VOL. 64 – NO. 7 FEBRUARY 17, 2017

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-644, Healthy Public Buildings Assessment Act of 2016
- D.C. Council enacts Act 21-664, Specialty Drug Copayment Limitation Act of 2016
- D.C. Council enacts Act 21-666, Washington Metrorail Safety Commission Establishment Act of 2016
- D.C. Council enacts Act 21-668, Uniform Electronic Legal Material Act of 2016
- D.C. Council enacts Act 21-669, State Board of Education Omnibus Amendment Act of 2016
- D.C. Council schedules a public oversight roundtable on the District Department of Transportation's Second Proposed Vision Zero Regulations
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the FY2017 Qualified High Technology Company Security Deposit Assistance Grant Program
- Public Service Commission schedules community hearings to get public comments on PEPCO's rate application

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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DISTRICT OF COLUMBIA
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ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-612

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 13, 2017

To amend Title III of the Washington Metropolitan Area Transit Regulation Compact, known as the Washington Metropolitan Area Transit Authority Compact, to provide that the Secretary of the United States Department of Transportation appoints the federal government representatives to the Board of Directors of the Washington Metropolitan Area Transit Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Washington Metropolitan Area Transit Authority Compact Amendment Act of 2016".

Sec. 2. Section 5(a) of Article III of Title III of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01(5)(a)), is amended by striking the phrase "Administrator of General Services" both times it appears and inserting the phrase "Secretary of the United States Department of Transportation" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 13, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-644

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 25, 2017

To require the Department of General Services ("DGS") to conduct assessments to identify environmental risks in all public buildings, to require DGS to develop, in consultation with the Department of Energy and Environment and the Department of Health, publicly available protocols for each assessment, to require DGS to, by September 30, 2017, post information online about the assessments required by this act, and to require DGS to submit 2 reports to the Council, describing its compliance with this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Healthy Public Buildings Assessment Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "DGS" means the Department of General Services.

(2) "Hazardous waste" shall have the same meaning as provided in section 3(2) of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1302(2)).

(3) "Minimum risk pesticides" means pesticide products listed in 40 C.F.R. § 152.25(f).

(4) "Organic pesticides" means pesticides including no active ingredients other than those published in the National List at 7 C.F.R. §§ 205.601 and 205.606.

(5) "Public building" means any building owned by the District of Columbia where people regularly occupy the building, including assembly spaces, places of employment and education, child and adult care facilities, health care centers, foster care facilities, and homeless shelters.

(6) "Toxic chemical" shall have the same meaning as provided in section 3(6A) of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1302(6A)).

Sec. 3. Assessments of public buildings for environmental risks.

(a) DGS shall assess each public building for, at a minimum, the following to identify environmental risks:

(1) Indoor air quality;

(2) Outdoor air quality;

(3) Ventilation and temperature control;

(4) Mold or mildew;

(5) Pests;

(6) The use of any pesticides that are not minimum risk pesticides or organic pesticides;

(7) Toxic chemicals and hazardous waste;

(8) Asbestos;

(9) Lead-based paint;

(10) Lead in drinking water;

(11) Radon; and

(12) Carbon monoxide.

(b) For each assessment listed in subsection (a) of this section, DGS shall establish protocols, in coordination with the Department of Energy and Environment and the Department of Health, by which DGS shall conduct the assessments required by subsection (a) of this section. The protocols shall describe, at a minimum:

(1) The frequency and methods of assessment;

(2) The threshold levels at which remediation measures shall be taken; and

(3) The remediation and public disclosure measures that shall be taken when an assessment reveals levels that exceed a threshold level established pursuant to paragraph (2) of this subsection.

(c) Protocols already in existence for an assessment described in subsection (a) of this section may serve as the protocol for the relevant assessment under subsection (b) of this section if the protocol meets the requirements of subsection (b) of this section.

(d) DGS shall make available online:

(1) The protocols established pursuant to subsection (b) of this section, including any updates to the protocols;

(2) By September 30, 2017, user-friendly information about the assessments described in subsection (a) of this section for each public building, including:

(A) If an assessment found an exceedance of a threshold established under subsection (b) of this section, a brief explanation of plans for remediation;

(B) Whether DGS is complying with the protocols for each assessment; and

(C) If DGS is not complying with a protocol for an assessment, a brief explanation of its plans to come into compliance with the protocols.

(e)(1) By September 30, 2017, DGS shall submit a report to the Council describing its compliance with this act.

(2) By September 30, 2018, DGS shall submit another report to the Council describing its compliance with this act.

Sec. 4. Fiscal impact statement.

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

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Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
Janaury 25, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-655

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend the Rental Housing Conversion and Sale Act of 1980 to modernize references to elderly tenants and tenants with disabilities and clarify the language in existing law regarding the Mayor's determination that a tenant qualifies as an elderly tenant or tenant with a disability under the act; to amend the Rental Housing Act of 1985 to standardize and modernize the definition of elderly tenants and tenants with disabilities, to require the Housing Commission to publish additional information pertinent to elderly tenants and tenants with disabilities, to prohibit an increase above the base rent unless a housing provider provides a tenant with information relevant to establishing elderly tenant and tenant with a disability status, to lower the cap on the annual standard rent increase for a unit occupied by an elderly tenant or a tenant with a disability to the Consumer Price Index, the Social Security COLA, or 5% of the current rent charged, whichever is least, to change the maximum annual income for low-income elderly tenants and low-income tenants with a disability to qualify for an exemption from a capital improvement surcharge from $40,000 to 60% of the area median income in the Washington Metropolitan Statistical Area for a household of 4 persons, and to establish that same amount as the maximum annual income for a low-income elderly tenant and a low-income tenant with a disability to qualify for an exemption from rent adjustments pursuant to a hardship petition, a services and facilities petition, and a substantial rehabilitation petition, to exempt current and future low-income elderly tenants and low-income tenants with a disability from a rent adjustment approved pursuant to a hardship petition, a services and facilities petition, and a substantial rehabilitation petition, in addition to the existing exemption from capital improvement surcharges, to provide housing providers with a tax credit for each unit occupied by a low-income elderly tenant or a low-income tenant with a disability to compensate for certain exemptions and limit the total combined tax credits claimed by all housing providers for any fiscal year to a maximum of $1.25 million, to prohibit a voluntary agreement from increasing the rent charged for a current or future elderly tenant or a tenant with a disability with a qualifying income, to permit a low-income elderly tenant or low-income tenant with a disability to waive his or her right to an exemption from a services and facilities petition or from an increase in rent charged resulting from a voluntary agreement, to permit a tenant to establish elderly or disability status by providing the minimum information necessary, and by filing the registration form by mail, fax, email, or in person at the

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Rental Accommodations Division, to establish that the Rent Administrator may deny registration for elderly or disability status only upon clear and convincing evidence of error, fraud, falsification, or misrepresentation, and only if the tenant has had the opportunity to respond to the denial or a challenge from the housing provider, to impose a penalty on a tenant upon a finding by the Rent Administrator of fraud, falsification, or misrepresentation of eligibility for elderly or disability status, and to provide for penalties if a housing provider's challenge to a tenant's registration to establish elderly or disability status is determined to have been frivolous or made in bad faith.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016".

Sec. 2. 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.*), is amended as follows:

(a) Section 101(a)(4) (D.C. Official Code § 42-3401.01(a)(4)) is amended by:

(1) Striking the phrase "elderly and disabled tenants" and inserting the phrase "elderly tenants and tenants with disabilities" in its place.

(2) Striking the phrase "lower income, elderly, and disabled tenants" and inserting the phrase "lower income tenants, elderly tenants and tenants with disabilities" in its place.

(b) Section 102 (D.C. Official Code § 42-3401.02) is amended as follows:

(1) Paragraph (3) is amended by striking the phrase "elderly and disabled tenants" and inserting the phrase "elderly tenants and tenants with disabilities" in its place.

(2) Paragraph (4) is amended by striking the phrase "low income non-elderly and non-disabled tenants" and inserting the phrase "lower income non-elderly tenants and tenants without disabilities" in its place.

(c) Section 103 (D.C. Official Code § 42-3401.03) is amended as follows:

(1) A new paragraph (9A) is added to read as follows:

"(9A) Elderly tenant" means a tenant who is 62 years of age or older.".

(2) A new paragraph (19) is added to read as follows:

"(19) "Tenant with a disability" means a tenant who has a disability as defined in section 3(1)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(1)(A)).".

(d) Section 203(d)(4) (D.C. Official Code § 42-3402.03(d)(4)) is amended by striking the phrase "elderly or disabled tenant" and inserting the phrase "elderly tenant or tenant with a disability" in its place.

(e) Section 204(b)(3)(A) (D.C. Official Code § 42-3402.04(b)(3)(A)) is amended to read as follows:

"(A) Is sold to a person who is an elderly tenant or a tenant with a disability.".

