduled for another eligibility interview based on the restored application date and any updated applicant information.

6106.6 The eligibility interview will be held in order to collect eligibility data, determine eligibility and identify any special problems or needs. As part of the eligibility determination, an applicant will be provided the opportunity to complete a reasonable accommodation request. All information shall be verified as a part of the eligibility determination.

6106.7 During the eligibility interview, the Client Placement Division shall assist the applicant in completing any forms necessary. The following forms, as applicable, are to be completed or signed by the applicant:

(a) Privacy Act Notice;

(b) Asset Certification Form – only assets with a value greater than fifteen thousand dollars ($15,000) or which generate a net income of greater than one thousand dollars ($1,000) per year must be reported and documented. DCHA will rely on applicants certification as to value of assets and whether net income from assets exceeds the threshold established above;

(c) Verification of Date of Birth for each Household Member;

(d) Social Security Number Certifications:

(1) Social Security Numbers for each Household Member six (6) years old or older; or

(2) Certification of inability to meet the documentation requirement where an applicant has a Social Security Number but no documentation; or

(3) Certification that Social Security Numbers have not been issued.

(e) Picture ID for family members age eighteen (18) or older;

(f) Declaration of Section 214 Status (Non-citizen Rule);

(g) Verification of Preference or Admission Category;

(h) Verification of Full-time Student Status Form;

(i) Certification of Disability Form;

(j) Statement of Child Care Expense Form;

(k) Zero Income Statement;

(l) Verification of Income from Assets;

(m) Statement of Child Support;

(n) Income Verification (Employment, Public Assistance, Social Security); and

(o) Other forms, as may be required.

6106.8 At the end of the eligibility interview, the Client Placement Division shall provide the applicant with written notification of any missing or incomplete forms, information on how to determine if any debt remains unpaid to DCHA or any HCVP or RAD Project Owner, or any additional information which is to be provided by the applicant.

6106.9 If an applicant cannot complete all the necessary forms at the time of the interview, the interviewer may request that any additional required forms be completed by the applicant within a specified timeframe not to exceed ten (10) days.

6106.10 A written receipt shall be provided to the applicant for any additional information provided.

6106.11 Applicants who do not provide the additional items requested by DCHA pursuant to Subsection 6106.9 within ten (10) days, may request one (1) extension of time not to exceed ten (10) days.

6106.12 Applicants who do not provide additional items requested by DCHA pursuant to Subsection 6106.9 within ten (10) days, or within any additional period allowed under Subsection 6106.11, shall be removed from the waiting list(s).

6106.13 If an applicant experiences difficulty in securing verification in the prescribed form, DCHA may accept other documents to expedite the certification process (for example, baptismal or school records could be used as proof of birth).

6106. 14 Briefings.

(a) Applicants must attend a full briefing prior to issuance of a Housing Choice Voucher unless this requirement is waived by the Executive Director in emergency cases.

(b) DCHA will mail notice of the briefing via U.S. mail to the last address provided by the applicant or existing participant.

(c) Families or applicants who provide prior notice of inability to attend a briefing will automatically be scheduled for the next available briefing and notified by mail of its date and time. If a family or applicant fails to attend a scheduled briefing another notice will be mailed for a second briefing date.

(d) If an applicant fails to attend two (2) scheduled briefings, and does not notify DCHA in advance of their inability to attend the second briefing appointment, then the applicant shall be deemed inactive on the waiting list. If the applicant informs DCHA that the applicant remains in need of the housing assistance at any time after becoming inactive then the applicant shall be restored to active status on the waiting list with the applicant's original application date.

(e) If vouchers of the type that would have been issued to the applicant at the missed briefings are still available and the inactive applicant asserts the need for housing assistance less than thirty (30) days after initial eligibility determination then a new briefing appointment shall be made with the applicant.

(f) If the inactive applicant requests assistance more than thirty (30) days after the initial eligibility determination by DCHA, and vouchers of the

type that would have been issued to the applicant at the missed briefings are still available; DCHA shall schedule the restored applicant for another eligibility interview. If the applicant is determined to be eligible, the applicant shall be scheduled for a full briefing. If vouchers of the type that would have been issued are not available, the applicant will be restored to the waiting list as an active applicant with the date and time of the original application.

6107 ELIGIBILITY DETERMINATION

6107.1 After reviewing the application, additional supporting documents and obtaining necessary verifications, DCHA shall determine the applicant's eligibility in accordance with Section 6106 of this chapter.

6107.2 Applicants determined to be eligible for housing shall be placed in the selection pool.

6107.3 DCHA must mail a letter to each applicant determined to be ineligible and the notification of ineligibility shall contain:

(a) The date and time of the informal conference;

(b) The location where the informal conference will be held;

(c) The reason for the determination of ineligibility;

(d) The applicant's right to bring new or additional information to the informal conference;

(e) The type of additional documentation or information DCHA may need in order to reconsider an applicant's eligibility for the public housing, RAD, and Housing Choice Voucher programs; and

(f) The applicant's right to bring an attorney or any other representative to the informal conference.

6107.4 The informal conference shall be scheduled and/or rescheduled as follows:

(a) The date of the informal conference shall be no sooner than fifteen (15) days and no later than thirty (30) days after the postmark date of DCHA's letter to the applicant.

(b) A family or applicant may request to reschedule an informal conference for the convenience of the applicant any time up to two (2) days after the scheduled informal conference date. If a family or applicant fails to attend the conference rescheduled for their convenience they may make one final

request for rescheduling any time up to two (2) days after the rescheduled informal conference date.

(c) Notwithstanding paragraph (b) above, DCHA will reschedule an informal conference as a reasonable accommodation if the applicant can demonstrate that a disability prevented them from rescheduling within the prescribed time period.

6107.5 If the applicant does not attend the informal conference, a supervisor in the Client Placement Division will conduct a review of the application to determine if the applicant is eligible for public housing or RAD. This supervisory review will take place even where no additional information is provided by the applicant or the applicant's representative.

6107.6 Applicants determined to be eligible after the supervisory review or the informal conference will be notified in writing and placed in the selection pool.

6107.7 When an applicant is determined ineligible after the informal conference or supervisory review, the Client Placement Division will issue a letter informing the applicant of their right to:

(a) A review by an independent third party acceptable to DCHA willing to review applicant files pro bono; and

(b) Bring a grievance pursuant to Chapter 63, Chapter 89, or Sections 5730 through 5747 of this title.

6107.8 When an applicant is determined ineligible for public housing, RAD, or the Housing Choice Voucher Program, the applicant will be removed from the waiting list(s) and his or her application will be retained up to three (3) years in an inactive status.

6107.9 Applicants who were determined ineligible solely by reason of an unpaid debt may, at any time during their inactive status, provide evidence that the debt has been paid or otherwise resolved. These applicants may be returned to the waiting list(s) with the same date and time of application as the date and time the applicant had when the applicant was placed on inactive status.

6107.10 Notwithstanding provisions which may appear elsewhere in this subtitle, a determination of eligibility for public housing, RAD, or HCVP under this chapter shall be valid for a period of one hundred eighty (180) days from the date of said determination.

6108 INCOME LIMITS

6108.1 To be eligible for admission to public housing or the Housing Choice Voucher Program an applicant's annual income shall be within the limits of lower income families established by HUD, based on the family size.

6108.2 Income limits for lower income families and very low income families shall be as established and revised periodically by HUD. HUD establishes low income limits based on eighty percent (80%) of the area median income, very low income limits based on fifty percent (50%) of the area median income, and extremely low income limits based on thirty percent (30%) of the area median income.

6108.3 Income limits shall be applied at the time of eligibility determinations by the Client Placement Division.

6108.4 Based on HUD regulations, DCHA shall ensure that actual admission of eligible lower income families from the Public Housing Waiting Lists is as follows: at least forty percent (40%) shall be families with extremely low incomes at the time of commencement of occupancy. Actual admission to RAD Covered Projects from the Public Housing Waiting Lists shall be governed by Section 5708 of this Title 14.

6109 APPLICANT FAMILY SELECTION CRITERIA

6109.1 This section applies to applicants for public housing, RAD, and the Housing Choice Voucher Program. All subsections of this section are applicable to applicants for public housing. Only Subsections 6109.3, 6109.4, 6109.6, 6109.7 and 6109.8 apply to applicants for public housing, RAD, and the Housing Choice Voucher Program.

6109.2 Information that will be considered in screening an applicant shall be reasonably related to assessing the applicant and other applicant family members listed on the application. The applicant's history (*e.g*., employment history, personal habits or practices, and/or rental or personal credit history) must demonstrate the capacity to comply with the terms of the DCHA lease. If the applicant requires support (*e.g*., live-in aide) to enable him/her to meet the standards identified below, the applicant must demonstrate that the necessary support would be available at the time of admission. Additionally, the applicant, including the applicant's family must be willing to:

(a) Not interfere with other residents in such a manner as to diminish their peaceful enjoyment of the premises by adversely affecting the health, safety, or welfare of the other residents or the community;

(b) Enhance and/or maintain the physical environment or financial stability of the project;

(c) Help create an environment where young people, especially children, can live, learn, and develop into productive and responsible citizens;

(d) Attend and complete DCHA's Community Living Training Program, prior to admission; and

(e) Comply with the terms and conditions of the DCHA lease.

6109.3 DCHA will utilize the following methods in determining an applicant's eligibility for admission: reference checks, including current and/or previous landlords, consultations with current and/or former neighbors, conducting home visits, reviewing police reports and/or criminal background checks of each member of the applicant family, including juveniles, as may be permitted by law.

6109.4 Relevant information respecting personal habits or practices to be considered in the admission process, may include, but is not limited to, the following:

(a) A reasonable cause to believe, supported by signed documentation, that any family member's illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of any DCHA programs by other residents, employees or community members; and

(b) An applicant's past performance in meeting financial obligations, especially rental payment obligations. An applicant who is responsible for any debt to DCHA, any other housing authority, or any landlord participating in any federally assisted housing program (*e.g.*, the Housing Choice Voucher Program) may not be admitted or readmitted until the debt is paid or otherwise satisfied; and

(c) A record of respecting the rights of others, as defined in the DCHA lease; and

(d) A determination that the applicant has committed fraud in connection with any Federal housing assistance program or any local housing assistance program; and

(e) An applicant's misrepresentation of any information related to eligibility, including, but not limited to, the award of a preference for admission, family composition, or income.

6109.5 If an applicant is determined eligible and qualified for admission, the applicant will be referred to a public housing property for housing, consistent with Section 6111 of this title. Notwithstanding, prior to the applicant signing a lease, if the relevant property manager or RAD Project Owner uncovers information regarding the applicant that would lead a reasonable person to believe that housing the

applicant on the relevant property would interfere with the other residents' peaceful enjoyment of the premises by adversely affecting the health, safety, or welfare of the other residents or the community, the property manager shall so advise the Client Placement Division and refer the application for further consideration. The Client Placement Division will then conduct a further review of the application, taking into consideration the information provided.

6109.6 With respect to criminal conviction(s) or activity:

(a) The DCHA may deny admission to public housing, RAD, or the Housing Choice Voucher Program to any applicant if any adult member of the applicant's family (or any non-adult member who has been convicted of a crime as an adult) has been convicted of a felony, or involving destruction of property or acts of violence against another person or other felony criminal convictions within the last seven (7) years that may adversely affect the health, safety, or welfare of other DCHA residents, staff, or other members of the community, *e.g.*, distribution or manufacture of illegal drugs or controlled substances, possession of an unlicensed firearm and/or ammunition, or child molestation; or

(b) DCHA shall deny admission to any applicant who has been evicted from housing assisted under the United States Housing Act, for drug-related criminal activity for a three year period beginning from the date of the eviction.

(c) DCHA shall prohibit admission of any family that includes any individual who is subject to a lifetime registration requirement under any sex offender registration program (*e.g.*, state, local or international). DCHA shall, upon request, provide the tenant or applicant with a copy of the registration information and an opportunity to dispute the accuracy and relevance of that information.

(d) DCHA shall prohibit admission for any individual that has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine or production of methamphetamine on the premises of federally assisted housing.

6109.7 If unfavorable information is received as a result of the investigation conducted pursuant to Subsections 6109.2,6109.4, or 6109(a) or (b) above, consideration shall be given to the time, nature, and extent of the applicant family's conduct, and to factors which might indicate a reasonable probability of favorable future conduct or financial prospects. Verifying information may be provided or requested from various sources, including but not limited to, the applicant (by interview and/or home visit), landlords, clergy, employers, family members, social workers, parole officers, court records, drug treatment counselors,

neighbors, and/or police department records. Mitigating circumstances might include, but are not limited to:

(a) Evidence of favorable changes in the applicant's pattern of behavior including the length of time since an offense or behavior was committed; or

(b) Evidence of successful rehabilitation, *e.g*., acknowledgment of culpability, evidence that the responsible member of the applicant family is not likely to repeat the prior criminal behavior, evidence that neither the applicant nor any member of the applicant family is likely to cause harm to the other public housing or Housing Choice Voucher Program residents, DCHA or Project Owner staff, or other members of the community; or

(c) Evidence of the applicant's participation in or willingness to participate in relevant social service activities or other appropriate counseling services including but not limited to: participation in a generally recognized training program, substance abuse treatment, and/or successful completion of therapy directed at correcting the behavior that lead to the activity; or

(e) Evidence of the applicant's modification of previous disqualifying behavior, with indications of continuing support intended to assist the applicant in modifying the disqualifying behaviors;

(f) Context or details of previous disqualifying behavior, including the nature and severity of the offense, the age of the applicant at the time of the occurrence of the offense, whether the offense occurred on or was connected to property that was rented or leased by the applicant; or

(g) Evidence of adequate and suitable employment.

6109.8 Care and consideration shall be used in soliciting personal information concerning the applicant and his/her family members, and appropriate authorizations shall be obtained for the release of information, as necessary, from each applicant family. Any information received regarding an individual applicant will be used solely for the purpose of determining eligibility and will not be released for any other use, unless such release is required by law. Failure to sign the required release forms or the failure to submit information determined necessary to establish eligibility, shall result in the applicant's removal from the waiting list(s). If the applicant is removed from the waiting list(s) because of such a failure, the informal conference procedures set forth in Section 6107 shall not apply.

6109.9 The DCHA Applicant Family Selection Criteria will not be used to determine eligibility of residents for continuing occupancy in the same public housing or RAD unit. Eligibility for continuing occupancy in the same unit will be made in accordance with the terms and conditions of the DCHA lease.

6109.10 Resident requests for transfers will be subject to this Section - Applicant Family Selection Criteria- and shall be a requirement for transfer of residents and the execution of new leases. This section will not be applicable to DCHA-initiated transfers, approved emergency medical transfers, reasonable accommodation transfers, or Property Transfers conducted pursuant to § 5750.16. Transfers that result in the family being offered a spot in a different DCHA program than the one they are currently in may be subject to screening for program qualifications.

6110 OCCUPANCY STANDARDS

6110.1 Standards for admission and continued occupancy shall be established to avoid overcrowding and wasted space, and each dwelling unit shall be leased in accordance with the standards of this Subtitle and Subtitle A of this title. Applicants assigned to public housing shall be governed by the occupancy standards set forth in this Section 6110. Applicants assigned to RAD Covered Projects shall be governed by the occupancy standards set forth in Section 5709 of this Title 14.

6110.2 Tenants shall be assigned to dwelling units which consist of the number of rooms necessary to provide decent, safe and sanitary accommodations without overcrowding or wasting space. The following standards for unit size at admission, and for continued occupancy, shall apply:

Unit Size (Number of Bedrooms)	Minimum Number of Persons in Unit	Maximum Number of Persons in Unit
0	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

6110.3 Dwelling units shall be assigned in a manner that will eliminate the need for persons of the opposite sex, other than husband and wife, to occupy the same bedroom.

6110.4 Every member of the family, regardless of age, shall be considered a person when applying the standards for admission and continued occupancy. In accordance with Chapter 74, DCHA will consider unit assignment to a larger size to provide a separate bedroom for a disabled person, if verified as medically necessary.

6110.5 Each dwelling unit shall be used solely as a residence for the tenant and the tenant's family as represented in the application for housing, and the dwelling lease.

6110.6 When possible, occupancy shall be restricted at admission to minimum requirements to allow for family growth.

6110.7 Application of occupancy requirements for continued occupancy shall be consistent with Subsection 6114.7 and Subsection 6205.2 of this subtitle.

6111 TENANT ASSIGNMENT

6111.1 When an Applicant has been deemed eligible and a unit has become available for offer, DCHA shall review the Applicant's file to determine whether the information is current and correct. Information shall be considered current if it was verified by DCHA within no more than one hundred eighty (180) days prior to tenant assignment.

6111.2 If updated information is required, the Applicant shall be required to submit information in accordance with Section 6106 of this chapter before a unit is offered.

6111.3 Eligible Applicants shall be offered an appropriate unit, when available, consistent with the priorities and requirements of this title.

6111.4 Unit offers shall be made to Applicants with the earlier application date and time regardless of whether the Applicant selected the First Available Waiting List or a Site-Based Waiting List for the particular site selected.

6111.5 Suitable vacancies arising at a given time at any location shall be offered to the selected Applicant first in sequence at the time of vacancy; provided, that referrals may be made out of sequence in the following situations:

(a) For Applicants with a preference or in the Emergency Category, assignments shall be made to units in sequence based upon the date and time of application, as indicated in Section 6105;

(b) For low income families, pursuant to Section 6105;

(c) For disabled families, pursuant to Section 6112; and

(d) For comprehensive modernization properties and new developments, pursuant to Section 6113.

6111.6 Each Applicant shall be assigned an appropriate unit in sequence based upon the date and time of application, suitable type or size or unit, preference, consistent with the objectives of Title VI of the Civil Rights Act of 1964, and applicable HUD regulations and requirements.

6111.7 Selection from the First Available Waiting List.

(a) Eligible applicants with the earliest application date and time selecting a First Available Unit shall be offered the next available unit that matches the family bedroom size and required needs regardless of the development pursuant to this section.

(b) When an Applicant is offered a unit from the First Available Unit waiting list, DCHA shall send the Applicant an offer letter and identify the development where the unit is available. The Applicant must contact the property and view the unit within ten (10) calendar days of the offer letter.

(c) If the Applicant fails to show up at the appointment or refuses the unit offer, the Applicant shall be offered one (1) additional unit for selection. If the Applicant refuses the second unit offer, the Applicant shall be removed from the public housing waiting list(s) but shall remain on the Housing Choice Voucher Program and Moderate Rehabilitation Program waiting lists.

(d) If an Applicant fails to show up at an appointment or refuses a unit offer, DCHA shall offer the unit to the next Applicant on the Public Housing Waiting Lists in accordance with this section.

(e) If the Applicant accepts an offered unit, the Applicant shall be removed from all Public Housing Waiting Lists but shall remain on the Housing Choice Voucher and Moderate Rehabilitation Waiting Lists.

6111.8 Selection from the Site-Based Waiting List.

(a) Eligible Applicants on the Site-Based Waiting List with the earliest date and time shall be offered the next available unit that matches the family bedroom size and unit characteristics pursuant to this section.

(b) When an Applicant is offered a unit from the Site-Based Waiting List, DCHA shall send the Applicant an offer letter and identify the development where the unit is available. The Applicant must contact the property and view the unit within ten (10) calendar days of the offer letter.

(c) If the Applicant fails to show up at the appointment or refuses the unit offer, the Applicant shall be offered one (1) additional unit for selection at any of their selected sites when their name reaches the top of the waiting list(s). If the Applicant refuses the second unit offer, the Applicant shall be removed from all DCHA Public Housing Waiting Lists.

(d) If an Applicant fails to show up at an appointment or refuses a unit offer, DCHA shall offer the unit to the next eligible Applicant on the Public

Housing Waiting Lists in accordance with this section.

(e) If the Applicant accepts an offered unit, the Applicant shall be removed from all Public Housing Waiting Lists but shall remain on the Housing Choice Voucher and Moderate Rehabilitation Waiting Lists.

6111.9 If the Applicant is willing to accept the unit offered but is unable to move at the time of the offer, and presents clear evidence to DCHA's satisfaction of his or her inability to move, refusal of the offer shall not count as one of the number of allowable refusals permitted the Applicant before removing the Applicant from the Public Housing Waiting Lists.

6111.10 If the Applicant presents evidence to the satisfaction of DCHA that acceptance of a given offer of a suitable vacancy may result in undue hardship not related to considerations of race, sex, color, or national origin, such as inaccessibility to employment, children's day care, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before removing the Applicant from the Public Housing Waiting Lists.

6111.11 If a non-disabled family refuses to accept a vacancy in an accessible unit, the refusal shall not be counted as one of the allowable refusals.

6111.12 The following requirements shall be applicable to any offered vacancies:

(a) The unit offer shall be in writing and shall include the following:

(1) Identification of the property;

(2) Address and phone number of the property management office;

(3) The bedroom size and unit characteristics; and

(4) The time to contact the property and to view the unit.

(b) The Applicant must contact the property in accordance with this section; and

(c) After the Applicant has viewed the offered unit, the Applicant shall accept or reject the unit at that time.

6111.13 Applicants with preferences who reject two units for reasons other than those allowed in this section shall be removed from the public housing waiting list(s). If they are on the Housing Choice Voucher Program or the Moderate Rehabilitation waiting lists, the Applicant shall be permitted to remain on the list(s).

6111.14 Applicants with preferences who reject two units for reasons other than those allowed in section shall lose their preference provided in Subsection 6105.2 and shall be withdrawn from the Public Housing Waiting Lists. If the Applicant is on the Housing Choice Voucher Program or the Moderate Rehabilitation waiting lists, the Applicant shall be permitted to remain on the list(s).

6111.15 Selection from the Housing Choice Voucher Program Waiting List.

(a) Applicants seeking a Housing Choice Voucher shall be placed on the Housing Choice Voucher Program waiting list according to the date and time of the application and any application preferences selected by the Applicant on the application pursuant to Chapter 76 of this title.

(b) When selecting Applicants from the waiting list for a Housing Choice Voucher, Applicants who have been deemed eligible shall be issued a voucher pursuant to Chapter 76 of this title.

6111.16 Selection from the Moderate Rehabilitation Program Waiting List.

(a) Applicants seeking admission to the Moderate Rehabilitation Program shall be placed on the Moderate Rehabilitation Program waiting list according to the date and time of the application, and any application preferences selected by the Applicant on the application pursuant to Chapter 76 of this title.

(b) When selecting Applicants from the waiting list for the Moderate Rehabilitation Program, Applicants who have been deemed eligible shall be referred to the next available unit based on the family composition, pursuant Chapter 76 of this title.

6113 TENANT ADMISSION AND OCCUPANCY: REDEVELOPED AND SERVICE RICH PROPERTIES

6113.1 Scope.

Redeveloped Properties are mixed-finance communities owned by private entities which communities are created through HOPE VI or other public funding combined with private financing, which have some or all of their units assisted by operating funds or project-based rent subsidy payments provided by DCHA. Service Rich Properties may be DCHA-owned, conventional public housing or privately owned units assisted with operating funds provided by DCHA and managed by DCHA or third parties, which provide and/or oversee the delivery of services for residents.

6113.2 Overview.

(a) Pursuant to the MTW Agreement between DCHA and the U.S. Department of Housing and Urban Development, dated July 25, 2004, as amended by an Agreement dated September 29, 2010, and as such agreement may be further amended, DCHA may, notwithstanding certain provisions of the Housing Act of 1937 and regulations issued pursuant thereto, adopt local rules for the governance of its public housing and housing choice voucher programs.

(b) Accordingly, Section 6113 sets forth the regulatory framework for the property based rules and ongoing oversight or approvals governing: occupancy and re-occupancy; selection criteria; screening criteria; application processing; waiting lists; lease provisions; income determinations; and grievance procedures for properties officially designated as Redeveloped or Service Rich Properties by the DCHA Board of Commissioners.

(c) Service Rich Properties operated as District of Columbia-licensed assisted living residences also shall operate subject to, and in accordance with the requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)), and regulations promulgated thereunder, Title 22 (Health), The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and any other applicable local or federal regulatory requirements.

6113.3 Selection Criteria.

(a) The selection criteria, including all priorities and preferences for applicants for initial occupancy following construction and re-occupancy upon vacancy of units at Redeveloped or Service Rich Properties that are receiving operating subsidies or project-based rent subsidy payments from DCHA, are those incorporated in a regulatory and operating agreement or RAD control agreement by and between the owner and DCHA after consultation with representatives of the community and former and/or prospective residents. These selection criteria are hereinafter referred to herein as the “General Selection Criteria”.

(b) While the General Selection Criteria may vary by property, selection and screening criteria for all properties shall include the mandatory federal standards with respect to certain types of criminal activity as specified in federal statute.

(c) For UFAS-Accessible Units, besides the General Selection Criteria, occupancy of the Units shall be to a household qualified for the available bedroom size of the Unit and a verified need for the features of a UFAS-Accessible Unit in the following order of priority, with date and time of

application or transfer request where there are multiple applicants within any one priority:

(1) First, to a qualified returning resident who previously resided in one of the developments being redeveloped.

(2) Second, to a qualified applicant referred by DCHA from its list of households designated in 2006 for interim assistance in accordance with the provisions of the Amended VCA.

(3) Third, to a qualified applicant referred by DCHA from its list of households designated in 2007 for interim assistance in accordance with the provisions of the Amended VCA.

(4) Fourth, to a qualified DCHA resident on DCHA's Transfer List;

(5) Fifth, to a qualified public housing applicant on DCHA's Waiting List;

(6) Sixth, to a qualified Housing Choice Voucher.

6113.4 Application Process.

Each property shall develop its own process for taking applications, subject to review and approval by DCHA.

(a) Application forms for transferring or returning residents and applicants are developed by the owner for the Redeveloped Property and shall be subject to review and approval by DCHA.

(b) Completed applications for returning residents, transferring residents or applicants shall be accepted at the property and shall be reviewed and approved in accordance with the criteria approved in accordance with Subsection 6113.2.

(c) The occupancy and re-occupancy application and selection process shall be monitored by DCHA's Office of Asset Management.

6113.5 Waiting Lists.

(a) Where the number of returning residents, transferring residents or new applicants exceeds the number of available units, applicants seeking to be housed at the property shall be placed on a waiting list.

(1) Waiting lists shall be maintained by the manager of the property based on the date and time of application and in accordance with

the selection criteria developed for the property and approved by DCHA in accordance with Subsection 6113.2; or

(2) At certain properties, a basic eligibility determination for public housing shall be made by DCHA's Client Placement Division and eligible tenants shall be referred to the property where the property's selection criteria shall be applied.

(b) A list of all properties, along with the status of each site based waiting list as either open or closed, shall be available from the DCHA's Client Placement Division. When a property makes a determination to open its waiting list, notice shall be provided to the DCHA resident advisory board and published in the *District of Columbia Register*.

6113.6 Lease Terms.

(a) Leases for Redeveloped Properties or Service Rich Properties may be developed by the owner or manager, subject to the approval of DCHA for compliance with applicable local and federal provisions as well as DCHA's regulations, including the requirements regarding Special Supplements to Lease governed by the provisions of Subsection 6112.4 of Title 14.

(b) Provisions relating to rent, rent collection, security deposits, excess utility charges, and such other provisions as DCHA may approve, may vary from the DCHA standard form of lease.

6113.7 Income Determinations.

Certification and recertification of income shall be performed by the manager of the property and monitored periodically by DCHA for compliance with applicable DCHA and federal regulations. At certain Service Rich Properties designated by DCHA, income for certification and recertification purposes may be disregarded for up to two (2) years of occupancy.

6113.8 Service Rich Properties – Assisted Living Residences.

(a) Authority. HUD has authorized DCHA to operate certain of its Service Rich Properties as assisted living residences, as defined in the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)).

(b) Eligibility; Continuing Occupancy.

(1) Families selected to live in a DCHA assisted living residence must meet assisted living-specific selection criteria, as outlined in site-

based, site-managed community-specific eligibility criteria that are set forth in the Management Plan for the property, which DCHA will make available.

(2) Continued occupancy for families residing at DCHA assisted living residences will be based on adherence to the programmatic and occupancy requirements for the specific property, as set forth in the Dwelling Lease, Residential Agreement, and any Individual Service Plan, or any addenda thereto.

(c) Grievance Rights.

(1) DCHA assisted living residences shall establish grievance procedures, which include informal and formal settlement procedures, (1) for all grievances arising public housing landlord tenant matters, that are consistent with the requirements of 24 CFR §§ 966.50 *et seq.*, and (2) for all grievances arising from assisted living matters, including transfer, discharge and relocation, the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)). The procedures shall be incorporated into the Dwelling Lease, as set forth in 24 CFR § 966.4(n), and shall be set forth in the Residential Agreement, pursuant to D.C. Official Code § 44-106.02.

(2) The grievance procedures shall provide:

(A) Informal Settlement of Grievance, as follows:

(i) If a Tenant wishes to grieve a decision of the administrator of the assisted living residence, he or she or his or her representative/surrogate must request an informal conference in writing within four (4) days of receiving the decision of the administrator in writing or within four (4) days of any alleged failure to act on the part of the administrator.

(ii) The request for an informal hearing must include a description of the nature of the complaint and issue to be grieved. Upon request, a facility employee shall help the resident complete the written request.

(iii) The administrator will provide the Tenant with a dated receipt when the request for an informal conference is filed. The informal conference will be

scheduled at a mutually agreeable time and will be held within two (2) days of the receipt of the request by the administrator.

(iv) The Tenant may bring his or her representative/ surrogate and an advocate if he or she wishes. A Supervisor of the Administrator will preside and render the decision resulting from the informal conference. A copy of the written decision will become a part of the Resident's clinical record.

(v) The Supervisor shall provide the decision in writing to the Resident within twenty four (24) hours of the completion of the informal conference. The decision shall include a summary of the discussion, the decision regarding the disposition of the complaint and the specific reasons for the decision. The decision summary will list the names of the participants, and the date of the meeting. When the written results of the decision are delivered to the Resident, they will include a description of the options remaining to the Resident, including instructions on how to request a Formal Hearing.

(vi) If the original decision is concerning a discharge, transfer or relocation and it is upheld, and if the Resident decides not to pursue a Formal Grievance Hearing, the Resident must comply with the decision within thirty (30) days of having received the Notice of Relocation, Transfer or Discharge prepared and delivered according to the provisions of D.C. Official Code § 44-1003.02(a).

(B) Formal Grievance Hearing Regarding Involuntary Discharge, Transfer or Relocation, as follows:

(i) If the Resident wishes to proceed with a formal hearing in order to contest the decision to involuntarily discharge, transfer or relocate the Resident, the Resident, his or her representative/ surrogate or the Long-Term Care Ombudsman shall mail a written request to the Department of Health and deliver it to the Administrator within seven (7) calendar days after receiving a notice of discharge or transfer to another facility, or within five (5)

calendar days after receiving a notice as described above, of relocation within the facility.

(ii) If the Resident elects to request a Formal Hearing, the Administrator will remind the Resident that if the original decision is upheld, then the Resident will be required to leave the facility by the fifth (5th) calendar day following his or her notification of the hearing decision or before the 31st calendar day following his or her receipt of notice of discharge required by D.C. Official Code § 44-1003.02(a), whichever is later. If the Resident is being required to relocate within the facility, he or she will be reminded by the Administrator that this must occur by the eighth (8th) calendar day following his or her receipt of the notice to relocate or the third (3rd) calendar day following his or her notification of the hearing decision, whichever is later. The Administrator shall provide all notices required under this paragraph in written and oral form.

(iii) The Department of Health will designate an appointee of the Office of Administrative Hearings as the Hearing Officer.

(iv) The Office of Administrative Hearings will schedule the formal hearing to occur within five (5) days of the request from the Resident.

(v) The Resident may bring his/her representative/ surrogate, and advocate or the Long-Term Care advocate to participate in the hearing. The facility shall have the burden of proof unless the ground for the proposed discharge, transfer, or relocation is a prescribed change in the resident's level of care, in which case the person(s) responsible for prescribing that change shall have the burden of proof and the resident shall have the right to challenge the level of care determination at the hearing. The Resident may not litigate Medicaid eligibility at the hearing.

(vi) The Office of Administrative Hearings will provide the decision within seven (7) days of the completion of the hearing. The decision will become a part of the Resident's clinical record.

(vii) If the original decision is upheld, the resident must leave the facility by the fifth (5th) calendar day after the receipt of the Hearing Officer's decision or the thirty-first (31st) day after receiving the discharge notification, whichever is later. If the original decision required relocation within the facility and it is upheld, this must occur before the third (3rd) calendar day after receiving the Hearing Officer's decision or by the eighth (8th) calendar day after having received the relocation notification, whichever is later. Notice shall be provided orally and in writing.

(viii) If the resident prevails in contesting the notice then the discharge is rescinded unless administrator appeals the decision.

(ix) Failure to request a formal grievance hearing shall not constitute a waiver by the Resident of his or her right thereafter to contest the Administrator's action in disposing of the complaint in an appropriate judicial proceeding.

(x) A decision by the Office of Administrative Hearings in favor of the Administrator or which denies the relief requested by the Resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Resident may have to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

(xi) If the Resident chooses to take the matter to court, he or she must make the filing within the thirty (30)-day notice period.

(xii) A Resident may seek judicial review of any decision of the Office of Administrative Hearings by filing a petition with the Court of Appeals of the District of Columbia; or any decision of DCHA by filing an action in District of Columbia Superior Court.

(d) Rent Calculation and Rent Collection at DCHA Assisted Living Residences.

(1) Tenant rent at DCHA assisted living residences shall be established as set forth at 14 DCMR § 6200, except as provided in subparagraphs (ii) and (iii) of this subsection.

(2) So long as a Family pays any applicable assisted living program fees timely, as provided in the Dwelling Lease, then for purposes of calculating adjusted income, as defined in 14 DCMR § 6099, to establish tenant rent for DCHA assisted living residences, such assisted living program fees shall be considered medical expenses and shall be deducted, in full, from the Family's annual income, as set forth in DCHA's approved 2014 Moving To Work Plan. In the event that adjusted income is zero dollars ($0.00) or less, then rent shall equal zero dollars ($0.00). Minimum rent, as defined by 14 DCMR § 6210, for assisted living residences, if any, shall be established by DCHA.

(3) Payments or allowances to residents of DCHA assisted living residences, for incidental living expenses under the provisions of any applicable assisted living program may be excluded from annual income for the purpose of calculating tenant rent.

(4) The Dwelling Lease for DCHA assisted living residences will include an itemized list of all fees, how they are calculated and allowances or payments for incidental living expenses.

(e) Assisted Living Residences - Resident Agreements.

(1) For purposes of this Section 6113, the term "Residential Agreement" shall have the meaning and components according to the requirements of Section 44-106.2 of the D.C. Official Code. In addition, the Resident Agreement shall set forth the terms and conditions governing participation in the assisted living programming

(2) At DCHA assisted living residences, the Resident Agreement may include or incorporate Individual Service Plans, as defined by D.C. Official Code § 44-106.04, to be completed by the participating household members.

(3) Upon execution, the Resident Agreement and related documents will become part of the Dwelling Lease. Participating Families must comply with the terms and conditions of the Dwelling Unit Lease Agreement, Addenda, the Resident Agreement and any related documents.

(4) Failure to abide by the terms of the Resident Agreement and

related documents shall be considered a violation of the Dwelling Lease Agreement.

(f) Assisted Living Residences - Transfers.

(1) A request by a Family to transfer to a DCHA assisted living residence, in accordance with 14 DCMR § 6400, will be deemed "a tenant initiated transfer" request if the Family accepts the offer of a unit at a DCHA assisted living residence.

(2) If a Family, which resides in a DCHA assisted living residence, no longer wishes to participate in the programing available at the assisted living residence, but remains compliant with the Dwelling Lease, then the Family will receive up to two (2) transfer offers of Conventional Public Housing units, in writing.

(3) A Family residing in a DCHA assisted living residence unit that receives a written offer to transfer into a new dwelling unit may refuse the offer on the basis of evidence, satisfactory to DCHA, that acceptance of the offered unit would cause undue hardship, as set forth in Subsection 6111.9, and such refusal shall not count against one of tenant's allowable offers under paragraph ii of this subsection.

(4) If a Family and refuses a second offered unit without good cause, then the Family may elect to stay at the assisted living residence, and shall comply with all applicable requirements, as set forth in the Dwelling Lease, or DCHA shall initiate discharge and termination processes, in accordance with Subsection 6113.8(h).

(5) Unless otherwise specified in the applicable Regulatory and Operating Agreement or Management Plan, or otherwise determined by DCHA, in the event of any family-initiated transfer to or from a DCHA assisted living residence to or from a conventional public housing unit as set forth in paragraph (f)(2) of this subsection, then the Family will be responsible for relocation costs.

(6) In addition to the foregoing requirements of this paragraph (g), any transfer of any resident from a DCHA assisted living residence shall be subject to, and in accordance with the applicable discharge and transfer requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)).

(g) DCHA Assisted Living Residences – Discharge/Termination.

(1) Any termination of any tenancy at DCHA assisted living facility shall be subject to the applicable termination and discharge provisions (including tenants' rights and protections) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)), in addition to any other DCHA, District or federal requirements

(2) If DCHA determines that a Family residing in an assisted living residence is in violation of the Dwelling Lease, except for lease violations predicated on criminal activity that threatens the residents health, safety or right to peaceful enjoyment of the assisted living residence, drug related criminal activity on or off the Leased Premises or at the assisted living residence or violent criminal activity, DCHA shall issue to the Lessee a notice to cure or vacate, stating in writing the violation(s) which provides the basis for the termination the lessee's right to cure the violations and instructions on how to cure the violations, provided that such notice and any requirement that tenant vacate the assisted living residence shall be subject to requirements of any applicable District or federal statute or regulation including those governing the assisted living residence or its services or programs. Administrator shall deliver notice orally and in writing.

(3) The notice shall inform the Family of its right to file an administrative complaint in accordance with Subsection 6113.8 (c), and any other administrative rights to which Tenant may be entitled by virtue of any District or federal regulation or statute governing the assisted living residence or its services.

(4) If a Lessee has filed a complaint requesting an administrative determination of his or her rights, in accordance with Subsection 6113.8(d), in response to service of a notice to cure or vacate or a notice of lease termination, and or such other notice required by District or federal regulation or statute including the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)), to which the assisted living facility, may be subject, and has not prevailed, the Lessee shall be issued a notice to vacate, as the time to cure has past and the Lessee shall be subject to legal action to gain possession of the unit (eviction).

(5) If DCHA determines that a Family's violation of the Lease results from a change in circumstance which renders the Family ineligible for the services offered at the assisted living facility, which change

is not at the fault or initiative of the Resident, then DCHA may, subject to availability and applicable requirements, transfer the Family to a unit in conventional public housing, in accordance with Subsection 6113.8(f).

(6) In the event of any lease violations, predicated on criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the assisted living residence, violent or drug related criminal activity on or off the Leased Premises or the assisted living residence, DCHA shall issue a notice to vacate, together with such other notice required by District or federal regulation or statute to which the assisted living facility or its programs or services may be subject.

(7) DCHA will not issue a notice to cure or vacate, or notice to vacate, where DCHA has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.

Chapter 64, LOW RENT HOUSING: PUBLIC HOUSING TRANSFER POLICY, Section 6400, TRANSFER POLICY, is amended as follows:

Subsection 6400.1 is amended to read as follows:

6400.1 It shall be the policy of the District of Columbia Housing Authority (DCHA) to transfer tenants from one dwelling unit to another to alleviate conditions of hardship caused by physical conditions or to address changed family circumstances. Transfers may result from actions mandated by DCHA or result from requests by its tenants. To facilitate such transfer, DCHA may offer units in its traditional public housing or in its RAD inventory, excluding RAD units within any Private Mixed Finance Project (as defined under Title 14, Chapter 57, Subsection 5705.1). Notwithstanding the foregoing, tenants residing within any Private Mixed Finance Project may also be transferred within or between any Private Mixed Finance Project in accordance with any applicable regulatory and operating agreement or RAD control agreement.

Chapter 89, INFORMAL HEARING PROCEDURES FOR APPLICANTS AND PARTICIPANTS OF THE HOUSING CHOICE VOUCHER AND MODERATE REHABILITATION PROGRAM, is amended by adding Section 8907 as follows:

8907 ADDITIONAL HEARING RIGHTS FOR RAD RESIDENTS

8907.1 In addition to DCHA determinations that require an opportunity for an informal hearing, as proscribed in 14 DCMR § 8903, residents of RAD Project-based properties may request a hearing for any dispute that a resident may have with respect to:

(a) A Project Owner action in accordance with the individual's lease; or

(b) The contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

8907.2 The RAD Project Owner will conduct any hearings authorized only under this subsection.

8907.3 There is no right to an informal hearing for class grievances or for disputes between residents not involving the RAD Project Owner or DCHA.

8907.4 When making a determination that creates a hearing right, the Rad Project Owner shall notify the family that the family may ask for an explanation of the basis of the determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

8907.5 The RAD Project Owner shall provide an opportunity for an informal hearing before an eviction.

DEPARTMENT OF PUBLIC WORKS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Public Works ("DPW"), in accordance with the authority set forth in the Sustainable Solid Waste Management Amendment Act of 2014, effective September 23, 2014 (D.C. Law 20-154; D.C. Official Code §§ 8-1031.01 *et seq*. (2013 Repl.)) and the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.* (2013 Repl.)), Mayor's Order 1986-160, dated September 19, 1986, and Mayor's Order 2017-116, dated May 3, 2017, hereby gives notice of the adoption of amendments to Chapter 7 (Solid Waste Control) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR) and the associated schedule of fines in Title 24 DCMR (Public Space and Safety), Chapter 13 (Civil Fines Under D.C. Law 6-100).

A solid waste collector registration and reporting process is established by these rules. Collectors of all types of solid waste are required to register and report annually with DPW. This registration is in addition to any license required by the Department of Consumer and Regulatory Affairs ("DCRA"). These rules identify which solid waste collectors are required to register and report with DPW and which are required to license with DCRA for solid waste collections.

These rules align requirements for recycling which previously were housed in Title 24, Chapter 12, Section 1031, which were repealed with the repeal of the provisions of the Solid Waste Management and Multi-Material Recycling Act of 1988 (D.C. Law 7-226; previously codified at D.C. Official Code §§ 8-1001 *et seq*.). The Mayor's List of Recyclables and Compostables is introduced in these rules. This list defines items as recyclable or compostable in the District. For clarity and consistency definitions were updated. The definition of solid waste was updated to align with the Sustainable Solid Waste Management Amendment Act of 2014 to mean all waste streams including refuse, recyclable materials, compostable materials, and reusable materials.

The Department published a Notice of Proposed Rulemaking on August 11, 2017 at 64 DCR 8038, and accepted comments until September 9, 2017. The Department did not receive any comments. The Department determined that no revisions were necessary and is adopting this rulemaking without changes. These rules were adopted as final on December 6, 2017, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 7, SOLID WASTE CONTROL, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 700, GENERAL PROVISIONS, is amended by amending Subsection 700.10 to read as follows:

700.10 Designated officials within the District agencies enumerated in the governing regulations for the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.*), which are set forth

in Title 24 DCMR, Chapter 13, § 1300.2, may issue the civil Notice of Violation to persons who violate a provision of this chapter.

New Subsections 700.12 and 700.13 are added to read as follows:

700.12 The Director or a designee shall be provided access to non-residential premises within the District of Columbia by the owner or occupant of the premises in accordance with the provisions of Section 4(b) of the Litter Control Administration Act of 1985, effective March 25,1986 (D.C. Law 6-100; D.C. Official Code § 8-803(b)) and Mayor's Order 1986-160.

700.13 All collectors are required to register and report to DPW in accordance with §§ 722 and 723. In addition, collectors who either collect refuse (trash) or operate a collection vehicle with a dumping mechanism must obtain a license with DCRA in accordance with §§ 710, 711, and 712.

Section 703, COLLECTION OF LEAVES, is amended by amending the section title to read as follows:

703 COLLECTION OF ORGANIC MATERIALS

Section 703 is also amended by amending Subsections 703.1 and 703.2 to read as follows:

703.1 Leaves shall be collected by the District on an announced schedule during the period of October through January.

703.2 Occupants of premises where leaves accumulate shall place their leaves at the point of collection.

New Subsection 703.4 is added to read as follows:

703.4 (a) Yard waste shall be set out for collection in either:

(1) Securely fastened paper bags; provided, that no such paper bag shall exceed fifty pounds (50 lbs.) in weight when filled; or

(2) Refuse (trash) collection containers that comply with the requirements of § 707.

(b) Notwithstanding paragraph (a) of this subsection, yard waste that consists of:

(1) Small branches and twigs may be set out for collection in separate, tied bundles that do not exceed four feet (4 ft.) in length; and

(2) Holiday trees and greenery may be set out for collection in a manner prescribed by the Director; provided, such trees and greenery shall be free of all nails, stands, bases, tinsel, and ornaments.

Section 705, COLLECTION OF SOLID WASTES, is amended by amending Subsections 705.1, 705.5, and 705.7 to read as follows:

705.1 Each premises or part of a premises where refuse are generated and where those wastes are not collected by the District shall be serviced by a licensed solid waste collector.

…

705.5 Residents of properties where solid wastes are collected by the District, excluding bulk wastes handled by special collection, shall do the following:

(a) Place the solid waste in legal containers, in a manner so as to prevent litter, at the point of collection no earlier than 6:30 p.m. on the day prior to the collection day and no later than the time of collection determined by the Director, on the collection day; and

(b) Return to private property by 8:00 p.m. of the collection day all emptied solid waste containers including Supercans.

…

705.7 Bundles of solid waste to be collected which are not placed in containers (when permissible under this chapter) shall be tied and shall not exceed four feet (4 ft.) in length.

New Subsections 705.8, 705.9, 705.10, 705.11, 705.12, 705.13, 705.14, 705.15, 705.16, 705.17, and 705.18 are added to read as follows:

705.8 All owners and occupants of private and public collection properties shall separate recyclable items for recycling collection. An owner may provide through a lease agreement for an occupant to be responsible for separating these materials for recycling, in which case the occupant shall also be responsible for meeting the requirements of this subsection and § 705.9. Notwithstanding the existence of such a lease agreement, the owner shall also be responsible for complying with this subsection and § 705.9 except where the Director determines that there are circumstances that warrant holding the occupant liable for compliance. The Director may issue a notice of violation to the occupant or to the owner.

705. 9 Materials that are separated for recycling shall be stored in bins, dumpsters, or other containers that are not used for the simultaneous storage of refuse (trash) and recyclable materials.

705.10 Each owner of a commercial property shall be responsible for the separate removal of recyclable materials by a registered solid waste collector or pursuant to a self-implementation plan submitted to and approved by the Office of Waste Diversion.

705.11 Each owner of commercial property shall, at least once a year, provide written notice to any tenants or occupants of the property of the legal requirement that certain materials be separated for recycling, the types of materials to be separated, how and where recyclables shall be taken in order to be collected for recycling, and the name and contact information of any recycling coordinator for the property.

705.12 Each owner of commercial property shall post and maintain at least one (1) sign where solid waste is collected or stored that sets forth what materials are required to be source separated and states the collection procedures for such materials, and shall post at least one (1) sign at containers where recyclables are collected stating what materials may properly be placed in them. The owner may provide through the lease agreement that an occupant shall be responsible for posting and maintaining such signs, in which case the occupant shall also be responsible for meeting the requirements of this subsection. Notwithstanding the existence of such a lease agreement, the owner shall be responsible for complying with this subsection except where the Director determines that there are circumstances that warrant holding an occupant liable for compliance. The Director may issue a notice of violation to an occupant or to the owner.

705.13 A solid waste collector shall not simultaneously transport recyclables along with other materials for disposal in the same vehicle at the same time except pursuant to a written waiver of this requirement issued by the Director or designee.

705.14 A written waiver shall only be issued to a registered solid waste collector if the collector demonstrates to the Director that the recyclables will be transported in a vehicle that does not compress or compact its contents. The collector shall also demonstrate that the method used for simultaneously transporting the materials ensures that recyclables will not be commingled with non-recyclable materials and that the recyclables will not be disposed of in any way other than by recycling.

705.15 The Director may revoke a written waiver if the Director finds that the conditions for receiving a waiver are not being met.

705.16 The contents of vehicles hauling solid waste to any District of Columbia disposal facility shall be subject to visual inspection for evidence of recyclables, as defined

in this chapter. If recyclables are detected, the driver of the vehicle shall be required to dump the load in an area away from regular dumping activities. Refuse (trash) loads shall not contain substantial amount of recyclables (approximately thirty percent (30%)).

705.17 No person shall remove recyclable materials that have been placed out in containers for collection by a solid waste collector, other than the solid waste collector or the person who placed out the recyclable materials.

705.18 (a) Newspaper, office paper, metals, glass, paperboard, cardboard, narrow necked plastic bottles, and other recyclables shall be recycled in accordance with this chapter.

(b) Beginning on January 1, 2018, the Mayor's List of Recyclables and Compostables shall prescribe the source separation requirements for all premises within the District of Columbia.

(c) Prior to January 1, 2018, items identified as recyclable on the Mayor's List of Recyclables and Compostables that are not listed in § 705.18 (a) may be considered recyclables or refuse (trash) for the purposes of source separation requirements.

(d) Beginning on January 1, 2018, items identified as recyclable on the Mayor's List of Recyclables and Compostables shall be source separated into dedicated receptacles for recycling.

Section 706, SPECIAL COLLECTIONS, is amended by amending Subsection 706.1 to read as follows:

706.1 (a) Persons occupying premises where solid waste collection service is provided by the District shall set out bulky wastes for collection in accordance with a scheduled appointment made by the person with the Mayor's citywide call center (311), and place at the point of collection no earlier than 6:30 p.m. on the day prior to the scheduled appointment.

(b) No person shall leave any bulky waste or cause any bulky waste to be left in or upon public space in the District of Columbia without a scheduled appointment.

(c) Mattresses must be wrapped in plastic before being placed out for collection for safe disposal.

Section 707, SOLID WASTE CONTAINERS, is amended by amending Subsections 707.3, 707.6, 707.9, and 707.11 to read as follows:

707.3 A sufficient number of containers shall be provided to store such solid wastes which may accumulate on the premises during the usual interval between collections.

…

707.6 In addition to the applicable requirements of this section, the provisions of § 708 shall apply to containers for solid wastes to be used at premises where solid waste collection service is provided by the District.

…

707.9 Grease held for recycling or disposal shall be stored in a tightly-sealed metal drum. The grease container and the area where the grease is stored shall be free of spilled grease. The grease container shall be stored not less than four feet (4 ft.) from any other vertical object such as a wall, shelving, or wood fuel stacks.

…

707.11 Commercial waste containers shall be constructed of heavy gauge metal, made of at least twelve (12) gauge steel with tightly-fitting lids constructed of at least sixteen (16) gauge steel. Waste container lids shall be kept closed at all times other than when the container is being filled or emptied. Waste container lids shall be free of gaps larger than one-quarter inch (1/4") between the lid (when closed) and the body of the waste container. Waste containers (including waste container lids) shall be free of any gaps, cracks, or holes larger than one-quarter inch (1/4"). The area where the waste container is stored shall be kept free of spilled waste at all times. If the waste container is equipped with a drain plug, the plug shall be constructed of heavy duty metal and shall be kept in the drain hole until the filled container is trans-ported to its ultimate destination for emptying and disposal of its contents.

New Subsection 707.13 is added to read as follows:

707.13 The following requirements regarding bin liners apply to private collection property owners:

(a) Recycling bin liners shall be clear, white, or non-pigmented.

(b) Composting bin liners shall meet requirements for compostable packaging as defined by the Mayor's List of Recyclables and Compostables.

Section 708, CONTAINERS FOR RESIDENTIAL MUNICIPAL REFUSE COLLECTION, is amended by amending the section title to read as follows:

708 CONTAINERS FOR RESIDENTIAL SOLID WASTE COLLECTION

Section 708 is amended by amending Subsection 708.1 to read as follows:

708.1 In addition to the applicable provisions of this chapter, all containers used by residents for solid waste collection shall conform to the requirements of this section.

Section 709, COLLECTION VEHICLES, is amended as follows:

Subsection 709.3 is repealed.

Section 710, LICENSING REQUIREMENTS, is amended by amending Subsection 710.1 to read as follows:

710.1 Except as provided in § 710.2 and § 710.3, no person shall engage in commercial collection and transportation of solid wastes by vehicle, in or through the District, without first having obtained a collector's license and a collection vehicle license for each vehicle so used.

New Subsections 710.3, 710.4, and 710.5 are added to read as follows:

710.3 Any collector who neither collects refuse (trash) nor operates a collection vehicle with a dumping mechanism shall be exempt from the requirement of having a collector's license issued by DCRA. This provision does not exempt such collectors from DPW registration requirements.

710.4 Any collection vehicle used in the collection of refuse (trash) shall be equipped with a dumping mechanism and shall have a valid collection vehicle license in accordance with § 710, § 711 and § 712.

710.5 Any solid waste collector who operates a vehicle used in the collection of refuse (trash) or operates a solid waste collection vehicle with a dumping mechanism shall have a valid solid waste collector license in accordance with § 710, § 711 and § 712.

Section 714, DISPOSAL AT DISTRICT INCINERATORS, is repealed.

Section 716, INSPECTIONS, is amended by adding a new Subsection 716.5 to read as follows:

716.5 The Director or a designee shall be provided access to premises within the District of Columbia in accordance with the provisions of section 4(b) of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Code § 8-803(b)), and Mayor’s Order 1986-160.

Section 721, PENALTIES, is amended by adding new Subsections 721.4, 721.5, 721.6, and 721.7 to read as follows:

721.4 If a person refuses to provide access to authorized DPW inspector pursuant to D.C. Official Code § 8–803, the Director may impose a fine of five hundred dollars ($500). Any person subject to a fine under this subsection may contest the legality of the DPW inspectors' request for access at the administrative hearing adjudicating the proposed fine.

721.5 If the Director finds that any collector or an agent of a collector, violates any provision of this chapter, the Director may (in addition to any other remedy available) deny the collector or its agent access to the District of Columbia's solid waste facilities for a period not to exceed thirty (30) days for each violation.

721.6 If the Director finds that a solid waste collector has committed three (3) or more violations of this chapter within a twelve (12) month period, the Director may (in addition to any other remedy available) suspend the collector's registration for up to twelve (12) months.

721.7 If the Director finds that a solid waste collector has committed six (6) or more violations of this chapter within a twelve (12) month period, the Director may (in addition to any other remedy available) revoke the solid waste collector's registration.

A new Section 722 is added to read as follows:

722 SOLID WASTE COLLECTOR REGISTRATION

722.1 Each solid waste collector shall register annually with the Director. This registration is in addition to any license required by 21 DCMR § 710 with DCRA.

722.2 The fee for registration shall be fifty dollars fifty ($50) per collector plus fifty dollars fifty ($50) per collection vehicle.

722.3 Each solid waste collector shall provide a list of its solid waste collection vehicles to the Department in its collector registration submission and certify that the list which it provides is complete and accurate.

722.4 Solid waste collectors shall register annually by February 1 or within thirty (30) days of the collector beginning operation in the District.

722.5 Registration shall be valid February 1 through January 31 of the following year.

722.6 Beginning on January 1, 2019, the fee charged for registration of a solid waste collector by the Department may be adjusted annually based on the change in the Consumer Price Index value published by the U.S. Department of Labor.

722.7 All registered solid waste collectors shall have processes in place to ensure that source separated materials with accepted levels of contamination are delivered directly to a recycling or composting facility or dropped off as source separated materials at a transfer station.

722.8 All registered solid waste collectors shall submit reports as required by § 723.

722.9 Nothing in this section shall be construed to require an indigent person who collects recyclable materials to obtain a solid waste collector registration.

A new Section 723 is added to read as follows:

723 SOLID WASTE COLLECTOR ANNUAL REPORTING

723.1 Each solid waste collector shall submit to the Director each year an annual solid waste report stating the tonnages, material types, and delivery locations of solid waste collected in the District.

723.2 Each solid waste collector shall retain corresponding certified scale tickets and other records of solid waste collected and disposed for three (3) years and provide any waste records, documents, or data compilations requested by the Director.

723.3 Information submitted in a solid waste collector's reports shall not be distributed publicly by the Department except in aggregate by year, facility name, type, and waste type. Collector-specific information shall be designated as confidential. Except as otherwise provided by law or court order, collector-specific information may be used only by the Mayor, the Mayor's agents and employees, other District agencies, and the United States Environmental Protection Agency, as authorized by the Mayor.

723.4 Annual reports shall be due on February 1 for the previous calendar year or for the portion of the previous calendar year in which the collector was operating in the District.

723.5 A solid waste collector shall maintain a copy of each day's solid waste collection route and a list of customers served, and provide a copy to the Director within five (5) business days after the Director requests the list.

Section 799, DEFINITIONS, is amended by amending Subsection 799.1 to read as follows:

799.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Approved - compliance with published standards specifically applicable to the device, method, thing, procedure, or facility under consideration and

which standards have been approved by the Director or the Director's agent.

Abandoned vehicle - any motor vehicle, trailer, or semitrailer that is left, parked, or stored on public space for more than forty-eight (48) hours or on private property for more than thirty (30) days, and to which at least two (2) of the following apply:

(a) The vehicle is extensively damaged, including fire damage;
(b) The vehicle is apparently inoperable, including a vehicle missing its transmission, motor, or one or more tires, and which is not undergoing emergency repair;
(c) The vehicle serves as harborage for rats, vermin, and other pests; or
(d) The vehicle does not display valid tags or a valid registration sticker.

Ashes - the residue from the burning of wood, coal, coke, or other combustible materials.

Baler - a machine used to compress and bind a quantity of solid waste or other material.

Bin Liner- a plastic bag used to protect a collection receptacle from residue which may also facilitate the transport of materials to a point of collection prior to final removal.

Bulk or bulky waste - the large items of solid waste such as appliances, furniture, and other materials too large to fit into a curbside bin.

Carry container - a container used to transfer solid wastes from premises to a collection vehicle.

Catch basin - an enlarged and trapped inlet to a sewer designed to capture debris and heavy solids carried by storm or surface water.

Clean condition - free of litter, debris, and weeds.

Collection vehicle – any vehicle whose primary purpose is the transportation or collection of solid waste or which is used over fifty percent (50%) of the time to transport or collect solid waste. (Also see licensed collection vehicle.)

Compost- a stable, organic substance produced by a controlled decomposition process that can be used as a soil additive, fertilizer, growth media, or other beneficial use.

Compostable – made solely of materials that break down into, or otherwise become part of, usable compost in a safe and timely manner in an appropriate program.

Composting or composted - the series of activities, including separation, collection, and processing, through which materials are recovered or otherwise diverted from the solid waste stream for conversion into compost.

Construction and Demolition Wastes - the waste building materials and rubble resulting from construction, remodeling, repair, and demolition operation on houses, commercial buildings, pavements, and other structures.

DCRA - The Department of Consumer and Regulatory Affairs

Debt reserves - the estimated cost of anticipated capital improvements and repairs to the District's solid waste disposal system including, but not limited to, landfill replacement costs, incinerator repairs, and the construction of any waste-handling facilities. (21 DCMR § 719)

Debt retirement - the sum of principal and interest estimated by the District to be paid in the current fiscal year for the purpose of reducing the long term debt related to the solid waste disposal system. (21 DCMR § 719)

Department - the Department of Public Works (or its successor agencies), except as provided in § 799.2.

Disposal area - any site, location, tract of land, area, building, structure or premises used or intended to be used for partial or total solid waste disposal.

Director- the Director of the Department of Public Works (or its successor agencies) or his or her designee, except as provided in § 799.2.

DPW - the Department of Public Works (or its successor agencies).

Enclosed collection vehicle - a vehicle that is specifically made or has been adapted for the collection of solid waste refuse (trash), having a watertight body, either entirely enclosed or having a cover made of metal or other rigid material, with only the loading hopper exposed. (24 DCMR § 6800)

Estimated material processing costs - the costs associated with the preparation, handling, and disposal of the various types of waste at the waste-handling facilities. These include prior fiscal year operating costs, estimated debt retirement or reserves, and other expenses attributable to operating the waste-handling facilities. (21 DCMR § 719)

Food waste - animal and vegetable waste resulting from the storage, handling, preparation, cooking, or serving of foods.

Food waste grinder - a device for pulverizing food waste (garbage) into the sanitary sewerage system.

Hazardous waste - as defined in Section 2(2A) of the Illegal Dumping Enforcement Amendment Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-901(2A)), any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may:

(a) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

Household hazardous waste - small quantities of hazardous wastes generated from homes and similar sources that are exempt from federal regulations, but exhibit dangerous characteristics such as ignitability, corrosivity, reactivity, or toxicity. (D.C. Law 7-38).

I-95 Complex Fee - the cost per ton that the District government pays to dispose of a specific waste type at the I-95 Resource Recovery, Land Reclamation, and Recreational Complex in Fairfax County, Virginia. (21 DCMR § 719)

Industrial waste - solid wastes which result from industrial processes and manufacturing operations such as factories, processing plants, repair and cleaning establishments, refineries and rendering plants.

Licensed collection vehicle - a solid waste collection vehicle licensed by DCRA in accordance with §§ 710,711, and 712 which either collects refuse (trash) and/or has a dumping mechanism.

Mayor's List of Recyclables and Compostables - a list updated regularly by DPW, which identifies items that are recyclable or compostable in the District of Columbia.

Occupant - any person who has a leasehold right, ownership interest, management responsibility, or direct or indirect control over the maintenance or affairs of any space within a residential or commercial building.

Office of Waste Diversion - An office located in the Director's Office in the Department of Public Works.

Open dump - an area on which there is an accumulation of solid waste from one or more sources without proper cover materials.

Operating costs - any cost related to the daily operation of the waste-handling facilities, including but not limited to, the following:

(a) Personal services:
  (1) Salaries;
  (2) Additional gross pay; and
  (3) Fringe benefits; and

(b) Non-personal services:
  (1) Supplies and materials;
  (2) Utilities, communication and building rentals;
  (3) Other services and charges provided by external parties;
  (4) Equipment purchase and rental; and
  (5) Subsidies and transfers. (37 DCMR § 4243)

Person - any individual, firm, partnership, company, corporation, trustee, association, or any other private or public entity.

Premises - a building, together with any fences, walls, sheds, garages, or other accessory buildings appurtenant to that building, and the area of land surrounding the building and actually or by legal construction forming one enclosure in which the building is located.

Private collection property – any property that does not receive solid waste collection services from the District

Projected tonnage - the solid waste tonnage for the prior fiscal year, adjusted to reflect the estimated changes in tonnage for the current fiscal year as presented in the "Comprehensive Solid Waste Management Plan." (21 DCMR § 719)

Putrescible wastes - wastes that are capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors, gases, and similar objectionable conditions. Kitchen wastes, offal, and dead animals are examples of putrescible components of solid waste.

Public collection property - a property that receives solid waste collection from the District either directly or through contract.

Recycle or Recycled or Recycling - the series of activities, including separation, collection, and processing, through which materials are recovered or otherwise diverted from the solid waste stream for use as raw materials or in the manufacture of products other than fuel.

Refuse - solid waste that is collected for disposal by incineration or at a landfill.

Solid waste - garbage, refuse, trash, or any other waste or waste product, including recyclable, compostable, or otherwise reusable material, whether in solid, liquid, semisolid, or contained gaseous state, resulting from an industrial, commercial, residential, or government operation or community activity; provided, that the following are not considered solid waste for the purposes of this chapter:

(a) Hazardous waste, as defined in Section 2(2A) of the Illegal Dumping Enforcement Amendment Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-901(2A));

(b) Medical waste, as defined in Section 2(3A) of the Illegal Dumping Enforcement Amendment Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-901(3A)); and

(c) Construction and demolition waste subject to Sections 406 and 503 of Title 12-K of the District of Columbia Municipal Regulations

Solid waste collector - any business, non-profit, or government entity engaged in the collection or transportation of solid waste in the District including:

(a) Businesses or persons removing solid waste under an approved self-implementing plan, as provided in § 705.12
(b) Electronic collectors
(c) Fat, oil, and grease collectors
(d) Food waste collectors
(e) Recycling collectors
(f) Textile collectors
(g) Traditional refuse (trash) collectors
(h) Yard waste collectors
(i) Other collectors of any type of solid waste

Solid waste storage - the temporary on-site storage of solid waste.

Source separated - Waste that is separated at the point of discard into, recyclable materials, compostable materials, and refuse (trash).

Special handling costs - the extraordinary costs associated with the handling of a specific waste type at the waste-handling facilities. (37 DCMR § 4243)

Street refuse (trash) - material picked up by manual or mechanical sweeping of alleys, streets and sidewalks, litter from public litter receptacles, and dirt removed from catch basins.

Supercans - a mobile refuse (trash) container on wheels having a serial number beginning with a D.C. prefix provided by the District to eligible premises specifically for use in the storage and collection of household refuse (trash). (D.C. Law 5-20)

Trash - See Refuse.

Weeds - uncultivated or wild vegetation that is greater than four inches (4 in.) in height. (D.C. Law 8-31)

Yard waste - prunings, grass clippings, weeds, leaves, and general yard and garden wastes.

Chapter 13, CIVIL FINES UNDER D.C. LAW 6-100, of Title 24 DCMR, PUBLIC SPACE AND SAFETY is amended as follows:

Section 1380, SCHEDULE OF FINES FOR VIOLATIONS OF THE LITTER CONTROL ADMINISTRATION ACT, is amended by amending the title and Subsections 1380.1, 1380.2, and 1380.3 to read as follows:

1380 SCHEDULE OF SOLID WASTE VIOLATIONS

1380.1 The following civil infractions and their respective fines set forth in this subsection shall refer to residential violations:

Infraction (DCMR Citation)	Abatement Violation		Fine	Service Hours
Solid wastes not properly stored and contained for collection (21 DCMR § 700.3)	YES	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period.	$ 300	32
		4th violation within 60-day period	$ 1000	100
Failure to maintain	YES	lst violation within 60-day period	$ 75	8

abutting public space (21 DCMR § 702.1)		2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 150 $ 300 $ 1000	16 32 100
Failure to maintain abutting public space (buildings with no more than 3 dwelling units) (2 1 DCMR § 702.2)	NO	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Construction waste out for collection (21 DCMR § 702.3)	YES	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Improper placement of leaves (21 DCMR §703.2)	NO	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Leaves swept onto public space (21 DCMR § 703.3)	NO	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Improper placement of yard waste (21 DCMR § 703.4)	Yes	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Solid waste container out at wrong time or place (21 DCMR § 705.5)	NO	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Household hazardous waste out for collection (21 DCMR § 705.6)	Yes	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100
Improperly bundled solid waste (21 DCMR § 705.7)	Yes	lst violation within 60-day period 2nd violation within 60-day period 3rd violation within 60-day period 4th violation within 60-day period	$ 75 $ 150 $ 300 $ 1000	8 16 32 100

Improper source separation of recyclable items (21 DCMR § 705.8)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Improper disposal of Bulk waste (21 DCMR § 706.1)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Insufficient number of solid waste containers (21 DCMR § 707.3)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Unclean or damaged containers (21 DCMR § 707.4)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Container without tight-fitting lid or not watertight (21 DCMR § 708.5)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Improper container-contents not removable (21 DCMR § 708.6)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Overweight container (21 DCMR § 708.7)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Overweight bags of yard waste (21 DCMR § 703.4)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Open solid waste container (21 DCMR § 708.9)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100

Improper solid waste container (21 DCMR § 708.1)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Overweight supercan (21 DCMR § 708.8)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Vehicle on public space without a permit (24 DCMR § 101.5)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Failure to maintain the public parking (24 DCMR § 102.1)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Improperly enclosing the public parking (24 DCMR § 103.1)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Enclosing the tree space (24 DCMR § 103.14)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Paving the public parking (24 DCMR § 104.1)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Illegal deposit in an alley (24 DCMR § 1000.1)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Dangerous Obstructions	Yes	lst violation within 60-day period	$ 75	8

in public space without a permit (24 DCMR § 2000.4)		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Obstructing public space without a permit (24 DCMR § 2001.2)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Obstructing free use of public space - overgrowth of shrubs, trees, bushes (24 DCMR § 2001.3)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Failure to properly protect public space when travel is obstructed (24 DCMR § 2001.4)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Improper disposal of container capable of confining children (24 DCMR § 2010.1)	Yes	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100

1380.2 The following civil infractions and their respective fines set forth in this subsection shall refer to commercial violations:

Infraction (DCMR Citation)	Abatement Violation		Fine	Service Hours
Improper storage of solid waste (21 DCMR § 700.3)	Yes	lst violation within 60-day period	$ 1000	16
		2nd violation within 60-day period	$ 2000	32
		3rd violation within 60-day period	$ 4000	24
		4th violation within 60-day period	$ 8000	200
Improper storage of solid waste (21 DCMR § 700.3)	No	lst violation within 60-day period	$ 1500	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Failure to maintain the abutting public space & causing a nuisance (21 DCMR § 702.1)	Yes	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Failure to maintain the	No	lst violation within 60-day period	$ 150	16

abutting public space		2nd violation within 60-day period	$ 300	32
(21 DCMR § 702.1)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Improper placement	No	lst violation within 60-day period	$ 150	16
of leaves		2nd violation within 60-day period	$ 300	32
(21 DCMR § 703.2)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Leaves on public space	No	lst violation within 60-day period	$ 150	16
(21 DCMR § 703.3)		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Open food waste stored	No	lst violation within 60-day period	$ 500	16
for collection		2nd violation within 60-day period	$ 1000	32
(21 DCMR § 704.2)		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
No licensed solid waste	No	lst violation within 60-day period	$ 500	16
collector		2nd violation within 60-day period	$ 1000	32
(21 DCMR § 705.1)		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Insufficient number of	No	lst violation within 60-day period	$ 500	16
solid waste collections		2nd violation within 60-day period	$ 1000	32
(21 DCMR § 705.2)		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Permitting spillage from	No	lst violation within 60-day period	$ 150	16
solid waste container or		2nd violation within 60-day period	$ 300	32
collection vehicle		3rd violation within 60-day period	$ 600	64
(21 DCMR § 705.3)		4th violation within 60-day period	$ 2000	200
Open-bodied	No	lst violation within 60-day period	$ 300	16
Vehicles licensed		2nd violation within 60-day period	$ 600	32
after 2/29/1980		3rd violation within 60-day period	$ 900	64
(21 DCMR § 705.4(a))		4th violation within 60-day period	$ 2000	100
Unenclosed or uncovered	No	lst violation within 60-day period	$ 300	16
solid waste collection vehicle		2nd violation within 60-day period	$ 600	32
(21 DCMR § 705.4)		3rd violation within 60-day period	$ 900	64
		4th violation within 60-day period	$ 2000	200
Household hazardous waste	Yes	lst violation within 60-day period	$ 150	16

out for collection		2nd violation within 60-day period	$ 300	32
(21 DCMR § 705.6)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Improper source separation	Yes	lst violation within 60-day period	$ 200	16
of recyclable items		2nd violation within 60-day period	$ 600	32
(21 DCMR § 705.8)		3rd violation within 60-day period	$ 1500	64
		4th violation within 60-day period	$ 3000	200
Failure to arrange for proper	Yes	lst violation within 60-day period	$ 200	16
recyclables collection		2nd violation within 60-day period	$ 600	32
(21 DCMR § 705.10)		3rd violation within 60-day period	$ 1500	64
		4th violation within 60-day period	$ 3000	200
Failure to notify	Yes	lst violation within 60-day period	$ 200	16
of recycling requirements		2nd violation within 60-day period	$ 600	32
(21 DCMR § 705.11)		3rd violation within 60-day period	$ 1500	64
		4th violation within 60-day period	$ 3000	200
Failure to post	Yes	lst violation within 60-day period	$ 200	16
signs		2nd violation within 60-day period	$ 600	32
(21 DCMR § 705.12)		3rd violation within 60-day period	$ 1500	64
		4th violation within 60-day period	$ 3000	200
Improper solid	No	lst violation within 60-day period	$ 150	16
waste container		2nd violation within 60-day period	$ 300	32
(21 DCMR § 707.1)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Insufficient number of	No	lst violation within 60-day period	$ 150	16
solid waste containers		2nd violation within 60-day period	$ 300	32
(21 DCMR § 707.3)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Unclean or damaged	No	lst violation within 60-day period	$ 150	16
container		2nd violation within 60-day period	$ 300	32
(2 1 DCMR § 707.4)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Improper grease container	No	lst violation within 60-day period	$ 150	16
or container placement		2nd violation within 60-day period	$ 300	32
(21 DCMR § 707.9)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200

Improper Bin Liners	No	1st violation within 60-day period	$ 150	16
(21 DCMR § 707.13)		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Improperly displaying	No	1st violation within 60-day period	$ 150	16
solid waste collector vehicle		2nd violation within 60-day period	$ 300	32
(21 DCMR § 709.5)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Collecting refuse or	No	1st violation within 60-day period	$ 500	16
a mechanized collection		2nd violation within 60-day period	$ 1000	32
vehicle without a license		3rd violation within 60-day period	$ 1500	64
(21 DCMR § 710.1)		4th violation within 60-day period	$ 2000	200
Illegal disposal at	No	1st violation within 60-day period	$ 300	16
DC facilities		2nd violation within 60-day period	$ 600	32
(21 DCMR § 713.1)		3rd violation within 60-day period	$ 900	64
		4th violation within 60-day period	$ 2000	200
Operating an open dump	Yes	1st violation within 60-day period	$ 300	16
(21 DCMR § 713.10)		2nd violation within 60-day period	$ 600	32
		3rd violation within 60-day period	$ 900	64
		4th violation within 60-day period	$ 2000	200
Unsafe, unclean, or	No	1st violation within 60-day period	$ 150	16
non-odor- free		2nd violation within 60-day period	$ 300	32
containerization		3rd violation within 60-day period	$ 600	64
(2 1 DCMR § 806.1)		4th violation within 60-day period	$ 2000	200
Debris drained into storm	No	1st violation within 60-day period	$ 1000	16
sewer		2nd violation within 60-day period	$ 2000	32
(21 DCMR § 806.5)		3rd violation within 60-day period	$ 4000	64
		4th violation within 60-day period	$ 8000	200
Nuisance or unsightly space	No	1st violation within 60-day period	$ 150	16
(21 DCMR § 806.10)		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Container lacks	No	1st violation within 60-day period	$ 150	16
collector's name		2nd violation within 60-day period	$ 300	32
phone number, capacity		3rd violation within 60-day period	$ 600	64
(21 DCMR § 806.24)		4th violation within 60-day period	$ 2000	200

Vehicle on public space without a permit (24 DCMR § 101.5)	No	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Failure to maintain the public parking (24 DCMR § 102.1)	Yes	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Improperly enclosing the public parking (24 DCMR § 103.1)	Yes	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Enclosing the tree space (24 DCMR § 103.14)	Yes	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Advertising device on sidewalk (24 DCMR § 104.9)	No	lst violation within 60-day period	$ 150	16
		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Simultaneously transporting recycling and refuse (24 DMCR § 705.13)	No	lst violation within 60-day period	$ 500	16
		2nd violation within 60-day period	$ 1000	32
		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Delivering recyclables mixed with refuse to a District transfer station. (24 DMCR § 705.16)	No	lst violation within 60-day period	$ 500	16
		2nd violation within 60-day period	$ 1000	32
		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Failure to have a valid solid waste collector registration 24 DMCR § 722.1)	Yes	lst violation within 60-day period	$ 500	16
		2nd violation within 60-day period	$ 1000	32
		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Failure to list all collection vehicles in registration (24 DMCR § 722.3)	Yes	lst violation within 60-day period	$ 500	16
		2nd violation within 60-day period	$ 1000	32
		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200

Failure to provide annual	Yes	lst violation within 60-day period	$ 500	16
report by deadline		2nd violation within 60-day period	$ 1000	32
(24 DMCR § 723.4)		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Failure to present records,	Yes	lst violation within 60-day period	$ 500	16
documents, or date data		2nd violation within 60-day period	$ 1000	32
(24 DMCR § 723.2)		3rd violation within 60-day period	$ 2000	64
		4th violation within 60-day period	$ 4000	200
Failure to deliver source	No	lst violation within 60-day period	$ 500	16
separated materials to proper		2nd violation within 60-day period	$ 1000	32
facility		3rd violation within 60-day period	$ 2000	64
24 DMCR § 722.9)		4th violation within 60-day period	$ 4000	200
Illegal deposits in alleys	Yes	lst violation within 60-day period	$ 150	16
(24 DCMR § 1000.1)		2nd violation within 60-day period	$ 300	32
		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Obstructing public space	Yes	lst violation within 60-day period	$ 150	16
without a permit		2nd violation within 60-day period	$ 300	32
(24 DCMR § 2001.2)		3rd violation within 60-day period	$ 600	64
		4th violation within 60-day period	$ 2000	200
Obstructing free use of	Yes	lst violation within 60-day period	$ 150	16
space-overgrowth of shrubs,		2nd violation within 60-day period	$ 300	32
trees, bushes		3rd violation within 60-day period	$ 600	64
(24 DCMR § 2001.3)		4th violation within 60-day period	$ 2000	200
Dangerous Obstruction	Yes	lst violation within 60-day period	$ 150	16
in public space without		2nd violation within 60-day period	$ 300	32
a permit		3rd violation within 60-day period	$ 600	64
(24 DCMR § 2000.4)		4th violation within 60-day period	$ 2000	200
Failure to properly protect	Yes	lst violation within 60-day period	$ 150	16
public space when travel		2nd violation within 60-day period	$ 300	32
is obstructed		3rd violation within 60-day period	$ 600	64
(24 DCMR § 2001.4)		4th violation within 60-day period	$ 2000	200
Improper disposal	Yes	lst violation within 60-day period	$ 150	16
of container		2nd violation within 60-day period	$ 300	32
capable of confining children		3rd violation within 60-day period	$ 600	64
(24 DCMR § 2010.1)		4th violation within 60-day period	$ 2000	200

1380.3 The following civil infractions and their respective fines set forth in this subsection shall refer to general violations:

Infraction (DCMR Citation)	Abatement Violation		Fine	Service Hours
Littering	No	lst violation within 60-day period	$ 75	8
(21 DCMR § 700.4)		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Failure to provide access	No	lst violation within 60-day period	$500	8
to authorized DPW		2nd violation within 60-day period	$500	16
(21 DCMR § 700.12)		3rd violation within 60-day period	$500	32
		4th violation within 60-day period	$500	100
Improper removal of	No	lst violation within 60-day period	$ 300	8
Recyclable materials		2nd violation within 60-day period	$ 600	16
(21 DCMR § 705.17)		3rd violation within 60-day period	$ 900	32
		4th violation within 60-day period	$ 2000	64
Posting notices on	Yes	lst violation within 60-day period	$ 150	8
public lampposts		2nd violation within 60-day period	$ 300	16
(24 DCMR § 108.1)		3rd violation within 60-day period	$ 600	32
		4th violation within 60-day period	$ 2000	100
Signs or posters on trees	Yes	lst violation within 60-day period	$ 150	8
in public space		2nd violation within 60-day period	$ 300	16
(24 DCMR § 108.2)		3rd violation within 60-day period	$ 600	32
		4th violation within 60-day period	$ 2000	100
Failure to remove animal	No	lst violation within 60-day period	$ 150	8
Excrement from public		2nd violation within 60-day period	$ 300	16
(24 DMCR § 900.7)		3rd violation within 60-day period	$ 600	32
		4th violation within 60-day period	$ 2000	100
Trailing mud, earth, rocks	No	lst violation within 60-day period	$ 300	8
onto public space		2nd violation within 60-day period	$ 600	16
(24 DCMR § 1000.1)		3rd violation within 60-day period	$ 900	32
		4th violation within 60-day period	$ 2000	64
Illegal Dumping	Yes	lst violation within 60-day period	$ 1000	

(24 DCMR § 1000.1)		2nd violation within 60-day period	$ 2000	
		3rd violation within 60-day period	$ 4000	
		4th violation within 60-day period	$ 8000	
Illegal Dumping (D.C. Official Code § 8-902)	Yes	lst violation within 60-day period	$ 5000	
		2nd violation within 60-day period	$ 5000	
		3rd violation within 60-day period	$ 5000	
		4th violation within 60-day period	$ 5000	
Nuisance Vacant Lot	Yes	lst violation within 60-day period	$ 300	
(24 DCMR § 1002.1)		2nd violation within 60-day period	$ 600	
		3rd violation within 60-day period	$ 900	
		4th violation within 60-day period	$ 2000	
Depositing handbills on public space (24 DCMR § 1008.1)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Improper use of litter receptacles (24 DCMR § 1009.1)	No	lst violation within 60-day period	$ 75	8
		2nd violation within 60-day period	$ 150	16
		3rd violation within 60-day period	$ 300	32
		4th violation within 60-day period	$ 1000	100
Damaging public litter receptacles (24 DCMR § 1009.2)	No	lst violation within 60-day period	$ 300	8
		2nd violation within 60-day period	$ 600	16
		3rd violation within 60-day period	$ 900	32
		4th violation within 60-day period	$ 2000	100
Graffiti (D.C. Law 13-309)	Yes	lst violation within 60-day period	$ 250	8
		2nd violation within 60-day period	$ 500	16
		3rd violation within 60-day period	$ 1000	32
		4th violation within 60-day period	$ 2000	100

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Housing and Community Development, pursuant to the authority set forth in Section 437 of the Rental Housing Conversion and Sale Act of 1980, effective December 24, 2008 (D.C. Law 17-286; D.C. Official Code § 42-3404.37 (2012 Repl.)), and Mayor's Order 2010-157, dated September 21, 2010, hereby gives notice of her intent to adopt Chapter 24, entitled "District Opportunity To Purchase," of Title 14 (Housing) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The new chapter establishes procedures implementing the District's Opportunity to Purchase Program, which grants the District the opportunity to purchase certain rental housing accommodations, subordinate to the rights of tenants.

A new Chapter 24 is added to Title 14 DCMR, HOUSING, to read as follows:

CHAPTER 24 DISTRICT OPPORTUNITY TO PURCHASE

2401 GENERAL PROVISIONS
2402 OPPORTUNITY TO PURCHASE & OFFER OF SALE
2403 MAYOR'S EXERCISE OF THE OPPORTUNITY TO PURCHASE
2404 SALE CONTRACT NEGOTIATION & SETTLEMENT
2405 MAYOR'S RIGHT TO ASSIGN THE OPPORTUNITY TO PURCHASE
2406 MAYOR'S OR MAYOR'S ASSIGNEE'S OBLIGATION TO MAINTAIN AFFORDABILITY
2499 DEFINITIONS

2401 GENERAL PROVISIONS

2401.1 This chapter establishes the rules governing the operation of the District's Opportunity to Purchase Program under Title IV-A of the Act.

2401.2 The purpose of the District's Opportunity to Purchase Program shall be to provide the District of Columbia with the opportunity to purchase or assign the right to purchase housing accommodations consisting of five (5) or more Rental Units, provided that twenty-five percent (25%) or more of the Rental Units are Affordable Rental Units.

2401.3 The Mayor's opportunity to purchase under Title IV-A of the Act is subordinate to a Tenant Organization's opportunity to purchase under Title IV of the Act. Tenant Organizations' rights shall not be abrogated.

2401.4 Third party contract purchasers shall act with full knowledge of tenants' rights, the Mayor's rights, and the public policy under the Act.

2401.5 All correspondence to the Mayor shall be in writing and shall be addressed to the Mayor c/o Department of Housing and Community Development, Rental Conversion and Sale Division, 1800 Martin Luther King, Jr. Avenue, S.E., Washington, D.C. 20020, or at any such address as designated by the Mayor.

2401.6 All correspondence to and from the Mayor shall be sent by registered or certified mail, return receipt requested, by commercial overnight delivery service that maintains proof of delivery, or by hand delivery. If the Owner delivers the notification to the Mayor by hand delivery, the Owner shall obtain a date stamped copy demonstrating the Mayor's receipt.

2401.7 All "days" shall be calendar days unless otherwise specified herein. If a time period under the chapter ends on a Saturday, Sunday, or legal holiday, it is extended until the next day which is not a Saturday, Sunday, or legal holiday.

2402 OPPORTUNITY TO PURCHASE & OFFER OF SALE

2402.1 Before an Owner may sell a Housing Accommodation consisting of five (5) or more Rental Units of which twenty-five percent (25%) or more of the Rental Units are Affordable Rental Units, the Owner shall provide the Mayor an opportunity to purchase the Housing Accommodation.

2402.2 If the Housing Accommodation does not consist of at least twenty-five percent (25%) Affordable Rental Units, the Owner shall provide a written certification, in a form approved by the Mayor, to the Mayor that the Housing Accommodation is not subject to Title IV-A of the Act contemporaneously with the filing of any Offer of Sale under Title IV of the Act.

2402.3 At a minimum, the Offer of Sale by the Owner to the Mayor shall contain:

(a) The asking price and material terms of sale;

(b) A statement as to whether a third party sale contract exists for the sale of the Housing Accommodation;

(c) A statement that the Owner shall provide to the Mayor the following information regarding the Housing Accommodation within seven (7) days after receiving a request for any of the following, if applicable:

(1) A copy of any third party sale contract for the Housing Accommodation;

(2) A list of tenant names with corresponding Rental Unit numbers and the current rent charged for each Rental Unit as of the Offer of Sale issuance date;

(3) A list of vacant Rental Units and corresponding Rental Unit numbers and the latest rent charged, in accordance with Chapter 35

of the Rental Housing Act, for each Rental Unit as of the Offer of Sale issuance date;

(4) A list of Affordable Rental Units and corresponding Affordable Rental Unit numbers as of the Offer of Sale issuance date and the Owner's calculations for determining the Affordable Rental Units rent charged;

(5) A floor plan, if available;

(6) An itemized list of monthly operating expenses for each of the two (2) preceding calendar years;

(7) Utility consumption rates for each of the two (2) preceding calendar years; and

(8) Capital expenditures for each of the two (2) preceding calendar years.

2402.4 The Owner shall offer to sell the Housing Accommodation to the Mayor at an asking price and terms representing a bona fide offer of sale. A bona fide offer shall consist of, but is not limited to:

(a) An asking price shall be less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the housing accommodation, or the appraisal value as determined by Section 402 of the Act;

(b) A disclosure of all liens, mortgages, deeds of trust, pending legal proceedings, including but not limited to tenant petitions, or any other matter affecting the title of the Housing Accommodation;

(c) A disclosure of all warranties and assignable service contracts; and

(d) An accurate rent roll.

2402.5 In the case of the existence of a third party sale contract, a *bona fide* offer is one in which the Mayor is offered the Housing Accommodation at an asking price and terms at least as favorable as and substantially conforming to the third party sale contract.

2402.6 The Owner shall notify the Mayor in writing within five (5) days if any of the following events occur:

(a) A fully executed sale contract between the Owner and the Tenant Organization is assigned, rescinded, terminated, or otherwise voided;

(b) A ratified third party sale contract between the Owner and a third party expires or is cancelled, rescinded, terminated, or otherwise voided;

(c) Expiration of the one hundred twenty (120) day contract negotiation period between the Owner and the Tenant Organization, as provided by Section 411 of the Act;

(d) The Tenant Organization declines or fails to exercise its right to purchase the Housing Accommodation;

(e) The Owner contracts with a Tenant Organization or a third party after an Offer of Sale has been provided to the Mayor, provided that the Owner shall provide a copy of the sale contract to the Mayor with the notification;

(f) The third party sale contract is assigned, amended, or otherwise modified, provided that the Owner shall provide the Mayor with a copy of the assigned, amended, or modified third party contract with the notification;

(g) The Tenant Organization performs under the ratified sale contract between the Owner and the Tenant Organization;

(h) A third party performs under the ratified third party sale contract between the Owner and the third party; or

(i) The Tenant Organization or its assignee fails to close or perform under the ratified sale contract between the Owner and Tenant Organization or its assignee.

2402.7 Any response from the Mayor to an Offer of Sale under Title IV-A of the Act shall be in writing.

2402.8 The Mayor's rights under Title IV-A of the Act shall be conditional only upon the Tenant Organization's or its assignee's exercise of tenant rights under Title IV of the Act.

2402.9 If the Owner has not sold or contracted to sell the Housing Accommodation within three hundred sixty (360) days from the date of the Tenants' receipt of an Offer of Sale or the Mayor's receipt of the Offer of Sale, whichever date is later, and if the Owner still desires to sell the Housing Accommodation at that time, the Owner shall comply anew with the requirements of Title IV and Title IV-A of the Act.

2403 MAYOR'S EXERCISE OF THE OPPORTUNITY TO PURCHASE

2403.1 The Mayor shall not exercise the opportunity to purchase unless at least twenty-five percent (25%) of the Rental Units in the Housing Accommodation are Affordable Rental Units.

2403.2 When determining whether to exercise the opportunity to purchase a Housing Accommodation, the Mayor shall consider whether a Housing Accommodation meets the selection criteria published annually by the Agency.

2403.3 The Mayor shall have thirty (30) days from receipt of the Offer of Sale to provide the Owner with a written statement of interest and to provide a copy of the written statement of interest to the Tenants.

2403.4 If the Mayor declines to exercise the opportunity to purchase the Housing Accommodation under Title IV-A of the Act, the Mayor shall notify the Owner in writing within ten (10) business days.

2404 SALE CONTRACT NEGOTIATION & SETTLEMENT

2404.1 The Mayor shall have not less than one hundred fifty (150) days from the Owner's receipt of the Mayor's written statement of interest to negotiate a sale contract for the Housing Accommodation with the Owner, which time may be extended by the Owner's written consent.

2404.2 For every one (1) day of delay beyond the seven (7) days in which the Owner shall provide information as required by Subsection 2302.3, the negotiation period shall be extended by one (1) day.

2404.3 The Owner and Mayor shall bargain in good faith.

2404.4 In accordance with the Act, the following shall constitute prima facie evidence of bargaining without good faith:

(a) The Owner's failure to offer the Mayor a price or term at least as favorable as that offered to a third party or Tenant Organization without reasonable justification;

(b) The failure of the Owner to make a sale contract with the Mayor that substantially conforms with the asking price and material terms of a third party sale contract without reasonable justification;

(c) The intentional failure of the Owner or the Mayor to comply with the provisions of Title IV or Title IV-A of the Act; and

(d) The Owner contracts or sells the Housing Accommodation to a Tenant Organization or third party for a price more than ten percent (10%) less than the price offered to the Mayor.

2404.5 The Owner shall not require the Mayor to pay a deposit of more than five percent (5%) of the sale contract price in order to make a sale contract, or refuse to refund a deposit in the event of the Mayor's good faith failure to perform under the sale contract.

2404.6 If a Tenant Organization is formed and delivers an application for registration to the Mayor pursuant to Title IV, the Mayor shall have an additional fifteen (15) days to negotiate a sale contract with the Owner.

2404.7 The Mayor shall have up to sixty (60) days after the sale contract ratification to complete settlement.

2404.8 If the Owner provides any extension of time to a Tenant Organization under Title IV of the Act, the Owner shall automatically grant the Mayor the same extension of time under Title IV-A of the Act. The Owner shall provide prompt written notification to the Mayor of any extensions of time granted to a Tenant Organization.

2404.9 All time periods for negotiation and settlement by the Mayor are minimum time periods, and the Owner may give the Mayor a reasonable extension of such time periods in writing.

2404.10 Within forty-five (45) days of settlement by the Mayor or the Mayor's Assignee, the Mayor or the Mayor's Assignee shall provide to each Household in the Housing Accommodation a written statement indicating the following:

(a) The name of the new Owner;

(b) Instructions to send or make all payments;

(c) The current terms of tenancy status or lease agreement; and

(d) Any program verification requirements, as applicable.

2405 MAYOR'S RIGHT TO ASSIGN THE OPPORTUNITY TO PURCHASE

2405.1 The Mayor may exercise the opportunity to purchase a Housing Accommodation under Title IV-A of the Act by assigning the rights to an assignee that:

(a) Must be selected from the Agency's Pre-Approved Developer list. In order to become a Pre-Approved Developer, any interested developer must apply to a request for proposals announced by the Agency and published at least annually in the D.C. Register by the Mayor.

(b) Demonstrates the capacity to own and manage, either by itself or through a management agent, the Housing Accommodation and related facilities for the remaining useful life of the Housing Accommodation;

(c) Agrees to obligate itself and any successors in interest to maintain the affordability of the Housing Accommodation, in accordance with Section 433 of the Act; and

(d) Is registered and licensed to do business in the District of Columbia.

2405.2 If the Mayor assigns the rights to purchase a Housing Accommodation under Title IV-A of the Act:

(a) the Mayor shall notify in writing all parties interested in the Housing Accommodation designating the assignee as the Mayor's Assignee;

(b) The Mayor and the Mayor's Assignee shall both receive all communications regarding the Housing Accommodation under Title IV-A of the Act; and

(c) The Mayor's Assignee shall have the Mayor's right to purchase under Title IV-A of the Act.

2406 MAYOR'S OR MAYOR'S ASSIGNEE'S OBLIGATION TO MAINTAIN AFFORDABILITY

2406.1 The Mayor or Mayor's Assignee shall file a combined property report and affordability plan for the Housing Accommodation with the Agency within one hundred twenty (120) days after settlement and annually by December 31 of each year. The District may request additional relevant information to be included in the combined property report and affordability plan.

2406.2 The combined property report and affordability plan shall include, but not be limited to, the following:

(a) The number of, number of bedrooms in, and size of each Rental Unit;

(b) The names of each Household member occupying a Rental Unit;

(c) The rent charged for each Rental Unit on the day the Offer of Sale was provided to the Mayor;

(d) The income of each Household occupying a Rental Unit on the day the Offer of Sale was provided to the Mayor;

(e) Proof of compliance with the Rental Housing Act, including but not limited to proof of rental registration, a certificate of occupancy, and a basic business license;

(f) Proof of insurance;

(g) A description of any income restrictions to be imposed on new Tenants in the Housing Accommodation;

(h) The proposed methodology to increase the number of Affordable Rental Units in the Housing Accommodation;

(i) Designation of which Rental Units were vacant on the day the Offer of Sale was provided to the Mayor;

(j) The Area Median Income (AMI) of each Household occupying a Rental Unit on the day the Offer of Sale was provided to the Mayor;

(k) A calculation of the percent of income each Household occupying a Rental Unit in the Housing Accommodation spends on Monthly Rent Charged;

(l) A notation indicating which Rental Units qualified as Affordable Rental Units under the Act on the date the Offer of Sale was provided to the Mayor; and

(m) Such other information as may be required by the Agency.

2406.3 Upon written request by a District agency, an Owner, a Tenant, or a Household, the Director may waive any or all of the provisions of this section in the Agency's sole and absolute discretion.

2406.4 The rent of a Tenant living in a Rental Unit in a Housing Accommodation purchased pursuant to Title IV-A of the Act shall not exceed their current rent charged on the date the Offer of Sale was provided to the Mayor, or the Maximum Rent as published in the Rent and Income Schedule, whichever is less, but shall be subject to allowable annual increases.

2406.5 The Mayor or Mayor's Assignee shall certify the income of each Household in a manner consistent with 24 CFR § 5.609.

2406.6 Upon request of the Mayor or Mayor's Assignee, a Tenant shall provide information regarding their current income and tenancy within the Housing Accommodation, including but not limited to lease documents, tax returns, pay stubs, and other information as reasonably requested. For Housing Accommodations and Rental Units exempt pursuant to Section 205 of the Rental Housing Act, if a Tenant refuses to provide the requested information to the Mayor or Mayor's Assignee, the Tenant may be served with a notice to vacate for a lease violation pursuant to Section 501(b) of the Rental Housing Act.

2406.7 The Monthly Rent Charged for Affordable Rental Units in a Housing Accommodation under Title IV-A of the Act shall not exceed the Maximum Rent charged in the Rent and Income Schedule.

2406.8 Unit Turn Over

(a) The Mayor or Mayor's Assignee shall ensure that vacancies in Affordable Rental Units shall be filled and maintained so that the division of Affordable Rental Units in the Housing Accommodation is as close as practicable to the following distribution:

(1) One-third shall be affordable for households at thirty percent (30%) of AMI;

(2) One-third shall be affordable for households at sixty percent (60%) of AMI; and

(3) One-third shall be affordable for households at eighty percent (80%) of AMI.

(b) Affordable Rental Units shall not be fewer than twenty-five percent (25%) of the total number of Rental Units in a Housing Accommodation purchased pursuant to Title IV-A of the Act.

2406.9 A Tenant may, by petition filed with the Rent Administrator, challenge or contest Monthly Rent Charged or Household Income. The petition shall be filed, heard, and determined according to the procedures established pursuant to the Rental Housing Act and the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 17-76; D.C. Official Code §§ 2-1831.01 *et seq.*).

2406.10 The Mayor or the Mayor's Assignee shall take all practicable steps to increase the number of Affordable Rental Units in the Housing Accommodation in accordance with the affordability plan approved by the Agency.

2499 DEFINITIONS

2499.1 For purposes of this chapter, the following words and phrases shall have the meaning ascribed:

Affordable Rental Unit – a Rental Unit for which the existing monthly rent, including utilities, paid by the Tenant at the time the Mayor receives the Offer of Sale is equal to or less than thirty percent (30%) of the monthly income of a Household with an income of fifty percent (50%) of the Area Median Income, as set forth by the United States Department of Housing and Urban Development, adjusted for household size, or a Rental Unit that has restricted Monthly Rent Charged pursuant to Title IV-A of the Act.

Act – the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3401.01 *et seq.*).

Agency – the District of Columbia Department of Housing and Community Development or other District agency to which the Mayor delegates authority to administer the Act.

Area Median Income (AMI) – the area median income for a Household in the Washington Metropolitan Statistical Area as set forth by the United States Department of Housing and Urban Development, adjusted for Household

size, without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers.

CFR – the United States Code of Federal Regulations.

Director – the head of the District of Columbia Department of Housing and Community Development or other agency to which authority is delegated by the Mayor to administer the Act.

Household – all persons living in a Rental Unit, which may include a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who occupy a single Rental Unit.

Household Income – the combined income of all persons living in a Rental Unit, calculated according to 24 CFR § 5.609.

Housing Accommodation – a structure in the District of Columbia consisting of one (1) or more Rental Units and the appurtenant land.

Mayor – the Mayor of the District of Columbia.

Mayor's Assignee – an individual or legal entity who has been assigned the Mayor's rights under Title IV-A of the Act and this chapter.

Maximum Rent – the highest amount chargeable for the benchmarked AMI, adjusted for Household size, taking into account an ability to pay thirty percent (30%) of Household Income towards housing costs.

Monthly Rent Charged – the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a Rental Unit, its related services, and its related facilities in accordance with section 103(28) of the Rental Housing Act.

Offer of Sale – a written statement provided to the Tenants and the Mayor in accordance with Sections 403 and 432 of the Act.

Owner – an individual, corporation, association, joint venture, business entity, government entity, and its respective agents, holding title to a Housing Accommodation.

Pre-Approved Developer – a person or legal entity selected through a competitive process, which meets certain standards and selection criteria published by the Agency.

Rent and Income Schedule – a document published in the *D.C. Register* pursuant to this chapter, which delineates rent restrictions based on income.

Rental Housing Act – the Rental Housing Act of 1985, effective December 24, 2008 (D.C. Law 17-286; D.C. Official Code §§ 42-3501.01 *et seq.*).

Rental Unit – a subset of a Housing Accommodation which is rented or offered for rent for residential occupancy, including but not limited to an apartment, efficiency apartment, room, suite of rooms, and its appurtenant land.

Tenant – a person or persons entitled to possession, occupancy, or the benefits of a Rental Unit in a Housing Accommodation.

Tenant Organization – an organization registered with the Agency in accordance with Section 411 of the Act.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments in writing to Danilo Pelletiere, Department of Housing and Community Development, 1800 Martin Luther King, Jr. Avenue S.E., Washington, D.C. 20020, or via e-mail at dopa.input@dc.gov, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from DHCD at the same address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING

RULEMAKING 3-2014-01 – UTILITY CONSUMER BILL OF RIGHTS[1]

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 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), commonly referred to as the "Consumer Bill of Rights" ("CBOR").

2. The proposed rules clarify various requirements for Energy Suppliers.

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 3, CONSUMER RIGHTS AND RESPONSIBILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 308, USE OF CUSTOMER'S INFORMATION, amends Subsections 308.1, 308.3, and 308.4 as follows:

308.1 An Applicant or a Customer need not disclose his or her Social Security number to the Utility, Energy Supplier, or Telecommunications Service Provider to obtain or maintain service. Upon requesting a Customer's Social Security account number, the Utility, Energy Supplier, or Telecommunications Service Provider shall inform the Customer that the provision of the number is voluntary and will not affect the provision of service to that Customer.

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308.3 Unless a Customer consents in writing, Utility, Energy Supplier or Telecommunications Service Provider may not disclose or use information that is about the Customer or the Customer's use of service except to the Commission. The Utility, Energy Supplier, or Telecommunications Service Provider shall reasonably protect the confidentiality of customer information.

308.4 The restrictions in §§ 308.2 and 308.3 above do not apply to lawful disclosures for bill collection, credit rating reports, or to assist Customers who have had, or may have, their service involuntarily disconnected. It shall be the responsibility of the Utility, Energy Supplier or Telecommunications Service Provider to obtain and maintain the written consent to disclose or use information about the

[1] This rulemaking revises the Notice of Proposed Rulemaking that was published in the *D.C. Register* at 64 DCR 6128 (June 30, 2017).

Customer or the Customer's use of service. A Customer's information shall be made available to the Commission upon request.

A new Section 309, PRIVACY PROTECTION POLICY, reads as follows:

309.1 Each Utility, Energy Supplier or Telecommunications Service Provider shall institute a Privacy Protection Policy to protect against the unauthorized disclosure or use of information about a Customer or a Customer's use of service. A copy of that Policy shall be made available once a year, including any updates or changes, through electronic means or a hardcopy to the Customer and to the Commission and posted in a prominent place on each company's website.

Section 310, GROUNDS FOR DISCONNECTION, amends Subsection 310.3 as follows:

310.3 Disconnection of natural gas or electric utility service for non-payment of bills, failure to post a cash Security Deposit, or failure to comply with the terms of a DPA where natural gas or electricity is used as the primary source of heating or cooling the residence is prohibited:

(a) For the Electric Utility, during the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is ninety-five (95º) degrees Fahrenheit or above or thirty-two (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts; or

(b) For the Natural Gas Utility, during the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is thirty-two (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts.

Section 321, PUBLICATION OF CONSUMER PAMPHLET, amends Subsection 321.1 as follows:

321.1 Each Utility, Energy Supplier, and Telecommunications Service Provider shall prepare a consumer pamphlet in English and Spanish in layman's terms summarizing the rights and responsibilities of Customers in accordance with these and other applicable rules. Prior to distribution, the Utility, Energy Supplier, or Telecommunication Service Provider shall provide the Commission and OPC with a copy of the consumer pamphlet. OPC shall submit any comments on the consumer pamphlet to the Commission and to the Utility, Energy Supplier, and Telecommunication Service Provider within ten (10) business days. If the Commission does not reject or otherwise act on the pamphlet within thirty (30) days of its filing, the consumer pamphlet shall be deemed approved.

Section 325, FORMAL HEARING PROCEDURES, amends Subsections 325.3 – 325.20 as follows:

325.3 If a review of the Formal Complaint by the Hearing Officer determines that the Complainant is solely requesting monetary damages or compensatory relief, the Office of General Counsel shall issue an order dismissing the case with prejudice for failure to state a claim upon which relief may be granted and for lack of jurisdiction by the Commission.

325.4 The Commission shall provide notice of the hearing by personal service, by first-class mail or other technological means, as authorized by the Commission, to the Customer and the Customer's Designated Representative and to the Utility, Energy Supplier or Telecommunications Service Provider. Service shall be made by first-class mail postage prepaid at least fourteen (14) days prior to the hearing date unless the parties agree on a shorter time. The notice shall also state that in the event that the Complainant fails to attend a scheduled hearing without evidence of good cause, the hearing officer may dismiss the Complaint with prejudice. The hearing officer may reschedule any hearing to a date or time agreed upon by the parties or, upon notice and for good cause shown, at the request of any party.

325.5 A party requesting a second continuance will be required to provide good cause for the continuance. If the party is the Complainant and he or she does not provide good cause, as determined by the hearing officer, the Complaint may be dismissed, with prejudice. If the party is a Utility, Energy Supplier or Telecommunications Service Provider and it fails to provide good cause, the matter may be heard, without continuance. The hearing officer may, at his or her discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is continued, adequate notice shall be provided to the parties.

325.6 In the event the Complainant fails to attend any scheduled hearing without good cause, the hearing officer may dismiss the Complaint with prejudice.

325.7 In the event a Utility, Energy Supplier or Telecommunications Service Provider fails to attend a scheduled hearing without good cause, the hearing officer may hear evidence and render a decision.

325.8 Upon a reasonable request from each other, the parties shall, within the timeframe prescribed in Chapter 1 of Title 15 DCMR, provide all information they have that is relevant to the matters at issue in the Complaint including relevant documents, Account data, files and the names of witnesses. Nothing herein shall preclude a party from filing a request or motion to compel responses to information requests.

325.9 Parties may examine any relevant records of the Commission. However, information deemed to be confidential may be reviewed in a manner that is consistent with the Commission's Rules of Practice and Procedure.

325.10 On any issue or procedure where Chapter 3 of Title 15 DCMR is silent, the hearing officer may at his or her discretion utilize Chapter 1 of Title 15 regulations as appropriate.

325.11 Parties may represent themselves or be represented by counsel, conservator, legal guardian or someone with power of attorney. If a Complainant proceeds *pro se*, the hearing officer may construe the pleadings liberally. If it appears to the hearing officer that a party appearing without an attorney should be represented by an attorney, the hearing officer shall suggest that the party secure counsel or contact the Office of the People's Counsel concerning representation and allow a reasonable time to secure such representation.

325.12 Parties shall have the right to present evidence, call witnesses, and present written and oral argument.

325.13 Witnesses shall testify under oath, and the parties shall have the right to examine and cross-examine all witnesses.

325.14 The hearing officer may, in his or her discretion, limit any line of questioning, testimony and the time for argument.

325.15 Unless otherwise ordered by the hearing officer, the Complainant's witnesses shall testify first, followed by the Utility's, Energy Supplier's or Telecommunications Service Provider's witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.

325.16 The hearing officer may elicit testimony from any witness regarding the issue(s) in dispute.

325.17 The hearing officer has the obligation, especially when a Complainant is not represented by counsel, to ensure that all material facts are developed to the fullest extent consistent with his or her responsibility to preside impartially throughout the proceeding.

325.18 The formal rules of evidence shall not apply, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.

325.19 Parties may stipulate to any facts, and such stipulation shall be put into evidence.

325.20 All proceedings shall be recorded or transcribed by a certified court reporter. The transcriptions shall be made available promptly to any party upon request, at the party's expense.

Section 326, DECISIONS AND APPEALS, amends Subsection 326.2(c) as follows:

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(c) Complaints requesting monetary damages as the sole form of relief shall be dismissed with prejudice by the hearing officer for failure to state a claim upon which relief may be granted and for lack of jurisdiction by the Commission.

Section 327, CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS, is amended to read as follows:

327 CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS

327.1 This section sets forth billing, Deposit, Enrollment, Termination of Contract, supplier switching, advertising and minimum Contract standards that apply to Energy Suppliers, Marketers, Aggregators, and Consolidators licensed to provide competitive electric and gas services by the Public Service Commission of the District of Columbia. If a Customer has a Complaint about an alleged violation of this section, the Complaint procedures in § 320 of these regulations shall apply.

327.2 An Energy Supplier may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D.C. Official Code § 28-3904.

327.3 An Energy Supplier shall not engage in Cramming.

327.4 An Energy Supplier shall not engage in Slamming.

327.5 Any prohibition regarding the disclosure of Account status and Customer information should not preclude Energy Suppliers from obtaining or providing Account status and Customer information for acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.

327.6 Energy Suppliers must maintain documentation to substantiate any advertisement of energy supply that contains specific environmental claims. Such documentation shall be made available, upon request, through a hard copy or other technological means.

327.7 Any Solicitation of energy supply that contains any specific offering to a residential Customer must at a minimum include the following in writing:

(a) The Energy Supplier's name, address, telephone number, and web site address, if applicable;

(b) The Energy Supplier's District of Columbia license number in a clear and conspicuous manner;

(c) The price offered for natural gas supply or electricity supply should be fixed or variable in nature. An explanation of a variable rate should indicate that:

(1) A variable price may be based on market conditions; and

(2) A variable rate may result in higher or lower costs over the initial introductory rate;

(d) A statement that the advertised price is only for the specified natural gas supply or electricity supply and does not include any additional tax, Utility Distribution Service Charge, or other Utility fee or Charge;

(e) Any minimum Contract duration necessary to obtain an advertised price;

(f) A statement of minimum use requirements, if any; and

(g) If the advertisement offers several services and does not break out individual prices for the services, the following disclaimer must accompany the advertisement: "Disclaimer: This offer includes several services at a single price. You should compare this price to the total of the prices you currently pay for each of the individual services."

327.8 An electricity supply or natural gas supply Contract with a Customer shall, at a minimum, contain the following material terms and conditions:

(a) A list and description of the Contract services;

(b) A statement of minimum use requirements, if any;

(c) A description of any time of use restrictions, including the time of day or season;

(d) A price description of each service, including all fixed and variable costs;

(e) A notice that the Contract does not include Utility Charges;

(f) A billing procedure description;

(g) In the case of consolidated billing, a notice that the Customer acknowledges that Customer billing and payment information may be provided to the Energy Supplier;

(h) A statement of Contract duration, including initial time period and any rollover provision;

(i) A Deposit requirement, if any, including: the amount of the Deposit; a description of when and under what circumstances the Deposit shall be returned; a description of how the Deposit may be used; and a description of how the Deposit shall be protected;

(j) A description of any fee or Charge and the circumstances under which a Customer may incur a fee or Charge;

(k) A statement that the customer may rescind the contract within three (3) business days from the start of the Rescission Period;

(l) A statement that the Energy Supplier may terminate the Contract early including the circumstances under which early cancellation by the Energy Supplier may occur; the manner in which the Energy Supplier shall notify the Customer of the early cancellation of the Contract; the duration of the notice period before early cancellation; remedies available to the Customer if early cancellation occurs;

(m) A statement that the Customer may terminate the Contract early including the circumstances under which early cancellation by the Customer may occur; the manner in which the Customer shall notify the Energy Supplier of the early cancellation of the Contract; the duration of the notice period before early cancellation; and remedies available to the Energy Supplier if early cancellation occurs; and the amount of any early cancellation fee;

(n) A statement describing Contract renewal procedures, if any;

(o) A dispute resolution procedure;

(p) The Commission's telephone number and website address; and

(q) The Office of the People's Counsel's telephone number and website address.

327.9 If an Energy Supplier receives a request from a Customer not to receive any Solicitations from that solicitor, the Energy Supplier shall no longer contact the Customer. If an Energy Supplier receives a request from a Customer not to receive a particular type of Solicitation from that solicitor, which includes, but is not limited to, in-person Solicitation, telephone Solicitation, electronic Solicitation or any form of mail or post card by the solicitor, the Energy Supplier shall not use that type of solicitation with that Customer in the future.

327.10 Nothing in these regulations shall affect the applicability of any Federal or District telephone Solicitation and consumer protection laws and regulations including, but not limited to, the fines and penalties thereunder for violation of such laws and regulations. Any Energy Supplier soliciting customers by telephone shall comply with all applicable District and federal laws, including the Telephone Consumer Protection Act of 1991 (15 USC §§ 6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 USC §§ 6101 *et seq.*).

327.11 There are three (3) principal ways in which a residential Customer may enter into a Contract with an Energy Supplier:

(a) Through a recorded verbal consent via telephone solicitation;

(b) Electronic contract; or

(c) Written contract.

327.12 An Energy Supplier may not use "negative option contracts," in which Contracts are created if the Customer takes no action. Therefore, an Energy Supplier may not enter into a Contract with a Customer if the Customer simply refrains from action. Contract renewals are not negative option contracts.

327.13 If a Customer wishes to enter into a Contract with an Energy Supplier, the Energy Supplier may request from the Customer the following information, by telephone, in writing, or Internet or other technological means:

(a) The customer's name;

(b) Billing address;

(c) Service address;

(d) Electronic mail address;

(e) Telephone number;

(f) Utility Account and any other number designated by the utility as necessary to process an enrollment;

(g) Employment information; and

(h) Usage information.

327.14 An Energy Supplier may ask for additional information beyond that specified in Subsection 327.13 only after first informing the Customer of his or her right not to provide such information.

327.15 An Energy Supplier shall advise a Customer that he/she has the right to rescind the Contract agreement within a three (3) business day period and that the Rescission Period begins on one of the following dates:

(a) When the Customer signs the Contract;

(b) When a positive Third-Party Verification or electronic recording has been made;

(c) When the Customer transmits the electronic acceptance of the Contract electronically; or

(d) If the Contract is mailed by the Energy Supplier to the Customer, when the Contract is received by the Customer. There shall be a rebuttable presumption that a Contract correctly addressed to a Customer with sufficient first class postage attached shall be received by the Customer three (3) days after it has been properly deposited in the United States mail with the instruction that if the Customer accepts the contract by signing and returning the contract, the Customer has three business days to rescind the contract from the date of acceptance. Date of acceptance is the date that the Customer deposits a signed contract in the United States mail.

327.16 FOR A TELEPHONE SOLICITATION: Telephone Solicitations shall be made only between the hours of 9 a.m. and 9 p.m. If a residential Customer is solicited to enter into a contract by telephone, whether the Energy Supplier or its authorized agent first contacts the Customer or the Customer calls the Energy Supplier or its authorized agent in response to a direct mail solicitation, the Energy Supplier or its authorized representative shall:

(a) Begin the conversation by accurately stating the following

(1) His or her name;

(2) The name of the business or organization calling;

(3) The nature of the call, *i.e.*, a Solicitation;

(4) A brief description of the subject-matter being solicited; and

(5) An offer to the Customer to hear the full Solicitation.

(b) Describe the rates, terms, and conditions of the Contract:

(c) Arrange to have the Customer's intent to contract with the Energy Supplier independently verified. To verify a residential Customer's intent to Contract with an Energy Supplier by telephone, an Energy Supplier must utilize either:

(1) An Independent Third-Party telephone verification; or

(2) An automated, computerized system; or

(3) An electronic recording of the entire conversation between the Customer and the Energy Supplier which the Energy Supplier shall maintain for three (3) years.

327.17 All verifications performed pursuant to Subsection 327.16 shall be required to ask the Customer the following questions:

(a) "Are you the Customer of record?";

(b) "Did you agree to switch your natural gas supply service or electric supply service to [New Supplier]?"; and

(c) "Is [Customer's address] your correct address?" or "Is [Customer's Utility Account number] your correct Utility Account number?"

327.18 Once the Customer's choice of Energy Supplier is verified by an Independent Third-Party Verifier or an electronic recording is made, the Energy Supplier shall, within five (5) business days from the day the Customer agreed telephonically to Contract with the Energy Supplier, provide to the Customer via U.S. mail or electronic mail a complete written Contract.

327.19 Once a positive verification has been obtained or an electronic recording has been made, and a written contract has been sent to the customer, and after the Rescission Period has expired, the Energy Supplier shall transmit the Enrollment transaction to the Natural Gas or the Electric Utility, whichever is appropriate.

327.20 FOR AN INTERNET SOLICITATION: The Energy Supplier may post on its website an electronic version of its solicitation for the supply of natural gas or electricity. The electronic solicitation shall include:

(a) An electronic application form for the Customer to enter into a Contract for the supply of natural gas or electricity;

(b) An electronic version of the actual Contract;

(c) Instructions on how the Customer may rescind the Contract; and

(d) A link to the Commission's website to obtain the applicable rules and regulations governing the relationship between the Customer and the Energy Supplier.

327.21 After the Customer completes the electronic application form and electronically accepts the Contract terms and conditions, the Customer has a three (3) business

day Rescission Period from the completed online Contract authorization date to rescind his or her Contract.

327.22 Upon receipt of the Customer's electronic application and electronic acceptance of the Contract terms and conditions and after the Rescission Period has expired, the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, whichever is appropriate.

327.23 FOR HOME SOLICITATIONS: Home solicitations shall be limited to the hours between 9 a.m. and sunset. During a home Solicitation, the Energy Supplier or its authorized agent shall:

(a) Present the Customer with a photo identification card that identifies the name of the person making the solicitation and the name of the Energy Supplier that he or she is representing;

(b) Begin the conversation by stating the following:

(1) The name of the business or organization;

(2) The nature of the visit, *i.e*., a Solicitation;

(3) A brief description of the subject matter being solicited;

(4) Ask the customer if he/she would like to hear the full Solicitation;

(c) Present the Customer with a complete copy of the written or electronic Contract being offered and obtain the Customer's consent consistent with one of the methods described in Subsection 327.11;

(d) Obtain either an Independent Third-Party telephone verification of the Customer's intent or obtain a signed contract that includes a statement in the Contract under the conspicuous Caption" "BUYER'S RIGHT TO CANCEL" which states: "If this agreement was solicited at or near your residence, and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you signed this agreement. This notice must be mailed to: (name and address of seller)."; and

(e) After the Rescission Period has expired, transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, whichever is appropriate.

327.24 FOR DIRECT MAIL SOLICITATIONS: If a residential Customer is solicited at home through a direct mail solicitation by an Energy Supplier, the Energy Supplier shall follow the solicitation and contracting requirements in Subsections 327.7 and 327.8, respectively, and 327.13 and 327.14 with respect to telephone

solicitation if the customer calls the Energy Supplier or its authorized representative in response to the direct mail solicitation.

327.25 In the event of a dispute over the existence of a Contract, the Energy Supplier shall bear the burden of proving the Contract's existence.

327.26 When using any of the permitted forms of solicitation, the Energy Supplier shall provide the Customer with a notification of his or her right to rescind the Contract pursuant to Subsection 327.15.

327.27 Upon completion of the Customer's electronic enrollment request and after the Recession Period has expired, the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or Electric Utility, whichever is appropriate.

327.28 For purposes of these rules, the electronic submission of the application to Contract with the Energy Supplier constitutes an "electronic signature" and an executed Contract.

327.29 The Electric Utility shall accept the last Enrollment submitted by an Energy Supplier. If the Customer submits an electronic application and electronic Contract, the Energy Supplier shall acknowledge the Customer's submission with a Confirmation of receipt of the electronic enrollment within twenty-four (24) hours of receipt.

327.30 It is the responsibility of the Energy Supplier to provide its website address to the Commission and to the Natural Gas Utility or the Electric Utility, as applicable. The Natural Gas Utility or Electric Utility shall include a link to the Energy Supplier's website on its website.

327.31 The Energy Supplier shall include on its website links to the websites of the Natural Gas Utility, the Electric Utility and the Commission.

327.32 During the electronic enrollment procedure, each web screen shall clearly display a "Cancel" icon enabling the Customer to terminate the Enrollment transaction at any time. In addition, the cancellation feature shall be clearly explained to the Customer at the beginning of the electronic enrollment process.

327.33 At the completion of the electronic enrollment process, and at the end of the three (3) business day Rescission Period, the Energy Supplier, at the Customer's request, shall provide a secure website location or a telephone number where the Customer can verify that he or she has been enrolled in the Energy Supplier's program.

327.34 All online transactions between Energy Suppliers and Customers shall be encrypted using Secure Socket Layer (SSL) or similar encryption standards to ensure the privacy of Customers information consistent with Subsection 309.1.

327.35 The Electric Utility shall transfer a Customer to a competitive electricity supplier in no later than three (3) business days after receiving the notice of an enrollment transaction from the competitive electricity supplier. The Electric Utility shall transfer a customer to Standard Offer Service in no later than three (3) business days after receiving the Customer's request.

327.36 By the seventh (7th) calendar Day of the month (or next Business Day, if the seventh day falls on a holiday or weekend), each Energy Supplier shall provide to the Natural Gas Utility a list of Customers to be supplied by that Energy Supplier beginning with the Customer's Meter read date the following month.

327.37 Once the Natural Gas Utility processes a Customer Enrollment from an Energy Supplier, the Natural Gas Utility shall not accept another Enrollment from any other Energy Supplier for that Customer until it receives notice of the Termination of the Customer's Contract.

327.38 Energy Suppliers must process all Customer cancellation requests within three (3) business days after receipt of the cancellation request.

327.39 The transmittal of an EDI Transaction by the Electric Supplier to the Electric Utility shall not occur until after the three (3) business day Rescission Period.

327.40 The transmittal of an enrollment transaction by the Gas Supplier to the Gas Utility shall not occur until after the three (3) business day Rescission Period.

327.41 Upon an Energy Supplier's Enrollment of a Customer, the Energy Supplier shall provide to the Customer, within a reasonable period of time the following:

(a) A statement of enrollment;

(b) A description of the agreed-upon billing option and the Company's billing date, if applicable and if different from the Utility's; and

(c) Customer service information (including toll-free telephone number, mailing address, and dispute resolution process information).

327.42 The Customer shall notify the Energy Supplier, not the Utility, of his or her intent to rescind the Contract within the Rescission Period. If the Customer does request to rescind their Contract within the three (3)-business day Rescission Period, the Enrollment shall be considered effective. If the Customer notifies the Energy Supplier of his or her intent to rescind the Contract within the 3-business day Rescission Period, the Contract is deemed invalid and non-binding.

327.43 After the three (3) business day Rescission Period expires and the enrollment is processed by the Utility, the relationship between the Customer and the Energy Supplier shall be governed by the terms and conditions contained in the Contract.

327.44 An Energy Supplier shall provide the Customer with written notice of Contract expiration or termination at least thirty-five (35) days before the expiration or termination of the current Contract. The Energy Supplier's written expiration or termination notice shall include the following:

(a) Final Bill payment instructions;

(b) A statement informing the Customer that unless the Customer selects a new Energy Supplier, Termination of Contract shall return the Customer to the Utility; and

(c) The Commission's telephone number and website address.

327.45 If an Energy Supplier's Contract provides for voluntary renewal of the Contract or for automatic renewal of the Contract (also known as an "Evergreen Contract"):

(a) The Energy Supplier shall provide written notice to the Customer of the pending renewal of the Contract at least forty-five (45) days before the renewal is scheduled to occur;

(b) Written notice of any changes to the material terms and conditions (including, but not limited to, changes to the rate, the billing option or the Billing Cycle), shall be provided with or before the forty-five (45) day written notice. The notification of renewal and of any change in Contract terms shall be highlighted and clearly stated; and

(c) If the Contract is an Evergreen Contract, the forty-five (45) day written notice shall inform the Customer how to terminate the renewal of the Contract without penalty and advise the Customer that terminating the Evergreen Contract without selecting another Energy Supplier shall return the Customer to Natural Gas Sales Service or Electric Standard Offer Service. The written notice shall also inform the Customer that the Commission has additional information on the energy supply choices available to the Customer. The telephone number and website for the Commission shall be included in the written notice.

327.46 ASSIGNMENT OF CONTRACT

(a) At least thirty (30) days prior to the effective date of any assignment or transfer of a supplier contract from one supplier to another, the suppliers shall jointly provide written notice to the Customers of the supplier, the Commission, the utility and the Office of People's Counsel of the assignment or transfer.

(1) Notice to Customer. The suppliers shall jointly send a letter to the Customer informing them of the assignment or transfer. The letter shall include:

(a) A description of the transaction in clear and concise language including the effective date of the assignment or transfer; and

(b) Customer service contact information for the assignee;

(2) The terms and conditions of the Customer's contract at the time of assignment shall remain the same for the remainder of the contract term; and

(3) The suppliers shall file a notice with the Commission, with a copy to the Office of People's Counsel and the utility, of the assignment or transfer of the Customer contracts and include a copy of the letter sent to Customers.

(b) Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned contracts. Records shall be maintained for a period of three years or until the contracts are expired, whichever is longer.

(c) An assignment or transfer of a supplier contract from one supplier to another is not an enrollment or drop.

327.47 Within twenty-four (24) hours after making changes to its publicly available current offers (as posted on the Commission's website), an Energy Supplier shall provide the Commission Secretary with information regarding the changes in its rates, charges and services that are being made so that the Commission has current information about the Energy Supplier.

327.48 An Energy Supplier shall post on its website current and understandable information about its rates, charges and services.

327.49 An Energy Supplier shall not conduct Meter readings unless the Energy Supplier has installed, owns, and reads metering equipment, consistent with the applicable Utility's tariff.

327.50 If an Energy Supplier's charges are based on usage, an Energy Supplier shall rely on the Meter reading (actual, estimated, or customer meter readings) provided to it by the respective Utility, unless the Energy Supplier has installed, owns, and reads metering equipment, consistent with the applicable Utility's tariff.

327.51 An Energy Supplier may, at the election of a Customer, Bill a Customer in accordance with a level payment billing plan. If an Energy Supplier utilizes the

billing services of a Utility, an Energy Supplier may use the level payment plan as part of the Utility's billing service. The Energy Supplier shall inform the Customer of this option and explain how the monthly payments are calculated. Prior to implementation of the level payment billing plan, the Energy Supplier shall provide the Customer with the following information in writing:

(a) An acknowledgement that the Customer shall be on the level payment billing plan effective the next billing period;

(b) An estimate of the Customer's use on an annual basis and an explanation of how the monthly payment has been calculated;

(c) An indication that the final bill for the level payment billing plan effective period shall reflect the last level payment billing plan installment adjusted for any difference between actual and budgeted usage. Amounts overpaid shall be credited to the Customer's account or refunded, if requested by the Customer. Amounts underpaid that are equal to or greater than the monthly payment may be paid in up to three (3) monthly installments; and

(d) Final bills are issued when either a Customer account is closed or in the case of a Customer with an Energy Supplier, the supply contract is closed or changed. Any level payment billing plan in effect shall be reconciled upon rendering the final bill. Amounts underpaid shall be due within twenty (20) days of final bill rendering. Amounts overpaid shall be refunded or credited to the Customer's utility account within twenty (20) days of final bill rendering.

327.52 The Energy Supplier may perform a periodic analysis of a Customer's level payment billing plan and notify the Customer, within twenty-one (21) days thereafter, if actual usage varies significantly from that upon which the level payment billing plan was based and give the Customer an opportunity for revision of the level payment billing plan. If an Energy Supplier utilizes the billing services of a Utility, the Customer may have an opportunity for revision of the level payment billing plan at the same time as the Utility allows under the Utility's level payment billing plan procedures or at a time designated by the Energy Supplier.

327.53 If the Customer enters into a Deferred Payment Agreement ("DPA") with the Utility pursuant to § 306, and the Energy Supplier utilizes the billing services of the Utility, the Utility may include the Energy Supplier's balance as part of its DPA.

327.54 Any Energy Supplier that violates this section, either directly or through its authorized agent, may be subject to Penalties and Sanctions, including license revocation, upon notice given by the Commission.

Section 399, DEFINITIONS, Subsection 399.1, is amended to add new definitions as follows:

Energy Supplier: a person, including an Electricity Supplier, Natural Gas Supplier, Aggregator, Broker, or Marketer, who generates or produces natural gas or electricity, sells natural gas or electricity, or purchases, brokers, arranges, or markets natural gas or electricity for sale to customers. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply natural gas or electricity solely to occupants of the building for use by the occupants; (B)(i) any person who purchases natural gas or electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) any apartment building or office building manager who aggregates natural gas or electric service requirements for his or her building(s), and who does not: (1) take title to natural gas or electricity; (2) market natural gas or electric services to the individually-metered tenants of his or her building; or (3) engage in the resale of natural gas or electric services to others; (C) property owners who supply small amounts of power, at cost as an accommodation to lessors or licensees or the property; and (D) a Consolidator.

Slamming (for Energy Suppliers): the practice of switching, or causing to be switched, a Customer's natural gas or electric supplier Account without the express authorization of the Customer.

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.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-6150.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 08-06N
(Text Amendment – 11 DCMR)
Technical Corrections to Z.C. Order 08-06A

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Chapter 3 (General Rules of Measurement) of Subtitle B (Definitions, Rules of Measurement, and Use Categories), Title 11 (Zoning Regulations of 2016), of the District of Columbia Municipal Regulations (DCMR) to make a technical correction to an amendment made by Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016.

The proposed technical correction would insert the phrase "to another" to 11-B DCMR§ 315.1 (c) so that the introductory phrase would read "The building façade of an interior lot attached **to another** building…". The phrase was inadvertently omitted in the Order. The correction is consistent with the Commission's intent that the front setback requirement and corresponding rules of measurement apply to both semi-detached and detached residential buildings. A complete explanation for the technical correction proposed may be found in the Office of Planning report, which appears as Exhibit 1 in this case, and which may be accessed on the Office of Zoning website at http://dcoz.dc.gov.

Typically, final rulemaking action may be taken not less than thirty (30) days from the date of publication of a notice of proposed rulemaking in the *D.C. Register.* However, in this instance the Commission found good cause to authorize a shorter time frame to reduce, to the maximum extent possible, the potential for pending building permit applications to be improperly reviewed or issued to the inadvertent omission of two words. Therefore, final rulemaking action shall be taken not less than fourteen (14) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold** underlined text):

Chapter 3, GENERAL RULES OF MEASUREMENT, of Title 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Paragraph (c) of § 315.1 of § 315, RULES OF MEASUREMENT FOR FRONT SETBACKS FOR RESIDENTIAL HOUSE (R) AND RESIDENTIAL FLAT (RF) ZONES, is amended to read follows:

315.1 A proposed building façade or structure facing a street lot line shall be located a distance:

(a) Not closer to the street than the point of the building façade closest to the street, based on all the buildings located along the blockface; and

(b) Not further back from the same street than the building façade furthest from the street, based on all the buildings located along the blockface; and

(c) The building façade of an interior lot attached **to another** building shall not be further forward or further back than the building façade of one (1) of the immediately adjoining buildings.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than fourteen (14) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Sections 4902(a)(8) and 4908 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code §§ 7-731(a)(8) and 7-737 (2012 Repl. & 2017 Supp.)), and Mayor's Order 2006-34, dated March 12, 2006, hereby gives notice of her adoption, on an emergency basis, of the following amendments to Chapters 102 (Licensing of Medical Devices – Distributors, Manufacturers, Initial Importers, and Vendors) and 104 (Medical Device Reporting) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

The emergency and proposed rules will clarify the time period for which a license is valid. In addition, it will clarify the definition of a "distributor" – one of the types of business entities that places medical devices in the supply chain in the District of Columbia.