(f) Section 208 (D.C. Official Code § 42-3402.08) is amended as follows:

(1) The section heading is amended by striking the phrase "Elderly or disabled tenancy" and inserting the phrase "Tenancy of elderly tenants and tenants with disabilities" in its place.

(2) Subsection (a)(2) is amended by striking the phrase "elderly or disabled tenant" and inserting the phrase "elderly tenant or tenant with a disability" in its place.

(3) Subsection (b) is amended by striking the phrase "elderly or disabled tenant" and inserting the phrase "elderly tenant or tenant with a disability" in its place.

(4) Subsection (c) is amended to read as follows:

"(c) Qualification. –

"(1) A tenant shall qualify under this title if, on the day a tenant election is held for the purposes of conversion, the tenant:

"(A) Is entitled to the possession, occupancy, or the benefits of the tenant's rental unit; and

"(B) Is an elderly tenant or a tenant with a disability.

"(2) In making a determination that a tenant qualifies as a tenant with a disability under this title, the Mayor:

"(A) Shall limit the inquiry to the minimum information and documentation necessary to establish that the tenant meets the definition of a tenant with a disability and shall not inquire further into the nature or severity of the disability;

"(B) Shall not require the tenant to provide a description of the disability when making an eligibility determination; provided, that the Mayor may require that a physician or other licensed healthcare professional verify that a tenant meets the definition of a tenant with a disability; and

"(C) Shall not require the tenant to provide eligibility documentation in fewer than 30 days.

"(3) The Mayor shall maintain records of the information compiled under this subsection and shall not disclose information about the disability of a tenant unless the disclosure is required by law.

"(4) In requesting information under this subsection, the Mayor:

"(A) Shall not include a qualified voter's name on any publicly available list of eligible voters;

"(B) Shall inform tenants that their names will be absent from publicly available lists of eligible voters; and

"(C) Shall not disclose information provided about a tenant's disability unless the disclosure is required by law.

"(5) The Mayor may provide a list of eligible voters upon request and may make a list of eligible voters available at the site of the tenant election.

"(6) The Mayor shall develop all forms and procedures as may be necessary to verify eligibility under this subsection.".

(g) Section 210(b) (D.C. Official Code § 42-3402.10(b)) is amended by striking the phrase "elderly and disabled tenants" and inserting the phrase "elderly tenants and tenants with

disabilities" in its place.

Sec. 3. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 42-3501.03) is amended as follows:

(1) Paragraph (12) is amended to read as follows:

"(12) "Elderly tenant" means a tenant who is 62 years of age or older.".

(2) A new paragraph (25A) is added to read as follows:

"(25A) "Qualifying income" means household income, as defined by D.C. Official Code § 47-1806.06(b)(2), that is no greater than 60% of the area median income, as defined by section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1).".

(3) New paragraphs (29A) and (29B) are added to read as follows:

"(29A) "Rent charged" means the amount of monthly rent charged to a tenant by a housing provider for a rental unit covered by the Rent Stabilization Program.

"(29B) "Rent surcharge" means a charge added to the rent charged for a rental unit pursuant to a capital improvement petition, hardship petition, or a substantial rehabilitation, and not included as part of the rent charged.".

(4) A new paragraph (36A) is added to read as follows:

"(36A) "Tenant with a disability" means a tenant who has a disability as defined in section 3(1)(A) of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102(1)(A)).".

(b) Section 202(a)(3) (D.C. Official Code § 42-3502.02(a)(3)) is amended to read as follows:

"(3) Certify and publish before March 1 of each year:

"(A) The annual adjustment of general applicability of the rent charged for a rental unit under section 206;

"(B) The most recent annual cost-of-living adjustment of benefits for social security recipients established pursuant to section 415(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i));

"(C) The maximum annual rent adjustment that may be imposed on a unit occupied by an elderly tenant or tenant with a disability pursuant to section 224(a); and

"(D) The qualifying income for an elderly tenant or tenant with a disability to be exempt from an adjustment in the rent charged pursuant to sections 210, 211, 212, and 214 and whose rent charged may not be increased under section 215.".

(c) Section 206 (D.C. Official Code § 42-3502.06) is amended as follows:

(1) Subsection (f) is repealed.

(2) Subsection (g) is repealed.

(d) Section 208 (D.C. Official Code § 42-3502.08) is amended as follows:

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

(A) Subparagraph (D) is amended by striking the word "and".

(B) Subparagraph (E) is amended by striking the period and inserting a semicolon in its place.

(C) New subparagraphs (F) and (G) are added to read as follows:

"(F) The housing provider has provided a tenant with written notice of the maximum standard rent increase that applies to an elderly tenant or a tenant with a disability and the means by which a tenant may establish elderly or disability status as set forth in section 224(d), as provided by the Rent Administrator pursuant to section 224(f), and has not required a tenant to provide more proof of age or disability than the minimum information necessary to establish that status; and

"(G) The housing provider, if a nonresident of the District, has appointed and maintained a registered agent pursuant to section 203 of Title 14 of the District of Columbia Municipal Regulations.".

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

"(h) Unless the adjustment in the amount of rent charged is implemented pursuant to sections 210, 211, 212, 214, or 215, an adjustment in the amount of rent charged:

"(1) If the unit is vacant, shall not exceed the amount permitted under section 213(a); or

"(2) If the unit is occupied:

"(A) Shall not exceed the current allowable amount of rent charged for the unit, plus the adjustment of general applicability plus 2%, taken as a percentage of the current allowable amount of rent charged; provided, that the total adjustment shall not exceed 10%;

"(B) Shall be pursuant to section 224, if occupied by an elderly tenant or tenant with a disability; and

"(C) Shall not exceed the lesser of 5% or the adjustment of general applicability if the unit is leased or co-leased by a home and community-based services waiver provider.".

(e) Section 215(b) (D.C. Official Code § 42-3502.15(b)) is amended by striking the phrase "on all tenants" and inserting the phrase "on all tenants, except as specified in section 224(i)(2)" in its place.

(f) Section 223 (D.C. Official Code § 42-3502.23) is amended by striking the phrase "disabled tenants" in the lead-in language and inserting the phrase "tenants with disabilities" in its place.

(g) A new section 224 is added to read as follows:

"Sec. 224. Elderly tenants and tenants with disabilities.

"(a) Notwithstanding section 208(h), an adjustment in the amount of rent charged while a unit is occupied by an elderly tenant or tenant with a disability, without regard to income, shall not exceed the rent charged for the unit, plus the least of:

"(1) The adjustment of general applicability;

"(2) The most recent annual cost-of-living adjustment of benefits for social security recipients established pursuant to section 415(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i)); or

"(3) Five percent of the rent charged.

"(b) A rent surcharge allowed pursuant to sections 210, 212, and 214 and a rent increase allowed pursuant to section 211, shall not be assessed against a current or future elderly tenant or tenant with a disability with a qualifying income. For the purposes of calculating the rent charged a future qualified elderly tenant or tenant with a disability, adjustments in the rent charged pursuant to these sections effected during the tenancy of a tenant not exempt from the adjustments, shall be considered rent surcharges, and shall be subtracted from the rent charged for the unit.

"(c) A tenant exempt from section 211 and a tenant whose rent charged may not be increased under section 215 may waive his or her rights under the respective sections. The waiver shall be in writing and shall state that it was made voluntarily, without coercion, and with full knowledge of the ramifications of a waiver of their rights.

"(d)(1) A tenant may file a completed elderly or disability status and income eligibility registration form and supporting documentation by mail, fax, email, or in person at the Rental Accommodations Division of the Department of Housing and Community Development.

"(2) The Mayor shall determine the minimum documentation necessary for a tenant to establish elderly tenant or tenant with a disability status and income eligibility, which may include:

"(A) For elderly status, proof of age as documented by a passport, birth certificate, District-issued driver's license or identification card, or any other documentation as the Mayor deems sufficient; and

"(B) For disability status, an award letter for disability benefits from the U.S. Social Security Administration, a letter from a physician stating that the tenant is a tenant with a disability, or other documentation as the Mayor may deem sufficient.

"(3) In making a determination that a tenant qualifies as a tenant with a disability under this subsection, the Mayor shall limit the inquiry to the minimum information and documentation necessary to establish that the tenant meets the definition of a tenant with a disability and shall not inquire further into the nature or severity of the disability.

"(4) The Mayor shall not require a tenant to provide a description of the disability when making an eligibility determination; provided, that the Mayor shall require that a physician or other licensed healthcare professional verify that a tenant meets the definition of a tenant with a disability.

"(5) The Mayor shall not require the tenant to provide eligibility documentation in fewer than 30 days.

"(6) The Mayor shall maintain records of the information compiled under this subsection and shall not disclose information about a tenant's disability unless the disclosure is required by law.