The emergency action is necessary to ensure that the health, safety, and welfare of the public is protected by ensuring that manufacturers, importers, vendors, and distributors are licensed at periodic intervals consisting of one (1) year, to make these regulations consistent with existing regulation 17 DCMR § 3500.1.

This emergency rule was adopted on September 11, 2017 and became effective on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (January 9, 2017), or upon publication of a Notice of Final Rulemaking in the *D.C. Register,* whichever occurs first.

The Director also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 102, LICENSING OF MEDICAL DEVICES - DISTRIBUTORS, MANUFACTURERS, INITIAL IMPORTERS, AND VENDORS, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Section 10203, LICENSURE REQUIREMENTS FOR DISTRIBUTORS, MANUFACTURERS, INITIAL IMPORTERS, AND VENDORS, Subsection 10203.8, is amended as follows:

10203.8 Unless a license is amended pursuant to this section or revoked or suspended as provided in § 10207 (relating to Refusal, Cancellation, Suspension, or Revocation of a License), the license shall be valid for one (1) year.

Chapter 104, MEDICAL DEVICE REPORTING, Section 10499, DEFINITIONS, is amended as follows:

Subsection 10499.1 is amended as follows:

Distributor – any natural or legal person who, on his or her own behalf, sells chiefly to vendors. The term "distributor" does not include a common carrier, a delivery agent, or sales representative, who does not have legal title to a medical device.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register.* Comments should be sent to the Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. In addition, comments may be sent to Van.Brathwaite@dc.gov, (202) 442-4899. Copies of the proposed rules may be obtained from the Department of Health at the same address during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3) and (11), and § 34-2202.16 (2012 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2016 Repl.)), hereby gives notice of the adoption, on an emergency basis, and intention to adopt permanently, an amendment of Section 112 (Fees) of Chapter 1 (Water Supply) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this emergency and proposed rulemaking is to revise the effective date of the System Availability Fee (SAF), which is currently effective on January 1, 2018.

On December 7, 2017, the DC Water Retail Water and Sewer Rates Committee met to consider the impacts of the SAF on affordable housing in the District and recommended the extension of the effective date of the SAF regulations to the Board. The Board through Resolution #17-83 approved the adoption of this Emergency and Proposed Rulemaking to revise the effective date to June 1, 2018.

This emergency rulemaking is necessary to protect the public peace, health safety, welfare, or morals. Without emergency rules, development of affordable housing in the District will be critically impaired. This rulemaking will revise the current effective date to June 1, 2018, which will provide the Board time to propose amendments to the SAF regulations to mitigate any impacts to affordable housing development and other project development issues.

This emergency rulemaking was adopted on December 7, 2017, by resolution, to become effective immediately, and shall remain in effect for up to one hundred twenty (120) days from the date of adoption. This emergency rulemaking shall expire on April 5, 2018, unless a Notice of Final Rulemaking is published in the *D.C. Register*, whichever occurs first. The Board also gives notice of its intent to take action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 1, WATER SUPPLY, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 112, FEES, is amended by revising the effective date of Subsection 112.11 to read as follows:

112.11 Effective June 1, 2018, DCRA Construction Permit Applicants and federal facilities shall be assessed a System Availability Fee (SAF) for new water and sewer connections and renovation or redevelopment projects for existing

connections to the District's potable water and sanitary sewer systems based on the SAF meter size in accordance with the following fee schedule and requirements:

(a) Residential customers shall be charged a System Availability Fee based on the SAF meter size as listed below:

SAF Meter Size (inches)	Water System Availability Fee	Sewer System Availability Fee	Total System Availability Fee
5/8"	$ 1,135	$ 2,809	$ 3,944
3/4"	$ 1,135	$ 2,809	$ 3,944
1"	$ 1,135	$ 2,809	$ 3,944
1"x1.25"	$ 2,047	$ 5,066	$ 7,113
1.5"	$ 5,491	$ 13,591	$ 19,082
2"	$ 11,125	$ 27,536	$ 38,661

(b) Multi-Family and all Non-Residential customers shall be charged a System Availability Fee based on the SAF meter size as listed below:

SAF Meter Size (inches)	Water System Availability Fee	Sewer System Availability Fee	Total System Availability Fee
1" or smaller	$ 1,282	$ 3,173	$ 4,455
1"x1.25"	$ 2,047	$ 5,066	$ 7,113
1.5"	$ 5,491	$ 13,591	$ 19,082
2"	$ 11,125	$ 27,536	$ 38,661
3"	$ 32,500	$ 80,442	$ 112,942
4"	$ 83,388	$ 206,394	$ 289,782
6"	$ 229,246	$ 567,408	$ 796,654
8"	$ 229,246	$ 567,408	$ 796,654
8"x2"	$ 229,246	$ 567,408	$ 796,654
8"x4"x1"	$ 229,246	$ 567,408	$ 796,654
10"	$ 229,246	$ 567,408	$ 796,654
12"	$ 229,246	$ 567,408	$ 796,654
16"	$ 229,246	$ 567,408	$ 796,654

(c) The SAF meter size shall be computed for the peak water demand, excluding fire demand in accordance with D.C. Construction Codes Supplement, as amended, Chapter 3 (Water Meters) of this title, and DC Water Standard Details and Guideline Masters.

(d) The System Availability Fee shall be assessed for any new premises, building or structure that requires a metered water service connection to the District's potable water and/or sanitary sewer systems.

(e) The System Availability Fee shall be assessed for renovation or redevelopment projects for any premises, building or structure that

requires a metered water service connection to the District's potable water and/or sanitary sewer systems.

(f) For a renovation or redevelopment project on a property that already had/has a DC Water meter(s) and account(s), DC Water shall determine the net System Availability Fee based on the difference between the property's new System Availability Fee determined by the SAF meter size(s) and the System Availability Fee determined by the old meter size(s) for the meters(s) being removed from the system.

(g) If the net System Availability Fee is zero or less, no System Availability Fee shall be charged.

(h) If the net System Availability Fee is greater than zero, DC Water shall provide System Availability Fee credits for the removed capacity and assess the net System Availability Fee.

(i) Properties under renovation or redevelopment shall not receive a System Availability Fee credit for the DC Water account(s) that have been inactive for more than twenty-four (24) months prior to DC Water's issuance of the Certificate of Approval.

(j) For DCRA Construction Permit applicants, payment of the System Availability Fee shall be a condition for DC Water's issuance of the Certificate of Approval.

(k) DCRA Construction Permit applicants that submitted plans and specifications to DC Water prior to the effective date of these regulations, shall not be subject to the System Availability Fee provided:

(1) The DC Water Engineering Review fee(s) has been paid;

(2) The plans, specifications and other information conform to the requirements of the D.C. Construction Codes Supplement, as amended, and are sufficiently complete to allow DC Water to complete its Engineering Review without substantial changes or revisions; and

(3) DC Water issues the Certificate of Approval within one year after the effective date of these regulations.

(l) For federal facilities, payment of the System Availability Fee shall be a condition of DC Water's issuance of the Certificate of Approval.

(m) After the effective date of these regulations to December 31, 2020, the property owner may request to pay the System Availability Fee in four

equal installments, with the final payment due on or before one year after the execution date of a Payment Plan Agreement. Execution of a Payment Plan Agreement and payment of the first installment payment, shall be a condition of DC Water's issuance of the Certificate of Approval.

(n) In the case that the DCRA Construction Permit is not issued or is revoked or the construction project is abandoned or discontinued, upon written request from the property owner, DC Water shall issue the property owner a refund of the System Availability Fee.

Comments on these proposed rules should be submitted in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, by email to Lmanley@dcwater.com, or by FAX at (202) 787-2795. Copies of these proposed rules may be obtained from the DC Water at the same address or by contacting Ms. Manley at (202) 787-2332.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-313
December 18, 2017

SUBJECT: **SEXUAL HARASSMENT POLICY, GUIDANCE AND PROCEDURES**

ORIGINATOR: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2), (3), and (11) of the District of Columbia Home Rule Act, 87 Stat. 790; Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (3), and (11) (2016 Repl.), and the District of Columbia Human Rights Act of 1977, D.C. Law 2-38, D.C. Official Code §§ 2-1401.01 *et seq*. (2016 Repl.), it is hereby **ORDERED** that:

I. Purpose

The purpose of this Order is to reaffirm and make clear that that the District of Columbia Government (the **"District of Columbia"**) does not tolerate any form of sexual harassment in the workplace. Sexual harassment is recognized as one of the most unjust, demeaning, and demoralizing examples of workplace misconduct.

II. Individuals Affected

(a) Prohibitions

The District of Columbia prohibits workplace sexual harassment by all District of Columbia employees, officials, and all employees under the Mayor's jurisdiction. The prohibition also applies to third parties doing business with, or carrying out the goals and objectives of the District of Columbia government, such as vendors, contractors, grantees, customers, and other persons visiting or working at District of Columbia worksites inside and outside District of Columbia agencies, who may not sexually harass District employees. Further, while carrying out their duties as contractors or grantees for the government, contractors and grantees of the District of Columbia may not engage in workplace sexual harassment, although not every procedure set forth in this Order applies to persons not working for the District government. In the course of their duties as members of District of Columbia Boards and Commissions that report up to the Mayor, board members are bound by the procedures and deadlines set forth herein.

(b) **Protections**

The protections against workplace sexual harassment extend to employees, contractors, interns, and any other persons engaged by the District of Columbia to provide permanent or temporary employment services at District of Columbia worksites inside and outside District of Columbia agencies, and to applicants for District government employment, although not every procedure set forth in this Order applies to persons not working for the government. District of Columbia employees are protected from sexual harassment by contractors, grantees, clients, applicants, and members of the public with whom they interact as part of their District of Columbia employment. Members of Boards and Commissions that report up to the Mayor are also protected as employees. Without limiting this broad definition, persons protected by this Mayor's Order will be referred to as "employees."

(c) **Agencies Not Reporting To Mayor**

Laws prohibiting sexual harassment apply throughout the District government. Agencies not reporting up to the Mayor are asked to ensure that their employees are given training, information, protections, and processes afforded in this Order to employees of agencies reporting to the Mayor.

III. Definitions of Sexual Harassment

(a) ***Quid Pro Quo* Sexual Harassment**

Quid pro quo sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual.

(b) **Hostile Environment Sexual Harassment**

Other conduct – if severe or sufficiently pervasive as to alter working conditions – may create a "hostile environment" and is also prohibited. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Unless the conduct was particularly severe or pervasive, where no warning or admonition is necessary, the person creating such an environment must have been told that the conduct is unwelcome or must stop.

The following are examples of unwelcome conduct that may create an intimidating, hostile or offensive work environment and that are not acceptable in the District of Columbia employment environment, including during work related travel:

1. sex acts;

2. display of sexual organs;

3. giving a preference to a third party who is engaged in a sexual or romantic relationship, to the disadvantage of an employee who is not engaged in a sexual relationship with a supervisor, hiring official, or person exercising authority over the disadvantaged party, (described legally as a "paramour preference");

4. using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;

5. sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sex, sexual orientation, or gender identity;

6. "sexting" or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as "upskirting" pictures), including by sending messages of a suggestive nature on self-destructive messaging apps where documentation of the written word or images is difficult to document;

7. displaying or disseminating sexually suggestive objects, books, screensavers, magazines, photographs, music, cartoons, or computer internet sites or references;

8. unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;

9. leering, ogling, or making sexually suggestive gestures or sounds, such as whistling or kissing noises;

10. making inquiries about someone's private sex life or describing one's own sex life;

11. workplace sexual comments, conduct, displays and suggestions between two willing parties that would cause a reasonable third party to be offended;

12. any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes; and

13. sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to egregious acts of sexual harassment.

(c) **Sexual Harassment is Prohibited by and Between All Persons**

1. Sexual harassment may be committed by persons of the same sex, or perceived sex, and by those who share the same sexual orientation or the same gender identity or expression, as well as by persons of the opposite sex or gender identity, and shall be prohibited.

2. Sexual harassment is not limited to inappropriate exercise of authority by persons in power over an employee. It can even occur by an employee towards a supervisor.

3. Supervisors are responsible for ensuring a workplace free of sexual harassment.

4. When sexual harassment occurs between colleagues or by clients or customers upon an employee, and it is brought to an appropriate person's attention, the agency must investigate and remedy the situation.

IV. Consensual Relationships

(a) Sexual or romantic relationships between employees and supervisors in the employee's chain of command are strongly discouraged.

(b) The Director of the Department of Human Resources (**DCHR**) is directed to develop and propose reporting mechanisms to help guard against conflicts of interest and "paramour preferences" that could arise when sexual or romantic relations develop within the chain of command.

(c) The existence of a consensual sexual or romantic relationship between an employee and a supervisor may be a factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment and/or adversely affected the terms and conditions of employment of the involved parties or a third party.

(d) Employees who engage in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, remain free to refuse further sexual overtures and have the right to demand that sexual or sexually harassing conduct going beyond that which was consented to must stop. Alternatively, they also may seek the assistance of a supervisor or manager, the agency General Counsel, or the person designated by the agency pursuant to Section V, below, to demand that sexually harassing conduct cease.

(e) Conduct that was once welcome or consensual may become unwelcome. Once the conduct is no longer welcome, and the formerly-consenting employee, or a supervisor, agency designee or counsel, tells the other party to stop, all unwelcomed behavior of a sexually harassing nature must cease.

(f) If legal action is commenced against the District of Columbia and/or a supervisor who engaged in a sexual/intimate relationship with an employee, or a person engaged in a potentially-conflictual relationship, the existence of the sexual or romantic relationship will be a factor in the District of Columbia's decision to provide legal representation to the supervisor or the employee(s) engaged in a potentially-conflictual relationship.

V. Procedures for Stopping Sexual Harassment; Reporting, and Investigating Sexual Harassment Claims

(a) **Agency Responsibilities**

1. Agencies shall immediately disseminate to all employees the Mayor's letter dated December 18, 2017 discussing our DC Values and condemning sexual harassment, as well as this Mayor's Order. Within thirty (30) days after the effective date of this Order, agencies shall follow up to ensure delivery to difficult-to-reach employees, including employees on leave and work-related travel. Each employee shall confirm receipt of these documents by email or signed copy as instructed by the agency.

2. Within thirty (30) days after the effective date of this Order, all agencies shall designate an Equal Employment Opportunity (EEO) Officer, HR Manager, or any other individual competent in EEO laws to accept sexual harassment complaints and review (henceforth, "**Sexual Harassment Officer**") and investigate claims, and an office to which claims should be reported, in the event the Sexual Harassment Officer is unavailable. The name of such designated Sexual Harassment Officer and office must be submitted to the Office of Human Rights at OHR@dc.gov. Changes or updates to this list must be provided to OHR via OHR@dc.gov within ten (10) business days of any such change. Smaller agencies may by agreement obtain assistance from a sister or superior agency in handling these matters provided its employees are notified of who will review and investigate claims of sexual harassment. For the purpose of this Order, agencies availing themselves of another agency's help will still be referred to as the "agency," even if another agency is providing investigation, human resource, and legal help through a jointly-designated Sexual Harassment Officer and office.

3. Within thirty (30) days after the effective date of this Order, each agency shall display, in noticeable and conspicuous locations accessible and used by a substantial number of agency employees, notices setting forth the District of Columbia's policy prohibiting sexual harassment. Each notice shall contain the identity and location of the agency's designated Sexual Harassment Officer, and office, who is responsible for receiving claims of sexual harassment and ensuring

that they are investigated. The notice shall advise employees that a sexual harassment complaint and any subsequent investigation shall be kept confidential to the greatest extent possible consistent with their investigation and resolution.

4. DCHR and the Office of Human Rights **(OHR)** shall develop and deliver on-going sexual harassment trainings for employees of the District of Columbia. OHR and DCHR shall conduct workshops for approximately 1500 managers by March 14, 2018 and shall ensure that all agencies have the capacity to respond effectively to allegations of sexual harassment, directly or through agreements with other agencies.

5. The Mayor's Office of Legal Counsel (**MOLC**) and OHR shall conduct a training on sexual harassment law before January 31, 2018 for all agency General Counsels or their designees.

6. Managers shall give all employees time to take a course or refresher course on sexual harassment, to be provided by DCHR or OHR, by February 28, 2018, and all current employees shall take such a course, in person or online. New employees shall take a course on sexual harassment as part of the on-boarding process and in no event more than fourteen (14) days of being on-boarded. All employees shall take a refresher course at least once every two (2) years.

7. Those entering into contracts or grants with the District government must affirm that they will abide by the District of Columbia Human Rights Act including its prohibitions on sexual harassment, consistent with 4 DCMR 1100 *et seq*. District agencies drafting contracts and grants shall include such covenants as part of the contract or grant agreement.

8. The best preventative measure to combat sexual harassment is for the workplace to be a place of respect for all persons, at all times. At work, at all times, we seek to serve the residents of the District of Columbia, a mission that is compromised whenever and wherever sexual harassment occurs.

(b) **Employee Communication**

1. An employee must either: (A) tell the person who is engaging in offensive or inappropriate sexual conduct to stop and that such conduct is unwelcome; or (B) ask the employee's supervisor or counsel or the agency's designated Sexual Harassment Officer to advise the person that the conduct is offensive and unwelcome. Employees and others engaged in intervention are encouraged to document all intervention efforts or requests to cease reported inappropriate sexual conduct, including conversations, text, or email exchanges. Some conduct is so egregious that no warning is necessary before personnel action or other consequences ensue; other times, it is necessary to indicate that the conduct is unwelcome.

2. Employees who believe they are being sexually harassed are urged to collect and preserve evidence of any offensive conduct. However, even in the absence of emails, pictures, or other physical evidence, employees should report sexual harassment as described below.

(c) **Reporting Inappropriate or Potentially Inappropriate Conduct of a Sexual Nature**

1. All District of Columbia employees are responsible for ensuring the workplace is free of sexual harassment. Employees who know of incidents of sexual harassment, as well as behavior which may create an intimidating, hostile or offensive work environment, or who are victims of sexual harassment or inappropriate conduct, should report the sexual harassment or inappropriate conduct to the Sexual Harassment Officer or office designated by the agency, or the supervisor or manager of the employee engaging in inappropriate conduct, or to their own supervisor. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.

2. If the complaint is against an agency director, the report shall be submitted to the appropriate Deputy Mayor for review. If the complaint is against a Deputy Mayor the report shall be submitted to the City Administrator. If the report is against the City Administrator, the report shall be submitted to the Mayor's General Counsel, who shall also receive complaints against any agency director in the Executive Office of the Mayor. If the complaint is against the Mayor's General Counsel or the Mayor, an independent consultant shall be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.

3. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.

4. The procedures and remedies specified herein are not intended to preclude an employee from seeking any remedies he or she may have in a court of law.

(d) **Agency Review and Investigation of Reported Claims**

1. Any supervisor or manager who receives a complaint or concern regarding sexual harassment or inappropriate conduct must take immediate steps to notify the Sexual Harassment Officer, who will ensure that an investigation is conducted and take other appropriate action. Any such effort shall be documented.

2. Where there is an allegation of criminal misconduct, including for example, sexual assault, kidnapping, stalking, and threats to do bodily harm, the agency may, after consulting its General Counsel, place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution

of the complaint or any criminal proceeding. The complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department (**MPD**). Where either the agency or an appropriate law enforcement officer determines that a criminal violation occurred, the agency shall recommend discipline of the perpetrator up to, and including, termination.

3. When an allegation of sexual harassment is reported, including allegations of criminal conduct, the agency shall notify the agency's General Counsel, who in turn must notify MOLC of the allegation.

4. Allegations of sexual harassment shall be investigated and resolved as soon as practicable, but no later than sixty (60) days after reporting. The agency or office investigating the charges must provide the employee and the alleged harasser with a written notification of its findings and conclusions after the sixty (60) day period, and shall convey the same to MOLC.

5. The agency shall also require that any employee found to have engaged in inappropriate conduct who is not terminated must attend mandatory sexual harassment training within sixty (60) days of receipt of the findings. Such training is supplemental to any disciplinary actions and must occur even if the employee recently received training.

6. The agency shall also remind complainants of sexual assault or other possible crimes of the existence of the DC Victim Hotline. The Hotline, 1-844-443-5732, is available 24/7 by telephone, text or online chat to seamlessly connect victims of crime to free resources to help them navigate the physical, financial, legal, and emotional repercussions of crime. In particular, through the Hotline, victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

(e) **Employee Responsibility to Participate in Agency Investigation**

1. All District of Columbia employees are expected to cooperate in the agency's investigation of sexual harassment complaints.

2. If an employee who alleges sexual harassment, or is believed to have been the victim of sexual harassment, declines to assist and/or participate in the investigation of the allegation, the agency may on its own initiative initiate and conduct an investigation.

3. Agencies must balance the need to respect a victim's wishes not to proceed or cooperate with an investigation, with the responsibility of the agency to ensure a respectful workplace free of sexual harassment. Employees who were not themselves victimized, who, after a direct request of the agency, decline to

participate in a sexual harassment investigation, may be subject to disciplinary action. Any consideration of whether to recommend disciplinary action for failure to cooperate in an investigation requires heightened sensitivity on the part of the agency, and should be conducted in consultation with the agency's General Counsel and MOLC.

(f) **Timely Filing; Statute of Limitations**

All complaints of sexual harassment shall be reported as promptly as possible. Agencies may consider alleged acts of sexual harassment for disciplinary purposes beyond the legal statute of limitations, consistent with the District Personnel Manual and any collective bargaining agreements, taking into consideration the sensitive nature of the alleged offense, the pressure the complainant may have felt not to report the conduct, when the victim became aware of behavior that was not immediately apparent, or a pattern of harassing behavior that developed over time. The statute of limitations for complaints filed at OHR is within one year of the harassment or its discovery.

(g) **Rights of the Alleged Harasser**

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment; to counsel and representation, including a union representative or other representative of their choosing, and including the presumption of innocence, unless and until there is a finding of harassment after an investigation by the agency or where appropriate, OHR. The right to counsel does not include the right to have counsel paid for by the government.

(h) **Interim Remedial Actions**

Pending final resolution of a sexual harassment complaint, and in order to protect the rights of the alleged victim as well as the alleged harasser, the agency may take prompt temporary personnel actions that do not result in any adverse employment action to either party. When an agency becomes aware of an allegation of sexual harassment, the agency shall notify the alleged harasser of the reported behavior to ensure that any such conduct ceases immediately and is not repeated.

Interim remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits. Where a request for separation, such as a job reassignment, from the alleged harasser is made by the alleged victim, the agency must require the victim to make the request in writing. DCHR is encouraged to find alternative, reasonably comparable placements, even in different agencies, during the pendency of an investigation for the accuser or accused in lieu of administrative leave with pay, where possible.

(i) **Discipline for Making False Statements or Representations**

In recognition of the seriousness of workplace sexual harassment charges, the agency shall recommend disciplinary action, up to and including termination, of any employee found to have knowingly and intentionally made materially false statements or representations in relation to a sexual harassment claim or investigation. Termination is only available if such statements were in writing and the allegations were formally made with warnings as to their legal force, or under oath.

Consideration of whether to recommend disciplinary action against an employee who is also the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and MOLC.

(j) **Discipline after a Finding of Sexual Harassment**

The agency shall recommend appropriate disciplinary action, up to and including termination of any employee found to have engaged in sexual harassment as defined in Section III of this Order.

(k) **Referral to the Board of Ethics and Government Accountability (BEGA)**

Some claims of sexual harassment may also involve ethical violations, such as if an employee is giving gifts to an employee for sexual favors or to a potential reporter of sexual harassment, or if an employee is using government resources to copy and disseminate inappropriate pictures. Credible violations of the Code of Conduct should be reported to BEGA. Its penalties are in addition to any personnel actions taken by the agency.

VI. Concurrent Remedies and Jurisdiction

(a) **Filing a Formal Complaint with the Office of Human Rights**

In addition to pursuing action within the agency, an alleged victim of sexual harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment claim within one year of the alleged harassment or its discovery to OHR using its Intake Questionnaire Form.

(b) **EEO Counseling Option When Filing a Claim with OHR**

EEO Counseling is not required prior to the filing of a complaint with OHR; however, if the employee wishes to first seek informal resolution, EEO Counseling is available. To exercise this option, the employee must contact a certified EEO Counselor within 180 days of the alleged harassment. The EEO Counselor must then resolve the complaint within thirty (30) days, or at maximum sixty (60) days, and issue an Exit Letter outlining the rights of the individual reporting the claim as well as the counselor's efforts to resolve

the claim. If the employee is not satisfied with the outcome of the counseling effort, the employee may file a formal complaint with OHR within fifteen (15) days of receiving the Exit Letter. EEO Counselors will not conduct an investigation. They will simply review the case and try to achieve an informal resolution.

VII. Prohibition against Retaliation

(a) Retaliation Prohibited

Retaliating against an employee for reporting or filing a claim of sexual harassment, assisting another person in filing or asserting a claim of sexual harassment, opposing sexual harassment, acting as a witness in a sexual harassment investigation, refusing to follow orders that would result in sexual harassment, intervening to protect others from sexual harassment or advances, or challenging an allegation of sexual harassment, is strictly prohibited. Employees shall not be penalized as a result of their assertion of rights provided under the District of Columbia Human Rights Act or providing truthful information in connection with an investigation (whether on behalf of a complainant or a respondent). Retaliatory behavior can include but is not limited to unwarranted reprimands, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, and altered and more inconvenient work schedules. Employees found to have engaged in retaliatory behavior shall be recommended for termination.

(b) Process for Alleging Retaliation

Employees who believe they have been retaliated against must file a complaint with an EEO Counselor within 180 days of the alleged retaliation and subsequently file a complaint with OHR within fifteen (15) days of receipt of the Exit Letter, if the employee is not satisfied with the outcome of EEO Counseling.

(c) Limits

Lodging a sexual harassment claim or triggering an investigation does not shield an employee from all discipline or discharge. Agencies are free to discipline or terminate employees if the agency is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such consequences.

VIII. Confidentiality

The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, shall be confidential. The agency shall take all reasonable steps to ensure that no information contained in the complaint file is disseminated except in furtherance of the investigation; resolution of the allegations; execution of any consequences stemming from the investigation; when lawfully released; or when required by court order.

The agency must take all reasonable efforts during the conduct of an investigation to protect the identities of the alleged harasser and the alleged victim, as well as witnesses for either party. However, the alleged harasser shall be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.

This confidentiality requirement does not preclude the agency from reporting a suspected illegal or improper act, or conduct related to the investigation, to an appropriate enforcement, investigating and/or legal organization or from cooperating in any related investigation.

IX. Applicability of Personnel Rules

Any proposed personnel action instituted under this Order is subject to the District of Columbia Personnel Regulations as set forth in the District of Columbia Personnel Manual.

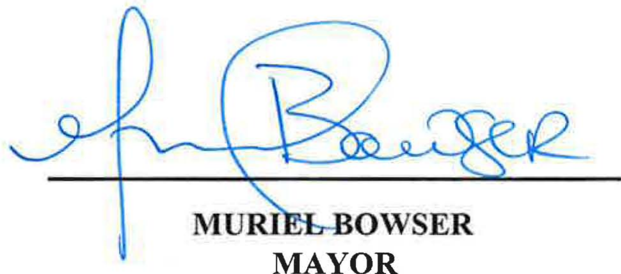
X. Implementation

Where responsibility is not otherwise specified, the Director of the Office of Human Rights, or the designee of the Director of the Office of Human Rights, is authorized and directed to implement this Order and to monitor the compliance of executive departments and agencies with its directives.

XI. Rescission/Repeal

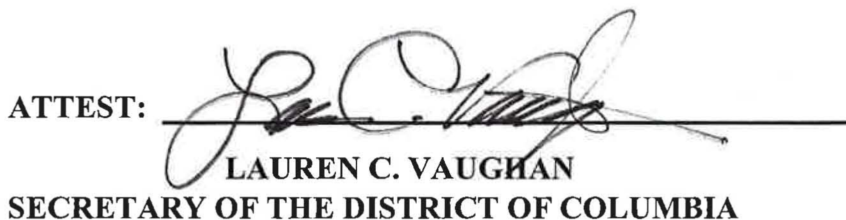
To the extent that any provision of this Order is inconsistent with the provisions of any Commissioner's Order, Order of the Commissioner, or previous Mayor's Order, the provisions of this Order shall prevail and shall be deemed to supersede the earlier provisions. Mayor's Order 2004-171, dated October 20, 2004, is rescinded.

XII. EFFECTIVE DATE: This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

BREAKTHROUGH MONTESSORI PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Legal Services

Breakthrough Montessori Public Charter School is seeking qualified legal services to gain site control over their proposed permanent location for SY 2018/19. Submissions are due no later than January 22, 2018 by 5pm ET. Please email info@bhope.org with any questions.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

HEALTHY YOUTH AND SCHOOLS COMMISSION

NOTICE OF 2018 MEETING SCHEDULE

The Healthy Youth and Schools Commission ("Commission") hereby gives notice of the annual schedule of meetings for the 2018 Calendar Year. The Commission holds quarterly public meetings at the Office of the State Superintendent located at 1050 First Street NE.

DATE	TIME	LOCATION
January 24, 2018	3:00-5:00pm	1050 First Street NE Washington, DC 20002
April 25, 2018	3:00-5:00pm	1050 First Street NE Washington, DC 20002
July 25, 2018	3:00-5:00pm	1050 First Street NE Washington, DC 20002
October 24, 2018	3:00-5:00pm	1050 First Street NE Washington, DC 20002

Any changes to this schedule will be reflected on the District of Columbia Office of Open Government website located at http://www.open-dc.gov. For questions regarding this schedule of meetings, please contact:

Kyle Flood
Policy Analyst
Office of the State Superintendent of Education
Division of Health and Wellness
1050 First Street NE
Washington, DC 20002
202-741-5252
Kyle.Flood@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT

EXTENSION OF PUBLIC COMMENT PERIOD

Air Quality Permit for Superior Concrete Materials, Inc.

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, is proposing to issue an air quality permit (#7188) to Superior Concrete Materials, Inc. to construct and operate a ready mix portable concrete batch plant at 1721 South Capitol Street SW, Washington DC, 20003. This plant will replace the existing Superior Concrete Materials, Inc. plant located at 1601 South Capitol Street SW, Washington DC, 20003. The contact person for the applicant is Roberto Talavera, Director of Technical Services/Operation, at (301) 343-7660.

On November 17, 2017, DOEE published a Notice of Public Hearing and Solicitation of Public Comment in the *D.C. Register* and requested comments by December 18, 2018.

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons must submit written comments on this subject by January 5, 2018.

The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. Written comments on the proposed permit not delivered in person at the hearing should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

All relevant comments will be considered before taking final action on the permit application.

No comments submitted after January 5, 2018 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF AN APPLICATION TO PERFORM VOLUNTARY CLEANUP

1719 T Street, NW
Case No. VCP2017-053

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real property located at 1719 T Street, NW, Washington, DC 20005, is 3 Tree LLC, located at 7926 Jones Branch Drive #600 McLean, VA 22102. The application identifies the presence of trace levels of petroleum compounds in the soil and trace levels of petroleum compounds and chlorinated solvents in the groundwater. The applicant intends to redevelop the subject property into a condominium building with 4 units.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-2B) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-2289. An electronic copy of the application may be viewed at http://doee.dc.gov/service/vcp-cleanup-sites.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty-one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2017-053 in any correspondence related to this application.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

Anacostia River Sediment Project Document Review

The Department of Energy and Environment (the Department) seeks applications from nonprofit organizations interested in technical support to improve their and the public's understanding of technical reports, site conditions, and DOEE's cleanup proposal and decision for the Anacostia River Sediment Project. The amount available for the project is approximately $50,000.00.

Beginning 12/22/2017, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

> **Download** from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.
>
> **Email** a request to ARSP.RFA@dc.gov with "Request copy of RFA 2017-1810-DIR" in the subject line.
>
> **Pick up a copy in person** from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Gretchen Mikeska at (202) 603-0964 and mention this RFA by name.
>
> **Write** DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Gretchen Mikeska RE:2017-1810-DIR" on the outside of the envelope.

The deadline for application submissions is 1/23/2018, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to ARSP.RFA@dc.gov.

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

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

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6578-R1) to USA Motors Inc to operate one automotive paint spray booth at the facility located at 45 Q Street SW, Washington DC 20024. The contact person for the facility is Mr. Abdul Shirar, Manager, at (202) 484-1200

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the automotive paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]

b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	**VOC Regulatory Limit As Applied***	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:

1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:

A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;

B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or

C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;

2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;

3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or

4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.

d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and

2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit, are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after January 22, 2018 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permits (Nos. 7058 and 7177) to Murphy's Auto Body, Inc. (dba Murphy's Auto Body) to operate two (2) identical down draft, Ameri-Cure /AquaMax automotive paint spray booths, designated PB-A and PB-B, respectively, at the facility located at 1708 Good Hope Road SE, Washington, DC 20020. The contact person for the facility is Christopher Murphy at (202) 678-0100.

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from each of the automotive paint spray booths will not exceed 3.12 tons per year, for a total potential emissions from the facility of 6.24 tons per year of VOC.

The proposed emission limits are as follows:

a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]

b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
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Clear coating	2.1	250
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Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Truck bed liner coating	1.7	200
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:

1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:

   A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;

   B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or

   C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;

2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;

3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or

4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.

d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and

2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permits and any request for a public hearing should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after January 22, 2018 will be accepted.

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

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (EXTENSION)

Friendship Public Charter School is seeking bids from prospective vendors to provide;

- Strategic communication, marketing and graphic design services to create a new brand identity package for FPSC that will effectively visually communicate the organization's new brand messaging in a manner that will position FPCS for future growth.

The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, Tuesday, January 23, 2018. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Cabling & AV Equipment

KIPP DC is soliciting proposals from qualified vendors for Cabling & AV Equipment. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on January 19, 2018. Questions can be addressed to keon.toyer@kippdc.org.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-128

August 18, 2017

VIA E-MAIL

Mr. Evan Lambert

RE: FOIA Appeal 2017-128

Dear Mr. Lambert:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested pertaining to complaints made against a police officer.

Background

On July 31, 2017, you submitted a FOIA request to the MPD for all citizen complaints made against an MPD officer. The MPD denied your request, without admitting or denying the existence of the requested records, stating that acknowledgement or disclosure or responsive records would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").

On appeal you challenge the MPD's response, asserting that the responsive records involve substantial public interest because you have reported on the officer's alleged misconduct. Further, you claim that complaints against the officer should be available to the public because his salary is funded by tax payers. Finally, you argue that the records would shed light on how MPD responds to complaints against its officers.

The MPD sent this Office a response to your appeal on August 17, 2017.[1] The MPD reaffirmed its earlier position that the records are exempt under Exemption 2 and Exemption 3(C). Further, the MPD asserted that the officer, even as a government employee, maintains some privacy interest in his employment records. The MPD notes that the purpose of FOIA is to permit citizens to find out how an agency is carrying out its responsibilities and allegations of misconduct against an individual officer do not shed light on the MPD's operation as an agency. Finally, the MPD reaffirmed its *Glomar* response, neither confirming nor denying the existence of responsive records, because the MPD claimed that acknowledging the existence of responsive complaints would in itself constituent an unwarranted invasion of the officer's privacy.

Discussion

[1] A copy of the MPD's response is attached to this determination.

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 DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

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." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Exemption 3(C) is applicable to records pertaining to investigations conducted by the MPD if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

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 disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[2]. "The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

[2] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that there is a sufficient privacy interest associated with a police officer who is being investigated for wrongdoing based on allegations. "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under [(3)(C)]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for the wrongdoing, because the agency's purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast*, 665 F.2d at 1254.

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated with alleged criminal activity and that protection of this privacy interest is a primary purpose of the investigatory records exemption. *Stern,* 737 F.2d at 91-92. We find that the same interest is present with respect to civil disciplinary sanctions that could be imposed on an MPD officer. The records you seek may consist of mere allegations of wrongdoing, the disclosure of which could have a stigmatizing effect regardless of accuracy.

We say "may consist" because the MPD has maintained that it will neither confirm nor deny whether complaint records exist relating to the officer. This type of response is referred to as a "Glomar" response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). Here, the Glomar response is justified because if a written complaint or subsequent investigation against the officer you have named exists, identifying the record's existence would likely result in the privacy harm that the DC FOIA exemptions were intended to protect.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest is outweighed by the public interest to require disclosure. On appeal, you assert that there is public interest based on media coverage of the officer and that civilian complaints against the officer would be illustrative on how MPD handles civilian complaints. The public interest in the disclosure of a public employee's disciplinary files was addressed by the court in *Beck v. Department of Justice, et al*., 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

> The public's interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of "the citizens' right to be informed about what their government is up to." *Reporters Committee,* 489 U.S. at 773 (internal quotation marks omitted); *see also Ray,* 112 S. Ct. at 549; *Rose,* 425 U.S. at 361. 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. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

Id. at 1492-93.

In the instant matter, disclosing the records you are seeking would not shed light on MPD's performance of its statutory duties and would constitute an invasion of the individual police officers' privacy interests under Exemptions 3(C) and (2) of the DC FOIA.[3]

Conclusion

Based on the forgoing we affirm the MPD's decision and dismiss your appeal.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[3] We also note that any public interest that would be served by disclosing the wrongdoings of police officers might be served by the Office of Police Complaints' ("OPC") annual, redacted, online report of all sustained findings of misconducts, along with extensive data regarding the type of allegations made and the demographics of complainants. *See Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). OPC's annual reports may be found at http://policecomplaints.dc.gov/page/annual-reports-for-OPC.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-129

August 18, 2017

Mr. Jonathan S. Jeffress

RE: FOIA Appeal 2017-129

Dear Mr. Jeffress:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) ("DC FOIA"). You assert that the Department of Corrections ("DOC") improperly withheld records in response to a request you submitted to DOC under DC FOIA dated June 1, 2017, on behalf of your client.

Background

Your FOIA request sought records pertaining to an April 10, 2017, incident involving your client that resulted in a double amputation.

On June 22, 2017, DOC denied your request. DOC asserted that the records in question are investigatory files that are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3"). DOC's denial also described your request for "All records" as not being "an adequate description."

On appeal, you challenge DOC's denial of your request on the grounds that DOC is improperly asserting a "blanket exemption" of all of the files in the investigative record. You assert that DOC has not made sufficient showings of the existence of an investigation or that the release of documents would interfere with an enforcement proceeding. Further, you request that the withheld records be subject to redaction and segregated release. Lastly, you list specific types of documents that you are requesting.

On August 10, 2017, DOC provided this Office with a response to your appeal[1], in which it reasserts the agency's position that the release of any responsive records in its possession would interfere with an ongoing enforcement proceeding. Additionally, DOC's response indicates that it will provide to you some of the documents enumerated in your appeal and further indicates the online location of some responsive policy documents.[2]

[1] A copy of DOC's response is attached.
[2] To the extent that DOC has provided you with documents or has indicated their online location, we consider such parts of your appeal to be moot.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). That right, however, is subject to various 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).

Exemption 3 exempts investigatory records that: (1) were compiled for law enforcement purposes; and (2) whose disclosure would interfere with enforcement proceedings. D.C. Official Code § 2-534(a)(3)(A)(i). "To invoke this exemption, an agency must show that the records were compiled for a law enforcement purpose and that their disclosure '(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'" *Manning v. United States DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (citing *Mapother v. U.S. Dep't of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

The purpose of Exemption 3 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. 224, 232 (1978). "So 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." *E.g. Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted).

Conversely, "where an agency fails to demonstrate that the documents sought relate to any ongoing investigation or would jeopardize any future law enforcement proceedings, the investigatory records exemption would not provide protection to the agency's decision." *Id.* An agency must sustain its burden "by identifying a pending or potential law enforcement proceeding or providing sufficient facts from which the likelihood of such a proceeding may reasonably be inferred." *Durrani v. United States Dep't of Justice*, 607 F.Supp.2d 77, 90 (D.D.C. 2009).

Here, DOC has provided a declaration, dated August 8, 2017, which states that "the investigation was (and is still) on-going." And as DOC's response to this Office indicates, this Office "must give 'substantial weight' to agency declarations absent contrary evidence or evidence of bad faith." *Manning v. United States DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017). As a result, we accept the declaration's assertion that there is an ongoing criminal investigation.

However, in asserting an investigatory records exemption it is impermissible for an agency to issue a "blanket exemption" that exempts from disclosure all records in a file by virtue of the records' location in that file. *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 789 F.2d 64,

66 (D.C. Cir. 1986). Agencies may not issue a "blanket exemption," but Exemption 3 does not require the agency to provide document specific justifications for withholding. Instead, agencies may justify their withholdings on generic categories of documents, rather than a document-by-document basis. *Id.*

To assert the investigatory records exemption under the generic approach, the task of the agency is "three-fold." *Bevis v. Department of State*, 801 F.2d 1386, 1388 (D.C. Cir. 1986). The agency must: (1) define its categories functionally; (2) conduct a document-by-document review in order to assign documents to the proper category; and (3) explain to the court how the release of each category would interfere with enforcement proceedings. *Id.* This process is designed to "allow the court to trace a rational link between the nature of the document and the alleged likely interference." *Crooker*, 789 F.2d at 67.

Here, the DOC's declaration states only the declarant's belief "that public disclosure of the records of the April 10, 2017 incident will interfere with the ongoing criminal investigation and prospective enforcement proceedings regarding the incident, including the allegation of assault on staff." While DOC is correct in citing to *Manning* for the proposition that this Office must accept the assertions of a declaration absent contrary evidence or evidence of bad faith – the declaration that DOC provided this Office is akin to a "blanket exemption" and does not engage in the generic approach contemplated by *Manning*. In *Manning*, the agency's declaration provided more than DOC's declaration provides here:

> The [agency] divided its investigative materials into two categories: (1) evidentiary/investigative materials, and (2) administrative materials. . . The [agency] then reviewed and assigned document types into each category. . . The [agency] further divided the two main categories into smaller subcategories. . . . The "evidentiary/investigative materials" category includes three subcategories: (1) confidential source statements; (2) exchange of information between [agency] and other law enforcement agencies; and (3) documentary evidence or information concerning documentary evidence. . . . The "administrative materials" category also has three subcategories: (1) reporting communications; (2) miscellaneous administrative documents; and (3) administrative instructions…
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> The declaration then describes how disclosing each subcategory of information would interfere with the pending investigation. . . . *see CREW*, 746 F.3d at 1098 (stating that "it is not sufficient for the agency to simply assert that disclosure will interfere with enforcement proceedings; it must rather demonstrate how disclosure will do so" (internal quotation marks omitted)). For example, the declaration explains that revealing confidential source statements could subject to retaliation or intimidation those individuals who are cooperating with law enforcement, which, in turn, could have a "chilling effect on the [agency]'s investigative efforts here and [on] any resulting prosecutions." . . .. Further, [declarant] states that releasing information exchanged between the [agency] and its law enforcement partners would "reveal the scope and focus of the investigation; identify and tip off individuals of interest to law enforcement; and

> provide suspects or targets the opportunity to destroy evidence and alter their behavior to avoid detection."

Manning v. United States DOJ, 234 F. Supp. 3d 26 (D.D.C. 2017)
Here, the issue is not only whether the records you seek were compiled for law enforcement purposes but also whether their release would interfere with an enforcement proceeding. In response to the instant appeal, DOC's declaration did not identify the types of documents being withheld. DOC's declaration does not explain facts from which this Office could "trace a rational link between the nature of the document and the alleged likely interference." *Crooker*, 789 F.2d at 67. This Office accepts DOC's position that there is an ongoing investigation; but is unable, at this point, to conclude how disclosure would interfere with that investigation.

Reasonable Redaction

The D.C. Code mandates reasonable redaction to allow for the disclosure of portions of documents not protected by an exemption. D.C. Official Code § 2-534(b). Because of DOC's apparent use of a "blanket exemption," it is unclear if DOC has engaged in a reasonable redaction analysis. On remand, DOC should review the withheld documents to make a determination if portions of some of the withheld documents could be released with protected portions redacted.

Conclusion

Based on the foregoing, the decision of DOC is moot in part and remanded in part. Within 15 days of this decision DOC shall release to you all portions of responsive records that in DOC's judgement would not interfere with an enforcement proceeding. Further, within 15 days of this decision, for all responsive documents that DOC believes would interfere with an enforcement proceeding, DOC shall review the withheld documents and issue to you a new decision letter which (1) defines categories of investigatory records, and (2) is accompanied by a declaration articulating how release of each category of documents could interfere with an enforcement proceeding. You may by separate appeal challenge DOC's subsequent decision letter.

This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-130

August 21, 2017

Mr. Arthur Slade

RE: FOIA Appeal 2017-130

Dear Mr. Slade:

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 Inspector General ("OIG") improperly withheld records you requested under the DC FOIA.

Background

In June and July of 2017, you submitted requests under the DC FOIA to OIG seeking documents relating to alleged cronyism and nepotism at the Department of Insurance, Securities and Banking ("DISB"). Your requests included asking OIG for emails, stored on DISB servers, between three individuals from June 1, 2012 to present. On July 20, 2017, OIG responded to your request providing you with two pages of responsive documents. OIG also stated that it did not have any responsive emails.

On appeal you challenge OIG's denial for not producing the emails of the individuals requested. You disagree with OIG's closure of your nepotism complaint against DISB and assert that the emails you requested would verify whether or not there was actual misconduct. OIG provided this Office with a response to your appeal on August 10, 2017.[1] In its response, OIG reasserts that it reviewed its files and it does not possess any emails that would be responsive to your 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).

[1] A copy of OIG's response is attached for your reference.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is whether or not OIG conducted an adequate search for DISB emails. 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).

Here, the most likely location for responsive email records would be the DISB email servers maintained by the Office of the Chief Technology Officer ("OCTO"). Pursuant to Mayor's Order 2008-88, OCTO can search and disclose emails sent or received by the District's employees when there is legal authority - e.g. pursuant to a FOIA request, investigation, or litigation. While OIG does have authority to request emails from OCTO for an investigation, the request here is pursuant to your FOIA request, not OIG's own investigation. Because your FOIA request is for DISB emails, DISB must authorize the email search from OCTO, not OIG. *See* Mayor's Order 2008-88.
As a result, the remaining likely location for responsive emails would be the files OIG created and maintained in response to you allegation of nepotism in DISB. OIG asserts that it searched its files and found no responsive emails. It is unclear from OIG's response if OIG never

requested emails for its investigation or if email records were purged following the conclusion of OIG's investigation. Although OCTO may maintain responsive emails stored on its servers for DISB, under applicable FOIA law the test is not whether any additional documents might conceivably exist, but whether OIG's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the low likelihood of OIG maintaining DISB emails and OIG's declaration that it does not have responsive emails, we find that the search OIG conducted was adequate.

Conclusion

Based on the foregoing, we affirm the OIG'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: Daniel W. Lucas, Inspector General, OIG (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-131

August 22, 2017

Mr. John McFarland

RE: FOIA Appeal 2017-131

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On April 10, 2017 you submitted a FOIA request to DCRA for "copies of all forms of electronic, written, taped and video communication from or to [named DCRA employee] and the below listed former or current Government of the District of Columbia employees," "[w]ithin the date range of January 1, 2011 to December 31, 2011." Your appeal also included a copy of an April 30, 2017 letter to the District of Columbia Human Resources ("DCHR") FOIA officer that contained 30 search terms.[1]

It appears that DCRA informed you that your request was granted by email on July 12, 2017 – and that you picked up a CD of responsive records from DCRA on July 13, 2017.[2]

On August 8, 2017, you filed this appeal. In relevant portions, your appeal offers your belief that DCRA did not provide you with specific emails that you believe exist. Specifically, you contend that DCRA did not attach an email accompanying a PDF that was provided to you. Additionally, you assert that a particular email chain from June 14, 2011, appears to be incomplete. Your appeal reiterated your request, stating that you "want to receive those e-mails and any other documents, and all forms of electronic, written, taped and video communication that [employee] sent to DCRA." [3] Additionally, your appeal asserts complaints regarding your unfair treatment as

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[1] This letter was in regards to a separate FOIA request to DCHR. Based on conversations between DCRA and this Office it appears that DCRA was in receipt of this document at the time it issued its response.

[2] We say "it appears" because DCRA's response to your request was not included in your appeal as required by 1 DCMR § 412.

[3] Your appeal also states "I want to receive all e-mails that were transmitted before and after that June 14, 2011 date between [named employees]." Your original request limited your request to the "the date range of January 1, 2011 to December 31, 2011." You cannot expand the scope of

an employee and states your desire for "compensation for the injustice [you] have been subject to." [4]

Your appeal also appears to include your concerns in relation to a FOIA request to DCHR that was the subject of FOIA Appeal 2017-64.[5] You did not include a denial letter for the DCHR request as required by 1 DCMR § 412. Further, you did not include a copy of the original DCHR request as required by 1 DCMR § 412. As a result, this Office has interpreted the instant appeal as solely challenging the adequacy of DCRA's response. DC FOIA appeals are agency specific; if you wish to challenge the separate actions of two agencies in response to two requests then you must file two appeals.

On August 14, 2017, DCRA provided a response to your appeal to this Office.[6] DCRA's response explained that the specific emails identified in your appeal as missing were actually provided to you. DCRA provided a copy of these emails to this Office. In communications with this Office, DCRA indicated that pursuant to your request, the Office of the Chief Technology Officer ("OCTO") conducted a search of the email inboxes of all 11 employees identified in your request. DCRA further indicated that the search returned a voluminous number of records and that the responsive documents provided to you consisted of a selection from the larger OCTO search results that had been retrieved using the keywords "McFarland" and "desk audit."

<u>Discussion</u>

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 primary issue in this appeal is whether or not DCRA conducted an adequate search for correspondence you requested. DC FOIA requires only that, under the circumstances, a search is

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your request on appeal; you must file a separate request if you would like to expand the date range of DCRA's search.

[4] These issues, of course, are beyond the scope of the instant FOIA Appeal and will not be addressed in this determination.

[5] 2017-64 was dismissed without prejudice as prematurely filed; this Office has not received a subsequent substantive challenge.

[6] A copy of DCRA's response is attached.

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 was for all communication between named DCRA employees within a specified time range. The repositories likely to contain such responsive email records would be the email accounts maintained by OCTO. Pursuant to Mayor's Order 2008-88, OCTO can search and disclose emails sent or received by District employees when there is legal authority to do so (e.g., pursuant to a FOIA request, investigation, or litigation). Here, DCRA has indicated that it conducted an OCTO search of the mailboxes of 11 named employees for the date range provided in your initial request. This portion of the agency's search was reasonable.

DCRA indicated to this Office that the search resulted in a voluminous number of records and that it engaged you in several telephone conversations concerning your request. In lieu of reviewing the entirety of the search results, it appears that DCRA took the voluminous results of the OCTO search and narrowed them using the keywords "desk audit" and "McFarland." [7] Unless you agreed to this narrowing of search terms, pursuant to 1 DCMR § 402.5, this was improper. Your request by its own terms unambiguously sought all emails between the employees in the provided date range. If the search results were voluminous, DCRA's remedy

[7] These search terms appear to be related to your DCHR FOIA request in which 30 search terms were identified.

was to acquire your consent to narrow the terms of the search, or to release the documents on a rolling basis and charge you fees in accordance with 1 DCMR § 408.[8] Unilaterally narrowing the scope of your request, even in good faith, renders the search DCRA conducted inadequate.

Conclusion

Based on the foregoing, we remand DCRA's decision and hereby dismiss your appeal. Within 15 days of this decision, DCRA shall begin providing to you on a rolling basis the remainder of responsive documents identified by its OCTO search, subject to appropriate exemptions. If DCRA determines that this production will incur fees, then you may either agree to pay the fees or discuss with DCRA narrowing the scope of your request. This constitutes the final decision of this Office; however, you are free to challenge DCRA's subsequent response by separate appeal.

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: Runako Allsopp, Assistant General Counsel, DCRA (via email)

[8] If DCRA were to make the good faith determination that fees for review and production would exceed $250, then DCRA 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: 2017-132

August 24, 2017

VIA ELECTRONIC MAIL

Mr. Randy Smith

RE: FOIA Appeal 2017-132

Dear Mr. Smith:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Office of the Deputy Mayor for Public Safety and Justice ("DMPSJ") failed to respond to your July 13, 2017 request for certain records.

This Office contacted DMPSJ on August 10, 2017, and asked for its response to your appeal. DMPSJ informed us that it responded to your request on August 24, 2017. Since your appeal was based on DMPSJ' 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 DMPSJ 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: Helder Gil, Chief of Staff, DMPSJ (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-133

August 25, 2017

VIA ELECTRONIC MAIL

Mr. Jason Klein

RE: FOIA Appeal 2017-133

Dear Mr. Klein:

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 Department of Health ("DOH") improperly denied you access to records you requested under the DC FOIA.

Background

On July 17, 2017, you submitted a request to the DOH for:

> *Any and all Letters of Intent that have been submitted pursuant to any public notice (one is attached, but this request covers all public notices) calling for the same to be submitted to DOH Medical Marijuana Program. This would include any letters of intent submitted March 1, 2017 through the date of this request, whether pursuant to the public notice attached or any other, in which an applicant indicates their intention to submit an application for registration of a dispensary in Ward 7, Ward 8, or both.*

DOH responded on July 19, 2017, denying your request. DOH's denial indicated that it was withholding all responsive records pursuant to D.C. Official Code §§ 2-534(a)(1), (a)(2), (a)(4).

You appealed DOH's denial by letter dated August 2, 2017. Your appeal argues that there is a *de minimis* privacy interest in the withheld documents, "because it only reveals an individual's intention to seek a license to operate a medical marijuana dispensary." Your appeal goes on to simultaneously argue that there is a substantial public interest in disclosure of the records because "The identity of the individuals who will own, operate, and ultimately will be responsible for the facility is [of] great interest to the public in general." Lastly, your appeal articulates why you believe Exemptions 1 and 4 were inappropriately asserted.

This Office notified DOH of the appeal on August 10, 2017. DOH responded to this Office on August 16, 2017, indicating its intent to release responsive documents with redactions. On August 22, 2017, DOH released to you responsive documents, with redactions to addresses made

pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[1] DOH's production released the names of the primary contacts associated with each Letter of Intent – and only appeared to redact addresses and some telephone numbers and email addresses.[2]

On August 22, 2017, you acknowledged receipt of the released records but challenged the redactions of addresses made by DOH. Further, you asserted that you had personal knowledge of two Letters of Intent that were not included in the production – and asked for DOH to conduct another search. On August 23, 2017, this Office asked DOH to respond to your response to its production.

On August 25, 2017, DOH submitted a supplemental response that explained the legal basis for the redactions that DOH made pursuant to Exemption 2. DOH's response indicated that there is a privacy interest in personally identifiable information. Further, DOH explained that no public interest was involved because release of the redacted portions would not reveal anything about the agency's conduct. DOH also explained that it had researched the addresses and redacted only those which it believed to be residential – business addresses were released. Lastly, DOH explained that it had released all Letters of Intent that it maintained, but in an abundance of caution the agency had requested that the program in charge of the files look again. DOH represented that the agency would provide any additional Letters of Intent that may have been missed during the original search.

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.

[1] 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."
[2] DOH's production did not make redactions pursuant to Exemptions 1 and 4; this decision will not address these exemptions further.

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,[3] 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). An individual has a substantial privacy interest in the individual's personally identifiable information. The information that DOH did redact – primarily addresses, telephone numbers, and email addresses that DOH determined were personal and not of a business[4] – raises a substantial privacy interest, as it all involves pieces of personally identifiable information.

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 772-773. In the context of DC FOIA, 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.

Here you have not articulated a public interest relevant to DC FOIA. Your public interest argument asserts "[t]he identity of the individuals who will own, operate, and ultimately will be responsible for the facility is [of] great interest to the public in general." Popular interest in a subject is not the same as 'public interest' in the FOIA context. Your argument does not explain how releasing the redacted personal information will reveal anything about the conduct of DOH. Indeed, it is unclear to this Office how these addresses, phone numbers and email addresses intersect with DOH's performance of its statutory duties. Conversely, it is clear that the release of this information could lead to the harassment of private citizens. When there is a privacy interest in a record and no countervailing public interest, the protected information may be

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[3] Here, DOH has made the decision to release to you the names of individuals listed as the primary contact for the Letters of Intent that you requested. It is this Office's view that DOH's release of names was discretionary; DOH could have redacted the names on the basis that names have a substantial privacy interest because they are personally identifiable information.

[4] DOH has represented that the personally identifiable information that it redacted is in fact personal information and not that of a corporate entity. We accept these representations.

withheld from disclosure. *See*, e.g. *Beck*, 997 F.2d at 1494. As a result, we find that DOH properly withheld the portions of the records it redacted under Exemption 2.

Conclusion

Based on the foregoing, we affirm DOH'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: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-134

August 25, 2017

VIA EMAIL

Ms. Mary Finn

RE: FOIA Appeal 2017-134

Dear Ms. Finn:

This letter responds to the administrative appeal submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In the appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On July 5, 2017, you submitted a FOIA request to MPD seeking "a list of all weapon types or protective/preventative devices" used by D.C. police responding to inauguration protests on January 20, 2017. On August 3, 2017, MPD denied your request, under D.C. Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)"), claiming that disclosure of the records would interfere with pending civil and criminal enforcement proceedings.

Your appeal challenges MPD's use of Exemption 3(A)(i) arguing that the information should not be withheld because it has been released in previous requests. You also claim there is a public interest in disclosure.

MPD provided this Office with a response to your appeal.[1] In its response, MPD reasserts that the documents are protected from disclosure under Exemption 3(A)(i). MPD states that it is currently conducting criminal and civil investigations related to the protests and riots that occurred on January 20, 2017. MPD states "release of the requested documents would inform persons involved of facts that could permit them to fashion their statements or testimony in order to escape culpability for wrongful actions."

Discussion

[1] A copy of MPD's response is attached.

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 3(A)(i) exempts investigatory records that: (1) were compiled for law enforcement purposes; and (2) whose disclosure would interfere with enforcement proceedings. D.C. Official Code § 2-534(a)(3)(A)(i). "To invoke this exemption, an agency must show that the records were compiled for a law enforcement purpose and that their disclosure '(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'" *Manning v. DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (citing *Mapother v. U.S. Dep't of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

The purpose of Exemption 3(A)(i) 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. 224, 232 (1978). "So 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." *E.g. Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted).

Conversely, "where an agency fails to demonstrate that the documents sought relate to any ongoing investigation or would jeopardize any future law enforcement proceedings, the investigatory records exemption would not provide protection to the agency's decision." Id. An agency must sustain its burden "by identifying a pending or potential law enforcement proceeding or providing sufficient facts from which the likelihood of such a proceeding may reasonably be inferred." *Durrani v. DOJ*, 607 F.Supp.2d 77, 90 (D.D.C. 2009).

Here, MPD asserts that the responsive records are part of ongoing criminal and civil investigations involving citizens and law enforcement personnel. Consequently, this Office accepts MPD's representation that the records you seek were compiled for law enforcement purposes. In order to withhold an investigatory record, however, MPD must also indicate how disclosure would foreseeably harm enforcement proceedings. *Crooker v. ATF*, 789 F.2d 64, 65-67 (D.C. Cir. 1986) (finding that agency failed to demonstrate that disclosure would interfere with enforcement proceedings).

Your request is for a list of "weapons and protective/preventative devices" used by police responding to a specific event. MPD asserts, without elaboration, that disclosure of a list of weapons and protective devices use by police "would inform persons involved of facts that could permit them to fashion their statements or testimony in order to escape culpability for wrongful actions." It is difficult to comprehend how the information, regarding equipment alone, would interfere with enforcement proceedings. We find that MPD has not sufficiently described the potential interference to enforcement proceedings to allow withholding of the responsive records in their entirety under Exemption 3(A)(i). It is possible that the documents, which contain the equipment used in response to inauguration protests, contain additional information which if disclosed may interfere with enforcement proceedings.[2] It does not appear that MPD addressed the segregability of the withheld records, whether portions may be disclosed without causing the harm to enforcement proceedings. As a result, MPD's current withholding is not permissible pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we remand MPD's decision. Within 10 business days from the date of this decision, MPD shall either: (1) provide you with previously withheld records; or (2) clarify to you by letter the nature of each withheld record, the particular harm release of that record would cause, and explain if redaction is not feasible. This constitutes the final decision of this Office; you may file a separate appeal for a subsequent denial.

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: Ron Harris, Deputy General Counsel, MPD (via email)

[2] MPD has not described or provided the responsive records to this Office. While your request asks for a list of equipment used in response to inauguration protests, it is possible this information is not compiled into a particular list but rather exists across multiple records. MPD has no obligation to compile a specific list that does not already exist; under FOIA, MPD is not required to create new records or to answer interrogatories. *See Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009), *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-135

September 12, 2017

VIA U.S. MAIL

Mr. Charles Awusin Inko-Tariah

RE: FOIA Appeal 2017-135

Dear Mr. Inko-Tariah:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On February 22, 2017, this Office referred to MPD a records request that you originally submitted to the Open Government Office seeking incident reports from 1994 and 1998. On February 27, 2017, MPD denied your request, stating that its documents retention schedule for incident reports is 10 years and the most recent incident report you requested was from 19 years ago; therefore, it no longer maintained the records you seek.

On appeal you challenge MPD's denial, asserting that you previously requested the incident reports from MPD approximately 15 years ago. You claim that at that time you were told that the incident reports would be provided to you; however, you never received them. MPD provided this Office with a response to your appeal on August 30, 2017.[1] In its response, MPD reasserted its position that the incident reports you seek were purged in accordance with MPD's document retention schedule. MPD's response also included a copy of the relevant portion of its document 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.

[1] A copy of MPD's response is attached for your reference.

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 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).

MPD asserts here that the latest retention period for the records you seek ended in 2008, and the responsive records have been purged. Although you contend that MPD indicated to you approximately 15 years ago that you could receive a copy of the records, this representation has no bearing on whether the records exist now. We accept MPD's representation that responsive records no longer exist, based on MPD's adherence to its retention policy for the incident reports at issue.

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: 2017-136

September 26, 2017

VIA ELECTRONIC MAIL

Ms. Barbara Donaldson

RE: FOIA Appeal 2017-136

Dear Ms. 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 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to a request you submitted under DC FOIA.

On July 9, 2017, you submitted a request to DCRA seeking "the approved plans for this permit number B1701721 at 1610 Riggs Place NW. The plans were approved in 2017." DCRA did not respond to your request.

This Office contacted DCRA on August 14, 2017, and asked for its response to your appeal. On August 25, 2017, DCRA informed us that it responded to your request by sending you a copy of a permit. You responded to DCRA and this Office, stating that you believed "plans" exist. This Office requested that DCRA describe the search it conducted. DCRA responded[1] by stating that it had located the responsive records; DCRA represented that it shared these plans with you. Since your appeal was based on DCRA's 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 DCRA 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: Runako Allsopp, Assistant General Counsel, DCRA (via email)

[1] DCRA's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-137

August 29, 2017

VIA ELECTRONIC MAIL

Mr. Kemit Mawakana

RE: FOIA Appeal 2017-137

Dear Mr. Mawakana:

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 University of the District of Columbia ("UDC") improperly denied your request for a fee waiver under the DC FOIA.

Background

The present appeal is related to a prior determination, FOIA Appeal 2017-93, issued by this Office. In FOIA Appeal 2017-93, UDC's decision to deny your FOIA requests due to your ongoing litigation was deemed improper. We remanded the matter to UDC and ordered it to conduct a search for and review of responsive documents and provide you with non-exempt portions of records on a rolling basis. This Office noted that due to the scope of your request, UDC may require advance payment of fees to process your request pursuant to D.C. Official Code § 2-532(b-3), which provides that an agency may require advance payment of a fee when the fee will exceed $250.

On July 12 2017, UDC informed you that its estimate to produce the documents you requested would cost $108,790.35 including $36,320.35 for ESI processing costs, $320 for initial document collection, and $72,150 to review approximately 108,225 pages of responsive documents. UDC included an analysis of its estimate and informed you that advanced payment would be required before it began providing you with responsive documents. In response, you sent emails to UDC inquiring if it would grant your previous requests for fee waivers or reductions. UDC responded via email on July 18, 2017, informing you that it would not grant your requests for reduced fees because it determined that the primary purpose of your request was to further your personal litigation interest and the requested records would not benefit the public interest. As a result, UDC maintained that you would have to pay fees for "the reasonable and direct costs of search, duplication, or review" pursuant to D.C. Official Code § 2-532(b-1)(3) and (4).