"(7) The Mayor shall develop any forms and procedures as may be necessary to verify eligibility under this subsection.

"(8) A tenant shall provide pay stubs, benefit statements, or other documentation as the Mayor may deem sufficient as proof of income eligibility to qualify for an exemption from

ENROLLED ORIGINAL

an adjustment in the rent charged pursuant to subsection (b) of this section.

"(9) A housing provider shall, upon the request of a tenant, provide the tenant with a current copy of the registration form issued by the Rent Administrator for purposes of establishing elderly tenant or tenant with a disability status, or qualifying income status.

"(e)(1) A tenant's elderly or disability status shall be effective as of the first day of the first month following compliance with this subsection and shall remain effective unless and until any time the Rent Administrator may deny the registration.

"(2) If the effective date of the tenant's elderly or disability status occurs less than 12 months after the effective date of a rent adjustment of general applicability, the housing provider shall reduce the rent charged to the rent for a unit occupied by an elderly tenant or a tenant with a disability pursuant to subsection (a) of this section, as of the effective date of the tenant's elderly or disability status.

"(3) An elderly tenant or tenant with a disability shall not be entitled to receive a retroactive refund for an approved registration for a time period where the tenant was qualified as an elderly tenant or a tenant with a disability, but had not yet fulfilled the requirements of this section.

"(f) The Rent Administrator shall issue a notice of rent adjustment that shall set forth:

"(1) The maximum standard rent increase percentage that applies to elderly tenants and tenants with disabilities, in bold 12-point lettering;

"(2) The benefits and protections that apply to elderly tenants and tenants with disabilities; and

"(3) The standards and procedures for qualifying for those benefits and protections.

"(g)(1) A housing provider who provides housing to an elderly tenant or tenant with a disability, with qualifying income, and is not permitted under subsection (b) of this subsection to implement, and does not implement, an adjustment in rent charged pursuant to sections 210, 211, 212, or 214, shall receive a tax credit for each unit occupied by an elderly tenant or a tenant with a disability, with qualifying income, in the amount of $1 for each $1 of the approved rent adjustment that is not implemented.

"(2) The tax credit may be taken against the next installment or installments of taxes payable to the District coming due with respect to the housing accommodation, inclusive of the land on which it is located.

"(3)(A)(i) The tax credit shall first be taken against real property taxes payable to the District.

"(ii) The Rent Administrator shall certify to the Office of Tax and Revenue the amount of credit allowable for each housing provider and parcel of real property for each real property tax year.

"(iii) The total amount of credit certified by the Rent Administrator for any tax year shall not exceed the maximum amount of credit allowable for the year under paragraph (6) of this subsection.

"(B) If the amount that would be collectible from elderly tenants and

tenants with disabilities at the housing accommodation exceeds the amount of real property taxes that would be payable during the real property tax year with respect to the housing accommodation but for the provisions of subsection (b) of this section, then the housing provider may take the tax credit against income or franchise taxes payable to the District for the housing provider's tax year during which the real property tax year ends.

"(4) The tax credit shall cease:

"(A) Upon recovery by the housing provider of all costs, including interest and service charges, used as a basis for a capital improvement petition or a substantial rehabilitation petition; or

"(B) Upon any expiration of a hardship petition granted to the housing provider.

"(5) If an elderly tenant or tenant with a disability, with qualifying income, should cease to reside in a rental unit, the tax credit allowed to the housing provider for that rental unit shall cease.

"(6) Notwithstanding any other provision of this section, the total combined tax credits claimed by all housing providers under this section for any fiscal year shall not exceed $1.25 million.

"(7) The maximum total combined tax credits claimed by all housing providers under this section for any fiscal year shall be adjusted annually by an amount equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W") for all items during the preceding calendar year.

"(8) The base year for the annual adjustment specified in paragraph (7) of this subsection shall be the year of the effective date of the Elderly Tenant and Tenant with a Disability Protection Amendment Act of 2016, passed on 2nd reading on December 6, 2016 (Enrolled version of Bill 21-173) ("Protection Act"). The annual adjustment shall occur at least 12 months after the effective date of the Protection Act on the following October 1. The annual adjustment shall be in accordance with the CPI-W effective as of the October 1 of each subsequent year.

"(9) Notwithstanding subsection (b) of this section, if the Chief Financial Officer finds that funds are not available for the tax credit provided by this subsection, then a housing provider may assess against an elderly tenant or tenant with a disability a rent surcharge allowed pursuant to sections 210, 212, and 214, and a rent increase allowed pursuant to section 211.

"(h)(1) A housing provider shall not increase the rent charged in an amount greater than that allowed for a unit occupied by an elderly tenant or a tenant with a disability pursuant to subsection (a) of this section, unless the Rent Administrator has issued a determination that the tenant failed to qualify for elderly or disability status, pursuant to this subsection.

"(2) If the housing provider has substantial grounds to believe that the tenant does not qualify for elderly or disability status, or that relevant documentation is fraudulent or has been falsified, and if efforts to resolve the dispute directly with the tenant are unavailing, then the housing provider may challenge the tenant's registration by:

"(A) Notifying the tenant of the basis for the challenge; and

"(B) Filing a request to deny the registration with the Rent Administrator, within 30 days of the tenant's compliance with subsection (d) of this section.

"(3)(A) If the Rent Administrator has substantial grounds to believe that the tenant does not qualify for elderly or disability status, and that relevant documentation is fraudulent or has been falsified, then within 30 days of the tenant's compliance with subsection (d) of this section, the Rent Administrator may deny the tenant's registration.

"(B) The Rent Administrator shall deny a tenant's registration only upon clear and convincing evidence of error, fraud, falsification, or misrepresentation, and only if the tenant has been given the opportunity to respond to the challenge to the registration by the housing provider or to the denial of the registration by the Rent Administrator.

"(C) If the Rent Administrator denies a tenant's registration, and determines that the tenant acted in bad faith rather than due to unintentional error, then within 21 days of the denial, the Rent Administrator may order the tenant to pay to the housing provider double the difference between the amount of rent to be charged pursuant to section 208(h) and the amount of rent actually paid, with interest.

"(i)(1) A voluntary agreement shall not increase the rent charged to a current or future elderly tenant or tenant with a disability with a qualifying income.

"(2) For the purposes of calculating the rent charged a future qualified elderly tenant or tenant with a disability, an increase in the rent charged pursuant to a voluntary agreement effected during the tenancy of a tenant not exempt from the increase, shall be considered a rent surcharge, and shall be subtracted from the rent charge of the unit during the tenancy of the qualified elderly tenant or tenant with a disability.

"(3) The voluntary agreement shall identify each rental unit that is occupied by an elderly tenant or a tenant with a disability, the name of each tenant in the unit, and the current rent charged.

"(j) The Mayor may determine the term of eligibility and recertification requirements for the exemptions provided by this section.".

(h) Section 901 (D.C. Official Code § 42-3509.01) is amended by adding a new subsection (h) to read as follows:

"(h) If a housing provider's challenge, pursuant to section 224(h)(2), to a tenant's registration to establish elderly or disability status under section 224(d) is determined to have been frivolous or made in bad faith, the housing provider shall be deemed to have made an unlawful demand for rent, and shall be held liable to the tenant, as applicable, for:

"(1) At a minimum, an amount equal to 2% of the total annual current rent charged;

"(2) At a maximum, an amount equal to the total annual current rent charged; and

"(3) In addition to the penalties specified in paragraphs (1) and (2) of this subsection, treble damages based upon the amounts prescribed in those paragraphs.".

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Sec. 4. Applicability.

(a) The new section 224(b) of the Rental Housing Act of 1985, within section 3(g), shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPORVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-656

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to establish financial disclosure requirements for the Council of the District of Columbia and to clarify certain financial disclosure requirements for certain Washington Metropolitan Area Transit Authority Board members.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Council Financial Disclosure Amendment Act of 2016".

Sec. 2. The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), is amended as follows:

(a) Section 101(47) (D.C. Official Code § 1-1161.01(47)) is amended as follows:

(1) Subparagraph (G-1) is redesignated as subparagraph (G-i).

(2) The newly designated subparagraph (G-i) is amended by striking the phrase "pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01)" and inserting the phrase "appointed by the Council pursuant to section 5(a) of the Washington Metropolitan Area Transit Authority Compact, approved November 6, 1966 (80 Stat. 1326; D.C. Official Code § 9-1107.01(5)(a))" in its place.

(3) A new subparagraph (G-ii) is added to read as follows:

"(G-ii) A Member or Alternate Member of the Washington Metrorail Safety Commission appointed by the District of Columbia pursuant to Article III.B. of the Metrorail Safety Commission Interstate Compact enacted pursuant to the Washington Metrorail Safety Commission Establishment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-828);".

(4) Subparagraph (H) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(5) Subparagraph (I) is amended as follows:

(A) Strike the phrase "A District of Columbia Excepted Service employee" and insert the phrase "A District of Columbia Excepted Service employee, except an employee of the Council," in its place.

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(B) Strike the phrase "appearance of a conflict of interest." and insert the phrase "appearance of a conflict of interest; and" in its place.

(6) A new subparagraph (J) is added to read as follows:

"(J) An employee of the Council paid at a rate equal to or above the midpoint rate of pay for Excepted Service 9.".

(b) Section 224 (D.C. Official Code § 1-1162.24) is amended as follows:

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

(A) Strike the phrase ", members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01),".

(B) Strike the phrase "shall file annually" and insert the phrase "shall file" in its place.

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

"(c)(1) Except as otherwise provided in this subsection, reports required by this section shall be filed annually no later than 11:59 p.m. on May 15 of each year. If, before 11:59 p.m. on May 15, a public official ceases to hold an office or position, the occupancy of which imposes upon him or her the reporting requirements set forth in subsection (a) of this section, the public official shall file the report required by subsection (a) of this section within 3 months after leaving the office or position.

"(2) Reports required by this section for the Chairman and each member of the Council shall be filed semiannually no later than 11:59 p.m. on May 15 and November 15 of each year. If, before 11:59 p.m. on May 15 or November 15, the Chairman or a member of the Council ceases to hold an office, the occupancy of which imposes upon him or her the reporting requirements set forth in subsection (a) of this section, the Chairman or member of the Council shall file the report required by subsection (a) of this section within 3 months after leaving the office.".

(3) A new subsection (c-1) is added to read as follows:

"(c-1) The Ethics Board shall publish in the District of Columbia Register no later than 11:59 p.m. on June 15 of each year, or in the case of the Chairman or a member of the Council, no later than 11:59 p.m. on June 15 and December 15 of each year, the name of each public official who has:

"(1) Filed a report under this section;

"(2) Sought and received an extension of the filing deadline and the reason for the extension; and

"(3) Not filed a report and the reason for not filing, if known.".

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

"(i) Each personnel authority shall compile a list of all public officials, as defined by section 101(47), within its respective agency or the Council, and shall supply the list to the Ethics Board no later than 11:59 p.m. on March 1 of each year. The list required by this subsection shall include the name, title, position, grade level, home address, work e-mail address, and work telephone number for each public official appearing on the list.".

(c) Section 225 (D.C. Official Code § 1-1162.25) is amended to read as follows:

"(a)(1) Each employee, other than a public official or a Council employee, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land-use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by the appropriate agency head, shall file a report containing a full and complete statement of the information required by section 224 with the appropriate agency head no later than 11:59 p.m. on May 15 of each year.

"(2) Each Council employee who acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by that employee's personnel authority, shall file a confidential report containing a full and complete statement of the information required by section 224 with the General Counsel to the Council no later than 11:59 p.m. on May 15 of each year.

"(b) Each personnel authority shall review each confidential financial disclosure statement filed by an employee of its agency or the Council pursuant to subsection (a) of this section no later than 11:59 p.m. on June 1 of each year. Any violation of the Code of Conduct found by the personnel authority shall be forwarded immediately to the Ethics Board for review.

"(c) Each personnel authority shall compile a list of all employees required to submit a confidential financial disclosure statement within its agency or the Council and shall supply the list to the Ethics Board by 11:59 p.m. on March 1 of each year. The list required by this subsection shall include the name, title, position, and grade level for each employee.

"(d) A confidential financial disclosure statement filed pursuant to this section shall remain confidential, and shall be retained by the personnel authority for at least 6 years.

"(e) For the purposes of this section, the Chairman of the Council may delegate all or a portion of his or her personnel authority, described in section 406(b)(3)(A)(i) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-604.06(b)(3)(A)(i)), to one or more employees of the Council.".

Sec. 3. Applicability

(a) Amendatory section 224(c)(2) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.24(c)(2)), within section 2(b)(2) of this act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the provision's fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provision.

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Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-657

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend the Condominium Act of 1976 to establish a Condominium Association Advisory Council, to improve notice requirements before foreclosure sales, to establish a Condominium Association Bill of Rights and Responsibilities, and to require that the Condominium Association Bill of Rights and Responsibilities be furnished to purchasers of condominiums.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016".

Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 42-1901.02) is amended as follows:

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

"(20A) "Mortgage Electronic Registration System" or "MERS" shall mean the process created by the mortgage banking industry that tracks mortgage ownership and servicing, is used by the real estate finance industry for residential and commercial mortgage loan trading, and that simplifies the mortgage process by using electronic commerce.".

(2) A new paragraph (21A) is added to read as follows:

"(21A) "Notice of Foreclosure Sale of Condominium Unit for Assessments Due" or "NFSCUAD" shall mean a notice sent to a condominium unit owner in default in the payment of condominium assessments, fees, charges, or other penalties owed by a unit owner that includes such information as the past due amount of assessments and other charges being foreclosed upon and the time, place, and date of the scheduled sale, sent pursuant to section 313(c).".

(b) A new section 308a is added to read as follows:

"Sec. 308a. Condominium Association Advisory Council.

"(a) There is established a Condominium Association Advisory Council ("CAAC").

"(b) The purpose of the CAAC shall be to serve as an advisory body to the Mayor, the Council, and District agencies on matters relating to condominiums located in the District.

"(c) The CAAC shall be composed of 14 members appointed as follows:

"(1) One community representative from each of the 8 District wards, appointed by the Councilmember representing each respective ward;

"(2) One community representative appointed by the chairperson of the Committee of the Council that oversees the Department of Housing and Community Development;

"(3) One community representative appointed by the Mayor;

"(4) The Director of the Department of Housing and Community Development, or his or her designee;

"(5) A representative from the community association management industry with at least 7 years of experience in the profession, appointed by the Mayor;

"(6) A representative from the mortgage industry with at least 5 years of experience in the profession, appointed by the Mayor; and

"(7) A representative from the legal community who is an attorney licensed to practice in the District and has at least 5 years of experience representing community associations, appointed by the Mayor.

"(d) (1) Each community representative shall be a resident of the District who has been a member in good standing of a unit owners' association for at least one year, with a priority for community representatives with experience on a condominium board.

"(2) A chairperson shall be elected from among the 10 community representatives, and shall serve for a term of 2 years.

"(3)(A) Each community representative member shall be appointed for a term of 3 years.

"(B) Initial appointments shall be staggered with 3 members appointed for a one-year term, 4 members appointed for a 2-year term, and 3 members appointed for a 3–year term.

"(C) The initial appointment terms shall be determined by lot at the first meeting of the CAAC.

"(4) The 3 non-community members appointed by the Mayor shall each be appointed for a term of 3 years.

"(e) Meetings of the CAAC shall be open to the public and shall take place at a public location at least 4 times a year. The CAAC shall provide a public listing of members by ward, meeting notices, and meeting minutes on a CAAC website.".

(c) A new section 312a is added to read as follows:

"Sec. 312a. Notice of intention to take legal action to collect past due amounts.

"The unit owners' association shall, when advising the unit owner of its intention to take legal action to collect any past due amount owed by a unit owner, provide a notice to the unit owner to include:

"(1) A statement of the account showing the total amount that is past due,

including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued;

"(2) Contact information for the individual or office the unit owner must contact to settle the past due amount; and

"(3) An enclosure providing information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

""FAILURE TO PAY PAST DUE AMOUNTS MAY RESULT IN LEGAL ACTION, INCLUDING FORECLOSURE.

""YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.

""The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].

""The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number].".

(d) Section 313(c)(4) (D.C. Official Code 42-1903.13(c)(4)) is amended to read as follows:

"(4) (A) A foreclosure sale shall not be held until at least 31 days after a Notice of Foreclosure Sale of Condominium Unit for Assessments Due is recorded in the land records and sent by a delivery service providing delivery tracking confirmation and by first-class mail to a unit owner at the mailing address of the unit, any last known mailing address, and at any other address designated by the unit owner to the executive board for purposes of notice.

"(B) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall:

"(i) State the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure;

"(ii) Expressly state that the foreclosure sale is for either:

"(I) The 6-month priority lien as set forth in subsection (a)(2) of this section and not subject to the first deed of trust; or

"(II) More than the 6-month priority lien set forth in subsection (a)(2) of this section and subject to the first deed of trust; and

(iii) Notify the unit owner that if the past due amount being foreclosed upon is not paid within 31 days after the date the NFSCUAD is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the NFSCUAD.

"(C) Substantial compliance with the requirements of subparagraph (B) of this paragraph shall be sufficient until new forms are made available by the Recorder of Deeds.