Now, you challenge UDC's denial of your requests for fee waiver asserting that you qualify for a fee waiver pursuant to D.C. Official Code § 2-532(b) because furnishing the information you

requested is in the public interest. Alternatively, you claim that you should be subject to only the costs of duplication pursuant to D.C. Official Code § 2-532(b-1)(2) for non-commercial educational or scholarly use. You argue that the information is in the public interest because it will inform the public about the existence or absence of racism at UDC. You also claim that your involvement in litigation against UDC does not make your request a commercial interest and that you intend to use the requested information for scholarly research and to publish scholarly writing on racial discrimination. On August 17, 2017, you submitted a supplement to your FOIA appeal, providing additional support for your arguments and a declaration regarding your intended use for the records sought.

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 Com'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is UDC's denial of your request for fee waivers. This Office's jurisdiction is limited to "review[ing] the public record to determine whether [a record] may be withheld from public inspection." D.C. Official Code § 2-537(a). As a result, ordinarily we do not review disputes over FOIA fees, unless a fee itself amounts to the constructive denial of public inspection. Due to the large amount of the fee and the requirement for prepayment, we find that constructive denial is at issue here. This determination will consider whether UDC should grant your requests for fee waivers and reductions, and also whether UDC's fee estimates are appropriate.

Under D.C. Official Code § 2-532(b), "documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."[1] The requester bears the burden to show that the information primarily benefits the general public. *See, e.g., Monaghan v. FBI*, 506 F. App'x 596, 597 (9th Cir. Jan 28, 2013). The public benefit must be stated with reasonable specificity. *See, e.g., Judicial Watch, Inc. v.*

[1] This differs from the fee waiver standard under federal FOIA, which states that "[d]ocuments shall be furnished without any charge or at a charge reduced… if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(ii). The use of the word "may" in DC FOIA indicates that fee waivers are discretionary as opposed to the use of the word "shall" in the federal statue.

Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (stating that a fee waiver request must be "based on more than conclusory allegations). A FOIA request to further litigation interests can be construed as not primarily benefiting the general public. *See Rozet v. HUD*, 59 F. Supp. 2d 55, 57 (D.D.C. 1999) (finding that the timing and content of requests in connection with other litigation demonstrated a primarily commercial interest despite plaintiff's assertion otherwise). *But see*, *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987) (finding records sought related to an ongoing tort claim was not primarily a commercial interest).

Here, you allege that the records you seek will demonstrate the existence or absence or racial discrimination at UDC. You cite the "race riots in Charlottesville, Virginia, deadly police brutality based on race, and other race-related issues" to support your request for a fee waiver. These examples generalized, conclusory, and not specifically related to the records sought from UDC. Additionally, your ongoing personal litigation against UDC clouds whether the information sought is primarily for the public interest or your personal interest. As a result, UDC's decision to deny your fee waiver based on D.C. Official Code § 2-532(b) was not inappropriate.

Under D.C. Official Code § 2-532(b-1)(2), fees are limited to reasonable duplication costs "when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution for scholarly or scientific research." Based on the language of this section, to qualify for this fee category the request must serve a scholarly research goal of an institution, not an individual goal. Your declaration states that you were a professor at Georgetown University Law Center and UDC David A. Clarke School of Law, and that you were scheduled to start teaching at Notre Dame de Namur University in August of 2017. Your statement indicates that your request was for personal scholarly research rather than an institutional goal. As a result, your request does not qualify for a fee reduction pursuant to D.C. Official Code § 2-532(b-1)(2).

Consequently, UDC may charge you for the reasonable and direct costs of search, duplication, or review pursuant to D.C. Official Code § 2-532(b-1)(3) and (4). UDC's estimates for personnel and review costs are supported by the fee schedule provided in 1 DCMR § 408. Nevertheless, it is not clear to us that the $36,320.35 that UDC estimates for ESI processing costs is a necessary or direct cost of search, duplication, or review. You are not required to pay for UDC to upgrade its technological capacity to facilitate processing your request. As a result, it is not appropriate for UDC to charge you a fee for ESI processing costs.

We note that some subparts of your requests more closely resemble interrogatories or requests for UDC to create new records than requests for public records. DC FOIA does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) ("FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters…"). UDC has no obligations under FOIA 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 duty either to answer questions unrelated to document requests or to create documents."); *Brown v. F.B.I.*, 675

F. Supp. 2d 122, 129-130 (D.D.C. 2009). As a result, if the records you requested do not already exist, UDC is not obligated to create them.

Conclusion

Based on the foregoing, we affirm in part and remand in part UDC's decision. UDC may require you to make advanced payment for reasonable and direct costs of search, duplication, and review; however, based on the information before us at this juncture, UDC cannot require you to pay ESI processing costs.

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: Alonzo Chisolm, Assistant General Counsel, UDC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-138

August 29, 2017

VIA ELECTRONIC MAIL

Mr. Theodore Whitehouse

RE: FOIA Appeal 2017-138

Dear Mr. Whitehouse:

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 in response to a request you submitted on behalf of a client under DC FOIA.

This Office contacted MPD on August 15, 2017, and asked for its response to your appeal. On August 29, 2017, MPD informed us that its investigation is closed and that it will process your request. Since your appeal was based on MPD's assertion of an exemption that MPD admits is no longer applicable, and because MPD has represented that it will provide you with responsive documents, 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 MPD 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: 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: 2017-139

September 1, 2017

VIA ELECTRONIC MAIL

Mr. Keith Allison

RE: FOIA Appeal 2017-139

Dear Mr. Allison:

This letter responds to the administrative appeal you filed with 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 Corrections ("DOC") improperly redacted records you requested under the DC FOIA.

Background

The present appeal is related to a prior determination, FOIA Appeal 2017-86, issued by this Office. The issue in FOIA Appeal 2017-86 was DOC's denial of your FOIA request based on a waiver agreement you signed. Because the waiver did not explicitly reference the FOIA statute, we remanded the matter to DOC and ordered it to conduct a search, review responsive documents and provide you with non-exempt portions of records on a rolling basis. This Office noted that some of the responsive records might be covered by various FOIA exemptions and may require redaction.

On appeal, you challenge DOC's redaction of records – attaching 15 pages of the redacted records. You contend that because you have already received some of these documents that you are entitled to them. Further, you argue that because some of these documents should have been placed in your personnel file that you are entitled to them. Your appeal also appears to contain a new FOIA request for your "annual yearly performance rating for 2013 & 2014."[1]

DOC provided this office with a response to your appeal on August 31, 2017, in which DOC reaffirmed its position vis-à-vis the withheld documents.[2] DOC argues that the redactions made to responsive documents were proper under D.C. Official Code §§ 2-534(a)(2) ("Exemption 2"), (a)(3)(C) ("Exemption 3C"), (a)(3)(D) ("Exemption 3D"), and (a)(4)("Exemption 4").

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[1] The underlying FOIA request for this appeal was for "the results of each findings; … Credit background Check … Criminal Background Check … Personal Reference … Employee Reference … Employment History." If you would like to request additional documents then you must file a new FOIA request with DOC.

[2] A copy of DOC's response is attached.

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 FOIA statue. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is the propriety of the partial redactions made by DOC. DOC produced 9 responsive documents, totaling 92. These documents are:

> 1) transmittal cover sheet, 2) disqualification summary report, 3) decision notification, 4) authorization for release of information, 5) confidential Human Resource interview form, 6) pre-employment/new hires/other internal processes form, 7) background investigation reports', 8) employment questionnaire and 9) Mr. Allison's prior DOC employment adverse action records.

Your appeal included 15 pages of these documents. In phone calls with this Office you indicated that it is these 15 pages that you are concerned with. As a result, this decision will focus solely on the propriety of the redactions made on those 15 pages of documents.

Under D.C. Official Code 2-534(b), DOC was obligated to review the records subject to FOIA exemptions, disclose portions that are reasonably segregable and non-exempt, and explain to you the reasoning for any withholdings. *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)).

Personal Privacy

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, … to the extent that the production of such records would . . . Constitute an unwarranted invasion of personal privacy." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a potential invasion of privacy under Exemption 3(C) is broader than under Exemption 2. *See United States*

Dep't of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 756 (1989). Here, DOC has asserted both privacy exemptions.

Records pertaining to investigations conducted by the DOC are potentially exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). While some of the records you seek appear to be related to the findings of an investigator, that investigator was performing an investigation in order to make an employment decision. It is not clear how the withheld documents relate to an investigation that could result in civil or criminal sanctions. As a result Exemption 3 does not apply to the responsive, redacted documents.

Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756.

On pages 8, 75, 86, 87, 89, 90, and 92 of the documents DOC provided in it response, the signatures of employees were redacted. This Office finds that government employees do not have a privacy interest in their signature on official documents that you have already seen, as such release does not appear to rise to the level of "creat[ing] a palpable threat to privacy." *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C.Cir. 2015). *See Trupei v. DEA*, No. 04-1481, slip op. at 3-5 (D.D.C. Sept. 27, 2005) (ordering disclosure of signature where name of retired DEA agent was already released, because "speculative" possibility of misuse of signature did not establish cognizable privacy interest). Such release is not akin to release of "employment history and job performance evaluation." *Stern v. FBI*, 737 F.2d 84, 91 (D.C.Cir.1984). Nor would such release reveal that the individuals "suffered some sort of injury or loss, or was the subject to discrimination." *Prison Legal* News, 787 F.3d at 1148. Finding no privacy interest we need not weigh the public interest in disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). These signatures should be disclosed.

Similarly, on page 85 of the documents attached to DOC's response, DOC has redacted the name of who sent the underlying memorandum. This too should be disclosed as the memorandum was addressed to you. The document does not reveal anything that would amount to a "clearly unwarranted invasion of privacy." This name should be disclosed.

On pages 7, 13, 75, and 76, of the documents attached to DOC's response, DOC has redacted the name of the investigator. This too should be disclosed – the investigator is a government employee performing his or her job and does not have a substantial privacy interest in his or her identity as it relates to the ordinary performance of his job. The release of his or her identity would not amount to a "clearly unwarranted invasion of privacy." The investigator's name should be disclosed. For the same reason, the name of the requesting manager on page 13 should also be released.

On page 7 and 8, of the documents attached to DOC's response, DOC has redacted the names of a Captain and Lieutenant. We have held in the past that the subject of discipline has a privacy interest in that information – but you are the subject of the discipline discussed on pages 7 and 8 and not the Captain or Lieutenant. There is no information on pages 7 or 8 about the Captain and Lieutenant which would suggest that they are individuals that "suffered some sort of injury or loss, or was the subject to discrimination," or which would "create a palpable threat to privacy." *Prison Legal* News, 787 F.3d at 1147-48. These names should therefore be disclosed.

Conversely, this Office agrees with the redactions, made pursuant to Exemption 2, of the name of the "Major" on page 8 of DOC's attachment of responsive document. Revealing the name of the Major would reveal his identity as the person who completed a confidential Employment Questionnaire. We find that the Major has a privacy interest in not being revealed as having completed this confidential form. The only relevant public interest in DC FOIA is information which "sheds light on an agency's performance of its statutory duties." *Reporters Committee,* 489 U.S. at 773. We find that public interest is adequately serve by the Major being referred to generically by his title.

Confidential Sources

Because we found that these documents were not compiled in an effort that could result in either criminal or civil sanctions, we have found that Exemption 3 is inapplicable to the withheld documents. DOC has made redactions on pages 73-76 of its response, in part, pursuant to Exemption 3C and 3D. These redactions are not appropriate under Exemption 3.

Deliberative Process Privilege

On page 8 of DOC's attachment of responsive documents, DOC has made redactions under Exemption 4. Specifically, DOC has asserted that the redactions made under Exemption 4 were pursuant to the deliberative process privilege – which "covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). We agree with DOC's redactions made under Exemption 4 – as they appear to redact the candid predecisional opinion of the investigator in making a recommendation as to the candidate's qualification for employment.

Additionally, although not an argument raised by DOC, we find that the redactions on pages 73-76 (the Reference Questionnaire) made by DOC are appropriate, albeit under the deliberative process privilege. This document was created by DOC before a decision was made in regards to your continued employment. The document solicits and captures the candid thoughts and impressions of an individual who answered under a pretense of confidentiality. This information was used by DOC in its deliberative process in coming to a final decision relating to your reemployment. As a result, we find that this is the sort of information protected by Exemption 4.[3] DOC's redactions of the questionnaire were therefore appropriate.

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[3] Exemption 4 protects inter-agency communications – to the extent that the reference was a non-governmental actor, we find that Questionnaire is still embraced by Exemption 4 because of the

Conclusion

Based on the foregoing, we affirm in part and remand in part DOC's decision. Within seven business days from the date of this decision, DOC shall release to you unredacted documents consistent with this decision. Specifically, DOC shall release copies of the documents identified by this decision that do not redact: the signatures, the investigator's name, the names in the memorandum "from:" line, and the names of some of the officers in the narrative report. DOC may continue to withhold the redacted portions of the above discussed Questionnaire.

This constitutes the final decision of this Office; however, you are free to initiate a new appeal based on the subsequent substantive response you receive from DOC.

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: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

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consultant corollary. *See Dep't of the Interior v. Klamath Water Users Protective Ass'n,* 532 U.S. 1, 11 (2001)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-140

August 31, 2017

VIA ELECTRONIC MAIL

Mr. Harold Christian

RE: FOIA Appeal 2017-140

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"). Your appeal is based on the failure of Office of the Chief Financial Officer ("OCFO") to respond to a request you submitted to the OCFO for certain records pertaining to Solar Plus Energy, Inc.

Upon receipt of your appeal, this Office contacted the OCFO and asked the agency to explain its failure to respond to your request. To date, the OCFO has not provided this Office with a response or justification.

The OCFO has failed to provide you with records within the 15 business days prescribed by D.C. Official Code § 2-532(c)(1) and has not asserted that the records are exempt from production under DC FOIA. As a result, this Office finds that the OCFO has constructively denied your request pursuant to D.C. Official Code § 2-532(e) and is improperly withholding the records at issue.

In light of the above, we order the OCFO to provide you with all documents in the agency's possession that are responsive to your request within 5 business days of the date of this decision.

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: 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: 2017-141

August 31, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos

RE: FOIA Appeal 2017-141

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"). In your appeal, you assert that the Department of Public Works ("DPW") failed to respond to your request for records.

On June 15, 2017, you submitted a request under the DC FOIA to DPW seeking records related to DC Water applications for development services. On the same day, DPW closed your request without providing you with a reason for the closure.

On August 18, 2017, this Office received your appeal in which you assert that DPW failed to respond your request. This Office notified DPW of the appeal. On August 25, 2017, DPW provided this Office with a response to your appeal.[1]

In its response, DPW explained that it neither denied you request nor is it withholding records, but instead DPW rerouted your request to the DC Water, the agency from which it appears you intended to request records. DPW stated that its failure to inform you of the transfer was an inadvertent oversight.

Since your appeal was based on DPW's lack of response and DPW 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 DC Water's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Nakeasha Sanders-Small, Deputy General Counsel, DPW (via email)

[1] A copy of DPW's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-142

September 7, 2017

VIA ELECTRONIC MAIL

Ms. Grace Zhao

RE: FOIA Appeal 2017-142

Dear Ms. Zhao:

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 response you received from the Executive Office of the Mayor ("EOM") to your request for information relating to an outstanding balance owed to the District of Columbia government.

Background

Your submitted a FOIA request to the Mayor's Correspondence Unit ("MCU") relating to a debt that appeared on your credit report. You attached a copy of a portion of the credit report to your request. Your request asked the MCU to "provide details of the collection information (e.g. purpose, place or business, date, invoice /receipts with itemized break-out of the collection or charges)."

On July 31, 2017, the EOM's FOIA officer responded to your request on behalf of the MCU. In its response, EOM stated that "EOM does not maintain records of fines or fees that individuals owe to the District Government. As such, there are no EOM records that are responsive to your request."

On August 23, 2017, you filed this appeal. In your appeal you stated, "I haven't received the information I needed – **Why** I was charged." This Office notified EOM of your appeal, and EOM provided its response the same day. In its response, EOM reiterated that "EOM does not maintain records of fines or fees that individuals owe to the District Government. I confirmed this by consulting with employees of the Mayor's Office of the General Counsel . . . No documents concerning records or fines or fees that individuals owe from prior administrations were found."

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 Search

The primary issue raised in your appeal is whether EOM conducted an adequate search for the records at issue (records pertaining to a balance owed to the District). 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 make a reasonable determination as to the locations of records requested and 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.* 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).

EOM's response indicated that EOM does not normally maintain the types of records you requested. Regardless, EOM explained in its response to this Office that because the records you seek are from 2012, they predate the current administration, such that any responsive documents

(if they existed) would be maintained in EOM's Office of the General Counsel ("OGC"). EOM's response indicates that they searched OGC's records and that no responsive documents were located. This Office accepts EOM's representation that it "does not maintain records of fines or fees that individuals owe to the District Government." As a result, we find that EOM conducted an adequate search.

We note that if such records do exist, they would likely be maintained by the Central Collection Unit, which is a division of the District's Office of the Chief Financial Officer.

Conclusion

Based on the foregoing, we affirm EOM decision and this appeal is hereby dismissed.

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: Erika Satterlee, Associate Director, EOM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-143

September 13, 2017

Mr. Gianluca Pivato

RE: FOIA Appeal 2017-143

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 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On May 23, 2017, you submitted a request under the DC FOIA to DCRA seeking "all records, including but not limited to emails, notes, correspondence, and memos" relating to a specific address. You specified the date range of January 1st, 2017 to May 23rd, 2017, for emails and communications. You also provided email addresses of DCRA employees and third parties to be searched.

FOIAXpress, the electronic portal that DCRA uses to process requests, indicates that DCRA closed your request on July 25, 2017, stating that it had been granted in full.

On appeal you challenge DCRA's response, asserting your belief that additional responsive documents should exist that have not been disclosed to you. You cite five emails you received from DCRA, which you assert indicate that additional records exist. You further claim that your request was not limited to emails and should have included all forms of responsive records.

DCRA provided this Office with a response to your appeal on August 30, 2017.[1] In its response, DCRA asserts that pursuant to your request, it directed the Office of the Chief Technology Officer ("OCTO") to conduct an email search of the addresses identified in your request. DCRA claims that it also asked the DCRA employees identified in your request to search their own files for responsive documents. DCRA maintains that the only information it withheld was an employee's private telephone number, which was redacted to protect personal privacy. DCRA asserts that all the responsive records from its search efforts were provided to you between July 27, 2017 and August 14, 2017.

Discussion

[1] A copy of DCRA's response is attached for your reference.

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 primary issue in this appeal is your belief that additional responsive records exist; therefore, we consider whether or not DCRA 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, DCRA explained the likely location for responsive records at issue here would be the email servers maintained by OCTO and the files of the DCRA employees identified in your request. DCRA had OCTO conduct a search of the email addresses provided in your request for the date range you requested. DCRA also directed its employees identified by your request to search their own files for responsive documents. DCRA asserts that it provided you with all the responsive records that resulted from these searches with only minor redaction.

Your appeal cites five emails that you claim provide evidence that additional responsive records exist which you have not received. In general, these emails involve requests for computations, data, reports, and additional information. These requests alone do not indicate that actual responses were sent or that more records exist; it is possible the requests were not fulfilled. You also believe that one of the emails should have been forwarded. Your beliefs do not amount to substantial evidence that additional responsive records exist. Although you contend that DCRA 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 DCRA's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on DCRA's description of its search, which it provided us in response to your appeal, we find that the search DCRA conducted was adequate.

Conclusion

Based on the foregoing, we affirm the DCRA'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: Erin Roberts, 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: 2017-144

September 7, 2017

VIA ELECTRONIC MAIL

Mr. Jonathan Holley

RE: FOIA Appeal 2017-144

Dear Mr. Holley:

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 Department of Employment Services ("DOES") failed to adequately respond to your request for certain records.

This Office notified DOES of your appeal on August 29, 2017. Subsequently, DOES advised us that the agency conducted a second search and provided you with supplemental responsive documents on September 1, 2017.

Your appeal was based on DOES' incomplete initial response, and DOES has since provided you with documents retrieved after an additional search. As a result, we consider your appeal to be moot, and it is dismissed. 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: Tonya A. Robinson, General Counsel, DOES (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-145

September 14, 2017

VIA EMAIL

Mr. Brian Freskos

RE: FOIA Appeal 2017-145

Dear Mr. Freskos:

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 withheld information in response to your D.C. FOIA request.

Background

On October 28, 2016, you sent a FOIA request on behalf of Trace Media to MPD for records related to lost or stolen firearms. MPD provided you with responsive records on June 9, 2017; however, the records did not include the firearms' serial numbers, information which was specifically requested. On June 12, 2017, you asked MPD to provide the serial numbers. On June 22, 2017, MPD responded by denying your request, claiming that serial numbers were withheld to protect individual privacy interests in accordance with D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C).

You appealed MPD's response, arguing that there is no privacy interest associated with the serial numbers you seek because the serial numbers are assigned to firearms not individuals. You claim further that different firearm manufactures can duplicate serial numbers, unlike social security numbers for individuals, which must be unique. You also assert that the release of firearm serial numbers alone cannot interfere with law enforcement proceedings. Finally, you maintain that disclosure of the information is in the interest of public safety to highlight the risks of illegal firearms and that hundreds of police departments around the country have responded to your similar public record requests by providing you with serial numbers.

On September 13, 2017, MPD provided this Office with a response to your appeal.[1] In its response, MPD reasserts its position that firearm serial numbers are protected from disclosure pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C). MPD further asserts that other jurisdictions' responses to your public records requests do not control MPD's response. MPD argues that there is a privacy interest associated with firearm serial numbers because the serial

[1] A copy of MPD's response is attached.

numbers can be cross-referenced with information in the National Crime Information Center ("NCIC") law enforcement database that would reveal personal information about the registered owners of the firearms.

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 MPD's withholding of firearm serial numbers was 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."

While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than 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 step of analysis under both Exemptions 2 and 3(C) 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, such as phone numbers or addresses. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011).

Courts have recognized that an invasion of privacy need not occur directly as the result of a disclosure and protection is warranted if disclosure could lead to unwanted intrusions. *See, e.g., NARA v. Favish*, 541 U.S. 157, 167-70 (2004) (taking into account "the consequences" of FOIA disclosure, including "public exploitation" of the records by either the requester or others).

Here, MPD argues that an individual has a privacy interest in personal information in a government record and that a third party's request for records about a private citizen can be reasonably expected to invade that citizen's privacy. Your request, however, sought records pertaining to lost or stolen firearms, not pertaining to individuals associated with these firearms. A serial number belonging to a firearm is not, on its own, personally identifying information. To the extent that MPD's records of serial numbers contain information on about an individual (e.g., the individual's name, address, or phone number), MPD could justifiably redact such information. MPD asserts that firearm serial numbers can be cross-referenced with the NCIC database to reveal personal information about the firearms' owners. The NCIC database is ordinarily available only to law enforcement and criminal justice agencies. For this reason, we find the potential for privacy invasion to be too attenuated to warrant withholding under either Exemption 2 or 3(C). As a result, MPD's withholding of firearm serial numbers pursuant to Exemptions 2 and 3(C) is improper. Having found an insufficient privacy interest associated with firearm serial numbers, balancing the weight of the public interest involved is not necessary here.

Conclusion

Based on the foregoing, we remand MPD's decision. Within 10 business days, MPD shall release to you the firearm serial numbers you requested 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)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-146

September 15, 2017

VIA ELECTRONIC MAIL

Ms. Loretta Townsend

RE: FOIA Appeal 2017-146

Dear Ms. Townsend:

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") inadequately responded to a request you submitted to MPD under the DC FOIA on behalf of your client, Monique Brown Spann.

Background

The request at issue that was submitted to MPD sought "[a]ny and all notes and conclusions and the complete file or record made by anyone associated with the Metropolitan Police [Department]" regarding 8 specific police reports, which were identified by report numbers.

MPD responded to the request on August 9, 2017, indicating that it conducted a search and no records were located other than the police reports associated with the designated report numbers, which MPD previously provided to you and your client.

On appeal you challenge MPD's denial, asserting that you believe MPD conducted a superficial search of its records. This Office notified MPD of your appeal, and MPD responded on September 12, 2017.[1] MPD stated in its response that after receiving your request it conducted a search of electronic and paper files in MPD's criminal investigations division and released everything to you except for documents pertaining to an open criminal investigation, as such documents are protected from disclosure under D.C. Official Code § 2-534(a)(3)A)(i).[2] Apparently, MPD initially withheld a statement from Ms. Spann that was contained in the open

[1] A copy of MPD's response is attached for your reference.

[2] It is unclear whether you were advised that MPD withheld these documents from its initial production. We received a copy of MPD's email response to you dated August 9, 2017, which does not reference the withheld records, but this email is titled "Final Response [to your request]." It is possible that MPD sent you an earlier email informing you of the criminal investigation records being withheld.

investigation file; however, MPD indicated in its response that it will release this statement to you.

After MPD received your appeal, it conducted a second search for documents. This search was conducted by staff of the criminal investigations division and the Sixth District detectives unit and consisted of paper and electronic files. MPD represented that no additional documents were located from the second search that were not previously released to you.

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).

The primary issue in this appeal is your belief that MPD's initial search was cursory and that more responsive records exist than have been released to you. Therefore, we consider whether 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 criminal investigations division and the Sixth District detectives unit. MPD further indicated that the first search conducted was of paper and electronic files located in the criminal investigation division. The second search MPD conducted was of the same division, as well as the Sixth District detectives unit, where paper and electronic files were also searched for responsive records. The second search yielded no additional documents. Although you contend that MPD's search was "superficial" and you imply that more responsive records 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 the two searches it conducted, we find that these searches were adequate.

Conclusion

Based on the foregoing, we affirm MPD's decision insofar as the searches it conducted were adequate. Your appeal does not reference the criminal investigation documents that MPD previously withheld under D.C. Official Code §2-534(a)(3)(A)(i).[3] As a result, we are not certain whether you are not challenging this withholding or whether you were not previously aware of it. If MPD did not previously advise you that it was withholding certain investigative documents, you are free to challenge this withholding by separate appeal.

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)

[3] This statute exempts from disclosure investigatory records compiled for law-enforcement purposes that would interfere with enforcement proceedings.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-147

September 20, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-147

Dear Mr. Matzelevich:

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 response you received from the Department of General Services ("DGS") to a request you submitted under the DC FOIA.

Background

On July 19, 2017, DGS received a six-part FOIA request you submitted for records relating to the "Hearst Park & Pool Project."

On September 1, 2017, DGS granted your request in part, providing you with documents. Portions of some of the documents were redacted.

You appealed DGS's response by letter dated September 5, 2017. Your appeal lays out four examples of where you believe DGS's production was insufficient. Primarily, your appeal argues that the records you received indicate that additional records exist that DGS did not provide you. Additionally, your appeal contends that the redactions DGS made to one email were not labeled with an exemption.[1]

This Office notified DGS of your appeal. DGS responded to this Office and explained that some of the attachments that your appeal asserts were not part of its September 1, 2017 production were actually produced. DGS further represented that it identified several additional responsive documents on subsequent searches and will be providing them to you. Additionally, DGS's response indicated that "the Agency requested names of DGS employees and search terms for a general search, Mr. Matzelevich did not provide names nor search terms. DGS was unable to submit an OCTO search for emails without requested information."

Discussion

[1] DGS's response indicates this redaction was made pursuant to D.C. Official Code § 2-534 (a)(4). Your appeal appears to challenge only the labeling and not the redaction itself, such that this decision will not address the issue further.

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

We have interpreted your appeal as challenging the adequacy of DGS's search for the records you requested – as you cite specific examples of email attachments that you believe should have been included in DGS's production but were apparently not. DC FOIA requires that a search be 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 make a reasonable determination as to the locations of records requested and 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.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

DGS did not satisfy the first element of conducting a reasonable search here because it failed to determine which record repositories were likely to contain responsive documents (i.e. which email accounts should be searched). Instead, DGS improperly shifted the burden to you by refusing to conduct a search until you identified the government employees associated with the records you sought. When you did not respond with email addresses, it appears that DGS instead gathered a collection of documents solicited from one employee. This was inadequate. Your request as submitted was not overly broad or vague, and DC FOIA does not require a requester to know the names of agency employees in order to request their email communications. *See* FOIA Appeal 2017-47. *See Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 863 (D.C. 2016) ("there is nothing in the statute that allows a prospective determination of undue burden to void a FOIA request.")

It was DGS' responsibility to make a determination as to where the requested documents were likely to be located – a responsibility that can be met by identifying agency employees in the relevant programs and making inquiries about the nature of document creation and retention in those programs. *See* 1 DCMR § 402.5;[2] s*ee also Truitt v. Dep't of State*, 897 F.2d 540, 545 n. 36 (D.C. Cir. 1990) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271)). (finding a request to not be vague when "a professional employee of the agency who [is] familiar with the subject area of the request … [could] locate the record with a reasonable amount of effort."). Absent your direction to search a specific government employee's email account, DGS should have made an effort to identify the relevant programmatic DGS employees who were likely to have communicated about the subject of your request. As a result, we find that by not conducting an email search through the Office of the Chief Technology Officer, DGS did not conduct an adequate search for the portion of your request that sought "all communications between DGS" and enumerated individuals and organizations.

Specific Challenges

On appeal you have made four specific challenges to the adequacy of DGS's production. As previously discussed, we find that DGS's search for email correspondence was inadequate and that the agency must conduct another search. We shall also address the four specific challenges raised by your appeal.

First, you challenged that DGS did not provide "The Phase 1 Archeological Survey" in its September 1, 2017, production. DGS's response indicates that after receiving the appeal it conducted an additional search and has since located and provided to you a document titled "Hearst Park and Pool/Idaho Avenue Trail, Phase IB Archaeological Site Survey Management Summary." As a result of this production we find this portion of the appeal to be moot.

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[2] 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.**") (emphasis added).

Second, you asserted that an attachment of an April 27, 2017, email titled "04.06.17 Arborist Survey to DGS.zip" was not provided in the September 1, 2017 production. DGS clarified that the attachment was provided, not as a ".zip" file but as the three documents contained in the compressed file. These documents were titled "D.C. Act 21-386 dated May 4, 2016; Civil BTU Survey; Heart Park Pool Inventory Spreadsheet; and Hearst Park Pool Plan." We accept DGS's representation that it provided these documents to you, and find this portion of the appeal to be moot.

Third, you challenge that an April 6, 2017, email did not include an attachment. DGS has represented that all attachments were provided to you in the initial production. Further DGS retransmitted all of the attachments to you on September 19, 2017. We accept DGS's representation that it provided these documents to you, and find this portion of the appeal to be moot.

Fourth, you challenge the absence of picture of borings. DGS's response indicates that after receiving the appeal it conducted an additional search and has since located and provided you with an additional record titled "Hearst _ Test Borings pics.pdf." We accept DGS's representation that it provided this record to you and find this portion of the appeal to be moot.

On appeal, DGS had conducted subsequent searches that have yielded several responsive documents specified in your appeal as missing. Further, DGS has proffered that some of the attachments that your appeal claims are missing were in fact provided to you in DGS' September 1, 2017, production. We accept these representations and find these portions of the appeal to be moot, to the extent that documents have been provided to you. However, this subsequent search and production of specific documents does not cure the deficiencies of the underlying search for communications, which did not include a systemic search of relevant record repositories, i.e. email accounts of relevant DGS employees.

Conclusion

Based on the foregoing, we remand this matter to DGS to within 15 days of this decision conduct a subsequent search and to begin providing to you nonexempt responsive documents on a rolling basis. Your appeal is dismissed; though you may file a separate appeal of DGS's subsequent response.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Johnson, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-148

September 20, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-148

Dear Mr. Matzelevich:

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 response you received from the Department of Parks and Recreation ("DPR") to a request you submitted under the DC FOIA.

Background

On July 6, 2017, you sent to DPR a five-part FOIA request for records relating to "Hearst Park."

On August 11, 2017, DPR granted your request in part, providing you with 100 responsive documents. DPR's initial response indicated that the search it had conducted returned a voluminous number of documents, and that DPR would review and provide them to you on a rolling basis. The response indicated a target date of September 1, 2017, for completion of production, at which time DPR would also provide a list of withheld documents.

Having not received a final response, on September 5, 2017, you filed this appeal, asserting that you had been constructively denied by DPR's untimely response. Your appeal sets out several examples of where you believe DPR's production was insufficient. One of these insufficiencies relates to DPR's failure to provide you with an assessment you requested.[1] Your appeal also challenges a lack of responsive documents regarding other park sites that may have been considered to host a public pool in Ward 3.

This Office notified DPR of your appeal. DPR responded to this Office, and explained that the initial delay in completing production was the result of DPR revising its search to include a wider range of email documents. DPR's response provides an index of withheld documents.[2]

[1] You included in your appeal a copy of a letter to the editor written by the DPR director referring to the assessment, as evidence that it exists.

[2] If you would like to challenge the withholding of these documents, you are free to file a separate appeal.

Additionally, DPR's response indicated that it had provided to you hundreds of documents and that it plans on completing production by October 2, 2017. Upon further review, DPR provided a signed declaration to this Office that explained how DPR's search was conducted. DPR's response states that a new document has been provided to you that constitutes the "assessment" referred to in your appeal. Lastly, the statement clarified that no further documents exist as to the evaluation of other pool cite locations.

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).

Constructive Denial

You submitted your request on July 6, 2017. DPR failed to provide all responsive requested records within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). Instead, DPR made a partial production and represented that it would continue reviewing and producing documents on a rolling basis. As a result of missing the deadline set by the statute, this Office finds that DPR constructively denied your request. D.C. Official Code § 2-532(e). In accordance with D.C. Official Code § 2-537 this Office orders DPR to complete the search it is processing.

Adequacy of the Search

We have interpreted your appeal as challenging the adequacy of DPR's search for the records you requested – as you specifically cite examples of documents that you believe should have been included in DPR's production but were apparently not. DC FOIA requires that a search be 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 make a reasonable determination as to the locations of records requested and 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.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Here, DPR provided a declaration that clarifies the search it conducted. DPR's statement clarifies that in conducting the search, the DPR FOIA Officer contacted the current project manager of the project to which your request relates. DPR's FOIA officer identified this individual as the person most likely to have responsive documents, and insured that all responsive documents were produced. Further, DPR's statement clarifies that because this project has been the subject of earlier requests, some of the documents were already identified. Lastly, DPR's FOIA Officer conducted a search of the emails of past project managers, and used the search terms "Hearst Park," "Pool," "EIS," and "ES." We accept DPR's representation that these repositories were searched, and we find that these search terms used and the repositories searched were adequate.

Your appeal specifically requests an "assessment" referred to in a letter to the editor attached to your appeal. DPR's statement clarifies that it has now provided to you the DPR document that was used to assess community needs for pools. DPR's statement clarifies that "no other documents exist concerning alternative locations for this pool project as it relates to the initial assessment of the pool location." We accept this representation.

Having reviewed DPR's response to your appeal, we find that DPR made a reasonable determination as to where the documents you are seeking would be located if they existed. We find that DPR conducted an adequate search for the documents, and we accept DPR's representation that it will finish reviewing and producing non-exempt responsive documents to you.

<u>Conclusion</u>

Based on the foregoing, we remand this matter to DPR to, within 10 days of this decision, complete review of the search it is conducting and provide you with all non-exempt responsive documents. Your appeal is dismissed; though you may file a separate appeal of DPR's

subsequent response or challenge the documents withheld by DPR identified in its September 19, 2017 index of withheld 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jamarj Johnson, DPR (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-149

September 19, 2017

VIA ELECTRONIC MAIL

Ms. Natasha Rodriguez

RE: FOIA Appeal 2017-149

Dear Ms. Rodriguez:

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 Department of Health ("DOH") improperly denied you access to records you requested under the DC FOIA.

Background

On August 25, 2017, you submitted a request to the DOH for all records in electronic format pertaining to the Cat Neighborhood Partnership Program ("CatNiPP"). DOH responded on July 30, 2017, denying your request. DOH's denial indicated that it was withholding all responsive records pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2")[1] on the basis that disclosure would constitute a clearly unwarranted invasion of personal privacy by revealing residential addresses.

You appealed DOH's denial, asserting that you are seeking "[a]ll information in electronic form that the Department of Health has on the release locations of cats in the District, through TNR, CatNipp, or any other program involving Animal Control Officers."[2] Your appeal argues that there is no personal privacy interest involved in the release locations of feral cats because the addressed only serve as reference points for the performance of a public function.

This Office notified DOH of your appeal on September 5, 2017. DOH responded to this Office on September 13, 2017, reaffirming its position that responsive records should be withheld in their entirety pursuant to Exemption 2.[3] DOH's response describes the process of releasing feral cats and asserts that responsive records contain residential addresses as well as personal names and phone numbers. DOH further asserts that its responsive records contain personal information pertaining to individuals who volunteer to manage cat colonies and those individuals have an expectation of privacy.

[1] 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."
[2] Your appeal names additional programs that were not identified in your initial request. It is unclear if these additions were encompassed in your initial request or constitute an expansion. DOH is only obligated to respond to your request as it was initially submitted.
[3] A copy of DOH's response is attached.

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).

With regard to the records at issue, we find that individuals' names, phone numbers, and addresses are generally subject to protection under Exemption 2. Accordingly, a residential address used to identify a cat drop-off location would involve a *de minimis* privacy interest justifying redaction pursuant to Exemption 2. *See Skinner*, 806 F. Supp. 2d at 113. The address of public property, businesses, or multi-dwelling unit buildings used as a cat drop-off location would not involve sufficient privacy interests to justify redaction.

Here, DOH has withheld in their entirety all responsive records pertaining to drop-off locations. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. DOH has not explained why redaction of personally identifiable information - instead of complete withholding - cannot be used to protect the privacy interests involved in the responsive records. DOH's records involving the release location of cats should therefore be disclosed subject to redaction for personally identifiable information of private citizens.

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 772-773. In the context of DC FOIA, 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.

Aside from arguing that no personal privacy interest is associated with the responsive records, you have not articulated a public interest relevant to DC FOIA. It is unclear to this Office how the release of names and phone numbers of private residents would shed light on DOH's performance of its statutory duties. However, if DOH's statutory duties involve the management of feral cat populations pursuant to D.C. Official Code § 8–1802(c), then disclosing the drop-off locations of feral cats presumably would shed light on DOH's performance. We are not convinced that this public interest outweighs the privacy interest associated with an individual's residential address when the release of this information could lead to the harassment of private citizens, particularly those who volunteer to manage cat colonies. As a result of the contravening interests, DOH's redactions to residential addresses should be minimal and limited to specific street numbers. Redactions should not remove information identifying the block, street name, quadrant, or zip code of drop-off locations.

Conclusion

Based on the foregoing, we remand DOH's decision. In accordance with the guidance herein, DOH shall provide you with non-exempt responsive records beginning within 10 business days from the date of this decision. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-150

September 20, 2017

VIA ELECTRONIC MAIL

Mr. Kemit Mawakana

RE: FOIA Appeal 2017-150

Dear Mr. Mawakana:

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 University of the District of Columbia ("UDC") improperly estimated its fees to process your requests under the DC FOIA.

This appeal is related to a prior determination, FOIA Appeal 2017-137, issued by this Office.[1] In FOIA Appeal 2017-137, UDC's decision to deny your requests for fee waivers was affirmed. We remanded the matter to UDC due to its inclusion of fees for Electronically Stored Information ("ESI") processing costs, which, based on the information available to us at the time, did not appear to be a direct cost of search, duplication, or review.

Previously, you requested that UDC provide you with itemized fee estimates for each subpart of your three FOIA requested submitted on April 17, 18, and 19 of 2017.[2] On September 6, 2017, you submitted your present appeal to this Office asserting that UDC should provide you with an itemized fee estimate for each subpart of your April 17 FOIA request, and UDC's estimate should not include costs deemed impermissible by FOIA Appeal 2017-137.

On September 18, 2017, UDC provided this office with a response to your appeal.[3] UDC's response included two options of fee estimates for your April 17 request.[4] The first option included ESI processing and estimated a total cost of $72,647.70. UDC's response asserted additional support for its claim that ESI processing is a direct cost of search and review. The

[1] FOIA Appeal 2017-137 was related to you prior appeal, FOIA Appeal 2017-93. In FOIA Appeal 2017-93, this Office noted that due to the scope of your request, UDC may require advance payment of fees to process your request pursuant to D.C. Official Code § 2-532(b-3), which provides that an agency may require advance payment of a fee when the fee will exceed $250.

[2] UDC previously aggregated your three FOIA requests for its fee estimate totaling $108,790.35.

[3] A copy of UDC's response is attached.

[4] UDC noted that similar fee estimates for your requests from April 18 and 19 would also be provided to you.

second option excluded ESI processing and estimated a total cost of $1,473,333 with an itemized cost breakdown for each subpart of the request. The second option also included a cost estimate totaling $346,260 for a limited search and review of the records most likely to contain responsive documents. Both options used the same hourly rate of $40 per hour and processing estimate of one minute per page. UDC asserts that the cost estimates of the second option are higher because the lack of ESI processing would require more records to be manually reviewed.

The hourly rate used in UDC's fee estimates is supported by the fee schedule in 1 DCMR § 408. UDC's estimate of one minute per page to search and review documents is reasonable. This Office is not in a position to analyze the estimated number of pages that UDC asserts that it expects to process under either fee option. *See Manning v. United States DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (finding that substantial weight is given to an agency declaration absent contrary evidence or evidence of bad faith).

Your appeal was based on UDC's aggregation of its fee estimate and the inclusion of ESI processing costs. UDC has since provided you with itemized fee estimates that exclude ESI processing costs. As a result, we consider your appeal to be moot, and it is dismissed.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Alonzo Chisolm, Assistant General Counsel, UDC (via email)

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

2018 SCHEDULE OF COMMISSION OPEN MEETINGS

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Official Code Section 2-576, of the Commission's 2018 Schedule of Open Meetings to consider formal case matters and other applications that require the Commission's action. The proposed agenda and time for each meeting will be posted on the Commission's website (www.dcpsc.org) and in the Commission Secretary's Office not less than 48 hours before each meeting. The Meetings are scheduled to convene at 2:00 p.m. and will be held in the Commission's Hearing Room, 1325 G Street, NW, Suite 800, Washington, D.C. 20005:

January 17, 2018
January 31, 2018

February 21, 2018

March 7, 2018
March 21, 2018

April 4, 2018
April 18, 2018

May 2, 2018
May 23, 2018

June 6, 2018
June 20, 2018

July 25, 2018

August 8, 2018

September 5, 2018
September 26, 2018

October 10, 2018
October 24, 2018

November 21, 2018

December 5, 2018
December 19, 2018

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

RM27-2014-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT,

1. By this Public Notice, the Public Service Commission of the District of Columbia ("Commission") informs interested persons of an extension of time to file comments and reply comments relating to a Notice of Proposed Rulemaking ("NOPR") published in this proceeding on November 17, 2017, in the *D.C. Register*.[1] The NOPR seeks to amend 15 DCMR § 2720, the retail quality of service rules applicable to telecommunications service providers. Through this Public Notice, the Commission extends the comment period for any interested person to January 17, 2018, and the reply comment deadline for any interested person to February 16, 2018.

2. All persons interested in commenting on the subject matter of this Notice of Proposed Rulemaking shall file comments and reply comments with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, DC 20005. Copies of the Notice of Proposed Rulemaking may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the above address.

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[1] 64 *D.C. Reg*. 11936 (November 17, 2017).

TWO RIVERS PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACT

Legal Services for Bond Document Modification

Two Rivers PCS intends to enter into a sole source contract with K&L Gates LLP to provide legal services. The decision to sole source is based on the economies to be realized by Two Rivers by working with the lead counsel who wrote and negotiated the initial bond documents. Two Rivers PCS and its lender wish to modify the existing 2013 bond documents.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Echo Hill Outdoor School

Pursuant to the School Reform Act, D.C. 38-1802 (SRA) and the D.C. Public Charter Schools procurement policy, Washington Latin PCS hereby submits this Notice of Intent to award the following Sole Source Contract:

Vendor: Echo Hill Outdoor School.
Description of Service Procured: Echo Hill Outdoor School hosts an academic learning environment on the Chesapeake Bay estuary with immediate access to farmland, wetlands, marshlands and a mile of coast line on the Chesapeake Bay. The staff provides academic, hands on classes in ecology and history and human interactions with the environment through the lens of the Chesapeake Bay. EHOS also conducts team/community building exercises as a part of their program. They also provide constant care and supervision for visitors/students on a residential campus capable of accommodating and feeding a large number of students/guests, well over 100.
Amount of Contract: $27,000
Selection Justification: The Echo Hill Outdoor School is the only operation that offers academic level classes on a campus with immediate access to working farmland, swamplands, marshlands, and a significant stretch of shoreline on the Chesapeake Bay, who also has facilities to comfortably accommodate and feed the number of students/teachers (nearly 100) attending, while also providing 24 hour supervision and care for visitors.

For further information regarding this notice contact Geovanna Izurieta at gizurieta@latinpcs.org no later than 12:00 PM December 22, 2017.

Washington Latin Public Charter School
5200 2nd Street NW
Washington, DC 20011
(202) 223-1111 (p)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19599 of Georgetown Day School, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 203.1(l) and Subtitle X § 104, to construct a new private school in the R-2, R-3, and MU-4 Zones at premises 4200 Davenport Street N.W. (Squares 1672 and 1673, Lots 4, 14, 804, 812, 815, 824, and 822).

HEARING DATES: October 25 and November 29, 2017[1]
DECISION DATE: November 29, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified[2], 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/or 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") 3E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. The ANC submitted a resolution recommending approval of the application subject to the Applicant's proposed conditions and its MOU with the Applicant submitted to the record at Exhibits 50 and 60. The ANC's resolution indicated that at a regularly scheduled, properly noticed public meeting on November 20, 2017, at which a quorum was present, the ANC voted to support the application so conditioned by a vote of 5-0-0. (Exhibit 49.)

The Office of Planning ("OP") submitted a timely report to the record recommending approval of the application, subject to conditions. OP's report originally indicated that an additional

[1] This case was postponed from the public hearing of October 25, 2017, to that of November 29, 2017 at the Applicant's request, which was supported by the ANC. (Exhibits 34 - 36.)

[2] The Applicant clarified in its Statement (Ex. 15) that relief under Subtitle X § 104 for campus plans is also included in the request, though it was not cited on the self-certification form. It has been included in the caption accordingly.

modification of significance to a prior BZA order for the property was needed, but in its testimony, OP noted that it is no longer required. (Exhibit 44.)

DDOT submitted a timely report to the record indicating that it had no objection to the grant of the application subject to conditions. (Exhibit 44.)

Three party status requests were submitted to the record – two in opposition (Exhibits 33 and 42) and one as a proponent (Exhibit 30). The two requests in opposition were withdrawn in advance of the hearing. (Exhibits 56, 57.) The Board granted the party status request of Adam Rubinson, as a Party Proponent.

Seven letters of support (Exhibits 46, 48, 51, 53-55, and 62) and three letters in opposition (Exhibits 31, 37, and 38) were submitted to the record. Testimony in support of the application was given from six students from the Applicant's school as well as from Kamal Ben Ali and Leroy Nesbitt, Jr.

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 and pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 203.1(l) and Subtitle X § 104, to construct a new private school in the R-2, R-3, and MU-4 Zones. No persons or 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 § 104 and Subtitle U § 203.1(1), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

This application by Georgetown Day School ("GDS"), the Applicant, is for a special exception to consolidate GDS' Lower and Middle School and the existing High School to create a unified campus at 4200 Davenport Street, N.W. (Square 1672, Lots 4, 14, 804, 812, 815; Square 1673, Lots 822, 824) (the "subject property"). The existing High School is the subject of approvals contained in BZA Orders No. 14278, 16944, and 17868 (collectively, the "GDS High School Orders"). The existing Lower and Middle School at 4350 MacArthur Boulevard, N.W. is the subject of approvals contained in BZA Orders No. 7451, 7801, 9597, 12599, 14140, and 16166 (collectively, the "GDS Lower/Middle School Orders").

Following the effective date of this Order, the GDS High School Orders and GDS Lower/Middle School Orders will all remain effective. The GDS Lower/Middle School Orders are unaffected by this Order and the Conditions hereof. However, because the new Lower/Middle School and the existing High School will ultimately function on the campus as a single school, for

administrative ease, the conditions of the existing High School will no longer apply once the new Lower/Middle School opens pursuant to this Order and the Conditions hereof. That is, upon the effectiveness of the Conditions hereof (i) such Conditions shall govern the approvals granted in this Order and the GDS High School Orders, and (ii) all conditions to the GDS High School Orders shall be deemed superseded and replaced by the Conditions of this Order.

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 PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 58A1-58A2 AND WITH THE FOLLOWING CONDITIONS:**

Enrollment and Faculty/Staff Caps

1. This Order authorizes and shall apply to the use of the Campus for grades Pre-K through 12 and shall upon effectiveness supersede and replace all conditions of existing orders applicable to the High School.
2. The Conditions of this Order shall become effective only upon the commencement of operation of the Lower/Middle School building on the Campus. Notwithstanding the foregoing, any Condition hereof applicable to the construction of such building shall become effective upon the commencement of construction of such building.
3. Upon the issuance of a Certificate of Occupancy for the Lower/Middle School building, the maximum enrollment shall be 1,075 students in the aggregate for the Campus. An increase to 1200 shall be permitted subject to Condition 12(a).
4. Upon the issuance of a Certificate of Occupancy for the Lower/Middle School building, the maximum number of full-time equivalent faculty and staff shall be 220 in the aggregate for the entire Campus. An increase to 260 shall be permitted subject to Condition 12(a).

Reporting and Community Engagement

5. At the beginning of each school year, but in no event later than November 15th of any calendar year that the monitoring and reporting requirements herein are in effect, the School shall provide to ANC 3E and to the District Department of Transportation (“DDOT”) documentary evidence sufficient to demonstrate the total enrollment of students in Pre-K through Grade 12 at the Campus and compliance with the terms of this Agreement, including the Transportation Management Plan (“TMP”) referenced herein. For avoidance of doubt, “documentary evidence sufficient to demonstrate the total enrollment of students” shall mean a copy of the student phonebook for the applicable

school year, or access to an online databases of student phone numbers and addresses to which students are provided, or evidence of similar scope and for avoidance of doubt shall not be a mere report or declaration of compliance. The annual reporting on the TMP shall provide, among other things: (1) the number of carpool exceptions that were granted and for what reason, (2) the number of students and staff who paid the parking penalty, and (3) the modal split among students and staff.

Transportation, Access, and TMP

6. All vehicular traffic entering the Campus shall be limited to the Davenport Street and River Road entrances (with the exception of deliveries to the Lower/Middle School, which will enter via the Public Alley on Ellicott Street). All vehicular traffic exiting the Campus shall be limited to the River Road, Davenport Street, and Ellicott Street egress points. All pre-K through Second Grade traffic will egress to Ellicott Street. All other Lower/Middle School traffic shall have the option of egressing from the Campus via either River Road or Ellicott Street. Pedestrian and bicycle access to and egress from the Campus shall be on 42nd Street, 43rd Street, River Road or Davenport Street only. Pedestrian and bicycle access to and egress from 43rd Street shall be permitted only subject to Condition 10.

7. Vehicular traffic exiting the Campus from the alley onto Ellicott Street shall be permitted to make only a right turn during morning drop-off and afternoon pick-up periods.

8. No passenger vehicle pick-up and drop-off of students shall occur on the streets or alleys immediately adjacent to the Campus (i.e., Ellicott Street, NW, 42nd Street, NW, Chesapeake Street, NW, River Road, NW, 43rd Place, NW, and 43rd Street, NW and their adjacent alleys). During drop-off and pick-up, caregivers shall not park on such neighborhood streets to wait or walk their student(s) to the Campus. Pick-up and drop-off of students by School-chartered bus(es) shall be permitted on 42nd Street.

9. The Campus shall continue to provide one vehicular emergency access point along 43rd Street, which access point shall be at all times secured (i.e., closed) by a locked gate (the "Vehicular 43rd Street Gate"), provided such gate shall be operable and open only for use and as needed by emergency vehicles. The 43rd Street neighbors will be consulted about the design of any replacement gate.

10. A new sidewalk shall be constructed as shown on the Final Plans to allow for a gated pedestrian connection (the "Pedestrian 43rd Street Gate") to the Campus at the southern end of 43rd Street, which has no outlet. The Pedestrian 43rd Street Gate shall be constructed at the terminus of 43rd Street and shall be open only on school days and only between the hours of 7:00 AM and 4:00 PM for the purpose of allowing pedestrian access to and from the Campus. At all other times, the Pedestrian 43rd Street Gate shall be locked. The Pedestrian 43rd Street Gate shall not be used for vehicular drop-offs of students or staff on 43rd Street or Ellicott Street (any such drop-off being a "Prohibited Drop-Off"). In the event that there is a Prohibited Drop-Off, DDOT shall be notified with information regarding the date and time so that DDOT can devise an Operations Plan to

prevent future drop-offs. In the event that there are more than three Prohibited Drop-Offs during the first year of the operation of the consolidated Campus, the School shall notify DDOT with information regarding the date and time of such Prohibited Drop-Offs. Upon such notification, the School shall secure the Pedestrian 43rd Street Gate at all times.

11. The TMP instituted pursuant to previous Orders for the High School is hereby replaced with the following Conditions, which shall be applicable to the entire Campus upon the effectiveness of these Conditions and which the Applicant shall fully implement and comply with as set forth in the Transportation Demand Management, Operations Management and Monitoring Subparts of the TMP contained in Exhibit 61 of the record. The Applicant shall be responsible for implementing the full TMP including, without limitation, the following provisions.

    a. The School shall in any year that the monitoring and reporting requirements herein are in effect and in accordance with and subject to the terms of the TMP, hold quarterly meetings with the ANC and other community members to garner feedback on traffic and parking related issues.

    b. The School shall engage a transportation engineer to undertake monitoring of vehicular access to the Campus to ensure compliance with the AM Peak Hour and PM School Peak Hour Trip Thresholds (as such terms are defined in the TMP). The established AM and PM Peak Hour Trip Thresholds shall be a goal for Years 1-4 and a binding cap thereafter (where “Year 1” is defined as the first school year commencing upon the initial opening of the new Lower/Middle School). Commencing Year 1 and continuing through Year 4, the School shall arrange to monitor compliance with the AM and PM School Peak Hour Trip Thresholds one (1) time each school year, during the fall semester of each school year, provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester of that same school year. If the School fails to meet its Trip Thresholds upon such second monitoring during this period, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. Commencing in Year 5 through Year 17, the School shall arrange to monitor compliance with the Trip Thresholds triennially in the fall semester (i.e., four times between Year 5 and Year 17) provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester of such year, and the School shall thereafter resume annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two consecutive years. At such time, triennial monitoring shall resume until Year 17 or until such time as two consecutive triennial studies demonstrate compliance, whichever is later.

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c. Beginning in Year 5, in the event the School fails to comply with the applicable Trip Caps (as such term is defined in the TMP), the School shall require the requisite number of students to comply with the Trip Cap to take three-person carpools and/or ride the bus to School, adding such buses and/or bus routes as necessary to comply with the Trip Cap. The School shall work with DDOT and the ANC to identify which of the foregoing remedial revisions to the TMP will be used to ensure compliance. Students and parents who fail to comply with the carpooling, parking, busing (if mandated) and/or pick-up and drop-off requirements of the TMP shall be subject to an escalating set of penalties (leading ultimately to student expulsion after the sixth offense). In the event of a violation of the Trip Cap, the Department of Consumer and Regulatory Affairs ("DCRA") will institute enforcement proceedings against the School using any or all of the enforcement measures that are legally available.

12. In connection with implementing the full TMP including, without limitation, the following provisions, the School shall:

a. Permit no more 595 AM peak hour vehicle trips during the AM peak hour, no more than 465 PM peak hour vehicle trips during the PM school peak hour, and no more than 265 for the PM peak, as verified by traffic monitoring to be conducted at the Applicant's expense, as outlined pursuant to the Conditions hereof and as more fully set forth in the TMP. In Years 1 through 4, the AM and PM Peak Hour Trip Thresholds shall be a goal, which the School shall strive to achieve. Beginning in Year 5, the Trip Thresholds shall serve as a binding cap. Upon the School's achievement of an AM Trip Cap of 595, a PM School Peak Hour Trip Threshold of 465, and the PM Peak Hour Trip Threshold of 265, and provided the School has satisfied all monitoring and reporting requirements with respect thereto for two consecutive school years, then the aggregate student enrollment limit hereunder shall automatically increase from 1075 to 1125 students and the limit on the aggregate number full-time equivalent faculty/staff shall automatically increase from 220 to 240 faculty/staff. Thereafter, provided the School has achieved the AM Trip Cap of 595, the PM School Peak Hour Trip Threshold of 465, and the PM Peak Hour Trip Threshold of 265, and satisfied all monitoring and reporting requirements with respect thereto for two additional consecutive school years, then the aggregate student enrollment limit shall automatically further increase to 1200 students and the limit on the aggregate number full-time equivalent faculty/staff shall automatically further increase to 260 faculty/staff. If the School does not satisfy the Trip Cap or Trip Threshold conditions in this subparagraph, it shall not be entitled to any automatic increase in its enrollment.

b. Meet no less than quarterly with the ANC to ensure any traffic concerns by either party can be addressed in a timely manner;

c. Hire a Metropolitan Police Officer (a Traffic Control Officer or "TCO") to control traffic at the intersection of Ellicott Street and the Public Alley, consistent with the Metropolitan Police Department and/or DDOT regulations, during the Lower/Middle School's pick-up and drop-off periods. The School shall instruct the TCO that the intended purpose of such officer is to require that all traffic exiting the Campus via the Public Alley during drop-off/pick-up turns only right onto Ellicott Street, and not to stop traffic along on Ellicott Street for long periods of time to facilitate egress from the school.

d. Deploy School staff along the perimeter of the Campus to ensure that Ellicott Street, 42nd Street, 43rd Street, 43rd Place, River Road, and Chesapeake Street are not used for vehicular drop-off/pick-up or temporary parking and to otherwise enforce the TMP;

e. Encourage the use of public transportation by the faculty, staff, and students who are old enough to use public transit and instruct eligible students to obtain a DC One Card (and the School shall and assist with sign-ups for the DC One Card) and establish a "transit buddy" program to match older students with younger students taking transit;

f. Provide up to $100.00 monthly in SmarTrip subsidies to Virginia and Maryland financial aid students;

g. Provide $135.00 monthly in SmarTrip Cards for faculty/staff who take transit to School;

h. Operate a minimum of three (3) full-sized buses or such larger number of smaller buses as is necessary to accommodate the same or more students as three full-sized buses, which buses shall pick-up students at School-designated off-Campus locations in the morning, which buses shall also be available for use by faculty and staff;

i. Require that cars dropping off students on Campus in the morning drop-off have at least two students per vehicle, with the following exceptions not to be subject to such carpooling requirement:

   i. Students in Pre-K through 1st grade,

   ii. Students in the "Early Grasshopper" program,

   iii. Student drivers who may not lawfully carry passengers, and

   iv. Students who demonstrate a hardship, to be evaluated by the School on a case-by-case basis and at all times subject to the Trip Caps, which evaluation may

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consider, without limitation, special transportation needs, lack of access to other transportation facilities, or distance from the Campus;

j. Not permit any students to drive a vehicle to the Campus unless there is an on-Campus parking space for that vehicle;

k. Ensure that at the beginning of each school year, all students have registered their vehicle(s) with the School;

l. Strictly prohibit students and staff from parking on the residential streets surrounding the Campus;

m. Provide discounted parking pricing for student drivers and faculty/staff who carpool. The parking fee will be reduced by one third (⅓) for each additional student beyond the driver (drivers with three additional student passengers will park for free);

n. Set the price for parking on Campus at substantially increased rates for students who drive to Campus from a residence within one (1) mile of Campus or within one (1) mile of a Red Line Metrorail station, subject to a discounted parking rates of one third (⅓) the premium amount for student drivers who carpool;

o. Train school employees at the beginning of each year to implement and enforce the TMP;

p. Instruct parents not to park on, or queue on, public streets adjacent to the Campus, including Chesapeake Street, 42nd Street, Ellicott Street, 43rd Street, 43rd Place, and River Road, to wait for their children at school drop-off or pick-up times;

q. Continue to provide traffic control personnel on Campus during drop-off and pick-up times to facilitate on-Campus traffic flow and enforce drop-off and pick-up procedures;

r. Facilitate the foregoing carpooling requirements by establishing an online system to help parents identify other families along their travel route by distributing information regarding the location of other families in the area to parents at the start of each school year;

s. Distribute a policy manual to all families prior to the start of the school year that explains all relevant policies and procedures regarding parking, pick-up, drop-off and penalties for non-compliance, which information shall also be posted on the School's website;

t. Incorporate the relevant provisions of the TMP into the enrollment contract between the School and parents, by which the parents shall agree to be bound by its fines and punishments; and

u. During any period of time when the existing Campus parking spaces are reduced (e.g., during construction), provide the same number of parking spaces elsewhere and shall fully enforce the School's existing parking restrictions.

13. The surface parking areas of the Campus shall be secured by a chain gate, cable, or similar device during all hours that such area is not in use. When the parking area is open during non-school hours, the School shall provide security to prevent unauthorized parking.

14. The Campus parking garages shall be available for use only by authorized users of the Campus during all hours that the School is open. The School shall have security personnel on duty at the School to monitor the garages at all hours that the garages are open. The garages shall be secured during all hours not in use.

15. Students parking cars on Campus shall stay on Campus during the hours that classes are in session except for trips off-Campus for the following purposes: (a) work or internship related activities; (b) community service events; (c) school or extracurricular-related activities; or (d) approved leave.

16. The School shall use all reasonable and diligent efforts to cause DDOT and the Public Space Committee ("PSC") to permit the closure to vehicular traffic of the 42nd Street, NW "slip lane" and to allow such slip lane to be returned to a sodded state or to such other finished material as is mutually agreeable to the School and the ANC, in the reasonable determination of each. In the event that the ANC does not support an alternative surface treatment, grass shall be required, subject to DDOT and PSC approval. The final surface treatment of such slip lane post-closure shall be subject to DDOT and PSC approval and DDOT's or the PSC's failure to consent to a landscaped or sodded condition shall not constitute a default of the School hereunder. The Parties agree that subject to the foregoing, the closure of the slip lane must occur prior to issuance of the certificate of occupancy for the Lower/Middle School. Determination of the final surface material, and the installation of the final surface material in the closed slip lane must be completed within one year of the issuance of the certificate of occupancy for the Lower/Middle School.

17. The School, at its expense, shall install or cause to be installed a traffic signal at the intersection of Chesapeake Street, N.W. and Wisconsin Avenue, N.W., subject to DDOT's review and approval and shall use reasonable efforts to obtain such approval prior to the issuance of the certificate of occupancy for the Lower/Middle School.

Summer Usage of Campus Facilities including Enrollment Increases

18. The School shall not be restricted from offering or authorizing use of the Campus for summer programs outside of the regular school year, provided that it meets the same Trip Thresholds that apply during the school year. To ensure same, the School agrees to the following: (a) that except as provided herein, the School shall allow no more than five hundred (500) students and staff (the term "students" shall encompass all participants in summer programming of any kind, including camps), cumulatively, to be on Campus on any day during such summer programs; (b) the School shall conduct monitoring during the summer for two consecutive years, which monitoring shall occur on the day when the maximum number of students and staff that summer are expected to be present; and which monitoring shall be of the same scope and thoroughness as monitoring conducted during the school year, and the peak hours selected for monitoring shall be the actual peak summer hours. If the School does not exceed the Trip Thresholds for two consecutive summers of monitoring, it may cease monitoring. In the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again during the summer of the following year. The School shall continue annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two consecutive years. Once the School has two successful consecutive years of satisfying the applicable Trip Thresholds, up to 50 additional students, resulting in a total of 550 students and staff, may be added if such additional students are required to arrive by bus or public transit. If at any time that traffic is not subject to monitoring, there is a shift or change in programming that is likely to substantially increase traffic demand during any peak hour, the School shall consult with the ANC and DDOT before implementing such change to determine whether additional monitoring is required. If both the ANC and DDOT concur that additional monitoring is desirable, the School shall institute said monitoring. If the School seeks to increase enrollment beyond 550 (500 plus 50 additional by bus or transit), the School shall consult with the ANC before implementing that change to determine whether the ANC will require additional monitoring, and shall abide by the ANC's decision.

19. If the School does not meet its summer Trip Thresholds, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. If the School fails to meet applicable Trip Thresholds for two consecutive years during Years 1 through 4, the School shall thereafter reduce the total number of students and staff permitted on campus during all days during the summer by a number sufficient to ensure it meets its Trip Thresholds.

<u>Building Plans</u>

20. The improvements constructed on the Campus shall be in conformance with the Final Plans, subject to any required subsequent District agencies approvals.

21. The School shall design the Lower/Middle School to meet the certification requirements at the Gold level under the LEED 2009 rating system. In connection with that commitment, the Lower/Middle School building shall contain motion-sensitive lighting

in the classrooms and function rooms in order to reduce the potential for light pollution and shall contain emergency lighting as required.

Campus Use, Noise and Lighting

22. All extracurricular or inter-scholastic activities held on the Campus shall be concluded by 11:30 p.m. This time limit does not apply to periodic (i.e., once or twice yearly) "lock-ins", where students from a single grade sleep over at the school.