"(D) The Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be accompanied by an enclosure providing the following information:

"(i) A statement of the past due amount being foreclosed upon and that must be paid in order to stop the foreclosure sale;

"(ii) A breakdown of the amount being foreclosed on, including amounts past due for assessments, accrued interest, late charges, all other categories of amounts past due, and the dates those amounts accrued;

"(iii) A statement that the amount being foreclosed upon may not be the total amount owed to the unit owners' association and instructions on how the unit owner can request a full account statement;

"(iv) Information on the availability of resources that a unit owner may utilize, which shall be in substantively the following form in at least 18-point font:

""FAILURE TO PAY AMOUNTS INDICATED IN THE ENCLOSED NOTICE OF FORECLOSURE SALE OF CONDOMINIUM UNIT FOR ASSESSMENTS DUE MAY RESULT IN SALE OF YOUR UNIT.

""YOU MAY BE ELIGIBLE FOR FREE OR REDUCED-COST ASSISTANCE.

""The D.C. Department of Housing and Community Development maintains a list of Community-Based Non-Profit Organizations that provide housing counseling services. Information on providers can be found on [Department of Housing and Community Development website for community-based non-profit organizations] or by calling [Department of Housing and Community Development's designated phone number].

""The U.S. Department of Housing and Urban Development ("HUD") sponsors housing counseling agencies that can provide advice on buying a home, renting, defaults, foreclosures, and credit issues. You can get a list of HUD-approved housing counselors at [Department of Housing and Urban Development's website] or by calling [Department of Housing and Urban Development's phone number].""; and

"(v) Any other information the Mayor may prescribe by rule.

"(E)(i) At least 31 days in advance of the sale, a copy of the Notice of Foreclosure Sale of Condominium Unit for Assessments Due shall be sent by a delivery service providing delivery tracking confirmation and by first class mail to:

"(I) The Mayor or the Mayor's designated agent;

"(II) Any and all junior lien holders of record; and

"(III) Any holder of a first deed of trust or first mortgage of record, their successors and assigns, including assignees, trustees, substitute trustees, and MERS.

"(ii) The unit owners' association shall be in compliance with this requirement if it sends notice as provided herein to the lienholders as their names and addresses appear in land records.".

(e) Section 410 (D.C. Official Code 42-1904.10) is amended to read as follows:

"Sec. 410. Copies of documents to be furnished to purchaser by declarant; Department of Housing and Community Development website publication.

"(a) Unless previously furnished, an exact copy of the recorded declaration, bylaws, and Condominium Association Bill of Rights and Responsibilities shall be furnished to each purchaser by the declarant within 10 days of recordation thereof as provided for in sections 201 and 205.

"(b) The Condominium Association Bill of Rights and Responsibilities shall read as follows:

""Condominium Association Bill of Rights and Responsibilities

""Every unit owner who is a member in a unit owners' association has certain rights and responsibilities under the D.C. Condominium Act, with some of those rights and responsibilities restated here:

""1. The right to attend and participate in meetings of the unit owners' association held in accordance with the provisions of the unit owners' association's condominium instruments at least once each year, according to and subject to the provisions of D.C. Official Code § 42-1903.03(a).

""2. The right to observe all meetings of the unit owners' association, committees of the unit owners' association, and the executive board, except for those meetings held lawfully in executive session, and to examine and copy minutes recorded at meetings, according to and subject to the provisions of D.C. Official Code § 42-1903.03(b).

""3. The right to an opportunity to comment on any matter relating to the unit owners' association during each regularly scheduled meeting, according to and subject to the provisions of D.C. Official Code § 42-1903.03(c).

""4. The right to have meetings of the unit owners' association and executive board only be conducted with a quorum present as provided in the governing documents of the association.

""5. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's voting interest, according to and subject to the provisions of D.C. Official Code § 42-1903.05.

""6. The right to an executive board that in the performance of its duties, is obligated to exercise the care required of a fiduciary consistent with business judgment standard, subject to the provisions of D.C. Official Code § 42-1903.08(d) and § 42-1903.09(b).

""7. The right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due amounts owed, according to and subject to the provisions of D.C. Official Code § 42-1903.13(c).

""8. The right to request a statement that sets forth the amount of unpaid assessments currently levied against the unit owner, according to and subject to the provisions of D.C. Official Code § 42-1903.13(h).

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""9. The right of access to all books and records kept by or on behalf of the unit owners' association, subject to the provisions and limitations of D.C. Official Code § 42-1903.14 and the unit owners' associations' condominium instruments."".

"(c) A copy of a Condominium Association Bill of Rights and Responsibilities shall be made available on the Department of Housing and Community Development website, in at least 12 point type.".

Sec. 3. Rules.

Within 180 days after the effective date of this act, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-658

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend the Department of For-Hire Vehicles Establishment Act of 1985 to change the name of the Disability Taxicab Advisory Committee to the Vehicle-for-Hire Accessibility Advisory Committee, to clarify the committee's structure, to provide the committee with administrative and budgetary support, to require private and public vehicle-for-hire companies to maintain records regarding requests for wheelchair-accessible service, and to require companies that use digital dispatch to provide passengers with the ability to request a wheelchair-accessible vehicle; and to amend Chapter 18 of Title 47 of the District of Columbia Official Code to provide a wheelchair-accessible vehicle tax credit for a taxpayer that upgrades a vehicle to make it a wheelchair-accessible vehicle or that purchases a wheelchair-accessible vehicle.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Vehicle-for-Hire Accessibility Amendment Act of 2016".

Sec. 2. The Department of For-Hire Vehicles Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301.01 *et seq.*), is amended as follows:

(a) Section 4(8) (D.C. Official Code § 50-301.03(8)) is amended by striking the phrase "Disability Taxicab Advisory Committee" and inserting the phrase "Vehicle-for-Hire Accessibility Advisory Committee" in its place.

(b) Section 20f (D.C. Official Code § 50-301.25) is amended as follows:

(1) The section heading is amended by striking the phrase "Accessible taxicabs" and inserting the phrase "Accessible public and private vehicles-for-hire" in its place.

(2) Subsection (a) is amended by striking the phrase "Taxicab service" and inserting the phrase "Public and private vehicle-for-hire service" in its place.

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

(A) Paragraph (1) is amended by striking the phrase "Disability Taxicab Advisory Committee to advise the Commission on how to make taxicab service" and inserting the phrase "Vehicle-for-Hire Accessibility Advisory Committee to advise the DFHV on how to make public and private vehicle-for-hire service" in its place.

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

(i) Sub-subparagraph (vi) is amended by striking the phrase ", when appropriate; and" and inserting a semicolon in its place.

(ii) Sub-subparagraph (vii) is amended by striking the period and inserting the phrase "; and" in its place.

(iii) A new sub-subparagraph (viii) is added to read as follows:

"(viii) Private vehicle-for-hire companies and private vehicle-for-hire operators, as those terms are defined in section 4(16B) and (16C), respectively.".

(C) A new paragraph (2A) is amended to read as follows:

"(2A)(A) A chairperson, who shall serve for a term of 2 years, shall be elected from among the members or representatives of the disability advocacy community at the first meeting of the Committee and every 2 years thereafter.

"(B) The Committee shall meet, at a minimum, on a quarterly basis, at times to be determined by the chairperson of the Committee at the first meeting of the Committee.

"(C) The DFHV shall provide the Committee with reasonable and accessible accommodations for holding meetings and an annual operating budget, which shall include funds to maintain a website where the Committee shall provide a public listing of members, meeting notices, and meeting minutes.".

(D) Paragraph (3) is repealed.

(E) Paragraph (4) is amended by striking the phrase "transmit to the Mayor and to the Council a report on the accessibility of taxicab service" and inserting the phrase "prepare and make publicly available a report on the accessibility of the vehicle-for-hire industry" in its place.

(4) A new subsection (c-1) is added to read as follows:

"(c-1)(1) Each public or private vehicle-for-hire company shall maintain records for at least 3 years that include:

"(A) The total number of fulfilled requests made to the company for wheelchair-accessible service, including the zip code where each request originated and terminated, and the manner in which each trip was requested; and

"(B) The total number of instances in which an individual requested a trip for wheelchair-accessible service and an operator was not able to fulfill the request, including the zip code where each request originated, and the manner in which each trip was requested.

"(2) Each public or private vehicle-for-hire company shall submit the records described in paragraph (1) of this subsection to the DFHV on an annual basis.

"(3) Any records disclosed to the DFHV under this subsection shall not be disclosed to a third party by the DFHV, including through a request submitted pursuant to the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*).".

(c) Section 20f-1 (D.C. Official Code § 50-301.25a) is amended by adding a new subsection (b-1) to read as follows:

"(b-1) A company that provides digital dispatch shall, within 180 days of the effective date of the Vehicle-for-Hire Accessibility Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-540), provide passengers with the ability to

request a wheelchair-accessible vehicle. If the company cannot fulfill the request for a wheelchair-accessible vehicle through the company's digital dispatch, the company may refer the requestor to a company or other provider that can fulfill a request for wheelchair-accessible service.".

Sec. 3. Chapter 18 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) A new section designation is added to read as follows:

"47-1807.13. Wheelchair-accessible vehicle tax credit.".

(2) A new subchapter VII-B is added to read as follows:

"Subchapter VII-B. Wheelchair-Accessible Vehicle Tax Credit.

"47-1807.61. Definitions.

"47-1807.62. Wheelchair-accessible vehicle tax credit.

"47-1807.63. Wheelchair-accessible vehicle tax credit eligibility.

"47-1807.64. Wheelchair-accessible vehicle tax credit application, approval, and calculation.

"47-1807.65 Wheelchair-accessible vehicle tax credit administration.

"47-1807.66. Rules.".

(3) A new section designation is added to read as follows:

"47-1808.13. Wheelchair-accessible vehicle tax credit.".

(b) A new section 47-1807.13 is added to read as follows:

"§ 47-1807.13. Wheelchair-accessible vehicle tax credit.

"A wheelchair-accessible vehicle tax credit shall be allowed as provided in subchapter VII-B of this chapter.".

(c) A new subchapter VII-B is added to read as follows:

"Subchapter VII-B. Wheelchair-Accessible Vehicle Tax Credit.

"§ 47-1807.61. Definitions.

"For the purposes of this subchapter, the term:

"(1) "Vehicle-for-hire" means:

"(A) A private vehicle-for-hire, as that term is defined in § 50-301.03(16A); or

"(B) A public vehicle-for-hire, as that term is defined in § 50-301.03(17).

"(2) "Wheelchair-accessible vehicle" shall have the same meaning as provided in § 50-301.03(32).

"§ 47-1807.62. Wheelchair-accessible vehicle tax credit.

"For tax years beginning on or after January 1, 2017, but before January 1, 2022, upon application by a taxpayer, in the order of priority received and not to exceed the annual amount allocated therefor in the budget and financial plan, the Mayor, in accordance with this subchapter, shall approve, and there may be allowed, to a taxpayer a refundable wheelchair-

accessible vehicle tax credit with respect to the franchise taxes imposed by subchapters VII and VIII of this chapter, in an amount determined by the Mayor pursuant to § 47-1807.64.

"§ 47-1807.63. Wheelchair-accessible vehicle tax credit eligibility.

"The Mayor shall approve any wheelchair-accessible vehicle tax credits allowed by § 47-1807.62 if a person, corporation, partnership, or association:

"(1) Upgrades a vehicle to make it a wheelchair-accessible vehicle; or

"(2) Purchases a wheelchair-accessible vehicle.

"§ 47-1807.64. Wheelchair-accessible vehicle tax credit application, approval, and calculation.

"(a) Within 2 years of becoming eligible pursuant to § 47-1807.63, a taxpayer shall apply for, and the Mayor shall approve, the wheelchair-accessible vehicle tax credit as follows:

"(1) A taxpayer shall submit a complete written application for a wheelchair-accessible vehicle tax credit, which shall include:

"(A) For the upgrade of a vehicle to make it a wheelchair-accessible vehicle, as described in § 47-1807.63(1), a receipt or similar document providing an itemized accounting for the cost associated with the upgrade; or

"(B) For the purchase of a new vehicle that was manufactured as a wheelchair-accessible vehicle, as described in § 47-1807.63(2), a receipt or similar document providing proof of purchase.

"(2) The Mayor shall review each application submitted for a wheelchair-accessible vehicle tax credit. Based on the application submitted, the Mayor shall approve the wheelchair-accessible vehicle tax credit as provided by § 47-1807.62. The approval shall include the maximum amount of the credit available to the taxpayer calculated pursuant to subsection (b) of this section and the specific terms that shall be met to qualify for the wheelchair-accessible vehicle tax credit.

"(b) The wheelchair-accessible vehicle tax credit shall be calculated by the Mayor as follows:

"(1) For the upgrade of a vehicle to make it a wheelchair-accessible vehicle, as described in § 47-1807.63(1), the Mayor shall allow a credit equal to the cost associated with the upgrade; provided, that the credit shall not exceed $10,000 per vehicle.

"(2) For the purchase of a new vehicle that was manufactured to be a wheelchair-accessible vehicle, as described in § 47-1807.63(2), the Mayor shall allow a credit equal to the cost associated with purchasing the vehicle; provided, that the credit shall not exceed $10,000 per vehicle.

"§ 47-1807.65. Wheelchair-accessible vehicle tax credit administration.

"(a) A taxpayer that receives approval for a wheelchair-accessible vehicle tax credit shall promptly notify the Mayor if the wheelchair-accessible vehicle for which the taxpayer received a wheelchair-accessible vehicle tax credit is sold or not used to provide vehicle-for-hire services. The approval shall be void if the taxpayer that receives approval does not use the wheelchair-accessible vehicle for vehicle-for-hire services for one year after receiving approval.

"(b) The Mayor shall certify, to the Office of Tax and Revenue, the following information for each applicant that the Mayor has approved for a wheelchair-accessible tax credit pursuant to this subchapter:

"(1) The taxpayer's identification number;

"(2) The effective date of eligibility for the tax credit;

"(3) A statement that funds are sufficient within an approved budget and financial plan to allow the Office of Tax and Revenue to issue a refundable wheelchair-accessible vehicle tax credit to this taxpayer; and

"(4) Such other information as the Office of Tax and Revenue shall require to administer the wheelchair-accessible tax credit provided by this subchapter.

"(c) The Chief Financial Officer may audit the accounts of a taxpayer receiving a wheelchair-accessible vehicle tax credit up to 3 years following the issuance of any credit.

"§ 47-1807.66. Rules.

"The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter.".

(d) A new section 47-1808.13 is added to read as follows:

"§ 47-1808.13. Wheelchair-accessible vehicle tax credit.

"A wheelchair-accessible vehicle tax credit shall be allowed as provided in subchapter VII-B of this chapter.".

Sec. 4. Applicability.

(a) Section 3 shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-659

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Downtown Business Improvement District Amendment Act of 2016".

Sec. 2. The Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.01 *et seq.*), is amended as follows:

(a) Section 3(24)(B) (D.C. Official Code § 2-1215.02(24)(B)) is amended by striking the phrase "and Capitol Riverfront BIDs," and inserting the phrase "Capitol Riverfront, and Downtown BIDs," in its place.

(b) Section 10b(a)(1) (D.C. Official Code § 2-1215.09b(a)(1)) is amended by striking the phrase "the BID;" and inserting the phrase "the BID or the board of directors of any condominium association on behalf of a real property within the geographic boundaries of the Downtown BID petition to join the Downtown BID;" in its place.

(c) Section 201(c)(3)(A) (D.C. Official Code § 2-1215.51(c)(3)(A)) is amended as follows:

(1) Sub-subparagraph (ii) is amended by striking the word "and" at the end.

(2) Sub-subparagraph (iii) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new sub-subparagraph (iv) is added to read as follows:

"(iv) Subject to paragraph (2) of this subsection, the amount of $120 per unit annually for nonexempt residential properties; provided, that for a residential unit restricted to residents based upon income pursuant to a federal or District affordable housing program, the BID tax due on the unit shall be computed by applying the percentage of area median income that an eligible household must meet to participate in the affordable housing program for the unit to the amount of the BID tax that would otherwise be due.".

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Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-660

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend, on a temporary basis, the Fiscal Year 2017 Budget Support Act of 2016 to extend the deadline for the submission of a report by the Youth Services Coordination Task Force and the sunset date from March 1, 2017, to October 1, 2017.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Youth Services Coordination Task Force Temporary Amendment Act of 2017".

Sec. 2. The Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775), is amended as follows:

(a) Section 5092(e) is amended by striking the date "March 17" and inserting the date "October 1" in its place.

(b) Section 5094 is amended by striking the date "March 17" and inserting the date "October 1" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-661

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

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

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

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

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

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

"(A) Homeless; and

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

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

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

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

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

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

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Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-662

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend, on a temporary basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to authorize the annual salary and the provision of certain employment benefits to the Chancellor of the District of Columbia Public Schools.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Chancellor of the District of Columbia Public Schools Salary and Benefits Authorization Temporary Amendment Act of 2017".

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 1052(b) (D.C. Official Code § 1-610.52(b)) is amended by adding a new paragraph (5) to read as follows:

"(5)(A) Notwithstanding paragraphs (1), (2), (3), and (4) of this subsection, Antwan Wilson shall be compensated $280,000 annually, effective February 1, 2017, while serving in the capacity of the Chancellor of the District of Columbia Public Schools.

"(B) Notwithstanding any other provision of law, the Chancellor may be paid a performance bonus of up to 10% of his annual base salary for goal achievements in the 2017-2018 school year.