23. All interscholastic athletic events utilizing the Campus athletic field(s) shall be scheduled to conclude no later than 7:30 p.m. In situations where an event goes into overtime, is subject to weather delays, or is subject to other conditions that force the event past 7:30 p.m., the event must be concluded no later than 8:00 p.m. No use of outdoor playing fields, playgrounds, outdoor recreational facilities, and green space shall be permitted after sundown.

24. There shall be no artificial lighting of the athletic field(s), playgrounds, outdoor recreation facilities, or green space that is directed at any of the nearby residences, provided such prohibition shall not be understood to preclude any code-required lighting (such as path lighting) from being installed.

25. No exterior building lights shall be directed toward the existing residences along 43rd Street, N.W.

26. The loudspeaker (i.e., audio) and bell systems within the Campus shall not be audible in the neighborhood except for standard emergency alarm systems. There shall be no permanent outdoor audio system of any kind except those required by law or for safety.

27. Temporary outdoor audio systems (apart from a loudspeaker, bell system, and alarm system) at the Campus shall be allowed only during school hours for special school events, and not more than three times a year.

28. Rooftop mechanical equipment on the new Lower/Middle School building will be designed to comply with the D.C. Noise Regulations.

Community Uses of the Campus

29. The School shall make available the following amenities on the Campus for use by approved community activities, subject to the following restrictions and subject to other reasonable posted rules and regulations:

    a. Exterior fields:

        i. During daylight hours only;

        ii. When the fields are not being used by the School;

iii. By making a reservation with the School's space-use coordinator;

iv. After signing an appropriate liability waiver;

v. After providing the proper liability insurance certificate(s);

vi. By paying a reasonable fee (reasonableness to be determined by reference to fees charged for field use by DC Department of Parks and Recreation ("DPR") and other private schools in DC)) for administrative, security and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers, and setting parameters on the types of uses allowed on the fields (e.g., no dogs or wheeled toys, etc.), provided such parameters shall not prohibit any sport permitted on fields maintained and/or programmed by DPR;

vii. With the understanding that users of the fields are liable for any damage to school property and fully responsible for any injuries;

viii. Expecting that the user is not using the space for profit; and

ix. No dogs (or any other animals) allowed.

b. Exterior playground:

i. When the playground is not being used by the School;

ii. During daylight hours only;

iii. With the understanding that users of the playground are liable for any damage to school property and fully responsible for any injuries; and

iv. No dogs (or any other animals) allowed. The School shall have the right from time to time to establish and post reasonable and customary rules and regulations governing community use of the play area and to close the play area on a temporary basis from time to time for maintenance, cleaning, or repairs.

c. Lower/Middle School and High School classrooms;

i. Only upon reservation confirmed by the School;

ii. When the classrooms are not being used by the School;

iii. After signing an appropriate liability waiver;

iv. Only if a School security guard is available and shall be subject to such reasonable requirements as the School may impose, including, without limitation: charging a reasonable fee for a security guard as well as any administrative and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers and setting parameters on the types of uses allowed in the classrooms.

Open Space

30. The southeast portion of the Campus south of the existing High School (i.e., located at the northwest corner of the intersection of 42nd and Chesapeake Streets), which is currently landscaped shall be maintained as open space. No parking shall be permitted on this portion of the Campus.

31. As a condition of securing a building permit for the Lower/Middle School building, the School shall place into an escrow account funds in the amount of $20,000.00 for DDOT to use toward the construction of a sidewalk on the west side of 43rd Street, NW between the Campus and Ellicott Street, NW. This condition shall be deemed satisfied when the funds are placed in escrow. If the sidewalk has not been constructed within two years of the issuance of the certificate of occupancy for the school, then the funds shall be released back to the School from escrow.

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 8, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19599-A of Georgetown Day School, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 203.1(l) and Subtitle X § 104, to construct a new private school in the R-2, R-3, and MU-4 Zones at premises 4200 Davenport Street N.W. (Squares 1672 and 1673, Lots 4, 14, 804, 812, 815, 824, and 822).

HEARING DATES: October 25 and November 29, 2017[1]
DECISION DATE: November 29, 2017

CORRECTED[2] SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified[3], 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/or 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") 3E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. The ANC submitted a resolution recommending approval of the application subject to the Applicant's proposed conditions and its MOU with the Applicant submitted to the record at Exhibits 50 and 60. The ANC's resolution indicated that at a regularly scheduled, properly noticed public meeting on November 20, 2017, at which a quorum was present, the ANC voted to support the application so conditioned by a vote of 5-0-0. (Exhibit 49.)

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[1] This case was postponed from the public hearing of October 25, 2017, to that of November 29, 2017 at the Applicant's request, which was supported by the ANC. (Exhibits 34 - 36.)

[2] This corrected order adds back Condition No. 14 from the MOU in the record at Exhibit 60 that was inadvertently left out of the original order as Condition No. 13 in this order and corrects a reference to the DDOT report to Exhibit 45. These corrections were brought to the Board's attention and agreed to by all the parties. These is the only changes to the order.

[3] The Applicant clarified in its Statement (Ex. 15) that relief under Subtitle X § 104 for campus plans is also included in the request, though it was not cited on the self-certification form. It has been included in the caption accordingly.

The Office of Planning ("OP") submitted a timely report to the record recommending approval of the application, subject to conditions. OP's report originally indicated that an additional modification of significance to a prior BZA order for the property was needed, but in its testimony, OP noted that it is no longer required. (Exhibit 44.)

DDOT submitted a timely report to the record indicating that it had no objection to the grant of the application subject to conditions. (Exhibit 45.)

Three party status requests were submitted to the record – two in opposition (Exhibits 33 and 42) and one as a proponent (Exhibit 30). The two requests in opposition were withdrawn in advance of the hearing**.** (Exhibits 56, 57.) The Board granted the party status request of Adam Rubinson, as a Party Proponent.

Seven letters of support (Exhibits 46, 48, 51, 53-55, and 62) and three letters in opposition (Exhibits 31, 37, and 38) were submitted to the record. Testimony in support of the application was given from six students from the Applicant's school as well as from Kamal Ben Ali and Leroy Nesbitt, Jr.

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 and pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 203.1(l) and Subtitle X § 104, to construct a new private school in the R-2, R-3, and MU-4 Zones. No persons or 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 § 104 and Subtitle U § 203.1(1), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

This application by Georgetown Day School ("GDS"), the Applicant, is for a special exception to consolidate GDS' Lower and Middle School and the existing High School to create a unified campus at 4200 Davenport Street, N.W. (Square 1672, Lots 4, 14, 804, 812, 815; Square 1673, Lots 822, 824) (the "subject property"). The existing High School is the subject of approvals contained in BZA Orders No. 14278, 16944, and 17868 (collectively, the "GDS High School Orders"). The existing Lower and Middle School at 4350 MacArthur Boulevard, N.W. is the subject of approvals contained in BZA Orders No. 7451, 7801, 9597, 12599, 14140, and 16166 (collectively, the "GDS Lower/Middle School Orders").

Following the effective date of this Order, the GDS High School Orders and GDS Lower/Middle School Orders will all remain effective. The GDS Lower/Middle School Orders are unaffected by this Order and the Conditions hereof. However, because the new Lower/Middle School and the existing High School will ultimately function on the campus as a single school, for administrative ease, the conditions of the existing High School will no longer apply once the new Lower/Middle School opens pursuant to this Order and the Conditions hereof. That is, upon the effectiveness of the Conditions hereof (i) such Conditions shall govern the approvals granted in this Order and the GDS High School Orders, and (ii) all conditions to the GDS High School Orders shall be deemed superseded and replaced by the Conditions of this Order.

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 PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 58A1-58A2 AND WITH THE FOLLOWING CONDITIONS:**

Enrollment and Faculty/Staff Caps

1. This Order authorizes and shall apply to the use of the Campus for grades Pre-K through 12 and shall upon effectiveness supersede and replace all conditions of existing orders applicable to the High School.

2. The Conditions of this Order shall become effective only upon the commencement of operation of the Lower/Middle School building on the Campus. Notwithstanding the foregoing, any Condition hereof applicable to the construction of such building shall become effective upon the commencement of construction of such building.

3. Upon the issuance of a Certificate of Occupancy for the Lower/Middle School building, the maximum enrollment shall be 1,075 students in the aggregate for the Campus. An increase to 1200 shall be permitted subject to Condition 12(a).

4. Upon the issuance of a Certificate of Occupancy for the Lower/Middle School building, the maximum number of full-time equivalent faculty and staff shall be 220 in the aggregate for the entire Campus. An increase to 260 shall be permitted subject to Condition 12(a).

Reporting and Community Engagement

5. At the beginning of each school year, but in no event later than November 15th of any calendar year that the monitoring and reporting requirements herein are in effect, the School shall provide to ANC 3E and to the District Department of Transportation ("DDOT") documentary evidence sufficient to demonstrate the total enrollment of

students in Pre-K through Grade 12 at the Campus and compliance with the terms of this Agreement, including the Transportation Management Plan ("TMP") referenced herein. For avoidance of doubt, "documentary evidence sufficient to demonstrate the total enrollment of students" shall mean a copy of the student phonebook for the applicable school year, or access to an online databases of student phone numbers and addresses to which students are provided, or evidence of similar scope and for avoidance of doubt shall not be a mere report or declaration of compliance. The annual reporting on the TMP shall provide, among other things: (1) the number of carpool exceptions that were granted and for what reason, (2) the number of students and staff who paid the parking penalty, and (3) the modal split among students and staff.

Transportation, Access, and TMP

6. All vehicular traffic entering the Campus shall be limited to the Davenport Street and River Road entrances (with the exception of deliveries to the Lower/Middle School, which will enter via the Public Alley on Ellicott Street). All vehicular traffic exiting the Campus shall be limited to the River Road, Davenport Street, and Ellicott Street egress points. All pre-K through Second Grade traffic will egress to Ellicott Street. All other Lower/Middle School traffic shall have the option of egressing from the Campus via either River Road or Ellicott Street. Pedestrian and bicycle access to and egress from the Campus shall be on 42nd Street, 43rd Street, River Road or Davenport Street only. Pedestrian and bicycle access to and egress from 43rd Street shall be permitted only subject to Condition 10.

7. Vehicular traffic exiting the Campus from the alley onto Ellicott Street shall be permitted to make only a right turn during morning drop-off and afternoon pick-up periods.

8. No passenger vehicle pick-up and drop-off of students shall occur on the streets or alleys immediately adjacent to the Campus (i.e., Ellicott Street, NW, 42nd Street, NW, Chesapeake Street, NW, River Road, NW, 43rd Place, NW, and 43rd Street, NW and their adjacent alleys). During drop-off and pick-up, caregivers shall not park on such neighborhood streets to wait or walk their student(s) to the Campus. Pick-up and drop-off of students by School-chartered bus(es) shall be permitted on 42nd Street.

9. The Campus shall continue to provide one vehicular emergency access point along 43rd Street, which access point shall be at all times secured (i.e., closed) by a locked gate (the "Vehicular 43rd Street Gate"), provided such gate shall be operable and open only for use and as needed by emergency vehicles. The 43rd Street neighbors will be consulted about the design of any replacement gate.

10. A new sidewalk shall be constructed as shown on the Final Plans to allow for a gated pedestrian connection (the "Pedestrian 43rd Street Gate") to the Campus at the southern end of 43rd Street, which has no outlet. The Pedestrian 43rd Street Gate shall be constructed at the terminus of 43rd Street and shall be open only on school days and only between the hours of 7:00 AM and 4:00 PM for the purpose of allowing pedestrian access to and from the Campus. At all other times, the Pedestrian 43rd Street Gate shall be

locked. The Pedestrian 43rd Street Gate shall not be used for vehicular drop-offs of students or staff on 43rd Street or Ellicott Street (any such drop-off being a "Prohibited Drop-Off"). In the event that there is a Prohibited Drop-Off, DDOT shall be notified with information regarding the date and time so that DDOT can devise an Operations Plan to prevent future drop-offs. In the event that there are more than three Prohibited Drop-Offs during the first year of the operation of the consolidated Campus, the School shall notify DDOT with information regarding the date and time of such Prohibited Drop-Offs. Upon such notification, the School shall secure the Pedestrian 43rd Street Gate at all times.

11. The TMP instituted pursuant to previous Orders for the High School is hereby replaced with the following Conditions, which shall be applicable to the entire Campus upon the effectiveness of these Conditions and which the School shall fully implement and comply with as set forth in the Transportation Demand Management, Operations Management and Monitoring Subparts of the TMP contained in Exhibit 61 of the record. The School shall be responsible for implementing the full TMP including, without limitation, the following provisions.

    a. The School shall in any year that the monitoring and reporting requirements herein are in effect and in accordance with and subject to the terms of the TMP, hold quarterly meetings with the ANC and other community members to garner feedback on traffic and parking related issues.

    b. The School shall engage a transportation engineer to undertake monitoring of vehicular access to the Campus to ensure compliance with the AM Peak Hour and PM School Peak Hour Trip Thresholds (as such terms are defined in the TMP). The established AM and PM Peak Hour Trip Thresholds shall be a goal for Years 1-4 and a binding cap thereafter (where "Year 1" is defined as the first school year commencing upon the initial opening of the new Lower/Middle School). Commencing Year 1 and continuing through Year 4, the School shall arrange to monitor compliance with the AM and PM School Peak Hour Trip Thresholds one (1) time each school year, during the fall semester of each school year, provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester of that same school year. If the School fails to meet its Trip Thresholds upon such second monitoring during this period, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. Commencing in Year 5 through Year 17, the School shall arrange to monitor compliance with the Trip Thresholds triennially in the fall semester (i.e., four times between Year 5 and Year 17) provided that in the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again in the spring semester of such year, and the School shall thereafter resume annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two

consecutive years. At such time, triennial monitoring shall resume until Year 17 or until such time as two consecutive triennial studies demonstrate compliance, whichever is later.

c. Beginning in Year 5, in the event the School fails to comply with the applicable Trip Caps (as such term is defined in the TMP), the School shall require the requisite number of students to comply with the Trip Cap to take three-person carpools and/or ride the bus to School, adding such buses and/or bus routes as necessary to comply with the Trip Cap. The School shall work with DDOT and the ANC to identify which of the foregoing remedial revisions to the TMP will be used to ensure compliance. Students and parents who fail to comply with the carpooling, parking, busing (if mandated) and/or pick-up and drop-off requirements of the TMP shall be subject to an escalating set of penalties (leading ultimately to student expulsion after the sixth offense). In the event of a violation of the Trip Cap, the Department of Consumer and Regulatory Affairs ("DCRA") will institute enforcement proceedings against the School using any or all of the enforcement measures that are legally available.

12. In connection with implementing the full TMP including, without limitation, the following provisions, the School shall:

a. Permit no more 595 AM peak hour vehicle trips during the AM peak hour, no more than 465 PM peak hour vehicle trips during the PM school peak hour, and no more than 265 for the PM peak, as verified by traffic monitoring to be conducted at the School's expense, as outlined pursuant to the Conditions hereof and as more fully set forth in the TMP. In Years 1 through 4, the AM and PM Peak Hour Trip Thresholds shall be a goal, which the School shall strive to achieve. Beginning in Year 5, the Trip Thresholds shall serve as a binding cap. Upon the School's achievement of an AM Trip Cap of 595, a PM School Peak Hour Trip Threshold of 465, and the PM Peak Hour Trip Threshold of 265, and provided the School has satisfied all monitoring and reporting requirements with respect thereto for two consecutive school years, then the aggregate student enrollment limit hereunder shall automatically increase from 1075 to 1125 students and the limit on the aggregate number full-time equivalent faculty/staff shall automatically increase from 220 to 240 faculty/staff. Thereafter, provided the School has achieved the AM Trip Cap of 595, the PM School Peak Hour Trip Threshold of 465, and the PM Peak Hour Trip Threshold of 265, and satisfied all monitoring and reporting requirements with respect thereto for two additional consecutive school years, then the aggregate student enrollment limit shall automatically further increase to 1200 students and the limit on the aggregate number full-time equivalent faculty/staff shall automatically further increase to 260 faculty/staff. If the School does not satisfy the Trip Cap or Trip Threshold conditions in this subparagraph, it shall not be entitled to any automatic increase in its enrollment.

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b. Meet no less than quarterly with the ANC to ensure any traffic concerns by either party can be addressed in a timely manner;

c. Hire a Metropolitan Police Officer (a Traffic Control Officer or "TCO") to control traffic at the intersection of Ellicott Street and the Public Alley, consistent with the Metropolitan Police Department and/or DDOT regulations, during the Lower/Middle School's pick-up and drop-off periods. The School shall instruct the TCO that the intended purpose of such officer is to require that all traffic exiting the Campus via the Public Alley during drop-off/pick-up turns only right onto Ellicott Street, and not to stop traffic along on Ellicott Street for long periods of time to facilitate egress from the school.

d. Deploy School staff along the perimeter of the Campus to ensure that Ellicott Street, 42nd Street, 43rd Street, 43rd Place, River Road, and Chesapeake Street are not used for vehicular drop-off/pick-up or temporary parking and to otherwise enforce the TMP;

e. Encourage the use of public transportation by the faculty, staff, and students who are old enough to use public transit and instruct eligible students to obtain a DC One Card (and the School shall and assist with sign-ups for the DC One Card) and establish a "transit buddy" program to match older students with younger students taking transit;

f. Provide up to $100.00 monthly in SmarTrip subsidies to Virginia and Maryland financial aid students;

g. Provide $135.00 monthly in SmarTrip Cards for faculty/staff who take transit to School;

h. Operate a minimum of three (3) full-sized buses or such larger number of smaller buses as is necessary to accommodate the same or more students as three full-sized buses, which buses shall pick-up students at School-designated off-Campus locations in the morning, which buses shall also be available for use by faculty and staff;

i. Require that cars dropping off students on Campus in the morning drop-off have at least two students per vehicle, with the following exceptions not to be subject to such carpooling requirement:

    i. Students in Pre-K through 1st grade,

    ii. Students in the "Early Grasshopper" program,

iii. Student drivers who may not lawfully carry passengers, and

iv. Students who demonstrate a hardship, to be evaluated by the School on a case-by-case basis and at all times subject to the Trip Caps, which evaluation may consider, without limitation, special transportation needs, lack of access to other transportation facilities, or distance from the Campus;

j. Not permit any students to drive a vehicle to the Campus unless there is an on-Campus parking space for that vehicle;

k. Ensure that at the beginning of each school year, all students have registered their vehicle(s) with the School;

l. Strictly prohibit students and staff from parking on the residential streets surrounding the Campus;

m. Provide discounted parking pricing for student drivers and faculty/staff who carpool. The parking fee will be reduced by one third (⅓) for each additional student beyond the driver (drivers with three additional student passengers will park for free);

n. Set the price for parking on Campus at substantially increased rates for students who drive to Campus from a residence within one (1) mile of Campus or within one (1) mile of a Red Line Metrorail station, subject to a discounted parking rates of one third (⅓) the premium amount for student drivers who carpool;

o. Train school employees at the beginning of each year to implement and enforce the TMP;

p. Instruct parents not to park on, or queue on, public streets adjacent to the Campus, including Chesapeake Street, 42nd Street, Ellicott Street, 43rd Street, 43rd Place, and River Road, to wait for their children at school drop-off or pick-up times;

q. Continue to provide traffic control personnel on Campus during drop-off and pick-up times to facilitate on-Campus traffic flow and enforce drop-off and pick-up procedures;

r. Facilitate the foregoing carpooling requirements by establishing an online system to help parents identify other families along their travel route by distributing information regarding the location of other families in the area to parents at the start of each school year;

s. Distribute a policy manual to all families prior to the start of the school year that explains all relevant policies and procedures regarding parking, pick-up, drop-off and penalties for non-compliance, which information shall also be posted on the School's website;

t. Incorporate the relevant provisions of the TMP into the enrollment contract between the School and parents, by which the parents shall agree to be bound by its fines and punishments; and

u. During any period of time when the existing Campus parking spaces are reduced (e.g., during construction), provide the same number of parking spaces elsewhere and shall fully enforce the School's existing parking restrictions.

13. The School shall instruct parents, caregivers, and staff who drive to use the entrance and exit that requires the least driving through the neighborhood around the Campus. Additionally, the School will, as part of its enrollment contract, instruct parents, caregivers, or staff not to use 43rd Place N.W., Ellicott Street, N.W., or Fessenden Street, N.W., between River Road and Wisconsin Avenue, to reach the School for pick-up or drop-off, whether on the way to or returning from the school, and will similarly instruct parents, caregivers, or staff not to use of Chesapeake Street, N.W. when traveling between River Road and 42nd Street, N.W. In addition to incorporating this restriction into its enrollment contract in writing, this instruction will be given orally at School orientation. The parties acknowledge that the School, unlike some universities but like most secondary schools, does not have its own police force and cannot independently enforce this restriction. Nevertheless, School personnel who become aware of such use shall advise the offending driver of the School's policy, and if the School becomes aware of repeat violations by offending drivers, said drivers shall be subject to disciplinary action.

14. The surface parking areas of the Campus shall be secured by a chain gate, cable, or similar device during all hours that such area is not in use. When the parking area is open during non-school hours, the School shall provide security to prevent unauthorized parking.

15. The Campus parking garages shall be available for use only by authorized users of the Campus during all hours that the School is open. The School shall have security personnel on duty at the School to monitor the garages at all hours that the garages are open. The garages shall be secured during all hours not in use.

16. Students parking cars on Campus shall stay on Campus during the hours that classes are in session except for trips off-Campus for the following purposes: (a) work or internship related activities; (b) community service events; (c) school or extracurricular-related activities; or (d) approved leave.

17. The School shall use all reasonable and diligent efforts to cause DDOT and the Public Space Committee ("PSC") to permit the closure to vehicular traffic of the 42nd Street, NW "slip lane" and to allow such slip lane to be returned to a sodded state or to such other finished material as is mutually agreeable to the School and the ANC, in the reasonable determination of each. In the event that the ANC does not support an alternative surface treatment, grass shall be required, subject to DDOT and PSC approval. The final surface treatment of such slip lane post-closure shall be subject to DDOT and PSC approval and DDOT's or the PSC's failure to consent to a landscaped or sodded condition shall not constitute a default of the School hereunder. The Parties agree that subject to the foregoing, the closure of the slip lane must occur prior to issuance of the certificate of occupancy for the Lower/Middle School. Determination of the final surface material, and the installation of the final surface material in the closed slip lane must be completed within one year of the issuance of the certificate of occupancy for the Lower/Middle School.

18. The School, at its expense, shall install or cause to be installed a traffic signal at the intersection of Chesapeake Street, N.W. and Wisconsin Avenue, N.W., subject to DDOT's review and approval and shall use reasonable efforts to obtain such approval prior to the issuance of the certificate of occupancy for the Lower/Middle School.

Summer Usage of Campus Facilities including Enrollment Increases

19. The School shall not be restricted from offering or authorizing use of the Campus for summer programs outside of the regular school year, provided that it meets the same Trip Thresholds that apply during the school year. To ensure same, the School agrees to the following: (a) that except as provided herein, the School shall allow no more than five hundred (500) students and staff (the term "students" shall encompass all participants in summer programming of any kind, including camps), cumulatively, to be on Campus on any day during such summer programs; (b) the School shall conduct monitoring during the summer for two consecutive years, which monitoring shall occur on the day when the maximum number of students and staff that summer are expected to be present; and which monitoring shall be of the same scope and thoroughness as monitoring conducted during the school year, and the peak hours selected for monitoring shall be the actual peak summer hours. If the School does not exceed the Trip Thresholds for two consecutive summers of monitoring, it may cease monitoring. In the event the School fails to stay below the applicable Trip Thresholds, the School shall arrange to monitor compliance with the Trip Thresholds again during the summer of the following year. The School shall continue annual monitoring until such time as the annual monitoring study demonstrates that the School has met the Trip Thresholds for two consecutive years. Once the School has two successful consecutive years of satisfying the applicable Trip Thresholds, up to 50 additional students, resulting in a total of 550 students and staff, may be added if such additional students are required to arrive by bus or public transit. If at any time that traffic is not subject to monitoring, there is a shift or change in programming that is likely to substantially increase traffic demand during any peak hour,

the School shall consult with the ANC and DDOT before implementing such change to determine whether additional monitoring is required. If both the ANC and DDOT concur that additional monitoring is desirable, the School shall institute said monitoring. If the School seeks to increase enrollment beyond 550 (500 plus 50 additional by bus or transit), the School shall consult with the ANC before implementing that change to determine whether the ANC will require additional monitoring, and shall abide by the ANC's decision.

20. If the School does not meet its summer Trip Thresholds, it shall work with DDOT and the ANC to identify remedial revisions to the TMP necessary to promote compliance and shall implement such measures. If the School fails to meet applicable Trip Thresholds for two consecutive years during Years 1 through 4, the School shall thereafter reduce the total number of students and staff permitted on campus during all days during the summer by a number sufficient to ensure it meets its Trip Thresholds.

Building Plans

21. The improvements constructed on the Campus shall be in conformance with the Final Plans, subject to any required subsequent District agencies approvals.

22. The School shall design the Lower/Middle School to meet the certification requirements at the Gold level under the LEED 2009 rating system. In connection with that commitment, the Lower/Middle School building shall contain motion-sensitive lighting in the classrooms and function rooms in order to reduce the potential for light pollution and shall contain emergency lighting as required.

Campus Use, Noise and Lighting

23. All extracurricular or inter-scholastic activities held on the Campus shall be concluded by 11:30 p.m. This time limit does not apply to periodic (i.e., once or twice yearly) "lock-ins", where students from a single grade sleep over at the school.

24. All interscholastic athletic events utilizing the Campus athletic field(s) shall be scheduled to conclude no later than 7:30 p.m. In situations where an event goes into overtime, is subject to weather delays, or is subject to other conditions that force the event past 7:30 p.m., the event must be concluded no later than 8:00 p.m. No use of outdoor playing fields, playgrounds, outdoor recreational facilities, and green space shall be permitted after sundown.

25. There shall be no artificial lighting of the athletic field(s), playgrounds, outdoor recreation facilities, or green space that is directed at any of the nearby residences, provided such prohibition shall not be understood to preclude any code-required lighting (such as path lighting) from being installed.

26. No exterior building lights shall be directed toward the existing residences along 43rd Street, N.W.

27. The loudspeaker (i.e., audio) and bell systems within the Campus shall not be audible in the neighborhood except for standard emergency alarm systems. There shall be no permanent outdoor audio system of any kind except those required by law or for safety.

28. Temporary outdoor audio systems (apart from a loudspeaker, bell system, and alarm system) at the Campus shall be allowed only during school hours for special school events, and not more than three times a year.

29. Rooftop mechanical equipment on the new Lower/Middle School building will be designed to comply with the D.C. Noise Regulations.

Community Uses of the Campus

30. The School shall make available the following amenities on the Campus for use by approved community activities, subject to the following restrictions and subject to other reasonable posted rules and regulations:

    a. Exterior fields:

        i. During daylight hours only;

        ii. When the fields are not being used by the School;

        iii. By making a reservation with the School's space-use coordinator;

        iv. After signing an appropriate liability waiver;

        v. After providing the proper liability insurance certificate(s);

        vi. By paying a reasonable fee (reasonableness to be determined by reference to fees charged for field use by DC Department of Parks and Recreation ("DPR") and other private schools in DC)) for administrative, security and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers, and setting parameters on the types of uses allowed on the fields (e.g., no dogs or wheeled toys, etc.), provided such parameters shall not prohibit any sport permitted on fields maintained and/or programmed by DPR;

        vii. With the understanding that users of the fields are liable for any damage to school property and fully responsible for any injuries;

        viii. Expecting that the user is not using the space for profit; and

        ix. No dogs (or any other animals) allowed.

    b. Exterior playground:

i. When the playground is not being used by the School;

ii. During daylight hours only;

iii. With the understanding that users of the playground are liable for any damage to school property and fully responsible for any injuries; and

iv. No dogs (or any other animals) allowed. The School shall have the right from time to time to establish and post reasonable and customary rules and regulations governing community use of the play area and to close the play area on a temporary basis from time to time for maintenance, cleaning, or repairs.

c. Lower/Middle School and High School classrooms;

i. Only upon reservation confirmed by the School;

ii. When the classrooms are not being used by the School;

iii. After signing an appropriate liability waiver;

iv. Only if a School security guard is available and shall be subject to such reasonable requirements as the School may impose, including, without limitation: charging a reasonable fee for a security guard as well as any administrative and maintenance costs associated with such use, requiring provision of a certificate of insurance, requiring liability waivers and setting parameters on the types of uses allowed in the classrooms.

Open Space

31. The southeast portion of the Campus south of the existing High School (i.e., located at the northwest corner of the intersection of 42nd and Chesapeake Streets), which is currently landscaped shall be maintained as open space. No parking shall be permitted on this portion of the Campus.

32. As a condition of securing a building permit for the Lower/Middle School building, the School shall place into an escrow account funds in the amount of $20,000.00 for DDOT to use toward the construction of a sidewalk on the west side of 43rd Street, NW between the Campus and Ellicott Street, NW. This condition shall be deemed satisfied when the funds are placed in escrow. If the sidewalk has not been constructed within two years of the issuance of the certificate of occupancy for the school, then the funds shall be released back to the School from escrow.

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 11, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19617 of Aaron Cobet, 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 construct a two-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 753 Morton Street N.W. (Square 2894, Lot 49).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 31, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 18.)

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") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, 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 October 11, 2017, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 20.)

The Office of Planning ("OP") submitted a timely report, dated November 22, 2017, in support of the application. (Exhibit 43.) The District Department of Transportation ("DDOT") submitted a timely report, dated October 13, 2017, expressing no objection to the approval of the application. (Exhibit 22.)

Two letters of support for the application from the adjacent property owners were submitted to the record. (Exhibits 13 and 14.)

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 construct a two-story rear addition to an existing one-family dwelling in the RF-1

[1]This case was administratively postponed from the public hearing of November 8, 2017, to that of December 6, 2017. (Exhibit 21.)

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 7.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 12, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.
PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION

THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19621 of Richard Hilton, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2, to construct a fourth story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2318 California Street N.W. (Square 2519, Lot 284).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 13).) 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") 2D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2D, which is automatically a party to this application. The ANC did not submit a report regarding this BZA application. The only report the ANC submitted was addressed to the Historic Preservation Review Board ("HPRB") and only referenced the ANC's support of the project in relation to the Applicant's HPRB application. (Exhibit 32.)

The Office of Planning ("OP") submitted a timely report dated April 7, 2017, in support of the application. (Exhibit 35.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 16.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201.3 from the non-conforming structure requirements of Subtitle C § 202.2, to construct a fourth story rear addition to an existing one-

[1] This case was administratively postponed from the public hearing of November 8, 2017 to that of December 6, 2017. (Exhibit 17.)

family dwelling in the R-1-B Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report[2], the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle D § 5201.3, and Subtitle C § 202.2, 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 7.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 11, 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.

[2] As the ANC's report submitted in this case was only in reference to the HPRB application, it does not receive great weight.

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. 19623 of Creative Grounds DC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 254.14, to permit a corner store containing an art gallery and accessory prepared food shop in the RF-1 Zone at premises 1822 North Capitol Street N.W. (Square 3106, Lot 84).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 10, 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 timely report recommending approval of the application. The ANC's report resolution 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.) Also, the Single Member District member for ANC 5E07 testified on behalf of the ANC in support of the application at the hearing on December 6, 2017.

The Office of Planning ("OP") submitted a timely report, dated November 22, 2017, in support of the application with 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. (Exhibit 43.)
Three letters of support of the application from North Capitol Main Street, Seaton Place Condos, and one neighbor were submitted to the record. (Exhibits 12, 16, and 31.) In addition, testimony was provided by Marnie Robinson 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 §

[1] This case was administratively postponed from the public hearing of November 8, 2017 to that of December 6, 2017. (Exhibit 18.)

901.2, for a special exception under the use provisions of Subtitle U § 254.14, to permit a corner store containing an art gallery and accessory prepared food shop in the RF-1 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 254.14, 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 45 AND WITH THE FOLLOWING CONDITIONS:**

1. Hours of operation for the coffee bar shall not exceed 7:00 am to 7:00 pm.

2. Art exhibitions shall end no later than 10:00 pm Monday through Thursday, and 11:00 pm Friday through Sunday.

3. All programs shall be supervised by a minimum of two staff members.

4. A maximum of 62 indoor seats shall be provided daily activities.

5. All deliveries shall be facilitated through the front door and occur between the hours of 7:00 am to 7:00 pm.

6. Indoor seating may be increased up to 110 seats for special events, with up to 2 special events per week.

7. All parts of the lot shall be kept free of litter and debris, and commercial trash pick-up shall occur a minimum of twice per week.

8. There shall be no on-site cooking of food or installation of grease traps.

9. There shall be no sale of alcoholic beverages for on-site consumption.

VOTE: **4-0-1** (Frederick L. Hill, Robert E. Miller, 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 8, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19624 of Kerameddine Dris, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5203 from the rooftop architectural element requirements of Subtitle E § 206.1(a), to construct a new mansard roof on an existing flat in the RF-1 Zone at premises 137 S Street N.W. (Square 3107, Lot 800).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 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") 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 dated November 24, 2017, and an ANC representative testified at the public hearing, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 21, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application with the proviso that the Applicant will seek "to incorporate, at minimum, the front half of a pyramidal roof above (or in place of) the proposed hip roof covering the 3rd floor front balcony." (Exhibit 36.) The Board noted the Applicant's incorporation of the pyramidal roof design in response to the ANC's request.

[1] The hearing in this application was administratively rescheduled from November 15, 2017 to December 6, 2017. (Exhibit 14.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 33.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5203 from the rooftop architectural element requirements of Subtitle E § 206.1(a). 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, and Subtitle E §§ 5203 and 206.1(a), 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 35 – REVISED ARCHITECTURAL PLANS AND ELEVATIONS, WITH SHEET 10 AS REVISED BY EXHIBIT 37 – REVISED BUILDING SECTION.**

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 8, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19625 of 61 Rhode Island Avenue NE, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the density requirements of Subtitle E § 201.4, to add two units to an existing 21-unit apartment house in the RF-1 Zone at premises 61 Rhode Island Avenue, N.E. (Square 3535, Lot 58).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 12.) 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") 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 dated November 21, 2017, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 21, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 37.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 36.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 35.)

Two letters of support from residents of the subject building were submitted to the record. (Exhibits 18, 31, and 32.)

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[1] This application was administratively rescheduled from November 8, 2017 to December 6, 2017. (Exhibit 17.)

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 density requirements under Subtitle E § 201.4, to add two units to an existing 21-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 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 variance from 11 DCMR Subtitle E § 201.4, 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 10 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 8, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED

STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19626 of Fort Lincoln Retail, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(n) from the use requirements of Subtitle U § 513, to permit a fast food restaurant with a drive-thru in the MU-5A Zone at premises Fort Lincoln Drive N.E. (Square 4327, Lot 1161).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 7). In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The ANC did not submit a report. ANC Commissioner Robert Looper III, ANC 5C03, who represents the Single Member District where the property is located, testified in support of the application and also submitted a letter of support for the application subject to conditions. (Exhibit 37.) The Applicant submitted a statement with proposed conditions. (Exhibit 38.) The Board adopted two of the conditions in this Order.

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 39.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application with one condition to provide one inverted U-rack to meet the short term bicycle parking requirement. (Exhibit 34.) The Board declined to adopt DDOT's condition in this Order, as it is already required by the regulations.

[1] This case was administratively postponed from the public hearing of November 8, 2017 to that of December 6, 2017. (Exhibit 13.)

A statement in support of the application from a resident in the neighborhood was submitted to the record. (Exhibit 26.)

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 U § 513.1(n) from the use requirements of Subtitle U § 513, to permit a fast food restaurant with a drive-thru in the MU-5A Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U §§ 513 and 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. The Applicant shall install a two-way stop sign on Market Street at the intersection adjacent to the proposed fast food establishment. The stop sign shall be installed at least 30 days prior to the opening of the fast food establishment.

2. The Applicant shall install and maintain two trash cans on the eastbound side of Fort Lincoln Drive adjacent to the Villages at Dakota Crossing. The trash cans shall be maintained at the expense of the Applicant and at intervals consistent with the maintenance of the Shops at Dakota Crossing as long as the special exception for the fast food establishment remains in effect.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

BZA APPLICATION NO. 19626
PAGE NO. 2

FINAL DATE OF ORDER: December 12, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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. 19634 of Jonathan and Kate Grabill, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and from the side yard setback requirements of Subtitle E § 307.3, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a new three-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 517 7th Street S.E. (Square 877, Lot 854).

HEARING DATE: December 6, 2017[1]
DECISION DATE: December 6, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 11, 2017, from the Zoning Administrator, 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 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 43.)

The Office of Planning ("OP") submitted a timely report, dated November 24, 2017, in support of the application. (Exhibit 42.) The District Department of Transportation ("DDOT") submitted a timely report, dated October 13, 2017, expressing no objection to the approval of the application. (Exhibit 23.)

Three letters of support for the application from neighbors, including one adjacent owner, were submitted to the record. (Exhibits 15-17.) A letter in support of the application from the Capitol Hill Restoration Society was submitted to the record. (Exhibit 25.)

[1]This case was administratively postponed from the public hearing of November 15, 2017, to that of December 6, 2017. (Exhibit 24.)

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 Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and from the side yard setback requirements of Subtitle E § 307.3, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a new three-story 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, Subtitle E §§ 5201, 304.1, and 307.3, and Subtitle C § 202.2, 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 21.**

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 11, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-07B
Z.C. Case No. 14-07B
GG Union LP, 1250 4th St., LLC, and 4th St., NE, LLC
(Second-Stage Planned Unit Development @ Square 3587, Lot 822)
September 11, 2017

Pursuant to proper notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on July 27, 2017 to consider an application by GG Union LP, 1250 4th St., LLC, and 4th St., NE, LLC (collectively, "Applicant") for second-stage review and approval of a planned unit development ("PUD"). The Commission considered the application pursuant to Chapter 24 of the District of Columbia Zoning Regulations (1958), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of Subtitle X, Chapter 3 and Subtitle Z, Title 11 of the DCMR (2016). The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Lot 822 in Square 3587, also known as 1300 4th Street N.E., in the Northeast quadrant of the District of Columbia ("Property").

2. On November 14, 2016, the Applicant filed an application for second-stage review and approval of a PUD ("Application"). (Exhibits ["Ex."] 1, 1A-1E2.)

3. On January 23, 2017, the Office of Planning ("OP") filed a report recommending that the Application be set down for a public hearing. In this setdown report, OP stated that it would continue to work with the Applicant to resolve issues related to streetscape improvements, building elevations, retail square footage, LEED and green area ratio ("GAR") calculations, affordable housing, bicycle parking, and the color and materials board. (Ex. 12.)

4. During its public meeting on January 30, 2017, the Commission voted to set down the Application for a public hearing. At the meeting, the Commission requested that the Applicant provide more information on the following: an increase in the number of bicycle spaces; an elevation drawing for the west side of the building; the incorporation of the draft Union Market Streetscape Guidelines into the design of Neal Place; confirmation of the amount of retail floor area; more information about compliance with inclusionary zoning ("IZ"); consideration of LEED-Gold design; GAR calculations; and more information about the proffered benefits and amenities. (1/30/2017 Transcript ("Tr.") at 91-93.)

5. Notice of the public hearing was published in the *D.C. Register* on June 9, 2017 and was mailed to Advisory Neighborhood Commission ("ANC") 5D, the ANC in which the property is located, and to owners of property within 200 feet of the Property. (Ex. 15.)

6. The Application was further updated by pre-hearing submissions that the Applicant filed on May 16, 2017 and July 7, 2017. In its May 16, 2017 submission, in addition to the changes responsive to comments from both the Commission and OP, the Applicant updated the design with new massing along 4th Street, new massing along the alley, a reduction in the overall width of the building in the east-west dimension, revising the penthouse plan, removal of the balconies, adjusting the unit count range, and adding "twinkle" lights over Neal Place. (Ex. 14, 14A1-14A4, 19.) In its July 7, 2017 submission, the Applicant further updated the Application by redesigning the windows, recoloring the brick of the building, modernizing the ground-floor retail façades, and recomposing the ground0floor canopy with steel and glass. (Ex. 22, 22A, 22B1-22B2.)

7. The Commission held a public hearing on the Application on July 27, 2017. On behalf of the Applicant, the Commission accepted Joseph Bailey as an expert in architecture and Robert Schiesel as an expert in traffic engineering. (Ex. 20, 22A.) The Applicant provided testimony from these experts as well as from others.

8. In addition to the Applicant, ANC 5D was automatically a party in this proceeding and submitted a report in support of the Application.

9. At the public hearing, OP testified in support of the Application, including the proposed building's design. The testimony also noted areas where more information was requested, all of which is described in OP's final report. (7/27/17 Tr. at 35-36.)

10. At the public hearing, the District Department of Transportation ("DDOT") testified in support of the Application. The testimony acknowledged the Applicant's acceptance of DDOT's conditions set forth in their final report. (7/27/17 Tr. at 37.)

11. A complete discussion of the OP and DDOT reports is provided in the portion of this Order entitled "Agency and ANC Reports."

12. No individuals or organizations testified in support or opposition at the public hearing.

13. At the close of the public hearing, the Commission requested that the Applicant respond to some outstanding comments and questions from the Commission and OP. The Commission asked OP and DDOT to respond to the Applicant's submission. (7/27/17 Tr. at 54-55.) The ANC was also given an opportunity to respond to the Applicant's post-hearing submission by September 8, 2017. (7/27/17 Tr. at 54.) Because a PUD-related map amendment had already been approved for the site, the Application was not referred to the National Capital Planning Commission, but was instead scheduled for deliberation on September 11, 2017. (*See* 11-Z DCMR § 604.3.)

14. The Applicant provided its responses to the Commission's comments and questions in a post-hearing filing that it submitted on August 10, 2017. The Applicant's post-hearing submission included information about retail signage, trust fund payment for penthouse habitable space, sustainable design and solar panels, consistency with the Ward 5 Works Industrial Land Transformation Study and PDR designation, parking, and responses to a submission in opposition from Mr. Chris Otten. (Ex. 31.)

15. Through a supplemental report dated August 24, 2017, OP indicated that overall it did "not find the Applicant's filing fully responsive to the Commission's concern." OP stated that the Applicant should provide information requested by the Commission regarding the sign design guidelines, aim to achieve a deeper level of affordability or a greater amount of square footage with respect to affordable units, commit to incorporate solar panels, clarify the parking benefits of the project, and provide the Florida Avenue Market parking data that had been previously requested by OP and DDOT. (Ex. 36.)

16. On August 29, 2017, the Applicant moved the Commission to reopen the record in order to respond to OP's supplemental report. The Chairman granted the Applicant's motion. (Ex. 35.)

17. On September 5, 2017, the Applicant filed its response to OP's supplemental submission dated August 24, 2017. (Ex. 36, 36A.) The Applicant stated that:

    a. It would provide solar panels on the building to achieve at least one percent of the building's energy from them;

    b. The Commission did not seek further information as to the heights of the retail signage;

    c. The affordable housing commitment had been approved as part of the first-stage application and it relied on that level of affordability in developing the project. Therefore, no greater affordability could be offered;

    d. Surplus parking was unlikely because the amount of parking to be provided in the North Building will be commensurate with the demand. Any surplus parking would be re-purposed for a use ancillary to the residential use in the building, such as storage or additional bicycle parking. Surplus parking would not be used for retail or to serve other buildings;

    e. OP's request for information as to how the retail parking in the South Building would serve the Union Market District and for parking data for the general Union Market District concern issues that were discussed and decided during the consolidated and first-stage PUD proceedings, and which would also pertain to the South Building, that is now under construction; and

    f. Similarly, the issues of the project's advancement of the Ward 5 Works Industrial Land Transformation Study and its consistency with the site's partial PDR designation on the Future Land Use Map were reviewed and settled in the predecessor Z.C. Case No. 14-07.

18. The ANC did not respond to any post-hearing submission by the September 8th deadline that was established by the Commission at the close of the public hearing.

19. At a regular public meeting on September 11, 2017, the Commission deliberated on the merits of the Application and the material contested issues, and it took final action to approve the Application. (9/11/17 Tr. at 22-24.)

THE MERITS OF THE APPLICATION

Overview of the Property

20. The Property is part of a larger single record lot that also contains a consolidated PUD that is not part of this application. The record lot is located in the Union Market District (also known as the Florida Avenue Market) in the Northeast quadrant of the District of Columbia. The record lot has a land area of approximately 67,200 square feet. (Ex. 1.)

21. The north side of the record lot is the parcel that comprises the Property in this Application, which contains approximately 16,200 square feet of land area. The consolidated PUD and this second-stage PUD building will be connected below the extension of Neal Place that will separate them. (Ex. 1.)

22. The Property fronts on 4th Street N.E., which bounds its east side, and is currently a vacant lot. The Property is located mid-block and is bounded to the west by a 48-foot-wide strip of property that is privately owned by the District of Columbia, and, pursuant to an easement agreement, functions as an alley for surrounding property owners. The Property is bounded to the north by a small retail building. The Property is bounded to the south by the eventual extension of Neal Place, across which will be the consolidated PUD building on the same record lot. (Ex. 1.)

23. The surrounding area is a mix of uses. Some nearby properties are improved with low-scale industrial warehouse buildings with retail and wholesale uses in the Union Market District. Additional nearby properties are being redeveloped or have been approved for redevelopment into mixed-use buildings with ground-floor commercial uses. (Ex. 1, 14A1-14A4.)

24. The Property is zoned C-3-C as a result of the first-stage PUD approval. Surrounding properties are zoned C-3-C as part of PUD approvals or are zoned PDR-1.

25. The Future Land Use Map ("FLUM") of the Comprehensive Plan designates the Property for mixed-use High-Density Commercial/High-Density Residential/Production, Distribution and Repair use. The Generalized Policy Map ("GPM") includes the Property in the Multi-Neighborhood Centers category. (Ex. 1.)

The Project

26. In 2015, as reflected in Z.C. Order No. 14-07, the Commission reviewed and approved an application for a first-stage PUD and related Zoning Map amendment for the Property that was part of a larger application. That larger application included a consolidated PUD ("South Building"), a first-stage PUD ("North Building"), and a related Zoning Map amendment. The Zoning Map amendment changed the zone for both the

consolidated and first-stage PUD sites from the C-M-1 Zone District to the C-3-C Zone District. The combined PUD (both the consolidated and the first-stage) will be a mixed-use residential and ground-floor retail development consisting of two buildings and containing approximately 41,042 square feet of retail and 545-680 residential units, with underground parking spanning both buildings, all on one record lot. The density of the combined PUD will be a floor area ratio ("FAR") of 8.0. The Commission granted flexibility to allow two buildings on a single lot of record. Z.C. Order No. 14-07 also included requirements for public space improvements, such as to the alley to the west. Z.C. Order No. 14-07 further required that Neal Place will be extended and improved for public access across the record lot, separating the North and South Buildings, but it will remain private property. (Ex. 1.)

27. Because the first-stage PUD was approved before September 6, 2016, this second-stage PUD is vested under and subject to the substantive area and use requirement of the 1958 Zoning Regulations. (*See* 11-A DCMR § 102.3(a).)

28. The first-stage PUD approved a mixed-use building with residential and ground-floor retail uses on the Property. The first stage approved approximately 165 (±20%) residential units; 12,000 square feet of retail use; 80-200 underground parking spaces; 48-71 bicycle parking spaces; a building height of 110 feet; and a density of 153,249 gross square feet. The first-stage PUD also required a GAR of 0.22.

29. The FAR for the combined North and South Buildings was properly calculated, reviewed, and approved in Z.C. Order No. 14-07 under the 1958 Zoning Regulations based on the entire area of the record lot, including the Neal Place extension. Nothing in the 1958 Zoning Regulations prevented the inclusion of the private Neal Place land area in the FAR calculation. The Commission reviewed and accepted this method of calculating the FAR in the first-stage PUD since the Neal Place extension through the project site was later added as an accommodation at the urging of OP and other stakeholders. The Commission agreed that the overall project should not lose density by accommodating Neal Place. Because of the Neal Place extension, the overall project's density was pushed to the North and South Buildings, so Neal Place's inclusion in the FAR calculation did not change the amount of density on the record lot. (7/27/17 Tr. at 28-32.)

30. The proposed second-stage PUD ("Project") will be consistent with the first-stage approvals and flexibility. The Project will have a height of 110 feet (10 stories) plus penthouse rising an additional 20 feet (11.5 feet for habitable and 8.5 feet for mechanical). The Project will contain approximately 153,249 square feet of gross floor area, of which 141,249 gross square feet will be for residential use. The ground floor will contain approximately 12,000 square feet of retail in a space with approximately 18-foot clear ceilings. The upper floors will contain 132-138 apartments. The apartment types will range from studios to two-bedrooms on typical floors. The penthouse will contain a building amenity space and some apartments with two or more bedrooms. (Ex. 14A1-14A4, 22B1-22B2.)

31. The Project will include parking and loading consistent with the first-stage approval. The underground parking will contain 115-135 spaces in three levels, and this parking will be only for residents of the Project. The Project's parking will be connected to the parking for the South Building. Access for the Project's parking will be from the alley and through the parking area for the South Building. Bicycle parking will be located in a dedicated and secured room on the first below-grade parking level; this room will contain 61-66 bicycle parking spaces. Loading for the Project will be from the private alley to the west, and the Project will provide a 30-foot loading berth. (7/27/17 Tr. at 12; Ex. 14A, 22B.)

32. In the first-stage PUD, the Commission granted flexibility from the IZ requirements so that 20% of the second-stage PUD's IZ floor area, which is equivalent to 2,260 square feet, will be located in the South Building in order to advance the production of housing reserved for households earning up to 50% of the area median income ("AMI"). All of the relocated IZ units in the South Building will be reserved for households earning up to 50% of the AMI. Consistent with the first-stage approval, the balance of the Project's IZ units, which will be equivalent to approximately 9,040 square feet, will be located in the Project and will be reserved for households earning up to 80% of the AMI. (Ex. 26.)

33. The public space surrounding the Property will include additional improvements, including sidewalk and streetscape improvements consistent with the Union Market Streetscape Guidelines. The private alley to the west of the Property will be improved in accordance with the requirements in Z.C. Order No. 14-07 for the consolidated PUD; these alley improvements will be for 35 feet of the alley's width. The alley will be further improved thereafter in accordance with the development of the PUD across the alley to the west approved in Z.C. Order No. 15-27. (Ex. 26.)

34. The Project will be designed to achieve LEED-Gold certification. (7/27/17 Tr. at 20-21.)

PUD Flexibility

35. **Rear Yard.** The Applicant requested flexibility from the rear yard requirement in § 774.1. The siting and orientation of the building on the site – including construction of the building to all four of its lot lines, three of which abut alleys or streets – was generally reviewed and approved in the first-stage PUD. In addition, the rear yard flexibility is justified for the Project. The rear of the Property is bordered by a 48-foot-wide private alley that will function as the Project's rear yard. This alley will allow for ample open space at the building's rear, and it will provide access to the Project's loading facilities. This alley will be preserved as open space and reserved as an alley by an easement and by multiple PUD Orders for projects that will border and use it. If the alley were public, then the Project could be constructed to rear property line anyway since the rear yard could be measured to the center of the alley. Further, 4th Street, Neal Place, and the wide alley will provide ample access for emergency response vehicles on three sides of the project. Also, there will be no light and air impacts since the Project will be removed from the south property line to maintain the 50-foot width for Neal Place. Accordingly, the Commission finds that the rear yard flexibility is justified because there will be no

adverse impact on the light, air, or open space available to nearby properties from the granting of this rear yard flexibility. (Ex. 1, 14A1-14A4, 22B1-22B2, 26.)

36. **Loading.** The Applicant requested flexibility from the loading requirements in § 2201.1. The Project will include one 30-foot loading berth and the required 200-square-foot platform accessed from rear private alley, but it will not include the service delivery space, a 30-foot berth for retail use, a platform for retail use, or the full depth berth (55 feet) for residential use. The first-stage PUD included only one 30-foot berth, and all loading activity can be successfully accommodated with one 30-foot berth. The service delivery space cannot be accommodated without removing valuable core and retail space, but the loading for the building can be adequately accommodated with the berth and platform. Furthermore, the Applicant will implement a loading management plan to accommodate the loading demand. Accordingly, the Commission finds that the loading flexibility is justified since there will be no adverse impact on the adjacent streets from granting this relief. (Ex. 1, 14A1-14A4, 19, 22B1-22B2; 7/27/17 Tr. at 12.)

37. **Court Width and Area.** The Applicant requested flexibility from the court width and area requirements in §§ 776.3 & 776.4. The Project will include four courts: one open court on each of the east and south façades and one closed court on each of the west and north façades, but they will not all have conforming widths and areas. These courts are necessary to allow more light to penetrate the interior of the building for the benefit of the residential units and will not have an adverse impact. Conforming court areas and widths would consume so much of the floor plate that they would render an impractical layout for the residential units. Accordingly, the Commission finds that the court width and area flexibility is justified since there will be no adverse impacts from it. (Ex. 1, 14A1-14A4, 22B1-22B2.)

38. **Design.** With respect to the design of the Project, the Applicant requested the following flexibility:

    a. To include windows within the notches on the north and south elevations to accommodate final unit layout;

    b. To remove a canopy above the ground-floor retail space on the south elevation to accommodate final retail layout;

    c. To vary the exterior design materials of the ground-floor retail space to accommodate the preferences of the individual retailer(s), subject to the guidelines included in the project plans, provided that the retailer does not modify the building footprint or reduce the quality of the materials used on the exterior of the ground floor;

    d. To add solar panels; and

e. To either provide an inclusionary unit or pay into the affordable housing trust fund for the affordable housing requirement derived from the penthouse habitable space. (Ex. 14, 31.)

Project Amenities and Public Benefits

39. As detailed in the Applicant's testimony and written submissions, the proposed Project will generate the following project amenities and public benefits:

a. The Project will include exemplary urban design, architecture, and landscaping The Project's design will have a contemporary, unique identity that will be compatible with the surrounding existing and planned buildings. Furthermore, the Project will incorporate significant ground-floor retail with high ceilings to activate the streetscape, and the Project will include public realm improvements, such as the extension of Neal Place, to further enhance pedestrian accessibility and the pedestrian experience. The architecture of the Project is an innovative approach to allowing more light deeper inside the building, and the architecture evolved to embrace this feature; (Ex. 1, 14A1-14A4, 22B1-22B2.)

b. The Project will demonstrate exceptional site planning and efficient land utilization. The Project will capitalize on the opportunity to create a new mixed-use building on an underutilized site in a transit-oriented location specifically targeted by the District for such uses. The Project and the neighborhood will benefit from the Project's location within one-third mile of a Metrorail station and in the Union Market District to provide a mix of retail uses and housing with the appropriate higher levels of height and density that the District has identified as goals for this neighborhood. The Project will efficiently use the land to provide appropriate residential and retail density; (Ex. 1, 14A1-14A4, 22B1-22B2.)

c. The Project will provide environmental benefits in excess of the required sustainable features. The Project will be designed and certified to meet at least LEED-Gold requirements under the 2009 rating system. In addition, the Project will attain a GAR of at least 0.22, which is greater than the minimum required. The Project will include additional environmentally-sustainable features such as a large (approximately 1,000 square feet) dedicated bike storage room, landscaping, and other green features that will significantly increase the water retention on the site. The Applicant also acknowledged that it will explore the inclusion of solar panels on the Project to achieve at least one percent energy savings; (Ex. 1, 14A1-14A4, 22B1-22B2, 31, 32.).

d. The Project will provide effective and safe vehicular and pedestrian access and transportation management measures as benefits and amenities. Specific features include:

i. A transportation demand management ("TDM") plan as set forth in the Applicant's Comprehensive Transportation Review, including various

means to encourage the use of non-automobile means of transportation; (Ex. 19, 32).

ii. A loading management plan; (Ex. 19.)

iii. The provision of 61-66 long-term bicycle parking spaces for residents in a secure below-grade room. The Project will include a dedicated entrance and corridor to access the secure bicycle parking room; and (Ex. 22B1-22B2, 32.)

iv. All vehicular entrances and exits for the underground parking will be at the rear private alley via the South Building so that one point of entry will serve both buildings. The at-grade loading for the Project also will be via the rear private alley. These locations for vehicle access will minimize potential pedestrian-automobile conflicts by funneling most traffic to the alley; (Ex. 1, 22B1-22B2.)

e. The Project will provide employment and training opportunities. The Applicant will enter into a First Source Agreement with the Department of Employment Services to achieve the goal of at least 51% of the new construction jobs for the Project being filled by District of Columbia residents. The Applicant will also provide notice of new jobs to ANC 5D; and (Ex. 32.)

f. The Project will provide new market-rate and affordable housing. The Project will create 132-138 new residential units in a neighborhood that lacks much housing but in a location where new housing is a considerable priority for the District. Furthermore, the Project will provide more affordable housing (in terms of depth of affordability) than required. As approved in the first-stage PUD, eight percent of the Project's residential gross floor area, less 2,260 square feet, shall be devoted to IZ units reserved for families earning up to 80% of the AMI. The 2,260 square feet of affordable housing is provided in the South Building and reserved for families earning up to 50% of the AMI. (Ex. 1, 26, 32.) Finally, because IZ does not apply to the CM zone, all the affordable housing being provided is considered a public benefit because it "exceeds what would have been required through matter-of-right development under existing zoning," (11 DCMR 2403.9 (F).)

Compliance with the Comprehensive Plan and Other Planning Guidance

40. The Project is not inconsistent with the Comprehensive Plan ("Plan"), including the Future Land Use Map ("FLUM"), Generalized Policy Map ("GPM"), and multiple written policies as further discussed below.

41. In the first-stage approval in Z.C. Order No. 14-07, the Commission found that the Project is not inconsistent with the FLUM. Specifically, the mixed-use retail and residential Project, with a FAR of 2.32 (8.0 for the entire record lot) and a maximum height of 110 feet, is not inconsistent with the mixed-use High-Density Commercial/High-

Density Residential/Production, Distribution and Repair FLUM designation for the Property. Nothing in the Comprehensive Plan requires the Property to accommodate all uses indicated on the FLUM. The striping on the FLUM indicates that all such uses are permitted but are not required. Furthermore, with regard to the partial PDR designation, the Project is not inconsistent because commercial use, which includes retail, is identified as an appropriate use for PDR designation in the Framework Element of the Comprehensive Plan, and retail is a matter-of-right use in all C-M zones. In addition, the Project will advance the goals of the Ward 5 Works Industrial Land Transformation Study. (Ex. 1, 12, 24, 31.)

42. The Project is not inconsistent with the GPM's depiction of the Property as a Multi-Neighborhood Center. The Project will promote the policy behind this depiction of providing new retail and service uses, and additional housing and job opportunities to serve a multi-neighborhood area. (Ex. 1, 12, 24.)

43. The Land Use Element of the Comprehensive Plan ("Plan") includes the following policies advanced by the Project:

   a. **Policy LU-1.3.1**: **Station Areas as Neighborhood Centers** – Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed-use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area;

   b. **Policy LU-1.3.2**: **Development Around Metrorail Stations** – Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;

   c. **Policy LU-1.3.3**: **Housing Around Metrorail Stations** – Recognize the opportunity to build senior housing and more affordable "starter" housing for

first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;

d. **Policy LU-1.4.1**: **Infill Development** – Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;

e. **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to "create successful neighborhoods" in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;

f. **Policy LU-2.2.4: Neighborhood Beautification –** Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements;

g. **Policy LU-2.4.1: Promotion of Commercial Centers –** Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents; and

h. **Policy LU-2.4.5: Encouraging Nodal Development** – Discourage auto-oriented commercial "strip" development and instead encourage pedestrian-oriented "nodes" of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them.

The Project will implement policies that promote future growth and infill development in a location identified for such changes. It will capitalize on the project site's proximity to several transit options and will help address the District's housing demand. The Land Use Element recognizes the area around the NOMA-Gallaudet Metrorail station as an area of future growth outside of the traditional downtown. The Project will support transit-oriented development and provide more housing near a Metrorail station and will provide housing in an area that where there are currently no housing options. The Project will promote nodal

commercial development, and revitalization and beautification of the Union Market District. Finally, the redevelopment of the Property will not displace any industrial uses. (Ex. 1, 12.)

44. The Project will advance the following policies of the Transportation Element of the Plan:

a. **Policy T-1.1.4: Transit-Oriented Development** – Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points;

b. **Policy T-1.2.3: Discouraging Auto-Oriented Uses** – Discourage certain uses, like "drive-through" businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas;

c. **Policy T-2.4.1: Pedestrian Network** – Develop, maintain, and improve pedestrian facilities. Improve the city's sidewalk system to form a network that links residents across the city;

d. **Policy T-2.4.B: Sidewalks** – Install sidewalks on streets throughout the District to improve pedestrian safety, access and connectivity. Continue to monitor the sidewalk network for needed improvements. Consult with ANCs and community organizations as plans for sidewalk construction are developed. All sidewalks shall be constructed in conformance with the American with Disabilities Act Accessibility Guidelines; and

e. **Policy T-2.4.C: Innovative Technologies for Pedestrian Movement** – Explore the use of innovative technology to improve pedestrian movement, such as personal transportation systems and enhanced sidewalk materials.

The Project will advance transit-oriented development since it will contribute multiple new housing units in a central part of the city close to the NOMA-Gallaudet Metrorail station. The Property's central location and proximity to transit and bicycle facilities make it a prime location for additional density. In addition, the Project will incorporate many features, embodied in its transportation demand management plan, to discourage automobile use. Further, the construction of new sidewalks and other public space improvements around the Property will promote better pedestrian accessibility in the Union Market District. The Project will provide a significantly enhanced streetscape that includes landscape planters and pedestrian amenities. (Ex. 1, 12.)

45. The Project will advance the following policies of the Economic Development Element:

a. **Policy ED-2.2.3: Neighborhood Shopping –** Create additional shopping opportunities in Washington's neighborhood commercial districts to better meet

the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences; and

b. **Policy ED-2.2.5: Business Mix** – Reinforce existing and encourage new retail districts by attracting a mix of nationally-recognized chains as well as locally-based chains and smaller specialty stores to the city's shopping districts.

The Project will be an infill development on a vacant and underutilized site. The Project will include ground-floor retail which will help the Union Market District area to better meet the demand for basic goods and services and reinforce the emerging retail district. (Ex. 12.)

46. The Project will advance the following policies of the Housing Element of the Plan:

a. **Policy H-1.1: Expanding Housing Supply** – Expanding the housing supply is a key part of the District's vision to create successful neighborhoods;

b. **Policy H-1.1.1: Private Sector Support** – Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;

c. **Policy H-1.1.4: Mixed Use Development** – Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed-use corridors, and around appropriate Metrorail stations;

d. **Policy H-1.1.3: Balanced Growth** – Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing; and

e. **Policy H-1.2.1: Affordable Housing Production as a Civic Priority** – Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.

The Project will expand the District's high-quality housing supply in a neighborhood well-suited to accommodate significantly more housing. The Project will similarly implement the policy of mixed-use development and will support the retail uses in the Union Market District. The Project will add 132-138 residential units in a mixed-use neighborhood consistent with these policies, and it will comply with Inclusionary Zoning requirements. (Ex. 1, 12.)

47. The Urban Design Element of the Plan includes the following policies that the Project will advance:

    a. **Policy UD-2.2.1: Neighborhood Character and Identity** – Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;

    b. **Policy UD-2.2.3: Neighborhood Centers** – Undertake strategic and coordinated efforts to create neighborhood centers, civic buildings, and shopping places that reinforce community identity;

    c. **Policy UD-2.2.5: Creating Attractive Façades** – Create visual interest through well-designed building façades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;

    d. **Policy UD-3.1.1: Improving Streetscape Design** – Improve the appearance and identity of the District's streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street "furniture," and adjacent building façades; and

    e. **Policy UD-3.1.7: Improving the Street Environment** – Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless façades and gaps in the street wall.

    The Project will implement policies to strengthen the Union Market District character and identity through exemplary architecture and public space improvements. The Project will enhance the appearance of a key site in the Union Market area and will be a prominent piece of its future character that will help foster additional development. The streetscape will be improved significantly from its current state to accommodate multimodal activities, while providing amenities for pedestrians that include street furniture. (Ex. 1, 12.)

48. The Project will implement the following policies of the Upper Northeast Area Element:

    a. **Policy UNE-1.1.6: Neighborhood Shopping** – Improve neighborhood shopping areas throughout Upper Northeast. Continue to enhance 12th Street, N.E. in Brookland as a walkable neighborhood shopping street and encourage similar pedestrian-oriented retail development along Rhode Island Avenue, Bladensburg Road, South Dakota Avenue, West Virginia Avenue, Florida Avenue, and Benning Road. New pedestrian-oriented retail activity also should be encouraged around the area's Metro stations;

b. **Policy UNE-1.1.9: Production, Distribution, and Repair Uses** – Retain the existing concentration of production, distribution, and repair (PDR) uses in Upper Northeast, but encourage the upgrading of these uses through higher design standards, landscaping, and improved screening and buffering. Emphasize new uses, including retail and office space, that create jobs for Upper Northeast area residents, and that minimize off-site impacts on the surrounding residential areas;

c. **Policy UNE-1.2.1: Streetscape Improvements** – Improve the visual quality of streets in Upper Northeast, especially along North Capitol Street, Rhode Island Avenue, Bladensburg Road, Eastern Avenue, Michigan Avenue, Maryland Avenue, Florida Avenue, and Benning Road. Landscaping, street tree planting, street lighting, and other improvements should make these streets more attractive community gateways;

d. **Policy UNE-2.1.2: Capital City Market** – Redevelop the Capital City Market into a regional destination that may include residential, dining, entertainment, office, hotel, and wholesale food uses. The wholesale market and the adjacent DC Farmers Market are important but undervalued amenities that should be preserved, upgraded, and more effectively marketed;

e. **Action UNE-2.1.B Capital City Market** – Develop and implement plans for the revitalization and development of the Capital City Market into a mixed use residential and commercial destination. Redevelopment plans for the site shall be achieved through a collaborative process that involves the landowners and tenants, the project developers, the District government, and the community; and

f. **Policy UNE-2.1.4: Northeast Gateway Urban Design Improvements** – Improve the image and appearance of the Northeast Gateway area by creating landscaped gateways into the community, creating new parks and open spaces, upgrading key streets as specified in the Northeast Gateway Revitalization Strategy, and improving conditions for pedestrians along Florida Avenue and other neighborhood streets.

The Project will create a mixed-use building with new housing and retail in a high-quality design. In particular, the Project will support the policy of redeveloping the Union Market District with new uses, including retail and housing. The Project's design will complement the industrial character of the area and will contribute new retail options. The Project will further these policies and contribute to the area's transformation into a regional destination that will include housing and commerce.

49. The Project will be in accordance with the Florida Avenue Market Small Area Plan ("SAP"). The SAP envisions 4th Street as the commercial center of the Market, with wide streets to accommodate high volumes of traffic and wide sidewalks for ample pedestrian circulation. The Project's density and contemporary architecture with multiple streetscape improvements will promote polices for high density, design compatibility, and an active

public realm. Significantly, the Project will demonstrate further compliance with the SAP with the extension of Neal Place, an important piece of the grid network. The Project will create a mix of uses that will be street-activating and likely will be food-related, consistent with the current market. (Ex. 1, 12, 24.)

50. The Project will advance numerous goals and policies of the Ward 5 Works Industrial Land Transformation Study ("Study"). For the first-stage PUD in Z.C. Order No. 14-07, the Commission found that the Project will be consistent with and advance the goals of the Study. Further, Ward 5 Councilmember McDuffie, who commissioned the Study, submitted a letter to the record in Z.C. Case No. 14-07 stating that the Project will advance the goals and recommendations of the Study. More specifically, the Project will promote and advance the Study's goals by creating "great spaces" within Ward 5; by providing community amenities that will improve the quality of life in the area and support local businesses and residents; by helping the former Florida Avenue Market become a creative hub; by providing retail outlets within an industrial area; and by providing green development in a previous industrial area. (Ex. 1, 31.)

<u>Agency and ANC Reports</u>

51. By report dated July 17, 2017 and by testimony at the public hearing, OP recommended approval of the second-stage PUD, with a recommendation that additional information regarding FAR calculations for the individual buildings and the entire record lot with and without the area of Neal Place, information about the Project's parking in the context of Union Market District, and information about the Project's consistency with the partial PDR FLUM designation and Ward 5 Works Industrial Land Use Study be provided. The Applicant provided information regarding the FAR calculation at the public hearing, and it provide more information about the parking for the Project and the Union Market District. OP also requested additional information and/or confirmation on various topics to which the Applicant responded at either the public hearing or in its post-hearing submission. OP further acknowledged the relief and flexibility that the Application requested. OP concluded that the second-stage PUD is consistent with the first-stage approval and that it is not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Land Use, Economic Development, Transportation, Urban Design, Housing, and Upper Northeast Area elements. Also, OP concluded that the Project is consistent with the Florida Avenue Market Small Area Plan. OP evaluated the PUD under the standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project satisfies the standards. OP acknowledged that the benefits and amenities for the Project were accepted by the Commission as part of the First-Stage approval. OP also concluded that the Project will offer benefits and amenities with respect to urban design, site planning, effective and safe vehicular and pedestrian access, employment and training opportunities, housing and affordable housing, and environmental sustainability. (Ex. 24; 7/27/17 Tr. at 35-36.)

52. OP requested comments on the Application from District Department of Housing and Community Development ("DHCD"); District Department of Energy and Environment ("DOEE"); DC Fire and Emergency Management Services ("FEMS"); DC Water; and

District Department of Public Works. OP held an interagency meeting on March 9, 2017, at which DDOT, DHCD, OSSE, and DC Water provided comment. Written comments were received from DOEE and incorporated into OP's report. (Ex. 24.)

53. As noted in Finding of Fact No. 15, OP filed a supplemental report dated August 24, 2017 that responded to the Applicant's post-hearing submission. Based upon the analysis provided OP stated that it did "not find the Applicant's filing fully responsive to the Commission's concern." OP recommended that the Applicant provide the additional information requested by the Commission on the following issues: (1) sign design guidelines; (2) whether the Applicant can provide deeper level of affordability or greater amount of units for its affordable housing proffer; (3) a commitment to including solar panels; (4) the Union Market area parking need that would be served by the South Building, whether North Building's parking would be only for residents, and how excess parking spaces in the North Building would be used; (5) parking data for the entire Florida Avenue Market area; and (6) how the Project would advance the partial PDR designation on the FLUM. (Ex. 32.)

54. On September 5, 2017, the Applicant filed a response to OP's supplemental report that is fully described in Finding of Fact No. 15. (Ex. 36.)

55. The Commission finds that the Applicant's response, which is described in Finding of Fact No. 17, sufficiently addressed all of OP's comments and concerns raised in OP's Supplemental Report dated August 24, 2017.

56. At a regularly-scheduled and duly-noted public meeting on December 13, 2016, with a quorum present, ANC 5D voted to support the Application, but stated no issues or concerns with. (Ex. 11.)

Written Opposition

57. The Commission received one letter in opposition to the Application from Chris Otten. (Ex. 27.) The Applicant responded to the issues raised its August 10, 2017 post hearing submission, and the Commission's determination of these issues is stated in Finding of Fact Nos 59-68 below.

Contested Issues

58. Parking. The Commission and OP requested additional information about the parking for the Project and its context in the Union Market District:

    a. For the South Building, the Commission approved a range of 400–550 parking spaces, and the parking garage for the South Building contains 405 parking spaces, which is consistent. Half of the parking will be for the residential use. The remainder of the parking will accommodate parking demand for the retail within both the South Building and the North Building as well as meet other public parking demand within the Union Market Area. This includes accommodating the parking needs for existing and future uses in the historic spine

of the Market between 4th and 5th Streets, N.E. as well as offsetting the reduction of existing on-street parking due to street reconfigurations. This parking garage is under construction pursuant to the approved PUD for the South Building;

b. For the North Building, the Commission approved a range of 80-200 parking spaces for the building in the first-stage PUD. As described above, the North Building will contain approximately 115-135 parking spaces, which is consistent with the first-stage approval. The Applicant explained that the North Building parking is intended for residents only. The North Building's residential component may be for-sale condominium units, and as such, market demand associated with parking for condominium units dictated this parking ratio;

c. The overall parking ratio for the residential component of the South Building is approximately 0.47 spaces per unit, which is appropriate given the rental apartments. The North Building will have a higher parking ratio, which is appropriate given the potential for condominium units. The overall residential parking ratio for the combined North and South Buildings will be 0.57 spaces per unit. This ratio is commensurate with or below estimated parking use ratios for similar large residential buildings throughout the District of Columbia; and

d. Accordingly, the Commission finds that the amount and type of parking provided in the Project is appropriate and consistent with the Commission's prior approval in the first-stage PUD as well as with market expectations. The Commission disagrees with OP that a further study of the amount of parking in the context of the Union Market as a whole is appropriate at this stage. The parking for the South Building is already under construction pursuant to an approved consolidated PUD, and the amount of parking in this second-stage PUD is consistent with what was approved in the first-stage PUD. The information provided by the Applicant sufficiently responded to the requests of OP and the Commission. (Ex. 31.)

59. Written Submission in Opposition. As noted, no person testified in opposition to the Application. However, a submission, self-characterized as an "expert report," was submitted by Mr. Christopher Otten for "the benefit of Union Market Neighbors (UMN)." Since Mr. Otten did not appear so as to be cross-examined by the Applicant, the correspondence, to the extent it purports to be accepted as expert opinion, could have been struck from the record.

60. To the extent that Mr. Otten claims that he is acting in a representation capacity, that UMN even exists, or that he is authorized to act on its behalf. The submission includes an email from one person who allegedly authorizes Otten to represent UMN. However, the email does not include an address, any information about the group of which they are allegedly a part, or any other identifying information to verify either their or UMN's identity and legitimacy. Accordingly, the Commission finds that Mr. Otten's letter is expressing his own individual thoughts and viewpoints. This of course would not discount the validity of those views.

61. Otten alleges that he is a "zoning and planning expert." However, only a party can proffer an expert, who must be qualified by that party, may be challenged by a party in opposition, must be accepted by the Commission, and made subject to cross-examination.

62. Even if Mr. Otten could self-qualify himself, he would not meet the accepted standard for qualification.

63. Although the Federal Rules of Evidence are not binding upon the Commission, the Advisory Committees notes to Rule 702, which governs the use of expert testimony states:

> The rule is broadly phrased. The fields of knowledge which may be drawn upon are not limited merely to the "scientific" and "technical" but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training or education." Thus within the scope of the rule are not only experts in the strictest sense of the word, e.g., physicians, physicists, and architects, but also the large group sometimes called "skilled" witnesses, such as bankers or landowners testifying to land values.

64. Rule 702 was just recently adopted by the DC Court of Appeals in *Motorola Inc. v. Murray*, 147 A.3d 757 (D.C. 2016), which noted that "the Advisory Committee Notes to Rule 702 provide helpful guidance for applying the rule." (147 A.3d at (D.C. 2016))

65. Applying these principles to Mr. Otten's credential, the Commission notes that he has no formal education, training, or degree in planning or a related field. Further, Mr. Otten has no professional experience in planning. Although Mr. Otten has frequently (and effectively) appeared before the Commission and served as ANC commissioner for one term, this experience does not alone demonstrate subject matter expertise. Accordingly, the Commission finds that Otten is not an expert in planning and zoning.

66. Nevertheless, opinion testimony is allowed in contested cases, and the only difference between lay and expert testimony is that the Commission must explain the basis for rejecting the latter. *Comm. for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1193 (D.C. 1982).

67. Turning to the substance of Mr. Otten's submission, the Commission concludes that it represents a collateral attack on the first-stage PUD, which was approved two years ago and is now final and unchallengeable:

    a. Mr. Otten alleges adverse impacts from the amount of parking. The number of parking spaces was reviewed and settled in the first-stage PUD, and the Project is consistent with that number. The first-stage PUD comprehensively addressed the traffic and parking impacts of the project, and both DDOT and the affected ANC supported the amount of parking. Moreover, as set forth in the Applicant's Comprehensive Transportation Review, and confirmed by DDOT, the amount of parking will not result in adverse impacts and will be mitigated by the Applicant's

transportation demand management plan. Accordingly, the Commission found as described above in Findings that the amount of parking provided in the Project will be appropriate to meet market demand for the anticipated use and will not have an adverse impact;

b. Mr. Otten alleges that the transition of the Project is not appropriate. However, the building's massing, height, density, and relationship to the surrounding context were thoroughly reviewed and approved in the first-stage PUD as appropriate. Since the massing, height, and density of the second-stage PUD are consistent with the first-stage PUD, the Commission finds that the issue is settled and not relevant in this proceeding;

c. Mr. Otten alleges that the Project is inconsistent with the FLUM. However, the rezoning of the project site to C-3-C and the use mix of the Project were properly reviewed and approved in the first-stage PUD. The Commission concluded that the project, including its rezoning, was not inconsistent with the FLUM and the Comprehensive Plan. This conclusion was supported by OP. Since the Second-Stage PUD will maintain the already approved first-stage rezoning to C-3-C and will have a use mix consistent with the first-stage PUD, the issue is settled and not relevant in this proceeding. In addition, in this case, as described above in Findings of Fact Nos. 40-50, the Commission finds that the Project is not inconsistent with the Comprehensive Plan, including the partial PDR FLUM designation for the Property; and (Ex. 31)

d. Mr. Otten alleges that the Project's IZ and affordable housing is unacceptable. However, the Project's affordable housing proffer and distribution were reviewed and approved in the first-stage PUD. Also, as noted above, because the property was rezoned from C-M-1 to C-3-C, all of the IZ provided must be considered a public benefit. Also, the affordable housing in the Project will exceed the minimum required. The applicable IZ standard is eight percent of residential gross floor area at 80% AMI. The Comprehensive Plan policy that Mr. Otten cites (H-1.2.2) sets a District-wide production target for affordable housing, which is aspirational and not a requirement. This target includes District-financed all-affordable projects and other market-rate projects that will contribute eight to 10% of their units under IZ. Thus, this Project is not inconsistent with this or other housing provisions in the Comprehensive Plan. Moreover, all of the housing in this Project will be new housing that will not displace existing residents; rather, it will create a new supply of both market-rate and affordable housing with a variety of unit types (studios to two-bedrooms) that will satisfy many demands. Therefore, the issue is settled and not relevant in this proceeding; the Commission finds that the IZ and affordable housing in the Project is a public benefit under its regulations and must be accepted as such.

68. With respect to issues relevant to this second-stage PUD, Mr. Otten alleges that the Project's impacts on city services were not properly reviewed. as noted in the OP report in this case and described above in the Findings of Fact, multiple agencies, including OP,

DDOT, DHCD, OSSE, DC Water, and DOEE participated in the review of the Project. Since the height, density, use mix, and benefits and amenities in the second-stage PUD will be consistent with the first-stage PUD, the issue is settled and not relevant in this proceeding. Accordingly, the Commission finds that the impact of the Project on city services was adequately reviewed and will not be unacceptable, but will be capable of being mitigated.

69. Mr. Otten alleges that the requested flexibility from the rear yard requirement would have adverse effects on life and safety. However, for the reasons identified in Findings of Fact No. 35, the Commission finds that the rear yard flexibility will not have adverse impacts.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promise "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offer a commendable number of quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.)

2. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a building type with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, uses, and design of the proposed PUD are appropriate, and the proposed construction of a new mixed-use residential and retail building in a transit-oriented and redevelopment targeted location is compatible with the citywide and area plans of the District of Columbia. The Project will be consistent with the applicable height, bulk, use, and other development standards established by the first-stage PUD.

3. The Applicant has the burden of showing that the PUD standards are met. There are three principal standards that apply:

   § 2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project;

   § 2403.4 The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; and

§ 2403.5 In the context of the Comprehensive Plan, the Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instances overlap.

4. Finally, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." (11 DCMR § 2403.8.)

The Impact of the Project

5. Based on the Applicant's expert testimony, TDM, DDOT's reports and testimony, and the Findings of Fact, the Commission finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area will not be unacceptable and are capable of being mitigated through the measures proposed by the Applicant and DDOT and are acceptable given the quality of the public benefits of the PUD. The proposed rear yard, loading, and court width and area will not cause an adverse effect on nearby properties. The Commission finds that the Applicant will sufficiently mitigate potentially adverse traffic and loading impacts resulting from the Project so that traffic and other transportation-related conditions resulting from the Project will not be unacceptable.

6. The Commission finds that the Project will not result in unacceptable impacts on land density, compatibility of massing, affordable housing, community and emergency services, or health and safety.

Comprehensive Plan

7. The Commission concludes that approval of the PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. The Commission credits the testimony of the Applicant that the Project is not inconsistent with the Plan and promotes multiple policies and goals in the citywide and area elements of the Plan as well as goals in the Ward 5 Works Industrial Land Use Study. The Commission agrees with OP and the Applicant that the Project will advance many polices of the Plan and the Study as discussed above in the Findings of Fact. Specifically, and as found in the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the Property's designation on the FLUM, including the partial PDR designation, and with the Property's designation as a Multi-Neighborhood Center category on the GPM.

Evaluation of Public Benefits and Amenities

8. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and includes superior public benefits and project amenities relating to site planning, safe vehicular and pedestrian access, environmentally sustainable features, employment opportunities, and housing and affordable housing.

The Degree of Development Incentives Requested

9. The Applicant requested flexibility from rear yard, loading requirements, and court area and width. The flexibility requested is relatively modest, further the development of the project and the public benefits it features, and will cause no adverse impacts.

Judging, balancing, and reconciling

10. The Project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the architecture, site planning, efficient and safe vehicular and pedestrian access, environmental sustainability, employment and training opportunities, and housing and affordable housing all are significant public benefits. The impact of the Project will be acceptable given the quality of the public benefits of the Project. As noted, the PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

11. The Commission therefore judges that the PUD will promote orderly development of the Property in conformance with the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia and therefore grants the application.

12. With respect to the issues present in the submission made by Mr. Otten, the Commission finds that for the most part Mr. Otten is re-arguing issues settled as part of the first-stage PUD that cannot be revisited here, and to the extent he raised new issues, none have merit. (*See* Findings of Fact 67 through 69.)

Great Weight

13. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP's recommendations. In its final report, OP recommended approval with recommendations to which the Applicant sufficiently responded. Accordingly, the Commission concludes that approval of the Second-Stage PUD should be granted in accordance with OP's recommendation, except, for the reasons stated in Findings of Fact the Commission disagrees with the recommendation that the Applicant should conduct a further parking study relating to the greater Union Market District.

14. In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANC. As noted ANC 5D's report expressed no issues and concerns with the Project, and therefore there is nothing to which the Commission must give great weight. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for

a second-stage PUD for the Property. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. <u>Project Development</u>

1. The Project shall be developed in accordance with the architectural drawings submitted into the record on May 16, 2017 as Exhibits 14A1-14A4, as modified by the drawings submitted on July 7, 2017 as Exhibits 22B1-22B2, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Project shall include a mixed-use building containing approximately 12,000 square feet of gross floor area of retail use, 132-138 residential units comprising approximately 141,249 square feet of gross floor area, and a parking garage containing 115-135 parking spaces for residential parking, as shown on the Plans.

3. The Applicant shall have flexibility with the design of the Project in the following areas:

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

   b. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;

   c. To vary the final streetscape design and materials for improvements in the public space in response to direction received from District public space permitting authorities such as DDOT and the Public Space Committee;

   d. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim, louvers, or any other changes that are necessary to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that do not significantly alter the exterior design;

   e. To modify the exterior design as shown on the Plans;

   f. To include windows within the notches on the north and south elevations to accommodate final unit layout;

   g. To remove a canopy above the ground-floor retail space on the south elevation to accommodate final retail layout;

h. To vary the exterior design materials of the ground-floor retail space to accommodate the preferences of the individual retailer(s), subject to the guidelines included in the Plans, provided that the retailer does not modify the building footprint or reduce the quality of the materials used on the exterior of the ground floor;

i. To add solar panels; and

j. To either provide an inclusionary unit or pay into the affordable housing trust fund for the affordable housing requirement derived from the penthouse habitable space.

B. <u>Public Benefits</u>

1. The Commission approves a maximum residential gross floor area for the North Parcel Building of approximately 141,249 square feet. The North Parcel Building shall comply with the Inclusionary Zoning set-aside requirement presently stated at 11 DCMR § 2603 (that is, eight percent of the residential gross floor area of the North Parcel Building), less 2,260 square feet, which represents the "North Parcel Building's 50% AMI Component" that is being accounted for in the South Parcel Building. The actual affordable housing requirement associated with the North Parcel Building shall be determined and calculated based on the residential gross floor area for the North Parcel Building as approved in the second-stage PUD. (Condition C(18)(a) in Order No. 14-07).

2. **<u>Prior to issuance of a Certificate of Occupancy ("C of O")</u>**, the Applicant shall provide the Zoning Administrator with evidence that the Project has been designed to a minimum of Gold certification under the LEED NC-2009 rating system. Within 12 months after the issuance of the C of O for the building, the Applicant shall provide evidence to the Zoning Administrator that it has secured such Gold certification.

3. **<u>Prior to the issuance of a Certificate of Occupancy</u>**, the Applicant shall provide evidence to the Zoning Administrator that it has designed the building to a minimum GAR of 0.22.

4. **<u>Prior to the issuance of a Certificate of Occupancy</u>**, the Applicant shall provide evidence to the Zoning Administrator that it has installed solar panels on the building that will provide at least one percent of the building's energy;

5. **<u>Prior to issuance of a Certificate of Occupancy</u>**, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES") in the form submitted into the record for Case No. 14-07 to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project.

6. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and DOES agree to develop skills or on-the-job training programs, the Applicant shall provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

C. Mitigation

1. **The Project shall provide a minimum of 61-66 long-term bicycle parking spaces for residents of the building for the life of the project** and in accordance with the plans in Exhibit 22B1 in the record.

2. **For the life of the Project, the Applicant shall provide the following transportation demand management ("TDM") measures**:

   a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;

   b. Provide information and website links to commuterconnections.com, goDCgo.com, and other transportation services on developer and property management websites;

   c. Provide a transportation information screen within the residential lobby;

   d. The Applicant will unbundle parking costs from a unit's purchase price or monthly rental payment;

   e. All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25 mile radius from the site, and unbundled from the costs of leasing or purchasing apartments;

   f. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials. Depending on availability at the time, the materials will include transportation information such as brochures (e.g., timetables and guides) and maps of the surrounding area with transportation features and amenities highlighted;

   g. The Applicant will offer a one-year carsharing or Capital Bikeshare membership to each new resident (first time sale or lease of a unit) until a cap of $20,000 is spent on the program; and

   h. The Applicant will provide 11 short-term bicycle parking spaces for building visitors in the public space adjacent to the project site at a final location to be determined with DDOT consultation and approval.

D. Miscellaneous

1. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction must commence no later than three years after the effective date of this Order.

2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On September 11, 2017, upon the motion of Commissioner Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Commissioner Shapiro, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 22, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-33A
Z.C. CASE NO. 15-33A
E Street Owner, LLC
(Modification of Consequence to a Consolidated PUD and
Related Zoning Map Amendment @ Square 1043, Lots 128, 156, 157, 818, and 819)
July 10, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission" or "Z.C.") was held on July 10, 2017. At that meeting, the Commission approved the application of E Street-Owner, LLC[1] ("Applicant") for a modification of consequence of the consolidated planned unit development ("PUD") and related Zoning Map amendment application approved by Z.C. Order No. 15-33 for Square 1043, Lots 128, 156, 157, 818, and 819 (collectively, the "Property").[2] The modification request was made pursuant to Subtitle Z, Chapter 7 of Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

Background

1. Pursuant to Z.C. Order No. 15-33, dated September 12, 2016, and effective as of November 18, 2016, the Commission approved a PUD and related Zoning Map amendment for the development of the Property with a four-story apartment house. The approved PUD included approximately 123,549 square feet of gross floor area and approximately 153 units ("Project").

2. The maximum height of the approved building was 46 feet, three inches to the highest point of the roof and 50 feet, three inches to the top of the parapet. The Project included a habitable penthouse, with a height of 13 feet to the top of the parapet, and an elevator override, with a maximum height of 15 feet. The Project also included approximately 90 parking spaces. A change in zoning was granted from the C-M-1 Zone District to the R-5-B Zone District.

3. The parties in Z.C. Case No. 15-33 were the Applicant and Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the Property is located.

Modification Request

4. By letter dated June 2, 2017, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to revise minor elements of the design of the Project that generally resulted from the advancement of design

[1] The applicant in the original PUD application was Insight E Street, LLC. The Property is currently owned by E Street Owner, LLC.

[2] The Property is pending subdivision into a single record lot.

development drawings to construction drawings, all as shown on the comparative architectural plans and elevations ("Plans"). (Exhibit ["Ex."] 3B1-3B5.) The modifications fall into four categories: (i) maximum building height; (ii) penthouse and roof design; (iii) open spaces; and (iv) general façade design.

5. The Applicant provided a Certificate of Service, which noted that the Applicant served ANC 6B with the modification request at the same time that the request was filed with the Office of Zoning. (Ex. 3.) The ANC was the only other party in the original application.

6. Maximum Building Height: The Applicant requested approval to increase the maximum building height from 46 feet, three inches to the highest point of the roof to 47 feet, 11 inches to the highest point of the roof, which is an increase of one foot, eight inches and is a direct result of slight changes in the floor to floor heights within the building. The Applicant also requested to reduce the maximum height of the parapet of the building from 50 feet, three inches to 49 feet, 11 inches, which decreases the maximum height of the overall building to the top of the parapet by four inches. The overall height is still below the maximum permitted building height of 60 feet in the R-5-B Zone District.

7. Penthouse and Roof Design: The Applicant requested approval for a variety of modifications to the penthouse and roof design. While the relative heights of the penthouse will be the same, the top elevation of the penthouse will be increased based on the change in overall height of the roof:

   a. The Applicant requested approval to separate the elevator cores within the building, with one in the front of the building and one in the rear of the building, in order to provide more efficient and equally distributed access to the building units and facilitate loading activities for the building. Each elevator override will have a maximum height of 15 feet as previously approved and will be setback 1:1 in accordance with the Zoning Regulations;

   b. The Applicant requested approval to shift the stair tower on the west side of the roof to the west and reduce its height to nine feet as a result of the design of the new elevator cores. The stair tower will be setback more than the 1:1 setback requirement of the Zoning Regulations;

   c. The Applicant requested approval to make minor revisions to the design of the roof. In the approved PUD, the guardrail was designed to be incorporated into the parapet. With the revisions to the roof terrace, the guard rail will be separated from the parapet, and the proposed guardrail will have a height of three feet, six inches and will be setback 1:1 in accordance with the Zoning Regulations; and

d. The Applicant requested approval to incorporate a trellis feature on the northern portion of the roof. The trellis will have a height of 10 feet and will be setback 1:1 in accordance with the Zoning Regulations.

8. Open Spaces: The Applicant requested approval to make the following modifications to the open spaces in the Project:

a. Enlarge the rear yard from four inches to seven inches. The change is a result of the decreased depth of the balconies on the south façade of the building fronting the alley;

b. Enlarge the open court on the east side of the building from 4,180 square feet to 4,237 square feet. This change is a result of the decrease in the size of the areaways at the cellar level to increase green space and the revised configuration of the existing townhome on Lot 156; and

c. Reduce the size of the central closed court from 5,140 square feet to 4,935 square feet, which is still greater than the minimum area required by Zoning Regulations. The reduced size is a result of the Applicant adding four additional balconies in the central courtyard at the second, third, and fourth floors.

9. General Façade Design: The Applicant requested approval to make modifications to the general façade design, including the following:

a. Modify the window locations on all four façades of the building in accordance with the revised unit configuration and count;

b. Remove individual door canopies on the north façade as a result of the change in location of the unit entryways;

c. Replace the walk-out areaways at the cellar level with window wells along E Street;

d. Enclose the first floor balcony on the west façade along the alley to enclose the western corridor and to provide better circulation on the first floor;

e. Provide 12 balconies along the south façade instead of 15 balconies to better match unit layouts and modify their locations accordingly; and

f. Add four balconies on the interior courtyard on floors two through four as a result of the reduction in exterior balconies.

10. ANC 6B submitted a written report to the record in response to the Applicant's request, which states that at its regularly scheduled, properly noticed meeting on June 13, 2017, with a quorum present, ANC 6B voted 8-0-0 in support of the Applicant's

request to modify the building design. (Ex. 7.) The ANC expressed no issues or concerns.

11. The Office of Planning ("OP") submitted a report on June 17, 2017. (Ex. 6.) The OP report stated that "OP is not opposed to the proposed refinements to the building design. OP notes that the revised plans reflect changes to the residential entry and window glazing patterns that were not identified in the Applicant's request."

12. At its June 26, 2017, public meeting, the Commission determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1.

13. Since the ANC had already submitted a report and there were no other parties to the original application, the Commission did not establish a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request pursuant to 11-Z DCMR § 703.17(c)(2). Instead, the Commission scheduled its deliberations for its July 10th public meeting and encouraged the Applicant to respond to the comments made in the OP report concerning the items not described in the application, but depicted in the revised plans.

14. On June 29, 2017, the Applicant submitted a letter describing the two modifications not fully described in the narrative portion of its application. These modifications fall into the general façade design category above. (Ex. 8.) The Applicant identified: (i) the refined window glazing pattern to single-hung windows in order to meet the energy efficiency goals for LEED-Gold certification and for operational purposes; and (ii) the refined residential entry to promote direct entry into the building and related changes to the amenity space and entry canopy. Both refinements were shown in the Plans that were presented to ANC 6B at its June 13, 2017 public meeting.

15. The Commission finds that none of the changes impact the use, proffered public benefits and amenities, or required covenants and the changes do not create any additional relief or flexibility from the Zoning Regulations not previously approved.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) "Examples of modification of consequence include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)

2. The Commission concludes that the modifications depicted in the Plans included in the record in this case, and as described in the above Findings of Fact, are modifications of consequence, and therefore can be granted without a public hearing.

3. The Commission concludes that the proposed modifications are entirely consistent with the Z.C. Order No. 15-33 for development of the Property. The Applicant is only proposing the redesign and relocation of architectural elements of the building that do not diminish or detract from the Commission's original approval.

4. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the issues and concerns contained in the affected ANC's written recommendation. In this case, ANC 6B voted unanimously to support the modification of consequence and recommended that the Commission approve the request. (Ex. 6.) The ANC did not note any issues and concerns in its written recommendation. Because the ANC expressed no issues and concerns, there is nothing for the Commission to give great weight to.

5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP's recommendations. The Commission has carefully considered the OP's recommendation in support of the request and agrees that approval of the requested modification of consequence should be granted.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD and related Zoning Map amendment application approved in Z.C. Case No. 15-33. The conditions in Z.C. Order No. 15-33 remain unchanged except the following condition replaces Condition No. A.1 of Z.C. Order No. 15-33:

1. The PUD shall be developed in accordance with the plans titled "Bowie Redevelopment Site", prepared by SK&I Architectural Design Group, LLC dated April 8, 2016, and marked as Exhibits 16A1-16A9 of the record, and as modified by the plans included with the Applicant's Post-Hearing Submission dated July 14, 2016, and marked as Exhibit 39B of the record, and as further modified by the plans included in the Applicant's Modification of Consequence application, dated June 1, 2017, marked as Exhibit 3B1-3B5 of the record in Z.C. Case No. 15-33A (collectively, the "PUD Plans").

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status,

personal appearance, sexual orientation, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

At its public meeting on July 10, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the D.C. Register; that is, on December 22, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-20
Z.C. Case No. 16-20
3443 Benning, LLC
(Consolidated Planned Unit Development & Related Map Amendment @ Square 5017)
September 25, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing ("Public Hearing") on May 4, 2017 to consider an application ("Application") from 3443 Benning, LLC ("Applicant") for review and approval of a consolidated planned unit development and related Zoning Map amendment ("Map Amendment") from the R-3 zone to the MU-5-A zone (collectively, a "PUD"). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations"), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Zoning Commission hereby approves the Application.

FINDINGS OF FACT

I. Procedural Summary

1. The property that is the subject of this PUD includes Lots 839, 840, 841, and 842, and a portion of the public alley[1] abutting Lots 839 and 840 in Square 5017 (collectively, the "Property"), which is located in Ward 7. (Exhibit ["Ex."] 2 at 1.) The Property is located mid-block on the 3400 block of Eads Street, N.E., less than one block south of Benning Road, N.E. The Property is owned by the Applicant and is in the River Terrace neighborhood of Northeast DC. The Property is contiguous and consists of approximately 17,863 square feet, or approximately 0.41 acres. (*Id.*) The Applicant proposes to redevelop the Property with a multi-family residential building containing 70 affordable age-restricted senior housing units and to provide certain other public benefits associated therewith (collectively, the "Project"). (*Id.*)

2. On May 24, 2016, the Applicant delivered a revised notice of its intent ("NOI") to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission ("ANC") 7D pursuant to § 300.7 of Subtitle Z of the Zoning Regulations.[2] (Ex. 2C.) The Applicant filed the Application materials ("Initial Statement") on September 13,

[1] Concurrent with this Application, the Applicant is pursuing the closure of the public alley between Lots 839 and 840.

[2] The Applicant initially mailed the NOI prior to the September 6, 2016 effective date of the Zoning Regulations. Subsequently, the Applicant sent out a revised NOI to clarify that the Application would proceed under the 2016 Zoning Regulations. (Ex. 2C at 2.)

2016, and the Application was accepted as complete by the Office of Zoning ("OZ") by letter dated September 15, 2016. (Ex. 1-2J6, 4.) The Applicant certified the Application satisfied the PUD filing requirements. (Ex. 2D.) OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning ("OP"), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 5-9.)

3. On November 4, 2016, OP delivered a report ("OP Setdown Report") on the Application, recommending that the Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 10.)

4. At a public meeting on November 14, 2016 ("Setdown"), OP presented the OP Setdown Report. (November 14, 2016 Transcript ["Tr. 1"] at 46-53.) The Commission then requested additional information from the Applicant. (*Id.*) (*See* Finding of Fact ("FF") ¶ 40.)

5. On March 2, 2017, the Applicant filed its pre-hearing statement ("PHS"), which included updated plans and information in response to the requests from OP and the Commission, and paid the requisite hearing fee. (Ex. 12-12E2, 13.) On March 17, 2017, the Applicant filed a comprehensive transportation review for the Project ("CTR"). (Ex. 16-17.)

6. Notice of the Public Hearing for Z.C. Case No. 16-20 was published in the *D.C. Register* on March 17, 2017, and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 14-15; 64 DCR 66531; Ex. 18.) On March 23, 2017, the Applicant posted notice of the Public Hearing at the Property. (Ex. 19.) On April 27, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 27.)

7. Pursuant to the Zoning Regulations, 11-X DCMR ("X") § 405.3,[3] OP requested comments on the Project from the District Department of Energy and the Environment ("DOEE"), the District Department of Transportation ("DDOT"), DC Water, and the Department of Housing and Community Development ("DHCD"). (Ex. 10 at 11.)

8. A discussion of all reports received is contained in the portion of this Order entitled "Agency Reports."

9. On April 14, 2017, the Applicant filed a supplemental statement ("20-Day Statement") providing additional information requested from OP and the Commission and providing updated architectural plans, drawings, and renderings. (Ex. 23, 23A1-23A2.)

[3] This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

10. The ANC is automatically a party to this proceeding. (11-Z DCMR ("Z") § 403.5(b).) The ANC filed three reports, which expressed issues and concerns with the Project and apprised the Commission of its efforts to resolve its disagreements with the Applicant. Those reports will be discussed elsewhere in this Order.

11. On May 4, 2017, the Commission conducted the Public Hearing in accordance with Z of the Zoning Regulations. (May 4, 2017 Transcript ["Tr. 2"] at 3-5.)

12. As a preliminary matter prior to the Applicant's testimony, the Commission accepted Mr. Mel Thompson and Mr. James Watson, the Applicant's witnesses, as experts in, respectively, architecture and transportation engineering. (*Id*. at 5-6.)

13. At the Public Hearing, the Applicant provided testimony from Michael Giulioni, as a representative of the Applicant, Mr. Thompson, and Mr. Watson. (*Id*. at 7-41.) Ms. Melody Crowder, a representative of the Applicant's property management company, was available as a witness on behalf of the Applicant and answered questions from the Commission and the ANC. The ANC cross-examined the Applicant's testimony. *(Id.* at 90-105.)

14. OP presented its report at the Public Hearing. (*Id*. at 106-107.) DDOT presented its report as well. (*Id.* at 107-108.) The ANC cross-examined DDOT. (*Id*. at 117-118.) No other cross-examination of the agencies was undertaken at the Public Hearing. (*Id*.)

15. At the Public Hearing, the ANC presented its resolution in opposition to the Application. (*Id.* at 118-34.) There was no cross-examination of the ANC. *(Id*. at 134.)

16. No persons or organizations spoke in support of the Application at the Public Hearing. (*Id*. at 143.) Eight persons spoke in opposition to the Application at the Public Hearing (*Id*. 45-167.); and others entered written testimony (collectively, the "Opponents"). (*See* FF ¶¶ 75-87.) No cross-examination was taken of Opponents. (*Id.* at 167.)

17. At the conclusion of the Public Hearing, the Commission closed the record except with respect to those items of information requested. (*Id*. at 189.)

18. On June 19, 2017, the Applicant filed a written post-hearing submission in response to items requested by this Commission ("Post-Hearing Submission") and a consolidated set of plans and drawings reflecting the final revisions to the Project resulting from discussions at the Public Hearing as described in the Post-Hearing Submission ("Final Plans"). (Ex. 80G1-80G4.)

19. On July 10, 2017, the Commission took proposed action on the Application. (July 10, 2017 Transcript ["Tr. 3"] at 50-51.)

20. The proposed action of this Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to Z § 603.1 on July 11, 2017. (Ex. 85.) Through a letter dated September 8, 2017, the NCPC Executive Director informed the Commission that by delegated action taken on August 31. 2017, he found the PUD not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 88.)

21. On September 25, 2017, this Commission took final action to approve the Application.

II. Summary of the Property and the Project

22. The Application seeks this Commission's review and approval for the Project under the standards for a consolidated PUD and related map amendment with respect to the development of the Project on the Property. (Ex. 2A1, 2A2.) The map amendment would change the zoning for the Property from the current R-3 zone to the MU-5A zone.[4] (*Id.*)

Overview of the Property and Surrounding Area

23. The Property is located in Ward 7 in the Northeast quadrant of the District of Columbia, midblock at the 3400 block of Eads Street, N.E. (Ex. 2.) To the north of the Property are vacant and commercial lots fronting on the eight-lane Benning Road, N.E. (*Id.*) To the east of the Property is a partially overgrown vacant lot owned by the District, and to the south and west of the Property are two-story single-family attached dwellings fronting on Eads Street, N.E. (*Id.*) A pair of 20-foot-wide public alleys separates the Property from lots to the north fronting on Benning Road, N.E. and from the adjacent attached dwellings to the west along Eads Street, N.E. (*Id.*)

24. The Property is located near the northeastern boundary of the River Terrace neighborhood and the western edge of the Benning neighborhood. (*Id.*) The Property is within Single Member District ("SMD") 7D04 of ANC 7D in Ward 7. (*Id.*) The immediately surrounding River Terrace neighborhood generally consists of single-family attached dwellings, but a number of multi-family dwelling unit residential buildings line the periphery of the neighborhood along Kenilworth Ave., N.E. Anchor institutions in the immediate neighborhood include the recently renovated River Terrace Educational Campus, which is part of the DC Public School system, and the Varick Memorial AME Zion Church. Commercial uses predominate along Benning Road, N.E. to the northeast and northwest of the Property, and the heart of the Benning Road corridor to the east contains the East River Park Shopping Center with a public library, a grocery store, and pharmacy as well as other shops and restaurants along Minnesota Avenue, N.E. (Id.) Approximately 500 feet from the Property, on the north side of Benning Road,

[4] The Applicant originally requested a Zoning Map amendment to the MU-7 zone. Following the Public Hearing, and in response to the ANC, the Applicant changed the Zoning Map amendment request to the MU-5A zone.

N.E., is Pepco's 77-acre Benning Service Center. The Benning Service Center is the site of the former Benning Power Plant, which was closed in 2012. Pepco continues to maintain a presence at this location. With the closure of the Plant, there are likely to be significant economic development opportunities on this site near the Property in the future. (*Id.*)

25. The Property has excellent transit and vehicular access. The Property is slightly greater than a half-mile walk to the Minnesota Avenue Metrorail station, which is served by WMATA's Orange Line. The Property is also served by four WMATA Bus lines (X1, X2, X3, and X9). Additional bus stops along Minnesota Avenue, N.E. are served by multiple WMATA bus lines and are within one-half mile of the Property. Benning Road, N.E. is approximately one-half block from the Property, and the Anacostia Freeway has ramps approximately one-quarter mile from the Property. Benning Road, N.E. is the designated corridor for the anticipated eastward extension of the DC Streetcar One City Line, and the Project would be only a few steps from the streetcar track and nearest proposed stop.

26. The Property consists of approximately 17,863 square feet of land and is roughly rectangular in shape. A fenced, vacant parking lot and a portion of a public alley to be closed in coordination with this Application comprise the existing uses of the Property. There are no structures on the Property other than a temporary storage shed. The Property is generally flat with only a slight variation in topography. The Property slopes down from the eastern to the western side of the site. The Property is not within any historic district.

27. The Property is located near both passive and active recreation opportunities and has great access to the District's trail system. The Riverwalk Trail connects to the Kenilworth Aquatic Gardens to the north and to a planned extensive trail system along both sides of the Anacostia River. Approximately 15 miles of the planned 28-mile trail system are open to pedestrians and cyclists today.

28. New development in the neighborhoods around the Property has generally been incremental in recent years, and there have not been any PUDs approved for nearby blocks.

29. The existing townhouses fronting on Eads Street, N.E. to the west and south are subject to a building restriction line requiring a setback of 15 feet from the right of way. Such building restriction line does not apply to the Property.

The Project

30. Overview. The Project includes a new building ("Building") containing 70 affordable residential multi-family dwelling units, exterior landscaping and greenery, 17 enclosed vehicle parking spaces, bicycle parking, and associated loading, amenity, and service space. The Building has exclusively residential uses apart from supporting amenity and service space (including a management office),

and all of the residential units are to be affordable to seniors (i.e., those aged 55 and over) earning 50% or less of the area median income ("AMI").

31. At ground level, the five-story portion of the Building includes a lobby with the management office serving the Building as well as a community room ("Community Room") to be shared as amenity space for Project residents and with local community organizations. The western portion of the Building contains units facing the street with separate entries. All of the Project's units have interior entrances from a double-loaded corridor running the length of the Building that is served by a single bank of elevators.

32. Site Plan and Dimensions.

(a) The Building has a total gross floor area of approximately 68,058 square feet of gross floor area ("GFA"), resulting in an overall density of 3.81 floor area ratio ("FAR"), all of which is devoted to residential uses. For comparison, the MU-5A zone permits a maximum FAR of 5.04 under the PUD process for a project that complies with the Inclusionary Zoning ("IZ") requirements of the Zoning Regulations. The Building occupies 80% of the Property, which percentage is the maximum lot occupancy in the MU-5A zone. The Project has a Green Area Ratio ("GAR") of 0.35, which is in excess of the MU-5A zone's minimum GAR requirements of 0.3;

(b) At the western edge of the Property, across the 20-foot alley from the existing two-story attached dwellings, the Project is proposed to be four stories. Approximately one-quarter of the width of the Property from its western lot line, the Building rises to five stories or a maximum overall height of just less than 58 feet. Under the Zoning Regulations, a PUD in an MU-5A zone can achieve a maximum height of 90 feet. Under the Height Act, the Project is limited to a maximum height of 70 feet;

(c) The Building is proposed to have a non-occupiable penthouse for rooftop staircase access and an elevator overrun. The Project has two rooftop mechanical systems that exceed four feet in height and both such units are screened. As originally proposed, the screening was not continuously connected to the elevator penthouse; however, the Final Plans make such screening continuous; and

(d) The Building has a rear yard that varies in depth when measured from the rear wall of the Building to the property line at the rear of the Property. This proposed rear yard is less than the minimum rear yard required in the MU-5A zone. The Building has a side yard that varies in width along the western boundary of the Property but does not meet the minimum requirements. There is no side yard on the eastern boundary of the Property.

33. The Project is designed to be certified in accordance with the 2015 Enterprise Green Communities ("Green Communities") criteria.

34. Project Design in Response to the Surrounding Context. The Project massing and architecture are designed to respond to the context surrounding the Building:

(a) The Project's four-story element at the western end of the Property steps down as a gesture to the existing neighboring two-story attached dwellings. The neighboring attached dwellings sit atop a substantive grade change, and as result, the four-story portion of the Project represents a relatively minor change in overall rooftop elevation from the neighboring townhouses. In addition, the neighboring attached dwellings are separated from the Property by the 20-foot public alley. The gentle increase in height – from the existing two-story attached dwellings, to the proposed four-story portion of the Project, to the ultimately five-story portion – reads logically in the urban context as the Project creates a transition out of the River Terrace attached dwelling neighborhood to the more urban environment of Benning Road, N.E. and Minnesota Avenue, N.E. immediately east and northeast of Eads Street, N.E. The Applicant provided evidence suggesting that the currently vacant, District-owned lot immediately east of the Property and the vacant and underutilized commercial lots immediately north of the Property has the potential ultimately to be redeveloped at an intensity that is concomitant with the proximity to the nearby transit access and highway access points. That is, the Comprehensive Plan (as hereinafter defined) and the Benning Road Corridor Framework Plan ("BRCFP"), a small-area plan adopted for the area surrounding and including the Property, taken together, encourages redevelopment of the Property and areas to the north and east at medium-density levels of development; (Ex. 80G at A-0.4-A-0.5.)

(b) The Project's two components are further broken up by bays, differentiated colors, and articulation. The Project's western elevation is similarly broken into multiple smaller elements, each intended to evoke the scale and composition of the nearby townhouses. At the eastern elevation of the Building, the Project is intentionally designed to have a strong rectilinear geometry that invites and encourages the Project's form to be continued into the immediately adjacent lot;

(c) At street level, although the Property is not subject to the building restriction line that is applicable to many of the surrounding residential lots, the Building is nonetheless set back approximately 10 to 12 feet from the front lot line to continue the street wall across the entirety of the Property, subject only to articulation necessary to soften the Building's massing. The Project's setback from the street creates opportunities for the ground-level landscaping addressed below as well as visual interest keeping with the character of the block;

(d) The Project is highly designed, and the façade, details, and materials introduce a contemporary vocabulary that is visually compatible with the existing residential context. The Building expresses a façade composed of brick at the lower levels and a dark panel along the penthouse. The Project's clean lines of the metal canopy beams, dark aluminum railings, and grey brick staircase entries together introduce a contemporary design at ground level. The ground-level landscape detailing along Eads Street, N.E. is currently an assortment of aluminum and iron fences and railings and stone. The Project's proposed detailing neither overpowers nor detracts from this context; and

(e) The Building's western and rear elevations are similarly highly designed with substantial articulation and fenestration. The Applicant expressed an awareness that the Project has a significant visual presence along Benning Road, N.E. to the north for at least the near term. As a result, the Project is intentionally designed to have a rear elevation that is more mindful of its public prominence than most buildings.

35. Public Space Improvements. The Project also improves the existing streetscape along the north side of Eads Street, N.E. with plantings and vegetation. Plantings and tree boxes along the curb line in front of the Project continue and enhance the emerging canopy along Eads Street, N.E. A vegetated bioretention area in the setback area runs the majority of the five-story portion of the Project, enhances the pedestrian experience along Eads Street, N.E., and simultaneously affords stormwater control and visual appeal. The Project's setback from the street and associated vegetation provides a measure of security and privacy for residents of lower-level units in the Building and softens the Building's relationship to the street.

36. Parking and Loading. The Project's parking and loading are accessed via an existing public alley through garage and loading bay entrances on the western and rear edges of the Project. The garage contains 17 vehicle parking spaces and 23 long-term bicycle spaces, and the at-grade loading bay provides a single loading berth. No new curb cuts are proposed as part of the Project. Instead, with the Applicant's proposed alley closing, an existing curb cut is removed. The garage and loading entrances each include automated doors that mitigate noise and impacts for neighbors and provide security for residents of the Building.

Applicant Community Outreach

37. Overall. The Applicant engaged in significant outreach to the surrounding community. Since the Project development process commenced in February 2016, the Applicant has held or presented at numerous public meetings with the ANC, the River Terrace Community Organization ("RTCO"), and other civic groups and individuals and responded to questions and received feedback via phone and email. (Ex. 46A1-46A4.) The Applicant also met with numerous District agencies

including OP, DDOT, DHCD, the Metropolitan Police Department ("MPD"), and others. (*Id.*)

38. The Project reflects the extensive Applicant led community outreach:

(a) As a result of the meetings referenced above and the feedback the Applicant has received, the Applicant has redesigned the Project; (Ex. 2.)

(b) The Applicant made various efforts to reach out to a vast cross-section of the community; and

(c) The preferences and desires of numerous community groups and individuals shaped the Project's package of public benefits ("Public Benefits").

39. Outreach with the ANC. The Commission has carefully evaluated the extended dialogue between the Applicant and the ANC. The Commission finds that while the ANC has expressed fervent and continuous opposition to the Project, that the Applicant has made good faith efforts to mitigate and resolve any issues and concerns:

(a) ANC First Report. The ANC First Report, submitted on May 4, 2017, declined a letter to support the Map Amendment as well as the Project's height, density, site plan, and proposal to load passengers from the alley. (Ex. 43 at 2-4.) The ANC First Report also raised concerns with the Project's parking and traffic impacts and questions assumptions in the CTR. (*Id.*) It also stated that the ANC had been working with the Applicant since September 2016, and committed to continue dialogue with the Applicant. (*Id.* at 1; Tr. 2 at 139.) Furthermore, the ANC First Report noted that it had requested the Applicant focus its engagement efforts on residents of nearby streets; (*Id.*)

(b) ANC Second Report. The ANC Second Report, on June 20, 2017, noted that following the Public Hearing and pursuant to the request of the Commission, it met with the Applicant. (Ex. 81 at 1; 80 at 1.) The ANC Second Report expressed continued concern with the Project's transportation and traffic mitigation efforts, the scale of the building and its impact on the character of the community, and parking. (Ex. 81 at 1-2.) This report also noted that nothing about the Applicant's post-hearing efforts "…would warrant continued dialogue" and that the Applicant's presentation to the ANC was "…an abject failure and a waste of time."; (*Id.* at 2-3.)

(c) At Proposed Action, the Commission indicated that it was disturbed by the ANC Second Report, and found the ANC's "take it or leave it" remark to be disconcerting. (Ex. 81 at 3; Tr. 3 at 48.) Consequently, the Commission directed the Applicant to conduct further outreach, and

encouraged the Applicant to "close the gap a little more" with the community; (*Id.* at 49.)

(d) Second Posthearing Submission. On September 18, 2016, pursuant to the request of the Commission, the Applicant filed the Second Post-Hearing Submission that detailed its post-hearing discussions with the ANC and RTCO. (Ex. 89.) "…[d]espite numerous discussions and hard work on both sides…" the Applicant and the community were unable to reach a consensus on certain outstanding issues. (*Id.* at 1.) The Second Posthearing Submission notes that the Applicant narrowed down the community's concerns with the Project to three key issues: (a) transportation and parking mitigation proposals; (b) the overall height of the project and whether a four-foot reduction in height would be a meaningful change from the neighborhood's perspective; and (c) how to allocate to specific uses the $47,000 contribution to RTCO the Applicant has proffered. (*Id.*) The Commission is persuaded by the Second Posthearing Submission, and finds that the Applicant addressed the Commission's concerns regarding community outreach that it expressed at Proposed Action;

(e) ANC Third Report. On September 18, 2016, pursuant to the request of the Commission, the ANC filed a report detailing the most recent dialogue with the Applicant. (Ex. 90.) The ANC Third Report noted that residents expressed deep concern over the adverse impacts related to parking, decrease in property values, and traffic congestion. (*Id.*) The ANC Third Report also noted that while there were some in favor of the Application, the community opposition, specifically from RTCO, was far too great to warrant a vote in support of the Application; and (*Id.*)

(f) The Commission finds that prior to the Public Hearing, the Applicant demonstrated that it made meaningful changes to the Project in response to ANC and community feedback, including changing the Project to a focus on senior housing and eliminating a level of underground parking to reduce construction impacts. (Ex. 46A1-46A4.) The Commission finds that after the Public Hearing the Applicant presented to the ANC a draft "Community Benefits Agreement" ("CBA")[5] that addressed, in some measure, each item that the ANC raised as a concern with the Project at the Public Hearing. (Ex. 80A.) Consistent with the Commission's directive, the dialogue between the Applicant and the community following Proposed Action was satisfactory; there was ample opportunity to find mutually acceptable compromises. The Commission finds nothing in the ANC Third Report to suggest that the Applicant haphazardly

[5] The Commission also notes that the Applicant presented evidence that it had met with the ANC no fewer than 14 times plus an additional five or more meetings with other community groups and/or neighbors. (Ex. 46A1-46A4, 80.) Nothing about the Applicant's community engagement suggests intransigence or unwillingness to find common ground on the Applicant's part.

engaged the community nor lacked good faith in pursuing compromise. While the Commission gives the ANC's written issues and concerns the great weight they are due, it is persuaded that the Applicant sought to address each issue, and that the Applicant's community engagement was thorough and responsive.

III. Commission Comments and Questions

40. Following review of the Initial Statement at Setdown, the Commission provided comments on the Application and requested that the Applicant: (a) provide information on the size of the units in the Project; and (b) reconsider the fiber cement lap siding material at the top of the Project, provide additional information on the use of cementitious siding, reconsider the Project's exterior color selections, and reconfigure the "townhouse"-style design and peaked roof originally proposed at the western end of the Project. (Tr. 1 at 47-53.)

41. The Applicant provided in its PHS, 20-Day Statement, and at the Public Hearing responses to the Commission's questions and comments at Setdown:

    (a) Size of Units. In the PHS and 20-Day Submission, the Applicant provided information that the Project had been redesigned to include a mix of 70 units, of which 68 would be one-bedroom units and two would be studio units; and (Ex. 12, 23.)

    (b) Materials, Colors, and Design. In the PHS and at the Public Hearing, the Applicant provided plans that addressed the Commissions requests regarding materials, color, and design. (Ex. 12, 12E1-12E2, 23A1-23A2; Tr. 2 at 42-43 and 62-63.)

42. At the Public Hearing, the Commission asked the Applicant: (a) whether the Applicant had agreed to DDOT's Transportation Demand Management ("TDM") requests; (b) whether the Applicant had settled with DDOT the location and configuration of the curbside pick-up/drop-off area; (c) for an update on the alley closing application; (d) about the hours of operation and access to the Community Room; (e) about sustainability measures on the Project's roof; (f) for information about the Project's marketing; (g) for clarification on the Project's internal garage circulation; (h) about the one intersection that in the CTR showed a poor level of service ("LOS"); (i) for additional information about the proposed zone designation under the Map Amendment; (j) about the amount of bicycle parking provided; (k) about the use of the Property as parking for a nearby nightclub and about the timing of parking restrictions on the street; (l) for additional information on vehicular access to and from the Property; and (m) why opposition letters were entered into the record from the community surrounding the Property, what type of outreach the Applicant had engaged in, and whether anyone on the development team was from the community surrounding the Property. (Tr. 2 at 41-90.)

43. The Commission finds that the Applicant satisfactorily responded to the Commission's questions raised during the Public Hearing:

    (a) TDM Requests. The Applicant confirmed that it had agreed to DDOT's requests; (Tr. 2 at 43.)

    (b) Pick-Up/Drop-Off Area on Eads Street, N.E. The Applicant confirmed that the location was generally along Eads Street, N.E. in front of the Building entrance and that it would continue to work with DDOT on this item as part of the public space process. The Applicant noted that there would be no net loss of street parking for such an area because parking would be gained back by the alley closure; (*Id.*)

    (c) Alley Closing. The Applicant summarized that it had received all agency reports needed for the alley closing process except for reports from DDOT and NCPC. (*Id.* at 44.) DDOT and NCPC were both holding reports pending the PUD process; (*Id.*)

    (d) Community Room. The Applicant: (i) explained the physical design of the Community Room and access considerations; (ii) noted that hours of use had not yet been determined; and (iii) acknowledged that discussions about the Community Room with the ANC and RTCO were ongoing; (*Id.* at 44-48.)

    (e) Rooftop Sustainability Measures. The Applicant explained: (i) the Project was subject to higher than usual sustainability standards by virtue of its location within the Anacostia Waterfront Development Zone ("AWDZ"); and (ii) it exceeded the GAR requirements under the Zoning Regulations and other stormwater requirements. (*Id.* at 52-53.) These other sustainability objectives as well as budgetary and rooftop load constraints limited the Project's rooftop sustainability measures; (*Id.*)

    (f) Marketing. The Applicant confirmed that the Project would be required to complete an affirmative fair housing marketing plan in conjunction with DHCD. (*Id.* at 54-55.) Such plan would be shared with the ANC before lease-up of the Project. (*Id.*) The Applicant would make the ANC aware of the application process and dates as well and the ANC would be the first stop; (*Id.* at 55, 73.)

    (g) Garage Circulation. The Applicant confirmed that all garage circulation was internal to the Building; (*Id.* at 59.)

    (h) Intersection with Poor LOS. The Applicant explained that the existing intersection with a poor LOS was the exit from the PEPCO facility across Benning Road, N.E. from the Project; (*Id.* at 70-72.)

(i) Map Amendment. The Applicant explained that the originally proposed MU-7 zone was consistent with the split Comprehensive Plan map designation for the Property. (*Id.* at 76-77.) The Applicant agreed to consider revising the designation to the MU-5A zone; (*Id.*; Ex. 80 at 4.)

(j) Bicycle Parking. The Applicant explained that the Project's bicycle parking levels were set in accordance with the Zoning Regulations; (*Id.* at 77-78.)

(k) Nightclub Parking. The Applicant explained that it had leases with the owner of a nearby nightclub and confirmed that street parking on Benning Road, N.E. began at 6:30 p.m.; (*Id.* at 78-79.)

(l) Vehicular Access. The Applicant described turning maneuvers into and out of River Terrance leading to the Property, including alley maneuvers. (*Id.* at 80-83); and

(m) Community Issues. The Applicant explained that it had been working with members of the ANC and community for over a year. (*Id.* at 83-86.) Only recently before the Public Hearing did concerns from the ANC emerge regarding the Project. (*Id.*) The Applicant also noted that it designed the Project in accordance with the parameters set forth in the Comprehensive Plan. (*Id.*) No one from the Applicant's team is from the surrounding community. (*Id.*)

44. Following the Applicant's testimony at the Public Hearing, the Commission requested the Applicant to: (a) provide a narrative describing the use of the Project's Community Room; (b) provide a narrative or draft of the construction management plan ("CMP"), identifying the Applicant's point of contact during construction; (c) reconsider including an outdoor terrace on the roof of the Project; (d) consider installing solar panels on the roof of the Project; (e) discuss with DDOT whether any upgrades were required for the alley; (f) consider restricting residents of the Project from being eligible to participate in the Residential Parking Program ("RPP"); (g) continue to examine the brick color on the Project's façade; (h) reconsider the materials and screening of the penthouse structures; (i) undertake a parking study of the streets surrounding the Project; (j) commit to marketing the Project to the community as soon as reasonably possible; (k) continue to work with the community on outstanding issues; and (l) provide images of the Project in the context of the neighborhood. (Tr. 2 at 41-90.)

45. The Commission finds that the Applicant has satisfactorily responded to the Commission's questions, comments, and concerns raised at the Public Hearing. In the Post-Hearing Submission, the Applicant provided information in response to the Commission's requests: (Ex. 80-80G4.)

(a) Community Room. In its Post-Hearing Submission, the Applicant provided a detailed set of guidelines for the ANC and RTCO to use the Community Room; (Ex. 80D.)

(b) CMP. In its Post-Hearing Submission, the Applicant also provided a detailed draft of the CMP; (Ex. 80C.)

(c) Outdoor Terrace. In its Post-Hearing Submission, the Applicant declined to provide a rooftop terrace on the Project. (Ex. 80 at 2.) The Applicant explained that its management company had provided information that such features were not common on other senior affordable buildings that it manages. (*Id*.) The Applicant also noted that it researched the possibility of nonetheless providing a rooftop feature on the Project but that it was not feasible because of the applicable stormwater management requirements, which are heightened for the portion of the District including the Property; (*Id*.)

(d) Solar Panels. The Applicant committed to achieve energy efficiency metrics similar to incorporating solar panels and to install equipment that could support the installation of solar technology at a point in the future. (*Id*. at 2-3.) The Applicant could not commit to install solar facilities because of the Project's stormwater management requirements; (*Id*.)

(e) Alley Upgrades. The Applicant committed to continue to work with DDOT during the alley closing process to evaluate whether upgrades to the alley system would be required; (*Id*. at 5.)

(f) RPP Eligibility. The Applicant proposed to restrict its tenants from participating in the RPP program; (*Id*.)

(g) Brick Color. In its Post-Hearing Submission, the Applicant revised the Project to include only two brick colors (rather than the three proposed in the PHS) and to exhibit a revised brick pattern; (*Id*. at 2.)

(h) Rooftop Screening. The Applicant also changed the cladding for the penthouse and screen wall to a dark panel and connected each screen wall to the adjacent penthouse, consistent with the Commission's request; (*Id*.)

(i) Parking Study. The Applicant's Post-Hearing Submission included a supplement to the CTR with a study of parking, curbside management, and other existing conditions in the surrounding area. (Ex. 80B.) Findings regarding the Project's parking and parking effects are addressed in detail in the "Findings regarding Contested Issues" section of this Order ("Contested Issues"); (*See* FF ¶¶ 75-87.)

(j) Marketing Plan. The Applicant committed to engaging with the ANC on marketing efforts for the Project's lease up. (Ex. 80 at 6.) The Applicant also committed to host a job fair in partnership with the ANC; (*Id.*)

(k) Community Outreach. Following the Public Hearing, the Applicant continued to engage with the ANC on the ANC's concerns; and (Ex. 80 at 1; 80A; 89; 89A; *see also* FF ¶¶ 51-60 (findings regarding community outreach).)

(l) Context Images. The Final Plans included perspectives showing the Project in context with surrounding existing buildings. (80G3.)

46. The Commission finds that the Applicant has satisfactorily addressed the Commission's comments and provided, in response to the Commission's questions, answers that are supported by substantial evidence.

47. At the Public Hearing the Commission also asked questions of OP and DDOT regarding possible traffic improvements and actionable items. (Tr. 2 at 109-116.) The Commission asked: (a) whether DDOT had reviewed the proposed pick-up/drop-off area; (b) OP to confirm that the OP Final Report erroneously included a reference that the Project was in the Enhancement Area of the Comprehensive Plan's Generalized Policy Map rather than in the Conservation Area of the Comprehensive Plan's Generalized Policy Map; (c) whether OP agreed with the Applicant regarding the Map Amendment in light of the Project's relationship to Eads Street, N.E. and Benning Road, N.E.; (d) DDOT about future plans for improving Benning Road, N.E.; and (e) OP about plans for the District-owned lot adjacent to the Property:

(a) Pick-Up/Drop-Off. DDOT confirmed that it had reviewed the proposed pick-up/drop-off area and that the proposal for such space would go through a DDOT-led permitting process; (*Id.*)

(b) OP Final Report Error. OP confirmed the error in its report; (*Id.*)

(c) Map Amendment Analysis. OP confirmed that it agreed with the Applicant's reading of the Zoning Regulations in light of the proposed map amendment. (*Id.*) OP supported the map amendment; (*Id.*)

(d) Benning Road, NE Plans. DDOT explained that plans for extending the streetcar along Benning Road, N.E. were underway; and (*Id.*)

(e) District-Owned Property. OP was unaware of any current plans for the District-owned property. (*Id.*)

48. At the Public Hearing, the Commission also asked questions of the ANC. (Tr. 2 at 135-143.) The Commission asked what the ANC and the community opposed about the Project and whether the ANC believed the Project served residents of

River Terrace. (*Id.*) The ANC explained that the community opposed the location and the density and had concerns about safety and parking. (*Id.* at 135.) The ANC also explained that it believed the Project was not designed to serve residents of River Terrace and could not sustainably do so. (*Id.* at 142.)

49. At Proposed Action, the Commission expressed concern that the Applicant had not made sufficient efforts in attaining community support, and afforded the Applicant additional time to conduct meetings and gather input from residents that might be adversely impacted by the Project. (Tr. 3 at 48; *see also* FF ¶ 58.)

50. A discussion of the Applicant's community outreach efforts follows below.

IV. Community Outreach

51. Since the Project development process commenced in February 2016, the Applicant has held or presented at public meetings with ANC 7D, the River Terrace Community Organization (**"**RTCO**"**), and other civic groups and individuals and responded to questions and received feedback via phone and email. (Ex. 46A1-46A4.)

52. Although the Commission will discuss the substantive issues and concerns of ANC 7D elsewhere in this Order, the Applicant's evolving interaction with the ANC will be discussed in the finding of fact that follow.

53. In its First Report submitted on May 4, 2017, the ANC, though declining to support the Project, indicated it had been working with the Applicant since September 2016, and committed to continue dialogue with the Applicant. (Ex. 43 at 1; Tr. 2 at 139.) Furthermore, the ANC noted that it had requested the Applicant focus its engagement efforts on residents of nearby streets. (*Id.*)

54. The ANC**'**s Second Report, dated June 20, 2017, noted that following the Public Hearing it held a public meeting on May 4, 2017, at which a presentation was made by Adrian Washington, the President and Chief Executive Officer of Neighborhood Development Corporation (**"**NDC**"**). (Ex. 81.)

55. Mr. Washington presented visualizations of how the PUD would present itself to the neighborhood, but the ANC found the presentation too limited. The report indicated that the photographs were taken from the ground upward and were thus one-dimensional. Also, "…there were no aerial photo(s) to render an in-depth view of how the proposed PUD will look among the current townhomes along Eads Street NE." (*Id.*)

56. Mr. Washington also presented a post-hearing changes review, which the ANC indicated did not capture the concerns it expressed in the May 4, 2017 Commission's hearing.