"(C)(i) In addition to such other benefits as the Chancellor may be entitled to receive under existing law or regulation, and notwithstanding subparagraph (A) of this paragraph and section 1058, the Mayor may make a separation payment to the Chancellor of up to 26 weeks of the Chancellor's base salary if the Chancellor's contract is terminated, unless the termination is for cause.

"(ii) For the purposes of this subparagraph, the term "cause" means:

"(I) Being indicted for or convicted of any criminal offense;

"(II) Committing on-duty conduct that is reasonably known to be a violation of a law or regulation;

"(III) Using public office for private gain; or

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"(IV) Committing any other act that would warrant removal pursuant to Chapter 16 of Title 6B of the District of Columbia Municipal Regulations (6B DCMR § 1600 *et seq.*).

"(D) The restrictions and reporting requirements specified in section 3602(b) of the Restrictions on the Use of Official Vehicles Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 50-204(b)), shall not apply to the Chancellor.".

(b) Section 1055(3) (D.C. Official Code § 1-610.55(3)) is amended by striking the period and inserting the phrase "; provided, that the Chancellor of the District of Columbia Public Schools Antwan Wilson and his immediate family may be provided a reasonable temporary housing allowance for a period not to exceed 90 days." in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-663

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To amend, on a temporary basis, the District of Columbia Health Occupations Revision Act of 1985 to clarify that the exemption from licensure requirements for individuals engaged in the practice of pharmaceutical detailing applies to those practicing for less than 30 days per calendar year.

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

Sec. 2. Section 502(a)(2A) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.02(a)(2A)), is amended by striking the phrase "30 consecutive days per calendar year" and inserting the phrase "30 days per calendar year" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-664

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To impose a limit on the amount that a person must pay in copayment or coinsurance through a health benefit plan for a prescription for a specialty drug.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Specialty Drug Copayment Limitation Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Class of drugs" means a group of medications having similar actions designed to treat a particular disease process.

(2) "Coinsurance" means a cost-sharing amount set as a percentage of the total cost of a drug.

(3) "Copayment" means a cost-sharing amount set as a dollar value.

(4)(A) "Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(B) The term "health benefit plan" does not include:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Liability insurance, including general liability insurance and automobile liability insurance;

(iii) Coverage issued as a supplement to liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; or

(viii) Other similar insurance coverage specified in federal regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; scattered sections of the United States Code) ("HIPAA"), under which benefits for health care services are secondary or incidental to other insurance benefits.

(C) The term "health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate of insurance, or contract of insurance, or are otherwise not an integral part of the plan:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing-home care, home-health care, community-based care, or any combination thereof; or

(iii) Other similar, limited benefits specified in federal regulations issued pursuant to HIPAA.

(D) The term "health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate of insurance, or contract of insurance, and there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same health insurer, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same health insurer:

(i) Coverage only for a specified disease or illness; or

(ii) Hospital indemnity or other fixed indemnity insurance.

(E) The term "health benefit plan" does not include the following if offered as a separate policy, certificate of insurance, or contract of insurance:

(i) A Medicare supplemental policy as defined in section 1882(g)(1) of the Social Security Act, approved June 9, 1980 (94 Stat. 476; 42 U.S.C. § 1395ss(g)(1));

(ii) Coverage supplemental to the coverage provided under An Act To amend titles 10, 14, and 32, United States Code, to codify recent military law, and to improve the Code, approved September 2, 1958 (72 Stat. 1437; 10 U.S.C. § 1071 *et seq.*); or

(iii) Similar supplemental coverage provided under a group health plan.

(5) "Health insurer" means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance, Securities and Banking.

(6) "Member" means an individual who is enrolled in a health benefit plan.

(7) "Member representative" means a:

(A) Person acting on behalf of a member with the member's consent;

(B) Person authorized by law to provide substituted consent for a member;

(C) Family member of the member;

(D) Member's treating health care professional when the member is unable to provide consent; or

(E) In the case of a request regarding an emergency or urgent medical condition, a health-care professional with knowledge of the member's medical condition.

(8) "Non-preferred drug" means a specialty drug formulary classification for certain specialty drugs that are subject to limits on eligibility for coverage or to higher cost-sharing amounts than preferred specialty drugs.

(9) "Preferred drug" means a specialty drug formulary classification for certain specialty drugs that are not subject to limits on eligibility for coverage or to higher cost-sharing amounts than a non-preferred drug.

(10) "Specialty drug" means a prescription drug that:

(A) Is prescribed for a person with:

(i) A physical, behavioral, or developmental condition that may have no known cure, is progressive, or can be debilitating or fatal if left untreated or undertreated, such as multiple sclerosis, hepatitis C, or rheumatoid arthritis; or

(ii) A disease or condition that affects fewer than 200,000 persons in the United States or approximately one in 1,500 persons worldwide, such as cystic fibrosis, hemophilia, or multiple myeloma;

(B) Has a total monthly prescription cost of $600 or more; and

(C) Has one or more of the following characteristics:

(i) Is an oral, injectable, or infusible drug product or a drug product that is delivered topically, through inhalation, implantation, or transmucosally;

(ii) Requires unique storage or shipment, such as refrigeration; or

(iii) Requires patient education and support beyond traditional dispensing activities.

(11) "Specialty tier" means a tier of cost sharing designed for select specialty drugs that imposes a cost-sharing obligation that is based on a coinsurance or copayment and exceeds that amount for non-specialty drugs.

(12) "Step therapy" means a protocol established by a health insurer that requires a prescription drug or sequence of prescription drugs to be used by an insured or an enrollee before a prescription drug ordered by a prescriber for the insured or the enrollee is covered.

(13) "Tiered formulary" means a formulary that provides coverage for prescription drugs as part of a health benefit plan for which cost-sharing, deductibles, or coinsurance is determined by category or tier of prescription drugs, and that includes at least 2 different tiers.

Sec. 3. Specialty drug copayment or coinsurance limitation.

(a)(1) A health benefit plan that provides coverage for prescription drugs shall ensure that a required copayment or coinsurance applicable to a drug on a specialty tier does not exceed $150 per month for up to a 30-day supply of the specialty drug or $300 for a 90-day supply.

(2) On July 1 of each year, the limit on a required copayment or coinsurance applicable to a drug on a specialty tier provided in paragraph (1) of this subsection shall increase by a percentage equal to the percentage change from the preceding year in the medical care component of the March Consumer Price Index for All Urban Consumers, Washington-Baltimore metropolitan area, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(b)(1) For a health benefit plan that provides coverage for prescription drugs and utilizes a tiered formulary, a member or member representative shall have the right to request that a non-preferred drug be covered under the cost sharing applicable for preferred drugs if the prescribing physician determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual, or both.

(2) The denial of a request made pursuant to paragraph (1) of this subsection shall be considered an adverse event and shall be subject to the health benefit plan's internal review process.

(c) A health benefit plan that provides coverage for prescription drugs shall not place all drugs in a given class of drugs on a specialty tier.

(d) Nothing in this section shall be construed to require a health benefit plan to:

(1) Provide coverage for any additional drugs not otherwise required by law;

(2) Implement specific utilization management techniques, such as prior authorization or step therapy; or

(3) Cease the use of tiered cost-sharing structures, including strategies used to incentivize use of preventive services, disease management, and low-cost treatment options.

(e) Nothing in this section shall be construed to require a pharmacist to substitute a drug without the consent of the prescribing physician.

(f) A health insurer shall not be precluded from requiring specialty drugs to be obtained through a designated pharmacy or other source of specialty drugs.

Sec. 4. Applicability.

This act shall apply to a health benefit plan effective, or renewed, on or after January 1, 2018.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-665

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To amend Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code to rename the Board of Architecture and Interior Design the Board of Architecture, Interior Design, and Landscape Architecture, to change the composition of the membership of the successor board, to allow students and employees to engage in the practice of architecture when under the supervision of a licensed architect, to require the licensure of firms operating in the District that practice architecture, landscape architecture, and interior design, to require each office of a professional design firm located in the District to be licensed, to establish requirements for licensure of professional design firms, and to authorize disciplinary actions against licensed professional design firms; and to amend the Confirmation Act of 1978 to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Regulation of Landscape Architecture and Professional Design Firms Amendment Act of 2016".

Sec. 2. Subchapter I-B of Chapter 28 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) Part C is amended by adding new section designations to read as follows:

"47-2853.64. Definitions.
"47-2853.65. Licensure of professional design firms.
"47-2853.66. Offices; rules.
"47-2853.67. License; issuance.
"47-2853.68. Actions against firms.".

(2) A new part H-i is added to read as follows:

"Part H-i.
"Landscape Architects.
"47-2853.116. Scope of practice for landscape architects.
"47-2853.117. Eligibility requirements.
"47-2853.118. Prohibited conduct and representations.".