57. ANC 7D therefore concluded that "…the presentation on the part of NDC was an abject failure and a waste of time." The report stated that ANC 7D had done "…its part to engage, dialogue, and offer solutions to the issues expressed by the River Terrace constituents…", but "…there was nothing about this presentation that would warrant continued dialogue." The ANC felt that it had been told to "…take it or leave it…" and exclaimed that it "…ha[d] chosen to leave it." (*Id.*)

58. At Proposed Action, the Commission indicated that it was disturbed by the ANC's Second Report, and found the ANC's "take it or leave it" remark to be disconcerting. (Tr. 3 at 48.) Consequently, the Commission directed the Applicant to conduct further outreach, and encouraged the Applicant to "close the gap a little more" with the community. (*Id.* at 49.)

59. On September 18, 2017, the Applicant and ANC made filings that discussed their post-Proposed Action discussions. (Ex. 89-89A, 90, respectively.) Although there remain areas of disagreement between the two, the disagreement is respectful. The Commission notes the acrimonious tone of the ANC's Second Report has been replaced by a civil tone in its third.

60. The Commission can encourage and facilitate dialogue but cannot command agreement. The Commission concludes that this dialogue has occurred and the Commission will resolve the outstanding areas of disagreement in the remaining portions of this Order.

V. Agency Reports and Testimony

Office of Planning

61. In the OP Setdown Report, OP requested the Applicant provide information regarding: (a) the Project's roof structure setbacks, a rooftop plan, and residential amenities proposed for the roof; (b) the length of affordability for the rentals; (c) material composition and discussion about the variety in the façade materials; (d) the Project's benefits and amenities (including the status of a commitment to participate in District hiring and employment programs); and (e) the Project's streetscaping. (Ex. 10 at 8, 10, 11.)

62. In response to the OP Setdown Report, the Applicant provided the following information:

    (a) Roof Plans. The PHS included an updated roof plan with information pursuant to OP's request; (Ex. 12 at 3.)

    (b) Unit Plan and Affordability Information. The PHS also included information on the Project's affordability and unit mix; (*Id.* at 4.)

    (c) Materials. Plans attached to the PHS depicted the material and design information requested by OP; (*Id.* at 3-4.)

(d) Public Benefits. The PHS and the 20-Day Submission included a detailed discussion of the Public Benefits including the District's hiring and employment programs; and (*Id*. at 5-6; 23 at 5-6.)

(e) Streetscaping. The PHS included a commitment to follow DDOT's guidelines. (*Id*. at 5.)

63. In the OP Final Report, OP requested the Applicant to: (a) provide a materials board at the Public Hearing; and (b) provide additional information on the Public Benefits at the Public Hearing. (Ex. 25 at 3, 11.) OP noted that the other items requested in the OP Setdown Report had been resolved. (*Id*. at 3.)

64. In response to the OP Final Report, the Applicant provided the following information:

(a) Materials Board. The Applicant provided a materials board at the Public Hearing; and (Ex. 45A2.)

(b) Public Benefits. The Applicant also provided detailed information on the Public Benefits at the Public Hearing. (Tr. 2 at 39.)

65. DHCD provided written comments to OP regarding the Project's affordability commitments. (Ex. 25 at 17-18.)

66. DC Water provided written comments to OP that the Project seemed feasible and that DC Water did not see any particular issues. (*Id* at 18.)

67. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions.

68. At the Public Hearing, OP testified in support of the Project. (Tr. 2 at 106.) OP testified that the Project was not inconsistent with the Comprehensive Plan for the District of Columbia, 10A DCMR ("10A") § 100, *et seq*. (the "Comprehensive Plan"). (*Id*.) OP also testified in support of approving the requested zoning flexibility. (*Id*.)

District Department of Transportation

69. The DDOT Report noted no objection to the Project provided the TDM program is effectively implemented. (Ex. 24 at 2-3.) The DDOT Report included numerous findings, which the Commission hereby adopts, and notes the following in particular:

(a) Sound Methodology. The Applicant used sound methodology to perform the transportation impact analysis in the CTR; (*Id* at 2.)

(b) Reasonable Assumptions. The background growth, mode split, and trip generation assumptions proposed by the Applicant are reasonable; (*Id.*)

(c) Parking Ratio. The Project's parking ratio is consistent with zoning requirements. (Ex. 24 at 6.) The amount of short-term bicycle parking is appropriate; (*Id.* at 2.)

(d) Traffic Impacts. The Project is not projected to increase travel delay in the vicinity of the Project; (*Id.*)

(e) Trip Generation. The Project is expected to generate a low number of new vehicle, transit, bicycle, and pedestrian trips; (*Id* at 7.)

(f) Conservative Analysis. The Applicant assumed appropriate number of new vehicle trips as part of its traffic impact analysis; (*Id.* at 6.)

(g) TDM. The proposed TDM plan is appropriate for the action; and (*Id.* at 2-3.)

(h) Continued Coordination. Given the complexity and size of the Project, the Applicant is expected to continue to work with DDOT outside of the Commission process. (*Id.* at 3.)

70. The TDM plan includes the following elements. The Applicant must:

(a) Unbundle the cost of residential parking from the cost of lease or purchase of the units;

(b) Install a transportation information center display (electronic screen) within the lobby of the Project, which screen must contain real-time information related to local transportation alternatives;

(c) Offer the initial occupant of each residential unit a one-time annual car sharing membership, a one-time annual Capital Bikeshare membership, or credits for use on private commuter shuttles to help alleviate the reliance on personal vehicles;

(d) Offer a one-time $50 SmarTrip card to each initial residential tenant and employee in the Project to encourage non-auto mode usage;

(e) Provide a bicycle repair station within the Project;

(f) Identify a TDM coordinator to work with the Project's residents and employees to distribute and market transportation alternatives;

(g) Provide TDM materials to new residents in the residential welcome package;

(h) For the first three years after the Project opening, provide the equivalent value of an annual Capital Bikeshare membership (currently $85) or credit for a commuter shuttle service equal to the value of an annual bikeshare membership to all new residents; and

(i) Provide updated contact information for the TDM coordinator and report TDM efforts and amenities to goDCgo staff once per year.

71. At the Public Hearing, DDOT discussed ongoing study of planned improvements to Benning Road, N.E. as part of the streetcar extension and offered to work with the Applicant on a parking study. (Tr. 2 at 107-08.)

VI. ANC Reports, Testimony, and Cross-Examination

72. As noted, the ANC filed three reports expressing opposition to the Application which stated the ANC's issues and concerns and apprised the Commission of the progress of its discussions with the Applicant to address its concerns. The latter issue has been previous discussed in this Order.

73. As to its substantive concerns. the ANC's written report, to which great weight must be given and its testimony included, expressed the following issues and concerns:[6]

(a) Safety Concerns. The ANC raised concerns with safety issues affecting residents of the Project and particularly with any shuttle bus loading of the Project from the rear alley. (Tr. 2 at 122-125.) The ANC also raised concerns about safety on Eads Street, N.E. and Benning Road, N.E., generally. (*Id.*) These concerns are similar to those raised by Opponents, and additional findings with respect thereto are provided below; (*See* FF ¶ 82.)

(b) Target Demographic. The ANC doubted that the Project would attract residents from River Terrace because seniors in that neighborhood would be unlikely to leave their attached dwellings in favor of smaller apartments in the Project. (Tr. 2 at 122.) The ANC expressed concerns that the Project did not serve the middle-class housing needs of Ward 7. (*Id.* at 132; *see* also FF ¶¶ 76-77.) The Commission notes that the Project is expressly intended to serve low-income individuals and not middle-class housing;

(c) Traffic Concerns. The ANC noted its opposition to curbside shuttle loading because of the narrow width of Eads Street, N.E. and objected to the adequacy of the Project's traffic mitigation. (Tr. 2 at 123.) The ANC also raised concerns about existing traffic conditions in River Terrace. (*Id.* at 139-141.) In the Post-Hearing Report, the ANC noted that there were no

[6] Additional findings responsive to other ANC's issues and concerns may be found in the portion of this Order entitled Contested Issues.

commitments or modifications made by the Applicant with respect to traffic and that it was deficient in many respects. (Ex. 81 at 2.) The Commission finds that many of the items raised by the ANC in the Post-Hearing Report were thoroughly addressed by the Applicant in the CTR. For instance, the Applicant examined impacts from the Project in its CTR and found that it was unlikely to cause adverse impacts on the community at peak hours given the amount of parking provided and the limited peak hour impact of senior housing use. (Ex. 17.) The Commission concurs. The Commission finds evidence in the record that there are regional traffic issues that impact congestion along Benning Road, N.E. but finds that the Applicant has provided substantial evidence that the impact of the Project is only negligible and capable of being mitigated through the TDM measures. Additional findings on traffic issues are discussed below in comments raised by Opponents; (*See* FF ¶ 81.)

(d) Design. The ANC objected to the Project's overall bulk as well as the brick design. (Ex. 81 at 3; Tr. 2 at 133.) The Commission finds that the Project's revisions are attractive and appropriate in light of the commercial context north of the Property along Benning Road, N.E. Findings on the Project's density are below in the Contested Issues;

(e) Parking. The ANC noted concerns about the loss of parking on the Property, which parking currently serves the adjacent nightclub. (Tr. 2 at 126.) The ANC was concerned that if the parking serving the nightclub is lost then there will be spillover effects on nearby streets. (*Id*.) The ANC also objected to the reduction in garage parking in the Project. (*Id*. at 132.) The ANC raised concerns that the Post-Hearing Submission was deficient in explaining the implementation of proposed parking mitigation measures. (Ex. 81 at 3.) On this point, the Commission disagrees. The Applicant provided substantial evidence and explanation for the implementation of the Project's parking mitigation strategy; (*See* Ex. 80 and 80B.) Additional findings on parking are below in the Contested Issues. (*See* FF ¶¶ 82.)

(f) Non-Tenant Residents. The ANC wondered what would happen if grown children moved in with their senior parents. (Tr. 2 at 128.) On rebuttal, the Applicant's property manager described the controls it had in place to ensure ineligible residents did not occupy the Project's units after lease-up; (Tr. 2 at 169-170.)

(g) Community Recreation Center. The ANC expressed that one of its preferences for the neighborhood was for the development of a recreation or community center for neighborhood youth and/or a wellness center for seniors. (*Id*. at 130-31.) The Commission understands that the Project is not of a scale to accommodate a community center and finds the

Applicant's proffer of the Community Room to be a meaningful public benefit; and

(h) Precedent. The ANC expressed concern about the Project setting precedent for future development and Benning Road, N.E. being developed and rezoned lot by lot without a comprehensive view. (Tr. 2 at 132-33.) The Commission notes that the Project is within the boundaries of the BRCFP, an area planning document that provides a coherent framework for redevelopment along Benning Road, N.E. (Ex. 2 at 33, 43.) The BRCFP specifically calls for redevelopment of the Property and adjacent properties to the north and east at significant levels of density. The Project's consistency with the BRCFP mitigates the ANC's concerns about unplanned, *ad hoc*, piecemeal rezoning and development. Finally, the Commission notes that the map amendment, as a PUD-related Zoning Map amendment, is by regulation non-precedential. (*See* X § 300.4.)

VII. Persons in Support

74. Former Ward 7 Councilmember Yvette M. Alexander wrote in support of the Project. (Ex. 11.) Councilmember Alexander wrote that the Applicant had engaged in extensive community outreach and supported the policies and objectives of the Comprehensive Plan with respect to reusing a vacant and underused lot and providing affordable housing to help meet the District's goals. (*Id*.)

VIII. Contested Issues

75. Lack of Analysis, Mitigation, and Responsiveness to Community Concerns. Opponents alleged that the Applicant "has not facilitated adequate mitigation, site design or analysis for this [P]roject." (*See* Opponents' Letters; *see* also Tr. 2 at 148-149, 155, 157.) The Commission disagrees. The Applicant has provided extensive analysis for this Project over the course of more than a year's study and refinement. (Ex. 2, 12, 16-17, 23, 45A1-46A4.) Moreover, the Applicant has appropriately mitigated all potential adverse effects of the Project. (*See* FF ¶¶ 121-125.) Opponents also alleged that the Application has not addressed or adequately answered many of the concerns of the neighborhood. (Ex. 36, 76.) Again the Commission disagrees. The Commission finds that the Applicant has engaged in extensive outreach and has delivered a sufficient amount of information to the community, including emails, handouts, and presentations responding to the community's questions and concerns. (Ex. 46A1-46A4; *see also* FF ¶¶ 40-42.)

76. Target Market for the Project/Inadequate Demand. Opponents questioned whether sufficient demand exists to fill the Project's units given that many senior residents in the River Terrace neighborhood have expressed a preference to "age in place." (*See* Opponents' Letters.) The Applicant provided information that demand is high

for affordable senior housing. (Tr. 2 at 168-169, 178.) The Applicant noted that it would market the Project to residents of River Terrace and also throughout the District more generally. (*Id*. at 54-55, 73, 97-98, 104-105.) The Commission notes that the construction of senior and affordable senior housing are priorities expressly enumerated in the Comprehensive Plan and Zoning Regulations. (*See* 10A §§ 504.6, 516.8; X § 305.5(f).) The Commission has little doubt that given the civic priority assigned to such housing that the Project will have little trouble filling with eligible residents. The Commission also finds that the Applicant's experience in developing, owning and (through a third party) managing affordable senior housing gives it a perspective of the housing market sufficient to outweigh the ANC's and Opponents' concerns. The Commission is persuaded that there are very few, if any, potential adverse effects from a putative lack of demand for the Project's residences.

77. Concentration of Affordable Housing in Ward 7. Opponents raised concerns about the over-concentration of affordable housing in Ward 7. (Ex. 36, 76; Tr. 2 at 152-153, 156, 161.) The Applicant provided evidence that the Comprehensive Plan and Zoning Regulations both prioritize the development of affordable housing, especially housing near transit. (Ex. 2 at 28, 41.) The Applicant and the Opponents appear to agree that the area surrounding the Project is a mix of commercial and single-family residential uses. There is no evidence that the area immediately surrounding the Property contains a concentration, or indeed any, income-restricted housing. Rather, Opponents' concerns tend to focus on affordable housing in the two-mile area around the Property and in Ward 7 more generally. (*See* Ex. 36, 76.) The Applicant provided evidence that the Project's AMI restrictions do not have a discernible effect on income demographics in the census tract containing the Project. (Ex. 80 at 6-7; 80E.) The Commission finds that the Applicant's census analysis satisfies the requisite evidentiary standards. Therefore, in the absence of any evidence from the Opponents other than conclusory statements, the Commission finds that the Project presents very few, if any, adverse effects with respect to the concentration of affordable housing.

78. Zoning Designation. Opponents objected to the proposed re-designation of the Property from the R-3 zone to the MU-7 zone. (*See* Opponents' Letters and Tr. 2 at 160-161.) Opponents noted that in their view, the Zoning Regulations indicate that the MU-7 zone is appropriate for "arterial streets," a description that is not appropriate for the comparatively smaller Eads Street, N.E. (*Id.*) The Applicant and OP provided testimony to the contrary. (Tr. 2 at 30; 111-112.) OP noted that the language cited by Opponents is in the preamble to the development standards for the MU zones and does not have binding regulatory effect. (*Id*. at 111-112.) OP also noted that the MU-7 zone is not confined to arterials and that the relevant question is not whether the proposed Map Amendment is consistent with the descriptive language in the Zoning Regulations, but rather whether the Map Amendment is consistent with the Comprehensive Plan. (*Id*.; X § 500.3 (directing the Commission to evaluate a map amendment application based on whether such application is not inconsistent with the Comprehensive Plan and providing no

instruction to the Commission to consider the prefatory (and precatory) language in the Zoning Regulations).) This Commission gives great weight to OP's testimony and analysis and finds that the map amendment is appropriately applied in this instance. The Commission notes that after the Public Hearing, the Applicant revised its map amendment request so that the Property would be re-designated to the MU-5A zone. Such revision does not affect the Commission's analysis here.

79. Project Density, Height, and Size. Opponents and the ANC objected to the Project's density and height. (*See* Opponents' Letters and Tr. 2 at 147, 149, 155, 164.) Opponents and the ANC alleged that the Project's height was out of character with the predominantly two-story residences nearby and would significantly increase the population of the block. (*Id.*) After careful study of the Project and the particular concerns of the ANC and Opponents, the Commission disagrees with the ANC and Opponents. The Commission finds that the Project's density, height, and size are appropriate in light of the Comprehensive Plan, BRCFP, the Public Benefits, the Project's design and context, and the lack of adverse effects:

(a) Comprehensive Plan. As discussed in more detail below, the PUD and Map Amendment are not inconsistent with the Comprehensive Plan. Indeed, the Map Amendment is appropriate for the Property in light of the Future Land Use Map and BRCFP objectives for the Property. (FF ¶¶ 108-118.) The Commission appreciates the Applicant's gesture to reduce the Map Amendment request from the MU-7 to the MU-5A. The Commission also reiterates that the Map Amendment is tied to the dimensions of the Project as shown on the Final Plans (i.e., a height of approximately 58 feet and a density of 3.81 FAR). (*See* X § 300.4.) The Project's height and density of the Project are not inconsistent with the relevant planning guidance and the surrounding context;

(b) Public Benefits. The Public Benefits, and more particularly the Project's provision of senior affordable housing, sufficiently warrants the Project's density, height, and size. (*See also* FF ¶¶ 105;127-139.) A reduction in size or density of the Project would necessarily result in the reduction of affordable units. However, the construction of such units is a civic priority. (Tr. 2 at 42.) The Commission finds that the benefits arising from the Project exceed any adverse effects from a change in character relative to surrounding conditions on Eads Street, N.E., particularly when such change is explicitly called for in the Comprehensive Plan and BRCFP; and

(c) Design and Context. The Commission observes that the Project is taller and larger than any existing structure on Eads Street, N.E. Although such size and scale is called for from a planning perspective, this Commission is sympathetic to the initial impressions of the ANC and Opponents in opposition to the Project. However, upon careful review, the Project's

design and site analysis appropriately address the balance of the proposed bulk and height in the immediate surrounding context:

- The Property's location in the context of the neighborhood weighs towards allowing greater height and density on the Property. The Project buffers the industrial and commercial uses and the heavily-trafficked highway corridor to the north and the lower-scale residential uses to the south;

- The Property is on the northern side of Eads Street, N.E. and to the east of any existing townhouses. As a result, the Project has the minimal possible impact with respect to solar/shadow orientation;

- The Project steps down at its western end to transition to the height of the townhouses opposite the alley from the Project. The Commission notes that the R-3 zoning that applies to the properties to the west and south would allow development to a height of 40 feet and three stories. The Project's stepdown in height to four stories and approximately 43 feet, eight inches at its western edge is an appropriate transition in height;

- The Project is voluntarily set back from Eads Street, N.E. in keeping with the building restriction line applicable to the nearby townhouses;

- The Project's quality of architecture and detailing also counsels in favor of allowing the greater height and density because the Building's mass is appropriately articulated and employs high-quality materials;

- The Project has an immediately adjacent alley entrance so that vehicles accessing the Project's garage do not necessarily pass by the rear of other townhouses that share the alley system serving the Project;

- The Project's use exclusively for residential purposes (excepting only the Community Room) also weighs in favor of allowing the additional height and density on an otherwise residential street; and

- The Property's existing use as a surface parking lot supports the requested additional height and density made possible by the Project. That is, the Property is already an anomalous condition along Eads Street, N.E., and the Project is an improvement over the existing condition.

For the foregoing reasons, the Project's design and context overall weigh in favor of granting the additional height and density sought for the Project.

80. Lack of Adverse Impacts. The Commission finds that there are no potential adverse effects from the Project. (*See* FF ¶¶ 119-126.) Given the absence of such unfavorable conditions, the Commission finds the Project's density, height, and size to be appropriate.

81. Traffic Congestion and Adequacy of the CTR. Opponents raised concerns that the Project results in increased traffic congestion that will likely have adverse spillover effects on Eads Street, N.E. and other nearby streets. (*See* Opponents' Letters and Tr. 2 at 149, 164-165.) Opponents also alleged variously that the Applicant failed to provide a transportation analysis or that it was deficient. (*Id.*) Regarding the transportation analysis, the Commission finds that the Applicant did submit the CTR, and that DDOT approved of it and found to be reasonable. (Ex. 17; 24 at 2.) The Commission concurs with DDOT with respect to the CTR for the reasons cited above. (*See* FF ¶ 69.) The Commission also finds Opponents' concerns regarding traffic congestion to be unavailing. The Applicant has provided adequate evidence in the CTR and in testimony that the Project's traffic congestion impacts are likely to be minor. (Ex. 17; Tr. 2.)

82. Parking. Opponents and the ANC raised concerns regarding the amount of parking proposed to support the Project's residents and guests. (*See* Opponents' Letter and Tr. 2 at 146, 152, 155, 158-160, 164.) The ANC also raised concerns about the impact of the Project on available on-street parking and the loss of parking currently on the Property, which existing parking serves the nearby nightclub. (Tr. 2 at 126.) The Commission appreciates the concern about the existing parking conditions on Eads Street, N.E. However, the Commission finds that the Project does not have potential adverse effects with respect to parking for the following reasons:

(a) The Project complies with the Zoning Regulations. The Project provides seventeen parking spaces, which exceeds the required twelve parking spaces under the Zoning Regulations. (Ex. 80B.) These Zoning Regulations are newly adopted by this Commission, and this Commission engaged in extensive study of such Regulations (including the parking minimums contained therein) before adoption. The Commission is therefore satisfied that the amount of parking required under the Zoning Regulations is appropriate for the Project;

(b) The Project has robust TDM measures. In addition to exceeding the amount of required parking, the Applicant has agreed to adopt TDM measures to reduce vehicle travel demand (and therefore parking needs) among its residents. (Ex. 24.) The Applicant further committed to establish a shuttle service to provide transportation to and from typical convenience

destinations (e.g., a grocery store or pharmacy as well as direct access to a Metrorail or DC Streetcar station); (Ex. 80 at 5)

(c) The Applicant has elected to make the Project's residents ineligible for RPP. In response to a concern from this Commission at the Public Hearing, the Applicant agreed to make the Project's residents ineligible for RPP; (Ex. 80 at 5)

(d) The Applicant has conducted a supplemental parking study of the neighborhood. Again in response to a request from this Commission at the Public Hearing, the Applicant undertook a parking survey of the streets surrounding the Project. The parking survey revealed that there is a sufficient supply of on-street parking in the immediate area to accommodate local residents even after the development of the Project. (Ex. 80B.) The Commission finds that the Project's parking controls are sufficient to ensure that the Project does not have adverse effects on the surrounding parking supply; and

(e) Parking for the nightclub will continue to be available. The Commission finds that the Project affects only one of the two parking lots that the nightclub uses. The Applicant's CTR supplement finds that there is a sufficient supply of on- and off-street parking to accommodate local businesses, including the nightclub. (*Id.*) Therefore, the Project does not result in unacceptable impacts to the surrounding areas.

83. Construction Impacts. Opponents raised concerns regarding adverse effects from construction. (*See* Opponents' Letters; Tr. 2 at 146, 154, 166.) The Commission finds that these concerns are not unacceptable and are capable of being mitigated. The Applicant has prepared and included in the record the CMP, which is an appropriate and adequate vehicle for mitigating construction impacts. (Ex. 80C.) Moreover, the Applicant noted that it had revised the Project to no longer require a below-grade garage in order to minimize excavation for the Project and to avoid related construction-period impacts on neighbors. (Tr. 2 at 48.)

84. Crime Impacts. Opponents also raised concerns about existing crime in the vicinity of the Project and impacts of the Project and on the Project's future residents. (*See* Opponents' Letters and Tr. 2 at 150-51, 153-54, 166.) The Applicant provided evidence that it had met with MPD and designed the Project to address safety concerns. (Ex. 2 at 4; 46A1 at 5; 80 at 6.) The Applicant also provided testimony that the Project is the type of "eyes on the street" development that tends to improve neighborhood safety especially in light of the existing condition of the Project as a vacant lot. (Tr. 2 at 33.) The Applicant committed to heightened security measures in response to MPD recommendations and community concerns. (Ex. 80 at 6.) The Commission finds that the Project does not have potential adverse effects with respect to crime and that such impacts are not unacceptable in light of the Public Benefits.

85. Environmental Impacts. One Opponent alleged that there had not been an adequate environmental impact study done to confirm that the Property was suitable for development in light of contamination on nearby properties. (Tr. 2 at 148.) As part of the Post-Hearing Submission, the Applicant presented evidence that it had conducted an environmental site assessment of the Property, and such review revealed that no further review was required and that no significant non-compliance with environmental statutes would arise from conditions as a result of impacts to the subsurface of the Property. (Ex. 80F at ii.)

86. Economic Impacts. One Opponent alleged that the Project will reduce surrounding property values and reduces the likelihood of attracting retail offerings. (Tr. 2 at 162.) The Applicant testified that it expected property values around the Project to increase over time. (*Id*. at 95.) The Applicant also provided a recent report showing rising Property values in River Terrace. (Ex. 80E at 4.) The Commission finds that the Project has no potential adverse effects that are not offset by the Public Benefits, most notably, the provision of affordable housing.

87. Neighbor Opposition. Opponents and the ANC point out that the Project is opposed by the River Terrace community. (*See* Opponents' Letters; Tr. 2 at 98, 124, 131, 147.) However, a PUD is not a popularity contest but must be decided based upon the standards set forth in Chapter 3 of X. Whether this or any other PUD is universally loved or hated, that sentiment must be ties to specific standards of review. Both the proponents and opponents of this PUD have addressed these factors, and the Commission has decided this application based upon the merits of those positions.

IX. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

88. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, this Commission retains discretion to grant relief from the development standards as a development incentive. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for relief. (*Id*. § 303.13.)[7] A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id*. § 303.12.)

[7] Subtitle X, § 303.13 provides in relevant part that "[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards."

89. As part of the Application, the Applicant requested the Commission grant the following development incentives (collectively, the "Development Incentives"):[8] the map amendment; special exception relief from the applicable rear and side yard requirements ("Yard Relief") and penthouse enclosure requirements ("Penthouse Relief"); and relief from the strict application of the parking access and loading requirements ("Parking and Loading Relief"). These items are addressed in turn below.

Map Amendment

90. The Property is currently in the R-3 zone. The Application seeks the map amendment to change the designation for the Property to the MU-5A zone to accommodate the proposed Project. The Map Amendment is not inconsistent with the Comprehensive Plan. (*See* X § 500.3.) The following factors bear on this Map Amendment request:

    (a) Future Land Use Map/BRCFP. The Property is split between the Mixed-Use Medium-Density Commercial/Moderate-Density Residential use designation and the Moderate-Density Residential use designation. The split occurs roughly down the center of the Property with the Mixed-Use Medium-Density designation applicable to the eastern half of the Property and the Moderate-Density designation to the western half. The Framework Element of the Comprehensive Plan establishes guidelines for interpreting the Map. (10A DCMR ["10A"] § 226(a).) This Element provides that Moderate-Density Residential use is "characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings." (*Id.* § 225.4.) Medium-Density Commercial use is characterized by "Buildings [that] are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height." (*Id.* § 225.6.) The requested MU-5A zone (formerly C-2-B) is expressly identified as corresponding to the Medium-Density Commercial designation and it is the lowest density zone in such designation. Given the split nature of the Property, using the lowest density zone under the Medium-Density designation is appropriate. The Comprehensive Plan further provides that density bonuses through the PUD process may exceed the guidance set forth on the Future Land Use Map. (*See id.* § 226(c); *see* also FF ¶¶ 108-118.) In addition, the Project's density is directly in alignment with the policy recommendations of the BRCFP;

    (b) Partial Moderate-Density Designation. The Property's partial designation within the Moderate-Density Residential area on the Future Land Use Map does not preclude the Map Amendment. Rather as noted in the Comprehensive Plan itself, "the Future Land Use Map is not a zoning

[8] In the 20-Day Statement, the Applicant withdrew its request for lot occupancy relief. (Ex. 23 at 2.)

map" and is not "parcel-specific" but is instead intended "to be interpreted broadly." (10A § 226(a).) In that same vein, the density of any given block on the Future Land Use Map may vary from lot to lot, such that there may be individual lots with densities that are either above or below the designation. (*Id*. § 226(c) ("The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area.").) In light of the Project's consistency with the Medium-Density designation and other provisions of the Comprehensive Plan, the Map Amendment is not inconsistent with the Moderate-Density Residential use designation. (*See also* FF ¶¶ 108-118.) Relevant to this analysis is the Project's design, the Map Amendment must be understood in partnership with the PUD. (*See* X § 300.4.) That is, the Project is slightly less dense on the portion of the Property that is within such Moderate-Density Residential area. This aspect of the Project further balances against any illusion of inconsistency with respect to the Moderate-Density designation;

(c) Surrounding Zones. Approximately half of the block containing the Property is within the MU-4 zone. The blocks surrounding the Property are otherwise also within the R-3 zone. On balance, the Map Amendment would not be anomalous in the current context; and

(d) Below Maximum FAR and Height. The Project is substantially below the maximum FAR allowed in the MU-5A (i.e., the Project's FAR is 3.81 and the maximum in the MU-5A under a PUD is 5.04). Likewise, the Project (at 58 feet) is below the maximum height allowed under the MU-5A zone designation pursuant to a PUD (90 feet under the Zoning Regulations and 70 feet under the Height Act).

91. The map amendment is not inconsistent with the Comprehensive Plan. The Commission makes additional findings regarding the Application's consistency with the Comprehensive Plan. (*See* FF ¶¶ 108-118.) Those findings are incorporated here by reference. On balance, the Commission finds that the weight of the factors supporting the map amendment, and in particular, the map amendment's lack of inconsistency with the Comprehensive Plan, justify granting the map amendment.

Yard Relief and Penthouse Relief

92. The Project requires modest relief from the side and rear yard requirements of the MU-5-A zone and from the strict application of the penthouse enclosure requirements:

(a) Rear Yard. Under Subtitle G, § 405.1 of the Zoning Regulations, a rear yard of not less than fifteen feet is required in the MU-5A zone. The

Project's rear yard varies in width but does not satisfy this requirement. (Ex. 80G1-80G4.) Subtitle G, § 409 authorizes relief from this yard requirement as a special exception pursuant to the provisions of Subtitle G, § 1201.1;

(b) Side Yard. Under Subtitle G, § 406.1 of the Zoning Regulations, no side yard is required but if any is provided it must be two inches per foot of building height and not less than five feet in the MU-5A zone. The Project includes a voluntary side yard on its western end, which also varies in width and also does not satisfy this requirement. (Ex. 80G1-80G4.) Subtitle G, § 409 authorizes relief from this yard requirement as well by special exception; and

(c) Penthouse. Under Subtitle C, § 1500.6, all penthouse and mechanical equipment must be placed in one enclosure except that a rooftop egress stairwell enclosure not containing any other mechanical space may be contained in a separate enclosure. The Project's stairwell egress enclosure also includes other enclosed mechanical space. Subtitle C § 1504.1 authorizes relief from § 1500.6 by a special exception and the considerations of § 1504.1(a)-(f).

93. The Commission finds that the Applicant's request for special exceptions for Yard Relief and Penthouse Relief satisfies the relevant criteria for the following reasons:

(a) Standard of Review for Yard Relief and Penthouse Relief. In reviewing a request for a special exception for Yard Relief and Penthouse Relief, this Commission must determine that the requested special exceptions are: (i) in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and (ii) do not tend to affect adversely the use of neighboring property. (X § 901.2 ("Special Exception Standard").) The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services"; (11-A DCMR ["A"] § 101.1 ("Zoning Purposes").)

(b) Harmony. The Commission finds that the Yard Relief and Penthouse Relief are in harmony with the Zoning Purposes:

- The yards for which relief is required allow for adequate light and air because both yards adjoin alleys. A side yard is not even required in the MU-5A zone, and the minimum width requirement is only to ensure no unusually narrow yards are created. Given the adjacent alley, that concern is not present for the Project. Similarly, the rear yard abuts only an alley and fails to comply with the underlying requirement of the MU-5A zone for only a portion of the width of the Property. Finally, the rear Yard Relief is a function of the Project's voluntary setback from Eads Street, N.E. to match the surrounding context, which is subject to the building restriction line;

- The Penthouse Relief does not diminish light and air. Rather, the penthouse as proposed provides the least amount of screening wall that encloses all mechanical equipment that is required to be enclosed. A fully compliant screening wall would be larger than that proposed;

- The Project as a whole, including the two items of relief subject to the Special Exception Standard, furthers the second prong of the Zoning Purposes because the Project overall complies with the density limits of the applicable zone and therefore avoids overcrowding; and

- Finally, the Project's non-compliant yards create conditions that promote the productive re-use of the Property for the purposes of affordable housing, which is a highly desirable civic priority. The Penthouse Relief is in harmony with the Zoning Purposes for similar reasons;

(c) No Adverse Effects. Neither the Yard Relief nor the Penthouse Relief tend to have adverse effects on the use of nearby properties.

- Any potential adverse effects of the requested rear yard flexibility on neighboring properties are significantly mitigated by: (i) the commercial nature of the lots to the rear (north) of the Property; (ii) the minor amount of relief requested; and (iii) the presence of the rear alley;

- Likewise, any adverse effects of the requested side yard flexibility are mitigated by the small amount of flexibility requested and the width of the alley adjacent to such side yard; and

- The flexibility requested for the rooftop enclosures is also modest and allows two air handling units to be spaced apart from each other on the roof to ensure efficient operation. Moving the units

closer together reduces efficiencies inside the Project. Creating a single enclosure around the both units would interfere with rooftop green space and would be excessively large given the total area of the mechanical units that need to be enclosed. Given the height of the units and the enclosure, none are visible from the street. There are no potential adverse effects from such relief;

(d) Other Conditions. In addition to the elements of the Special Exception Standard set forth above, the rear Yard Relief and the Penthouse Relief are subject to additional considerations:

- With respect to the Yard Relief for the rear yard, Subtitle G § 1201.1 includes two additional conditions: (i) no apartment window may be located within 40 feet across from another building; and (ii) adequate provision must be made for service functions. There are no apartment windows on the rear ground level of the Project, and there is only one building directly across the alley to the rear of the Project, but that building is only one story. Therefore, there is no building within 40 feet of a residential window. The Project makes adequate provision for loading and parking. Accordingly, the Yard Relief satisfies the additional conditions of § 1201.1; and

- With respect to the Penthouse Relief, the Commission may include other design and development factors in determining whether to grant such relief. (*See* Subtitle C § 1504.1(a)-(f).) The Commission finds that § 1504.1(c) ("The relief requested would result in a roof structure that is less visually intrusive [than a matter-of-right structure]") is relevant in this instance. The Penthouse Relief results in a smaller enclosure and therefore less impactful than one that would be fully compliant.

94. For these reasons, the Commission finds that the Yard Relief and Penthouse Relief each satisfy the Special Exception Standard and applicable additional considerations.

Parking and Loading Relief

95. The Project requires modest relief from certain parking access and loading requirements of the Zoning regulations. The Project provides the requisite number of parking spaces, but does not comply with the requirement that each parking entrance accessed from an alley be located at least 12 feet from the center line of that alley. (*See* Subtitle C § 711.7.) Only two of the Project's parking spaces do not comply with this requirement, and the amount of noncompliance is in both instances less than 20 inches.

96. Under the loading requirements, the Project is required to have both a 30-foot loading berth and a 20-foot service/delivery space, and the 30-foot loading berth must, among other things, have 14 feet of vertical clearance. (*Id*. §§ 901.1, 905.2.) However, the Project includes only a single 30-foot berth, which has a maximum vertical clearance of 12 feet rather than the requisite 14 feet.

97. The Parking Relief is de minimis, and in light of the Property's irregular configuration along the rear alley and the Project's many Public Benefits is readily justified.

98. The Loading Relief is more significant but justifiable in light of the Public Benefits. There is a direct trade-off in the number of affordable housing units for the amount of internal loading provided. The Commission finds that the extra housing provided is a benefit that outweighs the costs of granting the Loading Relief with respect to the delivery space. The two-foot reduction in the vertical clearance of the loading berth is warranted in light of the fact that it allows the Building to be two feet lower without any expected adverse effects on loading needs. (Ex. 24.) Accordingly, the Commission grants the Parking and Loading Relief.

Development Incentives – Summary

99. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the few Development Incentives set forth in the immediately foregoing paragraphs. Where the Project requires relief, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and Public Benefits and otherwise does not derogate or impair, but rather is in accordance with, the Zoning Purposes.

100. The Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing single-family residential uses and protected open spaces, and promotes land uses that create favorable conditions with respect to recreation, culture, and transportation. The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations, requiring only modest flexibility to shift density across the Property and to obtain minor relief for rear and side yards and for roof structures. For the reasons set forth above, the Commission grants the requested Development Incentives.

X. PUD Requirements

101. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and

advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the "PUD Requirements"). (X §§ 300.1, 300.2, 300.5.)

(a) For the following reasons, the Project is superior to the development of the Property under the matter-of-right standards:

- Amount of Housing. The Project includes a greater amount of housing than would have been feasible under a matter-of-right development;

- Amount and Level of Affordable Housing. The Project includes a greater amount of affordable housing than would have been feasible under a matter-of-right development. Moreover, the majority of such affordable housing is reserved at a deeper level of affordability than would be required or feasible for a matter-of-right project;

- Senior Housing. The Project's provision of housing reserved exclusively for seniors is a public benefit expressly recognized in the Zoning Regulations;

- Other Public Benefits. The Project includes other Public Benefits, including the Community Room and employment benefits, none of which would be required or feasible under a matter-of-right development; and

- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. Accordingly, the Project would not have been revised as it was in accordance with community preferences;

(b) The Public Benefits are commendable in number and quality. The Project's Public Benefits are enumerated above and discussed in detail elsewhere. (*See* FF ¶¶ 127-139.) For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. There are eight distinct categories of Public Benefits, an absolute number that the Commission finds to be commendable given the overall small size of the Project. Finally, the Commission finds that the Public Benefits are meaningful. The Public Benefits address the preferences, needs and concerns of community residents, were developed following the

Applicant's robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (FF ¶¶ 37-39 FF ¶ 138.)

(c) The Project protects and advances the public health, safety, welfare, and convenience:

- Public Health. The Project includes a number of mitigation measures, notably the CMP, that protect and affirmatively advance the public health. The Project also encourages walking and active mobility, measures that advance public health. The Project does not entail any unwarranted overcrowding or overpopulation and is constructed to a height and density below the full amount authorized under the Map Amendment. The Project also complies with enhanced AWDZ environmental performance standards; (Ex. 80 at 2.)

- Safety. The Project protects and advances safety: The Project has been designed in a manner that puts "eyes on the street" to promote public realm safety. Finally, the Project's has been designed in consultation with MPD to ensure adequate safety for Project residents;

- Welfare. The Project protects and advances the public welfare by providing much needed housing, senior housing, and affordable housing; and

- Convenience. Finally, the Project protects and advances the public convenience by adding new housing in proximity to transit options and non-residential uses and by providing the TDM measures set forth herein;

(d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below; (*See* FF ¶¶ 108-118.)

(e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare." (11A § 101.1.) Findings regarding the Project's protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 101(c).)

- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. (FF ¶¶ 37-

39.) The Public Hearing involved comments and discussion from a number of interested parties. The Commission finds that this community dialogue exemplifies the public morals as expressed through the Zoning Regulations;

- Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks and location north and east of existing residences. Finally, the Project follows the guidance set forth in the BRCFP; and

- Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land that is currently vacant. (FF ¶ 101(c).) The Project provides prosperity to the future residents of the Project. The Project also promotes public prosperity with respect to its future provision of tax revenue to the District; and

(f) The Project has undergone a comprehensive public review by this Commission, which has evaluated the Project's flexibility and incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record now includes more than 100 total exhibits, detailed briefings from the Applicant and the Residents, reports from multiple District agencies and the ANC, and dozens of letters of written testimony. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, the ANC, and Opponents. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to the District agencies (notably OP and DDOT), the ANC, and the many Opponents. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

102. The Commission finds that the Project satisfies the PUD Requirements.

XI. PUD Evaluation Standards

PUD Balancing

103. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of X. The

Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)

104. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See* Howell v. District of Columbia Zoning Comm'n., 97 A.3d 579 (DC 2014).) The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 2, 12, 17, 23, 45A1-45A2, 46A1-46A4, 80 (plus exhibits thereto).) This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.

105. Pursuant to X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project; (b) the Development Incentives requested by the Applicant (where, pursuant to X § 303.12, the requested Map Amendment is a type of PUD incentive); and (c) any potential adverse effects (collectively, the "PUD Balancing Test"):

(a) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous Public Benefits. A full accounting of the Public Benefits is provided below; (*See* FF ¶¶ 127-137.)

(b) The Project's Development Incentives are comparatively minor and appropriately granted in light of the Public Benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project, the vast majority of which specifically accommodate the Project's provision of affordable housing. The Project's individual Development Incentives are described above. (*See* FF ¶¶ 88-100.) The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. However, the Applicant does not utilize the entirety of the additional height and density available under the Map Amendment. In addition, the Map Amendment is expressly called for in the Comprehensive Plan and BRCFP. The Yard Relief, Penthouse Relief, and Parking Relief are all either minor and readily mitigated by the alley system surrounding the Project or less intrusive than the matter-of-right requirements. The Loading Relief is slightly more substantial than the three foregoing items of relief, but accommodates construction of additional affordable housing at the cost of not providing redundant internal loading facilities. Accordingly, the Development Incentives underlie and indeed make possible the Public Benefits;

(c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC and Opponents together list numerous potential adverse effects of the Project. (*See* FF ¶¶ 75-87.) The Applicant separately identified and studied potential adverse impacts of the Project. (*See* FF ¶¶ 119-126.) Such findings are incorporated herein. As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Project's many Public Benefits; and

(d) The Project's affordable housing and Public Benefits together outweigh the Project's potential adverse effects. The Commission returns to a familiar point in its review of the record in this proceeding: the Project provides much-needed affordable housing for seniors at levels of affordability below that required under the Zoning Regulations, and offers the Community Room and employment commitments and other Public Benefits. These items are the crux of the Project's trade-off for the reasonable additional density sought through the Application.

106. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

107. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "Plan") related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the "PUD Evaluation Standards"). (*See* X § 304.3.)

The Project Is Not Inconsistent with the Plan

108. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in

conservation, stabilization, and improvement of each neighborhood and community in the District. (*See* DC Code § 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new affordable housing on underutilized land, providing the Community Room, investing in a District neighborhood that seeks new investment, engaging in employment benefits, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property.

109. Comprehensive Plan Guiding Principles. The OP Final Report finds that the Project furthers three of the Comprehensive Plan's "Guiding Principles". (*See* Ex. 25 at 12 (citing 10A §§ 217.4, 217.6, 217.7 as the Guiding Principles that the Project furthers).) The Commission gives the requisite great weight to these OP findings and incorporates them herein.

110. Future Land Use Map and Generalized Policy Map. The Commission finds that the Project (including without limitation the Map Amendment) is not inconsistent with the Future Land Use Map or the Generalized Policy Map. The Framework Element provides guidelines for using the Future Land Use Map and Generalized Policy Map:

(a) The Framework Element states that the Future Land Use Map should be interpreted "broadly" and notes that the zoning for an area should be guided by the such Map interpreted in conjunction with the text of the entire Comprehensive Plan. (10A § 226(a).) The Framework Element also clearly provides that density and height gained through the PUD process are bonuses that may exceed the typical ranges cited for each category. (*Id.* § 226(c).) The purpose of the Generalized Policy Map is to categorize how different parts of the District may change up through 2025. (*Id.* § 223.1.) The Generalized Policy Map makes express reference to the densities set forth in the Future Land Use Map; (*Id.* § 223.5.)

(b) The Property is split between the Mixed-Use Medium-Density Commercial/Moderate-Density Residential use designation and the Moderate-Density Residential use designation. The split occurs on a north-south axis roughly through the center of the Property with the Mixed-Use Medium-Density designation applicable to the eastern half of the Property and the Moderate-Density designation to the western;

(c) The Framework Element provides that Moderate-Density Residential use is "characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings." (*Id.* § 225.4.) Medium-Density Commercial use is characterized by "Buildings [that] are generally larger and/or taller than those in moderate density commercial areas but generally do not exceed eight stories in height." (*Id.* § 225.6.) The

requested MU-5A zone (formerly C-2-B) is expressly identified as corresponding to the Medium-Density Commercial designation;

(d) The proposed four- to five-story Building is not inconsistent with the mix of designations on the Future Land Use Map. In the recent *Friends of McMillan Park v. Zoning Commission*, the D.C. Court of Appeals, citing with approval its recent *Durant* decision, determined that the relevant inquiry is whether a proposed action is inconsistent with the Comprehensive Plan *as a whole*. That is, merely examining one Element, even an Element as central as the Future Land Use Map, is not sufficient to analyze consistency with the Comprehensive Plan. Here, the Moderate-Density Residential use designation that underlies the entire Property establishes that a low-rise apartment building is appropriate on the Property, and the higher density Medium-Density designation establishes that a higher density is also appropriate. At a density of 3.81 FAR, the Project is comfortably within the moderate- to medium density range. The four- to five-story height is also appropriate, particularly given that the Project steps down in height as it moves west into the Moderate-Density Residential land use category;

(e) To the extent that the Project's proposed height and density is more "medium" than "moderate," the Comprehensive Plan explicitly anticipates that outcome when a PUD is employed, so the height and density is not inconsistent with the underlying land use designation. The Framework Element also states that "the land use category definitions describe the general character of development in each area," but there may be "individual buildings" that deviate from the expressed designations. (*Id.*) Here, the proposal only applies to a portion of the block, and it is literally at the location where the Comprehensive Plan contemplates a transition from "moderate" to "medium" density. Given than the Future Land Use Map is not intended to be parcel-specific (i.e., the rigid precision of a zoning map should not be imputed on the Future Land Use Map), the Project's use, height, and density must be read as not inconsistent with the Future Land Use Map designation for the Property as a whole;

(f) The proposed Zoning Map amendment and the proposed height and density are not inconsistent with the land use designations for the eastern portion of the Property. The Plan notes that the Medium-Density Commercial "designation is used to define shopping and service areas that are somewhat more intense in scale and character. . .." The corresponding Zone districts are generally C-2-B [i.e., analogous to the new MU-5-A zone under the 2016 Zoning Regulations], C-2-C, and C-3-A." (*Id.* § 225.9.) The proposed Map Amendment is not inconsistent with the Comprehensive Plan in light of the MU-5A zone (previously C-2-B zone) being expressly listed among the zones designated as appropriate in the Medium-Density Commercial area. The Project's proposed height and

density are also not inconsistent with the Comprehensive Plan's Future Land Use Map. The Medium-Density Commercial designation applicable to the Project's eastern half supports buildings up to eight stories, whereas the Project has a maximum of five. The Project's proposed density of approximately 3.81 FAR is not inconsistent with the maximum allowed in the zones expressly contemplated in the Plan: the MU-5A (previously C-2-B) permits a maximum density of 5.04 FAR;

(g) The map amendment and the Project's height and density are not inconsistent with the Moderate-Density Residential designation for the western end of the Property. The Comprehensive Plan provides that under the Moderate-Density Residential designation, zones other than those expressly listed may be appropriate in some instances. Moderate-Density Residential areas immediately adjacent to and partly coincident with Medium-Density Commercial areas are among the locales appropriate for such higher intensities of use. While the Comprehensive Plan generally describes the Moderate-Density Residential designation as neighborhoods appropriate for low-rise apartment buildings, the Future Land Use Map permits that "heights [may] exceed the typical ranges" where, as here, density bonuses are granted through a PUD. (*Id*. §§ 225.4, 226(c).) The proposed five-story maximum height on the eastern portion of the Property is not inconsistent with the 60-foot maximum height of the RA-1 (previously R-5-A) and RA-2 (previously R-5-B) pursuant to a PUD. Moreover, the boundaries of the Future Land Use Map are sufficiently imprecise to accommodate any of the five-story portions of the Project in the areas designated Moderate-Density Residential where the incremental density was granted through bonuses pursuant a PUD, as in the instant proceeding. The Plan also notes that the R-5-A Zone District, among others, is generally consistent with the Moderate-Density Residential category and that the R-5-B Zone District and "other zones may also apply in some locations."; and (*Id*. § 225.4.)

(h) The Comprehensive Plan's Generalized Policy Map designates the Property as a "Neighborhood Conservation Area." Such areas generally are regarded as having very little vacant or underutilized land and are to be generally conserved at current residential intensities but also to accommodate "some new development and reuse opportunities." (*Id*. § 223.4.) Because the Property is both vacant and underutilized, the strict conservation objectives of the Generalized Policy Map designation are inappropriate for the Property especially in light of the Area Element, the BRCFP, and other policy goals and objectives of the Comprehensive Plan. Instead, the Property should be expected to undergo new development and reuse, and therefore the proposed Project is not inconsistent with this Element of the Comprehensive Plan.

111. Land Use ("LU") Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development and protecting established single-family residential neighborhoods from inappropriate development:

(a) First, the LU Element encourages development around Metrorail stations and infill development more generally. Here, the Project's proximity to the Minnesota Avenue Metrorail station and four Priority Corridor Network Metrobus Routes (X1, X2, X3, X9), the extension of the streetcar, and the infill location in an established neighborhood advance Policies LU-1.3, 1.4.1, and 1.4.2. (*See Id.* §§ 306.1, 306.4, 307.5, 307.6.) The Project is a transit-oriented infill development;

(b) Second, the residential use at the Project meets the goals of maintaining a variety of neighborhood types and enhancing and revitalizing neighborhoods. The River Terrace neighborhood, though largely single-family in nature, has a strong backbone of multi-family residential dwellings along its perimeter, which dwellings serve as a buffer from the adjacent arterial roadways. The Project continues this neighborhood feature. In addition, the Project's overall massing respects the existing setback line of the attached dwelling neighborhood while providing a natural transition to the existing to the developing Benning Road, N.E. corridor to the north. The Project's location is therefore consistent with Policies LU-2.1.1, 2.1.3. The Project is not inconsistent with the neighborhood conservation policies of the LU Element; and

(c) Third, the LU Element encourages creative parking management to respond to the level of demand generated by the Project and to mitigate congestion. Such Element also encourages projects to enhance the overall aesthetic quality of existing neighborhoods. Here the Project meets the objectives of the Land Use Element by offering an appropriate amount of enclosed, garage parking for residents, removing a vacant lot, and providing attractive architecture and landscaping in a manner consistent with Policies LU-2.1.11 and 2.2.4.

112. Transportation Element. The Comprehensive Plan emphasizes non-vehicular transportation and creating a strong pedestrian environment. The Plan notes the importance of strengthening the linkage between land use and transportation as new development takes place and of undertaking "smart growth" solutions. (10A §§ 403.2, 404.8, 405.3.) The Project is located near a Metrorail Station and Priority Corridor bus lines, thereby promoting public transportation use. The Project's design de-emphasizes automobile use and places a priority on pedestrian safety and connections: the Project's sidewalks are wide and attractive, a curb cut is removed, and the Building is oriented to the sidewalk. (*See* 10A § 410.5.) The Project also responds to the Plan's directive for smart growth as a regional solution. (*See* 10A § 410.5.) As a result, the Project has the potential for positive

impacts on the region's traffic, as encouraged by the Comprehensive Plan. Finally, as noted elsewhere, the Applicant provides a TDM that is in keeping with the Plan's objective of studying transportation effects of new development. (Ex. 17, 80B; *See* 10A § 414.8.) Accordingly, the Project is not inconsistent with the Transportation Element.

113. Housing Element. The Project is consistent with the Comprehensive Plan's clear housing directive: build more affordable housing for seniors. (*See Id*. §§ 501.1, 502.2, 516.8, 516.9.) The Comprehensive Plan focuses on increasing the District's housing supply and encouraging private sector involvement. (*Id.* § 503.2.) The Comprehensive Plan articulates a clear need for particular types of housing: affordable and senior housing are both priorities of the Comprehensive Plan. (*See Id.* §§ 504.6, 516.8.) The Project includes 70 units of multi-family housing at a density and in a manner consistent with the Future Land Use Map while still providing a significant addition of new housing for seniors in the District. Finally, the Project advances the Plan's targets for the type of housing developed. Moreover, the Project is a rare opportunity to expand the pool of housing for seniors without displacing any existing residents. Accordingly, the Project is not inconsistent with the Housing Element. (Ex. 2 at 41-42.)

114. Environmental Protection Element. The Project is not inconsistent with this Element as a whole. With respect to environmental protection, the Comprehensive Plan sets forth a comprehensive array of sustainability objectives. The Plan encourages street trees, tree planting, landscaping, permeable surfaces, and greenscaping for stormwater control. (*See* 10A §§ 603.4, 603.5, 603.6, 613.2, 613.3.) The Applicant incorporates these objectives into the Project. (Ex. 2, 80G.) Likewise, the Plan promotes low impact construction technologies, energy efficiency efforts, and "green" materials and finishes. (*Id*.) The Project also satisfies the Green Communities standards and satisfies the enhanced controls in the AWDZ. (*Id*.) The Project's designers have complied with all best management practices (e.g., erosion controls) in protecting environmental elements during construction. *(See* Ex. 2; *See also* 10A § 605.2.)

115. Urban Design ("UD") Element. The Project is not inconsistent with the UD Element. The Urban Design Element seeks to ensure, conserve and strengthen existing neighborhoods' visual character. (Id. §§ 910.6, 910.7, 910.12.) The Project accomplishes these objectives because its density, scale, orientation, form, and materials palette strongly relate to and complement the existing context. The Project's street frontages are highly articulated and offer visually compelling detail for pedestrians. (Ex. 2, 80G.) This slightly higher density on the Project site relative to residential areas to the south and west satisfies the Comprehensive Plan's objective of having gradual transitions in intensity. (10A § 910.11.) As an infill development, the Project attains sufficient density to be economically viable without presenting an overpowering contrast from surrounding residential uses. (*See Id*. § 910.15.) Finally, the Project prioritizes pedestrian and transit access and de-emphasizes vehicle travel. (*See Id*. § 913.12.)

116. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. (Ex. 2 at 42.) It is not located within the boundaries of any Policy Focus Area of that Area Element. (10A § 1710.3.) This Element encourages the provision of housing through vacant-lot/infill development as advanced by the Project. (*Id*. § 1708.3.) The Area Element encourages buffering the existing lower-density residential neighborhoods from nearby highways while creating a positive visual statement from such highways. (*Id*. § 1708.9.) Likewise, the Element encourages development that leverages existing transit-oriented development opportunities around the Minnesota Avenue Metrorail station. (*Id*. § 1711.6.) The Project achieves such objectives. The Project is the type of compatible infill development encouraged by the Area Element and the Comprehensive Plan as a whole. (*Id*.)

117. BRCFP. The BRCFP "gives a clear and concise outline for how development can and should happen on Benning Road." (Ex. 2 at 43.) The Property is located within "Opportunity Site 2C" in the Corridor Plan, and is identified as appropriate for, among other possible uses, multi-family housing. (*Id*.) The proposed development of the Project is therefore consistent with this identification in the Corridor Plan. Other general policy objectives of the Corridor Plan include stated desires to: encourage construction of new, mixed-income housing along the corridor, and improve living conditions for existing residents without causing displacement; establish visual consistency and a strong sense of community identity along the Benning Road corridor; create transit-oriented development [and] mixed use opportunities around the Benning Metro to promote walkability; ensure transportation options are efficient, pleasant and readily available; create pleasant, barrier-free streets that reinforce the comfort, convenience, safety, and visual interest of pedestrians; support safe, diverse mixed-use opportunities including a variety of housing choices, a variety of land uses (residential, commercial, employment uses) and visually and physically accessible civic spaces (schools and parks and plazas); ensure new development is high quality and compatible with other new development along H Street and Minnesota Avenue. N.E.; and involve neighborhood communities in the development process to recognize and reward design excellence. (*Id*.) The Project directly advances each of these objectives. Specifically, the Project adds transit-oriented housing without causing any displacement, improves the surrounding streetscape, and is high quality relative to many other housing options in the area. Because the Project is among the few new developments along this portion of Benning Road, N.E., it has been designed to ensure future development can adopt certain design and architectural elements in order to establish a corridor-scale visual identity. Finally, the Applicant has taken significant steps to involve neighbors in the development process. Accordingly, the Project is consistent with the Corridor Plan.

118. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or Opponents.

Therefore, for the reasons set forth more fully above the Commission finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

119. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits.

120. Housing Impacts. This Commission finds that the Project's housing impacts are not unacceptable but are instead favorable for the surrounding neighborhoods and the District as a whole because the Project helps address a dire housing shortage. The Project delivers 70 new units of age-restricted senior affordable housing, a housing type of particular policy focus in the District. Many neighborhoods in the District's Northeast quadrant continue to experience strong demand for housing. As a result, housing prices in the neighborhood have increased in recent years. (Ex. 80E.) For long-time residents, the recent increase in values has been an opportunity for wealth creation, but for others, the housing price run-up can be a major obstacle to satisfying basic housing needs. The Project contributes to this much-needed housing supply in an incremental and thoughtful way. (*Id.*) The Project's contribution of affordable senior housing supply signifies a healthy renewal and continuation of investment. Moreover, the Applicant provided evidence that the Project's affordable housing ranges do not impact income ranges in the surrounding context, which allows the Commission to conclude that the Project does not concentrate affordable housing. The Project has an overall favorable impact on the surrounding area and the District as a whole from a housing perspective.

121. Land Use Impacts. The Commission finds that the Project's land uses create no unacceptable impacts on surrounding neighborhoods but are instead generally favorable or acceptable given the quality of the Public Benefits. The Project's proposed residential uses are compatible with existing land use patterns and existing zoning in the vicinity of the Property and creates no unacceptable negative impacts with respect to land use. As noted above, the areas around the Property are generally characterized by a mix of single-family residential and commercial uses. (Ex. 2.) From a land use perspective, the Project causes no unacceptable impacts because the Project's new residential uses and the surrounding single-family residential uses are compatible. Although the Project's intensity of proposed uses is greater than the existing surrounding uses, such intensity is warranted in light of the Property's Comprehensive Plan designation and designation under the BRCFP. From a zoning perspective, the PUD is consistent with surrounding areas. The proposed MU-5A zoning is necessary to accommodate the Project's proposed height, density, and lot occupancy. The Comprehensive Plan explicitly lists the proposed zone as consistent with the Future Land Use Map designation. (*See* 10A § 225.9.) Additionally, the MU-5A

zone is generally described as one that permits medium-density development, with a density incentive for residential development within a general pattern of mixed-use development on arterial streets and at rapid transit stops. Given the Property's proximity to Benning Road, N.E., and the Minnesota Avenue Metrorail Station, the MU-5A zone designation is appropriate for the Property. The proposed rezoning of the Property to the MU-5A zone across from a lower density R-3 zone has substantial precedent in Ward 7. Therefore, the requested amendment would not create zoning boundary conditions that do not exist elsewhere nearby today. Accordingly, the overall land use impacts of the Project are not unacceptable and are either entirely favorable or acceptable given the quality of the Public Benefits.

122. Transportation Impacts. The Commission finds that this Project's transportation impacts are not unacceptable and are capable of being mitigated subject to the Conditions of this Order. The Applicant has prepared a robust TDM in concert with review and analysis by DDOT. (Ex. 17, 24.) The proposed Project does not have an adverse impact on the public transportation facilities or roadways that it relies upon for service. (Ex. 17, 24, 80B.) The Project's vehicular traffic impacts are strongly mitigated by its transit options, and the Project achieves the right balance of mobility. (Ex. 2 at 25-26.) The Property is well served by transit and vehicular infrastructure, and the Project's relatively small scale does not introduce adverse impacts on either system. (Ex. 2 at 25.) The Minnesota Avenue Metrorail station is slightly greater than a half mile from the Property, and that station is relatively underutilized relative to other stations in the WMATA system. (Ex. 2.) The expected eastward extension of the One City Line of the DC Streetcar system along Benning Road, N.E. adds an additional transit option in the future for residents of the Project. (*Id*.) Numerous Metrobus lines also service the Property, including four Priority Corridor Network routes, and it is expected that many of the Project's residents will use public transit. The Project also contains 17 parking spaces to accommodate the parking demand of residents. Bicycle usage is also coherently integrated into the design of the Project, including long-term spaces in a dedicated enclosed storage room along with short-term spaces provided elsewhere in public space. The Project's physical form—no new curb cuts, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving. Finally, the Project includes transportation-related Public Benefits that address parking and mobility issues for senior residents in light of neighborhood concerns. The Project's transportation impacts are all either favorable, capable of being mitigated or acceptable given the quality of public benefits in the project, and the Project is designed as a model of infill residential development.

123. Aesthetic, Architectural, and Urban Design Impacts. The Project's proposed height, massing, and architecture produce no unacceptable impacts that are not capable of being mitigated or that are not acceptable in light of the Public Benefits. The Project's site plan and layout are generally consistent with the character of adjacent residential areas. The Project faces existing streets and is set back from the street at a distance similar to houses on most surrounding streets. The Project provides tasteful front landscaping and adds no new curb cuts. Indeed, the Project removes an existing curb cut. Access to the Project's parking and loading is via alleys. The Project's design and its detailing strongly reinforce and strengthen the character of the surrounding areas. The Project replaces an existing surface parking lot with an attractively designed building that provides a much-needed affordable senior housing use. The Project is taller and denser than surrounding uses but mitigates this density by virtue of its orientation and step down to the western end. (*See* FF ¶ 79C.) This Commission finds that the Project's impact from a public space, architectural, urban design, and massing perspective are capable of being mitigated and not at all unacceptable in light of the Public Benefits.

124. Environmental Impact. The Commission finds the Project's environmental impacts either acceptable or capable of being mitigated. The Project is designed so as to minimize any adverse environmental impacts that would otherwise result from the construction of this Project. The Project has been designed to achieve high levels of on-site stormwater retention. (Ex. 2F.) The proposed bio-retention areas, green roofs, and other features are designed to meet or exceed DOEE stormwater management retention and detention requirements, and the requisite inlets and closed pipe system are designed to be constructed in compliance with the standards set by DOEE, DC Water, and DDOT. (*Id*.) The Project is designed to exceed compliance with the District's Building Code with respect to energy efficiency and with the Green Communities standards. (*Id*.) The Project achieves an environmentally sustainable design.

125. Services and Facilities Impact. The Commission finds that the Project has an acceptable impact on the District's services and facilities given the quality of the Public Benefits. The Project's increase in demand on water and sanitary services can be met by the existing District water system. (Ex. 2F.) Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor. (*Id*.)

126. Other Impacts. The Contested Issues section of this Order and findings related to issues raised by Opponents and the ANC together include additional discussion on the Project's impacts and the Commission's balancing thereof. In sum, the Project's impacts are either capable of being mitigated or not unacceptable in light of the Public Benefits.

Public Benefits

127. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)

128. The Project achieves the goals of the PUD process by creating a high quality residential project with significant senior and affordable housing opportunities. The Commission finds that the Project includes the following Public Benefits, which are not inconsistent with the Plan as a whole with respect to the Property.

129. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.

130. Site Planning. The Project's site plan is superior benefit of the Project. (*See* X § 305.5(c).) The benefits of the Project's site plan and efficient land utilization are captured in the Project's balance of density and respect for the surrounding single-family residential context.

   (a) This Commission judges the following items indicative of superior site planning:

      - The proposed density of the Project is appropriate for the Property. The Project's overall FAR (3.81) is well within the density standards allowed in the MU-5-A zone; (Ex. 80G1-80G4.)

      - The Project makes efficient use of the Property, which is currently used for surface parking. The Project is laid out in the tradition of the surrounding neighborhoods, with a strong street front presence and a modest setback in keeping with the building restriction line applicable to the other structures on the block; and (*Id.*)

      - The Project's site plan improves adjacent sidewalks, adds street trees, and removes an existing curb cut; (*Id.*)

   (b) For these reasons, the Project's site plan is commendable: it achieves a laudable balance of new housing and contextually appropriate design and massing; and

   (c) The Project's superior site planning elements are benefits that accrue primarily to the areas immediately surrounding the Property and therefore are within the boundaries of the affected ANC.

131. Housing and Affordable Housing. Production of senior and affordable housing are public benefits that the PUD process is designed to encourage. (*Id.* §§ 305.5(f), (g).) For the following reasons, the Project's housing and affordable housing benefits are commendable:

(a) Given the rapid appreciation in value of existing homes in the District, affordable housing is one of the most challenging issues today. Such housing is particularly valued when it is produced at a level above what would be required in a matter-of-right development or when it provides age-restricted senior housing. The Project is an all-affordable senior housing redevelopment of an existing vacant site that creates 70 new affordable housing units for seniors without any displacement of existing residents or businesses;

(b) The overall amount of housing exceeds what could be provided as a matter of right on the Property;

(c) The amount of affordable housing significantly exceeds the minimum inclusionary zoning requirements, both in terms of GFA devoted to affordable housing uses and in terms of the levels of affordability. That is, the Project's affordability level is below that required pursuant to the IZ regulations;

(d) Twenty percent of the Project's units are set aside for households earning up to 30% of AMI;

(e) The remaining 80% of the Project's units are set aside for households earning up to 50% of AMI;

(f) All of the Project's units are reserved for seniors. Provision of such age-restricted housing is a specific benefit enumerated in the Zoning Regulations; and

(g) Finally, the Applicant has agreed to include residents of River Terrace and the ANC in the marketing plan for the affordable housing selection for the Project. Accordingly, the Project's housing and affordable housing benefits accrue to the area within the ANC's boundaries.

132. Employment and Training Opportunities. The Applicant has proffered two separate employment and training benefits that are Public Benefits: (*Id.* § 305.5(h).)

(a) The Applicant will participate in a First Source Employment Agreement as a part of the construction of the Project. Because such First Source Agreement related to the Applicant's pursuit of public financing for the Project, the Applicant will negotiate and execute such Agreement in conjunction with the Applicant's closing on such public financing;

(b) In addition, the Applicant will host a job fair in coordination and partnership with the ANC and the appropriate District agencies to identify qualified candidates for construction job openings; and

(c) The latter of these Benefits accrues primarily to the area encompassing the ANC.

133. Building Space for Special Uses. The provision of space for special uses is also a specifically-enumerated public benefit under the PUD provisions. (*Id*. § 305.5(i).) The Project includes the 1,250-square foot Community Room which is to be available to the ANC, RTCO and other community organizations for meetings and events. The Community Room is designed to be accessed directly by authorized users (such as officers from RTCO) without the need to pass into residential portions of the Project. This Public Benefit accrues primarily to the area encompassing the ANC.

134. Streetscape Improvements. Provision of streetscape improvements is a public benefit. (*Id*. § 305.5(l).) The Project includes new sidewalks and tree planting zones within the Eads Street, N.E. right of way and also a planting area and amenity zone located in the front setback area that enhances the residential character of the streetscape. The Project's setback area is not required by the Zoning Regulations, a building restriction line, or any other regulations; it is provided solely as a benefit of the Project. This Public Benefit accrues primarily to the area immediately surrounding the Property and therefore falls within the boundaries of the ANC.

135. Transportation Infrastructure. Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application including, but not limited to, dedication and/or construction of a public street or alley; maintenance of a street median; or provision of a public easement for a pedestrian walkway that would not otherwise be required are public benefits. (*Id*. § 305.5(o).) The Project provides transportation improvements to the immediately surrounding area, and those improvements are additional superior aspects of the Project:

(a) The Applicant proposed to restrict its residents from participating in the District's RPP program through a lease provision or similar mechanism. However, the Commission does not consider the RPP program to be a public benefit of the Project. While the Commission applauds the Applicant for its willingness to alleviate any adverse parking impacts due to its Project, and encourages the Applicant to enact its proposal, the RPP program, in the context of this Application, does not satisfy the criteria of § 305.3. Even though it is being voluntarily offered by the Applicant, the Commission finds the RPP program to be more of a mitigation item than a superior feature that benefits the surrounding neighborhood or the public in general; and (§ 305.2.)

(b) The Applicant committed provide shuttle service for Project residents to and from typical convenience destinations. The shuttle will operate at least twice a week and carry a minimum of ten passengers.

136. Uses of Special Value. Uses of special value to the neighborhood surrounding the Project qualify as a public benefit under the Zoning Regulations. (*Id*. § 305.5(q).) The Applicant has committed to provide RTCO with a contribution of $47,000 to enhance its community beautification and community gathering activities. This Public Benefit accrues primarily to River Terrace and therefore falls within the boundaries of the ANC.

137. Other Public Benefits. Other public benefits that substantially advance policies and objectives of the Comprehensive Plan qualify as public benefits. (*Id*. § 305.5(r).) The Applicant has offered the two following additional benefits. These two security-related benefits substantially advance "safe streets" policy objectives of the Comprehensive Plan:

(a) The Project includes security camera equipment intended to help monitor the surrounding neighborhood and provide MPD with access to data from the cameras to assist in improving neighborhood safety;

(b) The Project also includes exterior lighting to support the effectiveness of the cameras and act as a general deterrent; and

(c) These Public Benefits improve safety along and adjacent to Eads Street, N.E. and therefore primarily benefit the area within the boundaries of the ANC.

Consistency of the Public Benefits with the Plan

138. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.

139. Accordingly, the Commission finds that the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

1. The Commission hereby references and incorporates FF ¶¶ 1-135 in support of the following Conclusions of Law.

Procedural and Jurisdictional Conclusions

2. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-408, 600-606.) This Commission must hear any PUD case in accordance with the contested case procedures of Z, Chapter 4. X § 300.3. This Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements; and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF ¶¶ 1-21.)

3. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. X § 301. The Application satisfies these minimum area and contiguity requirements. (FF ¶ 1.)

4. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act").

Evidentiary Standards

5. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2.) The Commission's findings in relation to a PUD must be supported by substantial evidence. (*Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support" the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm'n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant's filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission's analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

6. The Commission is required under D.C. Official Code § 13(d) of the Advisory Neighborhood Commission Act of 1975 (D.C. Law 1-21: D.C. Official Code Section 309.10(d) to give "great weight" to the issues and concerns contained in the written report of an affected ANC. The Commission has considered the written issues and concerns that are referenced herein, and finds that the Applicant's responses adequately alleviate those concerns. (*See* FF ¶¶ 37-39, 72-73.) ANC 7D expressed strong opposition toward the Project, for reasons including a lack of community engagement, disagreement as to the merits of the Applicant's rezone request, the site design, the security, adverse parking and traffic effects, and lack of available public transit, and the potential adverse impact on property values. The Commission affords the requisite great weight to each issue and concern of the ANC.

7. The Commission is also required to give great weight to the recommendations of OP. D.C. Code § 6-623.04; Z § 405.8. This Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP. The Commission gives OP's

recommendation to approve the Application great weight, and concurs with OP's conclusions.

Consistency with the PUD Process, Zoning Regulations, and Plan

8. Pursuant to the Zoning Regulations, the purpose of the PUD process is "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan."(X § 300.1.) This Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. (*See* FF ¶ 101(a).) This Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. (FF ¶ 101(b).) Finally, this Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan. (*Id.* ¶¶ 101(c)-101(d).)

9. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (X § 300.2.) This Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. (FF ¶ 99-100.) The Project is not inconsistent with the Comprehensive Plan. (*Id.* ¶¶ 101, 108-118.) Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

10. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. (X §§ 500.1, 500.3.) The Commission has made extensive findings that the Map Amendment, as it supports the Project, is not inconsistent with the Plan. Accordingly, the Map Amendment satisfies the relevant standard for approval.

11. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (X §§ 303.1, 303.11.) The Applicant seeks the following elements of relief from the Zoning Regulations: the Parking Relief, and Loading Relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations, and the Yard Relief and Penthouse Relief pursuant to the Special Exception Standards and associated conditions. (FF ¶¶ 88-100.) The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and

are not inconsistent with the Comprehensive Plan. (*Id.*) The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions hereof.

12. The Zoning Regulations define public benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." (X § 305.2.) Such public benefits must satisfy the following criteria ("Public Benefit Criteria"): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4.) Based on the Commission's findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria. (FF ¶¶ 105-106, 127-138.)

13. The PUD provisions require the Commission to evaluate whether the Application: "(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site." (*Id.* § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. (*See* FF ¶¶ 107-139.) In particular, the Commission concludes the Project is not inconsistent with the Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes the Public Benefits, which are also not inconsistent with the Plan.

14. This Commission must undertake a "comprehensive public review" of the PUD application "in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits." (X § 300.5.) In deciding on the Application, this Commission must "judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." (X § 304.3.) The Map Amendment is a development incentive against which the Commission must weigh the benefits of the PUD: (*Id.* § 303.12.)

(a) This Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. (FF ¶¶ 1-21.) This Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed Public Benefits, in light of the circumstances of the case;

(b) The Commission's review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the many issues, concerns, and objections to the Project raised by the ANC and Opponents. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District and Federal agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and

(c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project's extensive and comprehensive Public Benefits. The Development Incentives are comparatively minor and largely and directly support the Project's provision of affordable housing. (FF ¶ 105(b).) The minor and Public Benefit-supporting nature of the Development Incentives affords the Public Benefits ample cushion to offset any potential adverse effects. (FF ¶ 105(c).) The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to parking—the magnitude of the Public Benefits and the Applicant's mitigation efforts provide sufficient justification for the Project notwithstanding such effects. (*Id.*) Moreover, apart from the provision of affordable housing, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. (FF ¶ 129.) Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project's Development Incentives are warranted in light of the Public Benefits, when considering the specific nature of the area surrounding the Project and the Project's overall consistency with the Comprehensive Plan.

15. Accordingly, the Project's Public Benefits justify the Development Incentives requested even in light of the background concerns of Opponents and the Residents regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for review and approval of the consolidated PUD and the related Map Amendment to the MU-5-A zone for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions and standards ("Conditions"). For the purposes of these

Conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an owner.

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit 80G1-80G4 ("Final Plans"), as modified by the guidelines, conditions, and standards herein.

2. The Project shall consist of approximately 70 residential units, approximately 17 vehicular parking spaces in an enclosed garage, the Community Room, and the provision of exterior and streetscape improvements, all as shown on the Final Plans and as further described herein. The Project shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall density of approximately 3.81 FAR and a maximum lot occupancy of 80%.

3. The Project shall have flexibility from the rear yard, side yard, penthouse, parking access, and loading requirements of the Zoning Regulations all as set forth in the Final Plans.

4. The Property shall be rezoned to the MU-5A zone.

5. The Applicant shall have flexibility in the following areas:

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

   b. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Final Plans;

   c. To vary the final streetscape design and materials and the placement of any items in the public right of way, as required by District public space permitting authorities;

   d. To vary the final landscaping components of the Project in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, the Department of Consumer and Regulatory Affairs ("DCRA") or other applicable regulatory bodies; and

e. To make minor refinements to exterior details and dimensions, including without limitation to belt courses, sills, bases, cornices, railings and trim, or any other changes that do not significantly alter the exterior design to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.

B. PUBLIC BENEFITS

1. Housing and Affordable Housing.[9]

a. **For so long as the Project is subject to public financing-related affordability restrictions** ("Initial Affordability Period"):

i. No fewer than 20% of the Project's residential units shall be reserved for residents earning no more than 30% of AMI; and

ii. Up to 80% of the Project's residential units shall be reserved for residents earning no more than 50% of AMI;

One hundred percent of the Project's residential units shall be reserved for residents aged 55 and over;

b. **Following conclusion of the Initial Affordability Period, and for so long as the project exist**, the Project shall reserve no less than eight percent of the Project's GFA at 60% of AMI; and

c. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant or its property manager shall provide information to the ANC about the lease application process for the Project.

2. Employment and Training Opportunities. **Prior to the issuance of a building permit for the Project**, the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has:

a. Entered into a First Source Agreement with the District Department of Employment Services with respect to the Project; and

b. Hosted a job fair in coordination and partnership with the ANC and the appropriate District agencies to identify qualified candidates for construction job openings, provided the evidence required in satisfaction

[9] This condition assumes that none of the affordable housing will be subject to the Inclusionary Zoning requirements set forth in Subtitle C, Chapter 10 of Title 11 DCMR. This is because the Applicant will be requesting the Zoning Administrator to grant an exemption from those requirements pursuant to 11-C DCMR § 1001.6. The Commission makes no finding as to whether the exemption should be granted and notes that if the request is denied the requirements of Chapter 10 of Title 11-C DCMR as well as the Inclusionary Zoning Act as defined at 11- B DCMR § 100.1 will apply.

of this Condition B.2.b may be given by, without limitation, a memorandum accompanied by sworn affidavit.

3. Building Space for Special Uses. **For the life of the Project**, the Applicant shall make available to the ANC, RTCO and other community organizations the 1,250-square-foot Community Room for meetings and events, subject to the Community Room Guidelines at Exhibit 80D, provided the Applicant shall have the right, from time to time, to amend such Guidelines in accordance with the reasonable needs of the community organizations that use the Community Room.

4. Transportation Infrastructure. **For the life of the Project**, the Applicant shall provide round-trip shuttle service for Project residents to and from typical convenience destinations, provided such shuttle shall operate at least two weekdays per week, during daytime hours, for a minimum period of two hours and carry a minimum of ten passengers.

5. Uses of Special Value and Other Public Benefits. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall:

   a. Demonstrate to the Zoning Administrator that is has deliver to the RTCO a contribution of $47,000 to enhance its community beautification and community gathering activities; and that the enhanced activities are being provided;[10]

   b. Install security camera equipment to monitor the surrounding neighborhood, the recordings of which camera shall be capable of being delivered to MPD; and

   c. Install exterior lighting to support the effectiveness of the cameras and act as a general deterrent.

C. Transportation and Construction Mitigation

1. Transportation Demand Management. **For the life of the Project** (except as expressly set forth below), the Applicant shall:

   a. Unbundle the cost of residential parking from the cost of lease or purchase of the units;

   b. Install a transportation information center display (electronic screen) within the lobby of the Project, which screen must contain real-time information related to local transportation alternatives;

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[10] In its September 18, 2017 filing, the Applicant has indicated that there remains disagreement as to how these funds should be allocated. The Commission believes that this condition is sufficiently detailed to identify how RTCO should use these funds, and it remains the Applicant's burden to prove to the Zoning Administrator that the funds have been used for those purposes.

c. Offer the initial occupant of each residential unit a one-time annual car sharing membership, a one-time annual Capital Bikeshare membership, or credits for use on private commuter shuttles to help alleviate the reliance on personal vehicles;

d. Offer a one-time $50 SmarTrip card to each initial residential tenant and employee in the Project to encourage non-auto mode usage;

e. Identify a TDM coordinator to work with the Project's residents and employees to distribute and market transportation alternatives and provide TDM materials to new residents in the residential welcome package;

f. Provide a bicycle repair station within the Project;

g. For the first three years after the Project's opening, provide the equivalent value of an annual Capital Bikeshare membership (currently $85) or credit for a commuter shuttle service equal to the value of an annual bikeshare membership to all new residents; and

h. Provide updated contact information for the TDM coordinator and report TDM efforts and amenities to goDCgo staff once per year.

2. Construction Management Plan. **Throughout construction of the Project**, the Applicant shall comply with the terms of the CMP as set forth in Exhibit 80B, and prior to the issuance of certificate of occupancy for the Project, the Applicant shall deliver to the Zoning Administrator, with a copy to the Office of Zoning, evidence that it has complied with such CMP, provided such evidence may be given by, without limitation, a memorandum accompanied by sworn affidavit.

3. RPP Restriction. Residents of the Project shall be ineligible to participate in the District's RPP program by notice given and enforced through a lease provision or similar mechanism.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the "PUD Covenant") in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning to the MU-5A zone shall be effective upon the recordation of the PUD Covenant.

3. The PUD shall remain valid for a period of two years from the effective date of this Order. The filing for a building permit for the Project pursuant to this Order vests this Order for the entirety of the Project.

4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 10, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to approve; Michael G. Turnbull, not having participated, not voting).

On September 25, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to approve; Michael G. Turnbull, not having participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 22, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
	)	
American Federation of Government Employees, Local 3721,	)	PERB Case No. 16-N-03
	)	
Petitioner,	)	Opinion No. 1641
	)	
and	)	
	)	
District of Columbia Fire and Emergency Medical Services Department,	)	
	)	
Respondent.	)	

DECISION AND ORDER

On September 23, 2016, the American Federation of Government Employees, Local 3721 ("Union" or "AFGE Local 3721") filed this Negotiability Appeal ("Appeal"). The Appeal concerns 16 proposals made by the Union and declared nonnegotiable by the District of Columbia Fire and Emergency Medical Services Department's ("Agency" or "FEMS"). FEMS and AFGE Local 3721 are engaged in bargaining concerning non-compensation matters. AFGE Local 3721 has withdrawn nine of the proposals in question, and therefore only appeals the declared nonnegotiably of the remaining seven proposals.[1] FEMS filed a timely Answer to the Appeal.

I. Standard of Review

Under sections 1-605.02(5) and 1-617.02(b)(5) of the D.C. Official Code, the Board is authorized to make determinations concerning whether a matter is within the scope of bargaining. The Board's jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.[2]

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[1] AFGE Local 3721 originally appealed the declared nonnegotiability of 8 of its proposals, but subsequently withdrew its appeal with regard to Declaration 12, concerning "Regulations and Release of Information." *See* Amendment to Negotiability Appeal.

[2] *See* PERB Rule 532.1.

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*[3] Under this standard, "the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."[4]

Section 1-617.08(b) of the D.C. Official Code provides that "[a]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.[5] The subjects of a negotiability appeal and the context in which their negotiability is appealed are determined by the petitioner, not the party declaring the matters nonnegotiable.[6] The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.[7]

II. Analysis of Proposals

The Union's proposals are set forth below. The proposals are followed by: (1) the Agency's arguments in support of nonnegotiability; (2) the Union's arguments in support of negotiability; and (3) the Board's findings.

AFGE Local 3721 Proposal 1 – Commensurate Pay (New Article):

> **NEW ARTICLE**
>
> **COMMENSURATE PAY**
>
> Members who are transferred or detailed outside of operations, to a forty (40) hour work week in administrative positions to include Office of the Fire Chief, Office of the Medical Director, Training Academy or Logistics, their salary will be commensurate with their prior position and work schedule. In the event the employee is no longer detailed, they will be returned to their prior position and work schedule.
>
> Commensurate Salary will occur on the first full pay period after the transfer or detail occurs. Members shall remain eligible to work overtime, and at their discretion may choose to work on

[3] 356 U.S. 3342 (1975).
[4] *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).
[5] *See Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).
[6] *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).
[7] *Fraternal Order of Police/Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

> holidays and governmental closings. At which time they will receive Administrative Closing Pay or Holiday Premium pay.[8]

Agency: This article is nonnegotiable because it involves a compensation matter and infringes upon management's rights under section 1-617.08(a) of the D.C. Official Code to set the tour of duty.[9] In addition to the title of "Commensurate Pay," the first paragraph of the proposal provides that an employee's salary will remain the same if transferred or detailed to a higher graded position, a violation of sections 1-611.01(a)(2) and 1-611.03(a)(2) of the D.C. Official Code.[10]

Furthermore, the proposal relates to overtime, which is subject to bargaining in the compensation agreement between the District Government and Compensation Units 1 and 2.[11] In addition to section 1-617.17(b) of the D.C. Official Code, which states that overtime pay is a subject of compensation negotiations, the parties have previously disputed the interpretation of the "Overtime" article within the compensation agreement that governs the parties.[12] The matter is nonnegotiable in a non-compensation agreement.

The proposal also eliminates the Agency's right to assign essential employees to work on holidays or during periods of early dismissal or governmental closings. The first paragraph of the proposal dictates an employee's tour of duty if transferred or detailed. These are a violation of management rights under sections 1-617.08(a)(1), 1-617(a)(5)(A), and 1-617.08(a)(5)(B). The proposal also dictates that work performed on a holiday or government closing is subject to holiday premium pay or administrative closing pay, which is a subject of compensation negotiations.[13] Finally, the proposal infringes on the Agency's right to set the tour of duty for essential employees.[14]

Union: The proposal has no bearing on the Agency's ability to set the tour of duty for bargaining unit employees. The proposal does not concern pay, benefits or any other compensation matter that is appropriate for negotiations during Compensation 1 and 2 bargaining.[15] The impact of the proposal concerns the Agency's decision to transfer or reassign employees, matters that are intertwined with working conditions. The proposal attempts to memorialize the current practice between the parties, which is that transfers and reassignments do not render an employee ineligible to work overtime.[16]

Further, the proposal has no bearing on the Agency's ability to set the tour of duty for bargaining unit employees because the proposal solely refers to the ability of employees to

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[8] Appeal, Ex. 1.
[9] Answer at 2.
[10] Answer at 2.
[11] Answer at 3.
[12] Answer at 3.
[13] Answer at 4.
[14] Answer at 4.
[15] Appeal at 2.
[16] Appeat at 3.

volunteer for, and the ability of the Agency to approve, overtime when an employee is not scheduled to work.[17]

Board: Section 1-617.17(b) of the D.C. Official Code, which specifically addresses collective bargaining concerning compensation, states that management shall meet with labor organizations to negotiate in good faith with respect to "salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters." The proposal states that "salary shall be commensurate with their prior position and work schedule." The proposal goes on to state that "members shall be eligible to work overtime, and at their discretion may choose to work on holidays and governmental closings." The Board has ruled in numerous cases that under section 1-617.17(b) salary and overtime pay are subject to bargaining in the compensation agreement.[18] All aspects of this proposal concern salary and overtime pay. This proposal relates to a compensation agreement. Therefore it is nonnegotiable in a non-compensation agreement.

The Board finds the Union's proposal *nonnegotiable*.

AFGE Local 3721 Proposal 6 – Miscellaneous Conditions of Employment:

MISCELLANEOUS CONDITIONS OF EMPLOYMENT

SECTION 1 – FOOD AT ALARMS OR SPECIAL ASSIGNMENTS

It is agreed that when unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments, the Agency shall provide appropriate food, beverages and/or meals to the employees.

SECTION 3 – PARKING

It is agreed that the Agency will attempt to make parking available for those unit members who are in a duty status, without charge. Those arrangements are intended solely as a convenience for employees. The Agency assumes no liability which might arise as a consequence of said parking facilities. A joint labor management

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[17] Appeal at 3.
[18] See *Teamsters, Local Union No. 639 and D.C. Pub. Sch.*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case Nos. 90-N-02, 03 and 90-N-04 (1991); *Int'l Ass'n of Fire Fighters, Local 36 and D.C. Fire & Emergency Medical Servs. Dep't*, 45 D.C. Reg. 4760, PERB Case No. 97-N-01, Slip Op. No. 515 (1997).

> committee shall consider any parking or security problems that may exist at any Agency facility.[19]

Agency: Section 1 and 3 are nonnegotiable because the proposal concerns compensation matters that must be addressed during Compensation Unit 1 and 2 negotiations consistent with section 1-617.17 of the D.C. Official Code.[20] Federal and District law prohibit providing food to employees as stated in section 1. The U.S. Government Accountability Office (GAO) states that in the absence of statutory authority, the government may not furnish meals or refreshments to employees within their official duty stations.[21] Therefore, the proposal is nonnegotiable because it concerns a compensation matter. Furthermore, parking is a personal expense under federal appropriations law and making parking available for employees without charge constitutes a compensation item.[22]

Union: The proposal does not concern pay, benefits or any other compensation matter that should be addressed in compensation negotiations. The proposal concerns a working conditions issue, namely mitigating the impact to employees when they are required to work significantly beyond their tour of duty, in the event of a weather emergency. FEMS will be required to provide food to employees in the same fashion that it is already provided to bargaining unit employees.[23]

The proposal also provides that FEMS will attempt to provide employees with onsite parking, which it already provides in various cases. The proposal seeks to ensure fairness and equity with respect to conditions under which employees are required to work.[24]

Board: The Board has previously held that parking is compensation constituting a condition of employment and thus a mandatory subject of bargaining under the CMPA.[25] A compensation matter is nonnegotiable in a non-compensation agreement.

The proposal states that the Agency shall provide food when "unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments." Since food and/or beverages will only be provided during these circumstances it is not a compensation matter but a term and condition of employment. The Federal Labor Relations Authority ("FLRA") has stated that when there is a direct connection between the matter and the work situation or employment relationship there is an obligation to bargain.[26]

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[19] Appeal, Ex. 2.
[20] Answer at 6.
[21] Answer at 6.
[22] Answer at 7.
[23] Appeal at 4.
[24] Appeal at 5.
[25] *AFGE, Local 383 v. MRDDA*, 59 D.C. Reg. 4584, PERB Case 07-U-03, Slip Op. No. 938 (2011).
[26] *Marine Corps Logistics Base Barstow, Cal. and AFGE Local 1482, AFL-CIO*, 46 FLRA 782, 794 (1992).

The Board finds section 1 of the Union's Proposal *negotiable* and section 3 *nonnegotiable*.

AFGE Local 3721 Proposal 8 – Injury or Sickness While On Duty:

INJURY OR SICKNESS WHILE ON DUTY

SECTION 2 – UTILIZATION OF THE POLICE AND FIRE CLINIC

1. Employees injured in the line of duty shall be free to select their treating physician from the list maintained by the D.C. Office of Risk Management.

2. Employees injured in the line of duty may, at their option, select to utilize the Police and Fire Clinic (PFC) as their treating physician, but no employee shall be mandated to utilize the PFC as their treating physician.

3. Recommendations for treating physicians outside of D.C. Office of Risk Management will be honored and treatment by recommended physician continued to maintain continuity and employee wellness.

SECTION 3 – DETERMINATION OF RETURN TO FULL DUTY

The treating physician of the employee who was injured in the line of duty shall be the sole determinant as to whether or not the injured employee may return to full duty with the Agency.

SECTION 4 – FITNESS FOR DUTY PHYSICALS

1. The Agency shall comply with Chapter 20 of the District Personnel Manual when requesting a fitness for duty physical for an employee.

2. An employee's failure to comply with an order for a fitness for duty physical which was not in compliance with Chapter 20 of the District Personnel Manual shall not form a basis of disciplinary action against the employee.

> 3. The Agency shall bear the burden of proof, by a preponderance of the evidence that the fitness for duty physical was ordered in compliance with the regulations in place.
>
> **SECTION 5 – TRANSPORTATION OF THE SICK OR INJURED EMPLOYEE**
>
> The Agency shall provide transportation of any employee that becomes sick or injured while on duty to a facility of their choice and back to his/her duty station. No Employee shall be required to be transported in an ambulance to a treatment facility.[27]

Agency: Sections 2 through 5 of this proposal are nonnegotiable because the proposal violates section 1-623.23 of the D.C. Official Code.[28] Section 1-623.23 governs when an employee is injured in the performance of his or her duty; therefore it preempts Section 2 of the proposed article. Furthermore, the Police and Fire Clinic (Clinic) serves as the District's medical officer/designated physician for employees represented by AFGE Local 3721. Section 2 undermines the Mayor's statutory authority to designate the Clinic as the treating physician for paramedics and emergency medical technicians injured on duty.[29]

Section 3 is also nonnegotiable because under this proposal the treating physician can be any doctor even those outside of the D.C. Office of Risk Management, who are not subject to any government oversight.[30] Section 5 of the proposal is nonnegotiable because it gives the employee the right to choose his or her medical provider if injured on duty, contrary to section 1-623.23.[31]

Union: Section 1-623.23 concerns the disability or death of an employee resulting from personal injury sustained while performing official duties. This is inapplicable to the Union's proposal. The proposal concerns temporary employee illness regardless of whether it stemmed from the employee's work duties, not disability or death.[32]

Board: Section 1-623.23 states that "an employee shall submit to examination by a medical officer of the District of Columbia government or by a physician designated or approved by the Mayor, after the injury and as frequently and at the times and place as may be reasonably required. The employee may have a physician designated and paid by him or her present to participate in the examination." In direct contradiction of the statute, Section 2 would allow employees to refuse treatment by a medical officer approved by the D.C. government. Section 3 also allows the treating physician of the employee to be the sole determining influence as to whether the injured employee may return to full duty. This proposal is contrary to the statute,

[27] Appeal, Ex. 3.
[28] Appeal at 6.
[29] Answer at 8.
[30] Answer at 9.
[31] Answer at 9.
[32] Appeal at 6.

which states that the employee shall submit to an examination by an approved medical officer or physician.

Section 4(1) requires the agency to comply with Chapter 20 of the District Personnel Manual; this requirement is not a violation the statute. The Board is concerned with the degree to which Section 4(2) and (3) interfere with the Agency's right to take disciplinary action. The right to take disciplinary action is a management right under section 1-617.08(a)(2) of the D.C. Official Code. Section 5 of the proposal allows the employee to be transported to a treatment facility of their choice; once again the statute states that employees shall submit to an examination by an approved physician after an injury. Although the statute does allow an employee's chosen physician to be present and participate in the examination, the employees must submit to an agency approved physician as well.

The Board finds that section 4(1) of the Union's proposal is *negotiable* and sections 2, 3, 4(2), 4(3), and 5 are *nonnegotiable*.

AFGE Local 3721 Proposal 9 – Hours of Work / Continuation of Duty:

HOURS OF WORK / CONTINUATION OF DUTY

SECTION 1 – HOURS OF WORK

Unit employees, except those assigned to Fleet Maintenance, Clerical or Logistics, shall have the option to work twenty-four (24) hour shifts.

SECTION 2 – CONTINUATION OF DUTY

1. Ambulance crews shall not work more than thirteen (13) hours on any tour of duty when assigned to twelve (12) hour shifts; however, an ambulance shall not be placed out of service when it is not in quarters.

2. Ambulance crews who have exceeded fourteen (14) hours on any tour of duty when assigned to twelve (12) hour shifts shall be placed out of service, and the crew allowed to go off duty, regardless of whether the ambulance is in quarters or not.

3. Ambulance crews shall not work more than twenty-five (25) hours on any tour of duty when assigned to twenty-four (24) hour shifts, an ambulance shall not be placed out of service when it is not in quarters.

4. Ambulance crews who have exceeded twenty-six (26) hours on any tour of duty when assigned to twenty-four (24) hour shift, shall be placed out of service, and the crew allowed to go off duty, regardless of whether the ambulance is in quarters or not.[33]

Agency: The Hours of Work/Continuation of Duty Article is nonnegotiable because it infringes upon management's right to establish a tour of duty under section 1-617.08(a) of the D.C. Official Code.[34] Under the proposal, employees must work a 12-hour shift unless they elect to work a 24-hour shift, the Agency has no role in vetoing an employee's election of a 24-hour shift, and the Agency cannot require its paramedics and emergency technicians to work a traditional 8-hour daily shift. The proposal infringes on management's right to set a tour of duty.[35]

Union: The proposal does not establish a tour of duty but rather, provides the existing tours that are available to employees and the procedures when employees will be required to work beyond the tour of duty. The existing tours have been set by the Agency, not the Union.[36] The Union relies on the presumption of negotiability as the statute does not prohibit negotiations over the matters raised in the proposal.[37]

Board: Section 1-617.08(a)(5)(A) states that management shall retain the sole right to establish the tour of duty. The Union describes the shifts named in these proposals as tours of duty but claims they are negotiable because they have already been established by FEMS. Regardless, establishing tours of duty is a management right and is not negotiable as a compensation matter or as a non-compensation matter pursuant to section 1-617.08 (b).[38] A union may not confine management to the current outcome of a management rights decision.[39]

The Board finds that the Union's proposal is *nonnegotiable*.

AFGE Local 3721 Proposal 10 – Union Rights:

UNION RIGHTS

SECTION 10:

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[33] Appeal, Ex. 4.
[34] Appeal at 7.
[35] Answer at 11.
[36] Appeal at 7.
[37] Appeal at 7.
[38] *Local 36, Int'l Ass'n of Firefighters, AFL-CIO v. D.C. Dep't of Fire & Emergency Med. Servs.*, 61 D.C. Reg. 5632, PERB Case 13-N-04, Slip Op. No. 1466 (2014).
[39] *See Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 64 D.C. Reg. 5132, Slip Op. No. 1617 at 29, PERB Case No. 16-N-01 (2017).

> The Agency agrees that accredited national representatives of AFGE shall have free access to the premises of the agency during working hours to conduct Union business.[40]

Agency: Section 10 of the Union Rights Article is nonnegotiable because infringes upon management's right to determine internal security practices under section 1-617.08(a) of the D.C. Official Code.[41] Granting unfettered access to all FEMS facilities to nonemployees interferes with the Agency's right to determine its internal security practices under section 1-617.08(a)(5)(D).[42]

Union: The proposal does not infringe upon or even address internal security practices at the Agency. The proposal enables the Union to fulfill its legal obligations under section 1-617.11 of the D.C. Official Code which states that the labor organization certified as the exclusive representative of all employees in the unit shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees.[43] The Agency's position that union representatives have no access to the Agency's facilities is nonsensical and evidence of the Agency's unwillingness to make a good faith effort to reach an agreement.[44]

Board: Section 1-617.08(a)(5)(D) states that management retains the sole right to determine the Agency's internal security practices. This does not preclude union representatives who are not District of Columbia employees from entering FEMS facilities. The proposal does not state that AFGE representatives may bypass any internal security practices; it simply states that they may enter the facilities during working hours to conduct Union business.

Based on the presumption of negotiability established by section 1-617.08(b), the Board finds that section 10 of the Union's proposal is *negotiable*.

AFGE Local 3721 Proposal 15 – Ambulance, Fleet Maintenance Division, and Logistics Division:

> **AMBULANCE, FLEET MAINTENANCE DIVISION & LOGISTICS DIVISION**
>
> **SECTION 2 – REPORTING EQUIPMENT**

[40] Appeal, Ex. 5.
[41] Appeal at 8.
[42] Answer at 13
[43] Appeal at 8.
[44] Appeal at 8.

> Employees will assist in assuring that ambulances are properly equipped and operationally safe by immediately reporting operations problems or equipment problems to the supervisors. This will remain in accordance with agency regulations. If the operational or equipment problem is discovered after dispatch, it shall be reported at the conclusion of the response, unless there are life safety hazards to the patient or crew members. At that time, operational or equipment problems will be communicated with Dispatch and ELO. If the shop foreman determines that the ambulance is operationally or mechanically defective or not adequately equipped, the shop foreman shall take steps to resolve the problem. If the problem is unable to be resolved, the unit shall be placed out of service until such time that the unit is restored to proper operational/mechanical and equipment status.
>
> **SECTION 4 – TOOLS**
>
> The agency shall either provide all basic tools and equipment necessary to perform fleet maintenance, including specialized tools germane to service a particular brand product, or provide a tool stipend of $3,000.00 per year for each employee assigned to the Fleet Maintenance Division.
>
> **SECTION 5 – COMMERCIAL DRIVERS LICENSES**
>
> The Agency shall reimburse Employees of the Fleet Maintenance Division all fees directly associated with obtaining and maintaining a commercial drivers license.[45]

Agency: Section 2 is nonnegotiable because it dictates the technology of performing work in violation of section 1-618.08(a) of the D.C. Official Code.[46] The technology of equipment is a permissive subject of bargaining, therefore FEMS may choose to bargain or not to bargain over it.[47] As a result, the matter is nonnegotiable.

Section 4 of the proposed article is also nonnegotiable. The proposal grants certain employees a stipend for a fixed dollar amount. Therefore it is a compensation matter subject to section 1-617.17(b).[48] Furthermore, the proposal requires FEMS to reimburse certain employees for fees necessary for job qualification such as a commercial driver's license. The GAO has held that fees incident to obtaining licenses to qualify a federal employee to perform the duties of his

[45] Appeal, Ex. 7.
[46] Appeal at 11.
[47] Answer at 16.
[48] Answer at 17.

position are considered to be personal expenses.[49] Accordingly, FEMS is prevented from using funds to reimburse employees for the costs associated with qualifying for the job. Even if such a reimbursement was permitted, it would be subject to compensation collective bargaining under section 1-617.17(b) of the D.C. Official Code.[50]

Union: The proposal in no way infringes upon, or interferes with management's right to determine the technology of performing work. If an ambulance is determined to be defective, the proposal provides that employees will not be required to work in an unsafe environment.[51] The Agency maintains the authority to determine the equipment that will be used and thus the technology of performing work. The proposal addresses a pertinent working condition issue, whether the employee will be required to work on a defective vehicle.[52] Furthermore, the proposal that employees have the equipment and licenses necessary to perform their official duties and responsibilities is inextricably intertwined with a working conditions matter.[53]

Board: The phrase "the technology of performing its work" has been interpreted by the Board to refer to the technology used to perform the agency's mission.[54] The proposal refers to ambulances and employees' role in assuring that the ambulances are properly equipped and operationally safe. The proposal does not require that any specific type of equipment, ambulances or otherwise be used. This proposal does not preclude the Union from exercising its right under section 1-617.08(a) to determine the particular type of equipment to perform the Agency's mission; in fact, it specifically states that safety reports will be in accordance with Agency regulations. Based on the presumption of negotiability, Section 2 of the Union's proposal is negotiable.

The FLRA has held that a provision that requires management to provide assistance to employees in the form of additional personnel, tools or equipment is negotiable.[55] Section 4 is negotiable concerning the provision of tools by the Agency, however a stipend would be a compensation matter and therefore nonnegotiable. Section 4 is partially *negotiable* regarding the provision of tools and partially *nonnegotiable* regarding the stipend.

The FLRA has held that employees must bear the cost of qualifying for the performance of their official duties and, if a personal license is necessary, employees must procure that license even if the licensing requirement is established after they are hired.[56] Accordingly, the FLRA found that in the absence of statutory authority, Federal agencies are precluded from using appropriated funds to pay for licenses that unit employees need in the performance of their

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[49] Answer at 17.
[50] Answer at 17.
[51] Appeal at 11.
[52] Appeal at 11.
[53] Appeal at 11.
[54] *Int'l Bhd. of Police Officers, Local 446 and D.C. Gen. Hosp.,* 42 D.C. Reg. 5482 Slip Op. 336, PERB Case 92-N-05, (1992).
[55] *Nat'l Ass'n of Gov't Employees, Local R4-75 and U.S. Dep't of the Interior Nat'l Park Serv. Blue Ridge Parkway,* 24 F.L.R.A. 56 (1986).
[56] *Nat'l Ass'n of Gov't Employees, Local R1-100 and U.S. Dep't of the Navy, Naval Submarine Base New London Groton, Connecticut*, 47 F.L.R.A. 750 (1993).

official duties. Using this reasoning, obtaining a commercial driver's license is necessary in order for an employee to perform his or her official duties and employees are precluded from being reimbursed for obtaining such a license.

The Board finds section 2 of the Union's proposal is *negotiable*, section 4 is *partially negotiable* and *partially nonnegotiable*, and section 5 is *nonnegotiable*.

AFGE Local 3721 Proposal 16 – Promotions, Transfers, Reassignments, Details and Merit Staffing:

PROMOTIONS, TRANSFERS, REASSIGNMENTS, DETAILS AND MERIT STAFFING

For the purposes of this agreement the terms:

"Transfer shall mean any action by the Agency that assigns an employee to a department within the District of Columbia Government other than the agency where the employee was originally employed.

"Reassignment" shall define the movement of members from assignment to assignment within the Fire and Emergency Medical Services Department.

"Detail" shall define the temporary movement of members where it is expected that a member will return to his/her original assignment. Details shall not exceed a three (3) month time period.

SECTION 3 – Ambulance Crew Member in Charge (ACIC):

The ACIC of a transport unit, to include ambulances, basic units and medic units, shall be determined by ACIC seniority. Ambulance Crew-Member-In-Charge seniority shall be determined by the earliest date of appointment as an ACIC when of equal qualifications. When two (2) qualified ACIC's are assigned to a transport unit and one must be detailed, the detail shall be rotated every other tour (weekly rotation changes on Sunday).

SECTION 4 – PROMOTIONS:

6. Generally no employee shall be involuntarily detailed to a higher graded position and may, without penalty, demand to bargain the detail to a higher graded position in writing.

Agency: The final sentence of Section 3 and the entirety of Section 4(6) are nonnegotiable because the proposals determine the tour of duty in violation of section 1-617.08(a) of the D.C. Official Code.[57] The last sentence of section 3 requires the Agency to no longer be in control of establishing tours of duty for details. The proposal limits details to a week and requires details to begin on a Sunday.[58] The proposal is an infringement of section 1-617.08(a)(5)(B).

Section 4(6) of the proposal denies the Agency the right to detail an employee to a higher grade position even if a critical need arises for that position to be immediately filled.[59] Furthermore, it converts a management right to a mandatory subject of bargaining by proposing the employee may demand to bargain the detail.[60]

Union: Section 3 of the proposal has no bearing on tours of duty. The proposal provides only that if the Agency rotates employee schedules, they will be rotated amongst eligible employees.[61]

Section 4(6) of the proposal provides that the Union has the right to bargain with the Agency over involuntary reassignments to higher grade positions. The Union maintains the right to bargain with the Agency concerning changes to employee working conditions, consistent with sections 1-617.02(b)(4) and 1-617.11 of the D.C. Official Code. The proposal does not address employee tours of duty and otherwise does not infringe upon any of the rights provided to the Agency.[62]

Board: Section 1-617.08(a)(5)(A) states that management shall retain the sole right to determine "the number, types, and grades of positions of employees assigned to an agency's organization unit, work project, or tour of duty." Section 3 of the proposal specifies the detail assignment of employees assigned to a transport unit and the rotational changes of the detail. This is an infringement of management's right to establish the tour of duty. Another violation of section 1-617.08(a)(5)(A) arises when Section 4(6) states that no employee shall be involuntarily detailed to a higher graded position Tours of duty are not negotiable as a compensation matter or as a non-compensation matter pursuant to section 1-617.08 (b).[63]

The Board finds that section 3 and section 4(6) of the Union's proposal is *nonnegotiable*.

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[57] Appeal at 12.
[58] Answer at 18.
[59] Answer at 19.
[60] Answer at 19.
[61] Appeal at 12.
[62] Appeal at 13.
[63] *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs*, 61 D.C. Reg. 5632, PERB Case 13-N-04, Slip Op. No. 1466 (2014).

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE Local 3721's Proposal 1 is nonnegotiable;

2. Section 1 of AFGE Local 3721's Proposal 6 is negotiable and section 3 of AFGE Local 3721's Proposal is nonnegotiable;

3. Section 4(1) of AFGE Local 3721's Proposal 8 is negotiable and Sections 2, 3, 4(2), 4(3), and 5 of AFGE Local 3721's Proposal 8 are nonnegotiable;

4. AFGE Local 3721's Proposal 9 is nonnegotiable;

5. AFGE Local 3721's Proposal 10 is negotiable;

6. Section 2 of AFGE Local 3721's Proposal 15 is negotiable, Section 4 of AFGE Local 3721's Proposal 15 is partially negotiable and partially nonnegotiable, and Section 5 of AFGE Local 3721's Proposal 15 is nonnegotiable;

7. Sections 3 and 4(6) of AFGE Local 3721's Proposal 16 are nonnegotiable;

8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Douglas Warshof, Barbara Somson and Mary Anne Gibbons.

Washington, D.C.

October 19, 2017

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-N-03, Op. No. 1641 was transmitted to the following parties on this the 30th day of October, 2017.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department	PERB Case No. 17-A-07
Petitioner,	Opinion No. 1643
and	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Robert Wigton),	
Respondent.	

DECISION AND ORDER

I. Introduction

On June 22, 2017, the Metropolitan Police Department ("MPD") filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-605.02(6). MPD seeks review of a supplemental arbitration award ("Supplemental Award") granting an award of attorneys' fees and interest on back pay to the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union") on behalf of Officer Robert Wigton ("Grievant"). MPD seeks review of the Arbitrator's Supplemental Award on the grounds that the Arbitrator exceeded his jurisdiction and that the Award was procured by fraud, collusion or other similar unlawful means.[1]

In accordance with the CMPA, the Board is permitted to modify or set aside an arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[2] Having reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law,

[1] Request at 2; *See* D.C. Official Code § 1-605.02(6).
[2] D.C. Official Code § 1-605.02(6).

the Board concludes that the Arbitrator did not exceed his jurisdiction and that the Award was not procured by fraud, collusion or other similar and unlawful means. Therefore, the Board lacks the authority to grant the requested Review.

II. Statement of the Case

The Grievant was an officer with MPD in the Special Operations Division, Canine Unit ("Canine Unit").[3] As punishment for events that occurred on April 30, 2011, MPD suspended the Grievant for three days and transferred the Grievant to Patrol Services and School Security Bureau.[4] On March 21, 2012, the Union demanded arbitration.[5] On April 19, 2016, the Arbitrator issued an Opinion and Award ("Award"), ordering the following: (1) MPD shall rescind a finding that the Grievant violated General Order 120.21 and remove all references and records from its data base and the Grievant's personnel file; (2) MPD shall rescind the three day suspension and offer reinstatement to his former position in MPD's Canine Unit; (3) MPD shall make the Grievant whole for any wages, allowances, annual leave, sick leave, or other benefits during the period of the transfer from the Canine Unit and three day suspension; (4) MPD shall pay the Arbitrator's fee.[6] The Arbitrator retained jurisdiction of the case "pending implementation of [the Award]."[7]

On March 3, 2017, the Union requested from the Arbitrator clarification and affirmation of the Award. The Union alleged that MPD had not fully complied with the Award.[8] The Union alleged that MPD failed to restore the Grievant's canine trainer classification.[9] Additionally, the Union requested attorneys' fees and back pay, pursuant to the federal Back Pay Act, 5 U.S.C. § 5596(b)(2)(A)(B)(i)-(iii). The Union also claimed that the Grievant was entitled to a time-and-one-half overtime pay rate for dog care performed for MPD from January 15, 2012, to August 6, 2016, as well as reimbursement for sick and annual leave after the Grievant was transferred.[10]

III. Arbitrator's Award

In the Supplemental Award, the Arbitrator addressed the Union's complaint that MPD had not complied with the Arbitrator's directive that MPD "offer [the Grievant] reinstatement to his former assignment as a canine trainer and dog handler in MPD's Special Operations Division, Canine Patrol Section."[11] The Union asserted that MPD insisted upon delaying the reinstatement

[3] Award at 6.
[4] Award at 2.
[5] Award at 13.
[6] Award at 18.
[7] Supplemental Award at 1.
[8] Supplemental Award at 1.
[9] Supplemental Award at 1.
[10] Supplemental Award at 1.
[11] Supplemental Award at 3.

of the Grievant until he successfully completed an MPD instructor classification class.[12] The Arbitrator explained that the "clear meaning of the Award's language is that MPD is obligated unconditionally to reinstate [the Grievant] to the assignment which MPD employed him on January 15, 2012 when the Agency wrongfully transferred him out if the Canine Patrol Section."[13] The Arbitrator also noted that MPD conceded that the Grievant was a certified canine instructor.[14] Therefore, the Arbitrator clarified that the Award granted "immediate and unconditional reinstatement."[15]

Second, the Arbitrator addressed the Union's request for attorneys' fees and back pay. The Arbitrator countered MPD's assertion that the Arbitrator did not have jurisdiction by pointing to recent arbitration awards in which the arbitrator retained jurisdiction over a party's petition for attorneys' fees.[16] In determining whether to award attorneys' fees and back pay, the Arbitrator analyzed the federal Back Pay Act, 5 U.S.C. § 5596(b)(1) and (2)(A) and 5 U.S.C. § 7701(g)(1).[17] Noting that in the Award it was determined that MPD violated disciplinary procedures enumerated in the parties' collective bargaining agreement, the Arbitrator found that the Union was entitled to reasonable attorneys' fees and interest on back pay.[18] The Arbitrator then determined that the expenses sought by the Union were reasonable.[19] Additionally, the Arbitrator found that the Grievant was entitled to interest on the back pay award as prescribed by 5 U.S.C. § 5596(b)(2)(A) and (B).[20]

Finally, the Arbitrator addressed what the Union characterized as MPD's failure to pay the Grievant for overtime he performed caring for MPD's Canine Unit police dog as well as sick and annual leave owed during his transfer from January 15, 2012 to August 6, 2016.[21] The Arbitrator found that the Union did not offer any evidence to support its claim that MPD failed to pay the amount of overtime pay required by the Award.[22] However, the Arbitrator found merit to the Union's argument that MPD failed to provide the amount of overtime it paid the Grievant and explain the calculations used to arrive at that amount.[23]The Arbitrator denied the Union's request for sick and annual leave during the back pay period, from January 12, 2012 to August 6, 2016.[24] The Arbitrator sided with MPD's assertion that the Grievant was not deprived of sick or annual leave during the back pay period.[25]

[12] Supplemental Award at 3.
[13] Supplemental Award at 3.
[14] Supplemental Award at 3.
[15] Supplemental Award at 3.
[16] Supplemental Award at 3-4.
[17] Supplemental Award at 5.
[18] Supplemental Award at 6.
[19] Supplemental Award at 6.
[20] Supplemental Award at 6.
[21] Supplemental Award at 7.
[22] Supplemental Award at 8.
[23] Supplemental Award at 8.
[24] Supplemental Award at 8-9.
[25] Supplemental Award at 8-9.

In a Supplemental Award, the Arbitrator ordered MPD to do the following: pay attorneys' fees, expenses, and interest on back pay, including overtime, from the period of January 15, 2012 to August 6, 2016; set forth in writing the amount of overtime for dog care paid to the Grievant for the period of January 15, 2012 to August 6, 2016; and explain the calculations used in accordance with 29 U.S.C. § 207(k) of the FLSA.[26] The Arbitrator retained jurisdiction in order to assist the parties in resolving any disputes which may arise regarding the Supplemental Award.[27]

I. Discussion

A. The Arbitrator's Supplemental Award does not exceed his jurisdiction.

In its Request, MPD stated that the Arbitrator had no jurisdiction or authority to issue the Supplemental Award.[28] Specifically, MPD contended that the Arbitrator exceeded his jurisdiction since only PERB is entitled to enforce arbitration awards.[29] MPD stated that the Union should have filed an arbitration review request or an unfair labor practice complaint with PERB instead of requesting that the Arbitrator intervene a year after he issued the Award.[30] MPD also argued that it never consented to the Arbitrator's jurisdiction and maintained its objection throughout the proceedings.[31] Finally, MPD asserted that the Arbitrator was without legal authority to reopen this case and amend the Award.[32] MPD argued that the doctrine of *functus officio* prevented the Arbitrator from considering remedies previously requested but not awarded.[33]

The test the Board uses to determine whether an Arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement."[34] The arbitrator's authority to review the actions of MPD in the instant case constitutes an exercise of his equitable powers arising out of the parties' collective bargaining agreement. The Board has held that an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreements.[35]

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[26] Supplemental Award at 9.
[27] Supplemental Award at 9.
[28] Request at 4.
[29] Request at 4.
[30] Request at 4.
[31] Request at 4-5.
[32] Request at 5-6.
[33] Request at 6.
[34] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Jacobs)*, 60 D.C. Reg. 3060, Slip Op. 1366, PERB Case No. 12-A-04 (2013); *See Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Johnson)*, 59 D.C. Reg. 3959, Slip Op. 925, PERB Case No. 08-A-01 (2012) (quoting *D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. 156, PERB Case No. 86-A-05 (1987)). *See also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. of Teamsters,* 813 F.2d 85 (6th Cir. 1987).
[35] *E.g., Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333, PERB Case No. 12-A-01 (2012); *Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.,* 59 D.C. Reg.

The Board finds no merit to MPD's argument that the Arbitrator exceeded his authority in issuing the Supplemental Award. MPD does not cite to any provisions of the collective bargaining agreement that restrict the Arbitrator's authority to determine an appropriate remedy in this case. Furthermore, the doctrine of *functus officio* is not applicable here. *Functus officio* provides that an arbitrator's jurisdiction ends when a final award is issued.[36] This doctrine does not apply here, as the issue of remedies was not decided in the Arbitrator's initial Award. The Board has held that an arbitrator's wide latitude in drafting awards includes the authority to retain jurisdiction.[37] When an arbitrator is accorded the authority to retain jurisdiction after an award is made, the arbitrator may make determinations only on issues that have not already been previously arbitrated.[38] Therefore, for purposes of Board review, each award is final when rendered with respect to the issues decided therein. In the instant proceeding, the Arbitrator did not make determinations on issues previously arbitrated. Therefore, the Board rejects MPD's claim that the Arbitrator exceeded his jurisdiction by issuing the Supplemental Award.

B. The Arbitrator's Award was not procured by fraud, collusion or other similar unlawful means.

MPD alleges that the Arbitrator engaged in *ex parte* communications with Union counsel, and that these communications are grounds to conclude that the Award was procured by fraud, collusion, or similar unlawful means.[39] MPD stated that in the Union's attorneys' fees invoice, it discovered that the Arbitrator called Union counsel and requested an affidavit for attorneys' fees and sent the Union an "example fax."[40] MPD argued that it was not notified of or present for this call and was not given the opportunity to review the example fax.[41]

For support, MPD cited to a D.C. Court of Appeals case, *Thompson v. Lee*.[42] In *Thompson v. Lee*, the court cited to a Minnesota Supreme Court case, *Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School District No. 182*,[43] wherein the court opined that during arbitration, *ex parte* contacts made "orally or in writing, in regard to issues under dispute, without notifying all other parties to the dispute, will raise a strong presumption that the ultimate award made was procured by corruption, fraud or other undue means, and thus subject to

12709, Slip Op. 1327, PERB Case No. 06-A-05 (2012); *D.C. Metro. Police Dep't and FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633, PERB Case No. 00-A-04 (2000).

[36] *AFGE, Local 2725 v. Dep't of Consumer and Reg. Affairs*, 61 D.C. Reg. 7565, Slip Op. 1444 at 10, PERB Case No. 13-A-13 (2013).

[37] *See AFGE, Local 1000 v. Dep't of Emp't Servs.*, 60 D.C. Reg. 5247, Slip Op. No. 1368 at p. 2, PERB Case No. 13-U-15 (2013)

[38] *UDC v. UDC Faculty Ass'n*, 41 D.C. Reg. 3830, Slip Op. 321, PERB Case No. 92-A-05 (1994).

[39] Request at 7-9.

[40] Request at 8.

[41] Request at 8.

[42] 589 A.2d 406, 412 (D.C. 1991).

[43] 285 N.W.2d 667, 670 (Minn.1979).

vacation." Accordingly, MPD argued that the Supplemental Award should be vacated since the Arbitrator engaged in *ex parte* communication.[44]

The Board finds MPD has not presented it with a basis of concluding that the Award was procured by fraud, collusion, or other similar and unlawful means. In *Crosby-Ironton Federation of Teachers*, the arbitrator therein attempted to change the award three days after it was issued, after being unilaterally contacted by one of the parties.[45] Here, MPD has not alleged that the attorneys' fee award was invalid. In fact, as the Arbitrator noted, MPD did not challenge the Union's statement of attorneys' fees.[46] Therefore, the Board rejects MPD's claim that the Supplemental Award was procured by fraud, collusion or other similar and unlawful means.

II. Conclusion

Based on the foregoing, the Board finds that the Arbitrator did not exceed his authority and that the Arbitrator's Supplemental Award was not procured by fraud, collusion or other similar and unlawful means. Accordingly, MPD's Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Mary Anne Gibbons, Barbra Somson, and Douglas Warshof.

October 19, 2017

Washington, D.C.

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[44] Request at 9.
[45] *Crosby-Ironton Fed'n of Teachers*, 285 N.W.2d at 670.
[46] Request at 6.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-07, Opinion No. 1643 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2017.

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/s/ Sheryl Harrington
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Metropolitan Police Department	)	
Petitioner,	)	PERB Case No. 17-A-09
v.	)	Opinion No. 1644
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Taunya Johnson),	)	
Respondent.	)	

DECISION AND ORDER

I. Introduction

On July 26, 2017, the Metropolitan Police Department ("MPD") filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator's Opinion and Award ("Award"). The Award sustained the grievance brought by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") on behalf of Officer Taunya Johnson ("Grievant"), directed that the Grievant be reinstated with back pay and benefits, and ordered a lesser penalty of 60 work days without pay. MPD asserts that the Award is, on its face, contrary to law and public policy.[1]

In accordance with the CMPA, the Board is permitted to modify or set aside an arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[2]

[1] Request at 2.
[2] D.C. Official Code § 1-605.02(6).

Having reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, the Board concludes that the Award on its face is not contrary to law and public policy. Therefore, the Board denies MPD's Request.

II. Arbitrator's Award

The Grievant was an officer with MPD.[3] In December 2009, MPD's Internal Affairs Division ("IAD") began an investigation based on allegations that the Grievant provided false statements and failed to appear at trial relating to an arrest in which the Grievant participated.[4] The IAD investigation sustained the charge that the Grievant provided false statements to MPD's Court Liaison regarding an October 15, 2009 witness conference and an October 27, 2009 trial date.[5] On March 12, 2010, the Grievant was served with a Notice of Proposed Adverse Action.[6] The Grievant was charged with falsely informing the Court Liaison that she had been excused from the October 15, 2009 witness conference and October 27, 2009 trial date.[7] On December 7, 2010, an Adverse Action Panel ("Panel") heard the evidence relating to the charged misconduct.[8] In a Final Notice of Adverse Action issued on January 24, 2011, the Panel found that the Grievant failed to obey orders to appear for trial on October 27, 2009, and untruthfully claimed to be excused from trial on that date.[9] Upon weighing each of the relevant the *Douglas*[10] factors, the Panel proposed termination.[11] The Grievant unsuccessfully appealed to Chief of Police Lanier, and the parties proceeded to arbitration.[12]

In an Arbitration Award issued on July 26, 2017, the Arbitrator sustained the Union's grievance, finding that, although MPD had sufficient evidence to support the charges against Grievant, the Panel did not meet its burden in establishing that the penalty in its recommendation was consistent with penalties in comparable cases.[13] For this reason, the Arbitrator directed that the Grievant's termination be reversed.[14] However, "given sustained evidence of [the Grievant's] repeated disregard of her responsibility to cooperate with the Office of the U.S. Attorney and her apparent cavalier attitude toward that responsibility," the Arbitrator determined that the Grievant still deserved a penalty of a 60-day suspension without pay. [15] The Arbitrator ordered that the Grievant be reinstated with back pay and benefits, less any earnings the Grievant may have made

[3] Award at 2.
[4] Award at 5.
[5] Award at 5.
[6] Award at 5.
[7] Award at 6.
[8] Award at 6.
[9] Award at 6.
[10] *Douglas v. Veterans Admin.*, 5 MSPB 313 (M.S.P.B. 1981) sets forth a list of factors to be considered when assessing the appropriateness of a penalty.
[11] Award at 6.
[12] Award at 6.
[13] Award at 8-10.
[14] Award at 11.
[15] Award at 11.

from the date of termination to reinstatement and back pay that would have been due for 60 days.[16]

On July 26, 2017, MPD filed the present Request, seeking review of the Arbitrator's Award. On August 15, 2017, FOP submitted its Opposition to Arbitration Review Request ("Opposition").

III. Discussion

The CMPA regulates public employee labor-management relations in the District of Columbia. As previously noted, under the CMPA, the Board is permitted to modify or set aside an arbitration award if the award on its face is contrary to law and public policy.[17] The Court of Appeals has stated, "the statutory reference to an award that 'on its face is contrary to law and public policy' may include an award that was premised on 'a misinterpretation of law by the arbitrator that was apparent 'on its face.'"[18]Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for that of the arbitrator.[19] Moreover, to overturn an arbitration award on the grounds that the award is contrary to law and public policy, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."[20]

The entirety of MPD's argument is that the Arbitrator misanalysed the *Douglas* factors. MPD argues that the Arbitrator "relied solely on the analysis of *Douglas* factors 6 and 12[21] in determining that termination was not the appropriate remedy" and failed to consider the reasonableness of the Panel's determination as it related to the *Douglas* factors.[22] MPD contends that even though the Arbitrator found that the Panel "arguably articulat[ed] reasonably its consideration of most of those factors," the Arbitrator focused solely on the Panel's inadequate consideration of factors 6 and 12 without analyzing or balancing the remaining factors.[23] MPD argues that the Arbitrator cannot substitute his judgment for the employer, and instead can only determine whether the Panel properly weighed the relevant factors to see if the decision was within reasonable limits.[24] MPD argues that the Panel's analysis of the *Douglas* Factors was thorough and "did not exceed the limits of reasonableness" particularly in light of the

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[16] Award at 11.
[17] D.C. Official Code § 1-605.02(6).
[18] *F.O.P./Dep't of Corr. Labor Comm. v. Pub. Emp. Relations Bd.*, 973 A.2d 174, 178 (D.C. 2009)(*quoting D.C. Metro. Police Dep't v. D.C. Pub. Emp. Relations Bd.*, 901 A.2d 784, 787-88 (D.C. 2006)).
[19] *D.C. Metro. Police. Dep't*, Slip Op. 1561 at 6.
[20] *MPD and FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). *Also see, D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case 86-A-05 (1987).
[21] *Douglas* factors 6 and 12 are as follows: 6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses; 12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
[22] Request at 9.
[23] Request at 19.
[24] Request at 19.

consequences of the Grievant's untruthful statements on her ability to provide testimony in criminal and civil matters.[25] MPD asserts that the Panel's analysis was significant because the Chief of Police referenced the Panel's reasoning in denying the Grievant's appeal.[26] Therefore, MPD argues, the Arbitrator's Award was not in accordance with the law.[27] In support of this contention, MPD cites to *Metropolitan Police Department v. D.C. Office of Employee Appeals*,[28] wherein the District of Columbia Court of Appeals determined that the Office of Employee Appeals erred by overturning an appellee's termination without assessing the appellant's *Douglas* analysis or considering any of the *Douglas* factors. MPD explains that similarly, in the present case, the arbitrator did not assess MPD's analysis of each of the *Douglas* factors, choosing to focus on factors 6 and 12, when the weight of the Panel's analysis unequivocally supported termination.[29]

FOP counters that MPD's arguments that the Arbitrator violated law and public policy in his *Douglas* analysis are nothing more than disagreements with the Arbitrator's findings and conclusions, which are not a sufficient basis for Board review.[30] FOP argues that the Arbitrator clearly articulated his basis for his *Douglas* analysis.[31] FOP notes that MPD has failed to cite to any authority to support its argument that the Arbitrator's findings and conclusions were contrary to law and public policy, and instead, bases its assertions on a disagreement with the Arbitrator's findings.[32]

As stated previously, to overturn an arbitration award on the grounds that the award is contrary to law and public policy, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."[33] In the present case, MPD asserts the Award is on its face contrary to law and public policy. However, the Board finds that MPD does not specify any "applicable law" and "definite public policy" that mandates the Arbitrator arrive at a different result.

Additionally, the Board finds that the Arbitrator's conclusions are based on a thorough analysis of the record, and cannot be said to be clearly erroneous or contrary to law and public policy. As stated previously, the Arbitrator determined that the Panel did not meet its burden in establishing that the penalty in its recommendation was consistent with penalties in comparable cases. The Arbitrator analyzed each of the *Douglas* factors and found that the Panel's review of *Douglas* factors 6 and 12 was "non-existent."[34] The Arbitrator stated: "The Panel does not

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[25] Request at 10-11.
[26] Request at 17-18.
[27] Request at 9.
[28] 88 A.3d 724, 729-30 (D.C. 2014).
[29] Request at 17.
[30] Opposition at 9.
[31] Opposition at 9.
[32] Opposition at 9.
[33] *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). *See also D.C. Pub. Sch. v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case 86-A-05 (1987).
[34] Award at 10.

identify a single comparable case in responding to either of these factors. Its conclusions that the removal penalty 'is commensurate with past recorded sustained allegations for the stated charges' and that 'alternative remedies . . . are not available' are simply unsupported assertions."[35] Due to the Panel's inadequate consideration of Douglas factors 6 and 12, the Arbitrator sustained the Grievant's appeal and reversed her termination.[36]

Therefore, the Board finds that MPD's Request is merely a dispute with the Arbitrator's evidentiary findings and conclusions in assessing the *Douglas* Factors. MPD's argument that the Arbitrator failed to assess the Panel's analysis of each of the *Douglas* factors, does not meet the requirement for the Board to overrule the Award. The Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based."[37] Moreover, "[t]he Board will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."[38] In the present case, the parties submitted their dispute to the Arbitrator, and MPD's claim that the Arbitrator's award is contrary to law and public policy only involves a disagreement with the Arbitrator's analysis of the *Douglas* factors. This does not present a statutory basis for reversing the Arbitrator's Award.

Finally, the Board finds that MPD's reliance on the District of Columbia Court of Appeals case, *Metropolitan Police Department v. D.C. Office of Employee Appeals*, is misplaced as the salient facts in the cited case are distinguishable from the facts in the present case. As stated previously, the Court determined that the Office of Employee Appeals erred by overturning an officer's termination without assessing the police department's *Douglas* analysis or considering any of the *Douglas* factors.[39] In the present matter, the Arbitrator reviewed the Panel's *Douglas* analysis, and found that the Panel's consideration of *Douglas* factors 6 and 12 were inadequate. Therefore, the Board finds no error in the Arbitrator's conclusions.

IV. Conclusion

In view of the above, the Board finds that there is no merit to MPD's arguments. Moreover, the Board finds that the Arbitrator's conclusions are based on a thorough analysis of the record and cannot be said to be clearly erroneous or contrary to law or public policy. Therefore, no statutory basis exists for setting aside the Award. Accordingly, MPD's Request is denied, and the matter is dismissed in its entirety with prejudice.

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[35] Award at 10.
[36] Award at 11.
[37] *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at p. 3, PERB Case No. 00-A-04 (2000).
[38] *D.C. Dep't of Corr. and Int'l Bhd. of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. 157 at p. 3, PERB Case No. 87-A-02 (1987).
[39] *D.C. Metro Police Dep't v. D.C. Office of Emp. Appeals*, 88 A.3d 730 (D.C. 2014).

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

2. Pursuant to Board Rule 559.1, this Decision and Order us final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Members Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

October 19, 2017

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-A-09, Op. No. 1644 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2017.

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District of Columbia REGISTER – December 22, 2017 – Vol. 64 - No. 51 012873 – 013407