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(b) Section 47-2853.04(a) is amended by adding a new paragraph (18A) to read as follows:

"(18A) Landscape Architect;".

(c) Section 47-2853.06(a) is amended to read as follows:

"(a)(1) There is established a Board of Architecture, Interior Design, and Landscape Architecture ("Board") to consist of 9 members, of whom:

"(A) Four shall be architects licensed in the District;

"(B) Two shall be interior designers licensed in the District;

"(C) Two shall be professional landscape architects licensed in the District; and

"(D) One shall be a consumer member.

"(2) The Board shall regulate the practice of architecture, interior design, and landscape architecture.".

(d) Section 47-2853.61 is amended as follows:

(1) Designate the existing text as subsection (a).

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

"(b) Nothing contained in this chapter shall be construed to prohibit a student, draftsman, or employee from engaging in the practice of architecture; provided, that the practice is performed under the responsible charge, as defined in § 47-2853.64(a)(4), of a licensed architect.".

(e) Section 47-2853.62 is amended by striking the phrase "Board of Architecture and Interior Designer" and inserting the phrase "Board of Architecture, Interior Design, and Landscape Architecture" in its place.

(f) New sections 47-2853.64 through 47-2853.68 are added to read as follows:

"§ 47-2853.64. Definitions.

"(a) For the purposes of §§ 47-2853.65 through 47-2853.68, the term:

"(1) "Professional design document" means any drawing, specification, report, request for information, construction and administration document, or contract that in any way calls for the professional services of an architect, interior designer, or landscape architect.

"(2) "Professional design firm" means any firm, franchise, partnership, association, or corporation that is licensed to solicit and provide architecture, interior design, or landscape architecture services in the District.

"(3) "Professional design services" means architecture, interior design, or landscape architecture services provided in the District.

"(4) "Responsible charge" means direct control and personal supervision by a licensed architect, interior designer, or landscape architect in the provision of professional design services, including that the licensee personally makes professional design decisions or reviews and approves proposed decisions before their implementation, including consideration of alternatives whenever technical decisions are to be made, and judges the qualifications of technical specialists and the validity and applicability of their recommendations before the recommendations are incorporated in the work.

"§ 47-2853.65. Licensure of professional design firms.

"(a) No firm, franchise, partnership, association, or corporation shall offer or perform professional design services in the District unless the entity has obtained a license from the Mayor as a professional design firm.

"(b) No professional design firm license shall be issued to an applicant unless:

"(1) The applicant is organized and exists pursuant to applicable District and federal laws;

"(2) At least one partner, officer, shareholder, member, or manager is an architect, interior designer, or landscape architect licensed and in good standing in the District;

"(3) Each member who performs professional design services in the District is licensed and in good standing in the District; and

"(4) All professional design services solicited or provided by a professional design firm shall be under the responsible charge of a supervising architect, interior designer, or landscape architect who is licensed in the District; provided, that this provision shall not be construed to permit any licensed architect, interior designer, or landscape architect to practice or supervise the performance of services that are beyond the scope of those authorized by the license as established under this subchapter.

"(c) No person shall sign and stamp a professional design document on behalf of the professional design firm except an architect, interior designer, or landscape architect licensed in the District.

"(d) A professional design firm licensed pursuant to this section may use the words "architect," "interior designer," or "landscape architect" or any other word, letter, figure, title, sign, card, advertisement, or symbol indicating that the professional design firm is authorized to solicit or provide professional design services in connection with its firm name.

"(e) A licensed professional design firm shall notify the Board within 30 days after the admission or withdrawal of a member or shareholder from a professional design firm.

"(f) The license of a professional design firm that is in noncompliance with the provisions of this section due to changes in ownership or personnel of the professional design firm shall be subject to suspension or revocation of its license.

"§ 47-2853.66. Offices; rules.

"(a) Each professional design firm shall be under the responsible charge of at least one member who holds a valid license as an architect, interior designer, or landscape architect issued by the Mayor and who shall serve in that capacity at one office only.

"(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to prescribe the licensure application procedures.

"§ 47-2853.67. License; issuance.

"A license for a professional design firm shall be issued by the Mayor if the firm has furnished evidence satisfactory to the Board of compliance with the requirements for licensure or the renewal of licensure, whichever applies, as outlined in this subchapter.

"§ 47-2853.68. Actions against firms.

"(a) After notice and a hearing as provided for in this subchapter, the Board shall suspend or revoke the license of a professional design firm found in noncompliance.

"(b) After notice and hearing, where the Board determines that a professional design firm license or applicant has committed any of the acts described in § 47-2853.17 or violated any rules issued pursuant to that section, the Board may:

"(1) Deny the application for an initial license or a renewal of licensure;

"(2) Revoke or suspend the licensure of the professional design firm;

"(3) Censure or reprimand the professional design firm; or

"(4) Impose a civil fine not to exceed $50,000 for each violation.".

(g) Section 47-2853.102 is amended by striking the phrase "Board of Architecture and Interior Design" and inserting the phrase "Board of Architecture, Interior Design, and Landscape Architecture" in its place.

(h) A new Part H-i is added to read as follows:

"Part H-i. Landscape Architects.

"§ 47-2853.116. Scope of practice for landscape architects.

"(a) For the purpose of this part, the term "practice of landscape architecture" means rendering or offering to render services, including consultation, evaluation, planning, and preparation of studies, designs, specifications, and other technical submissions, in connection with the development of land areas where, and to the extent that the dominant purpose of such services is preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches or environment for structures or other improvements, grading and drainage and the consideration and determination of inherent problems of the land relating to the erosion, wear and tear, blight or other hazards, and the administration of contracts relative to projects principally directed at the functional and aesthetic use of land, and the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this section. The term "practice of landscape architecture" does not include the design of structures or facilities with separate and self-contained purposes such as are ordinarily included in the practice of engineering or architecture or the making of land surveys or final land plats for official approval or recording.

"(b) This section shall not be construed to restrict or otherwise affect the right of any architect, professional engineer, land surveyor, nurseryman, landscape designer, landscape contractor, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist, irrigation designer, horticulturist, arborist, or any other similar person from engaging in their occupation or the practice of their profession or from rendering any service in connection their occupation or profession.

"§ 47-2853.117. Eligibility requirements.

"An applicant for a license as a landscape architect shall establish to the satisfaction of the Board of Architecture, Interior Design, and Landscape Architecture that the applicant:

"(1) Is of good moral character;

"(2) Is a graduate of a degree program in landscape architecture accredited by an accrediting institution, as prescribed by rule, or has completed an education program in landscape architecture, as prescribed by rule, that is the equivalent of an accredited landscape architectural degree program; and

"(3)(A) Has passed examination on the practice of landscape architecture, as prescribed by rule;

"(B) Meets any other requirements prescribed by rule that demonstrate to the Board that the applicant has the proper training, experience, knowledge, and qualification to practice landscape architecture; or

"(C) Meets the requirement of subsection (1) of this section and holds a valid license to practice landscape architecture issued by another state or territory of the United States if the Board determines the criteria for issuance of such license are substantially identical to the licensure criteria prescribed by the District of Columbia in this act or rules pursuant to this act at time of application.

"§ 47-2853.118. Prohibited conduct and representations.

"Unless licensed to practice landscape architecture under this subchapter, no person shall engage, directly or indirectly, in the practice of landscape architecture in the District or use the title "professional landscape architect," "landscape architect," or "registered landscape architect" or display or use any words, letters, figures, titles, signs, cards, advertisements, or any other symbols or devices indicating, or tending to indicate, that the person is a landscape architect or is practicing landscape architecture.".

Sec. 3. Section 2(f)(37) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)(37)), is amended by striking the phrase "Board of Architecture and Interior Designers" and inserting the phrase "Board of Architecture, Interior Design, and Landscape Architecture" in its place.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-666

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To enact the Metrorail Safety Commission Interstate Compact to provide necessary safety oversight of the rail fixed guideway system operated by the Washington Metropolitan Area Transit Authority, as required by 49 U.S.C. § 5329.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the "Washington Metrorail Safety Commission Establishment Act of 2016".

Sec. 2 The District of Columbia hereby consents to, adopts, and enacts the Metrorail Safety Commission Interstate Compact, substantially as follows:

"PREAMBLE

"WHEREAS, the Washington Metropolitan Area Transit Authority, an interstate compact agency of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, provides transportation services to millions of people each year, the safety of whom is paramount;

"WHEREAS, an effective and safe Washington Metropolitan Area Transit Authority system is essential to the commerce and prosperity of the National Capital region;

"WHEREAS, the Tri-State Oversight Committee, created by a memorandum of understanding amongst these 3 jurisdictions, has provided safety oversight of the Washington Metropolitan Area Transit Authority;

"WHEREAS, 49 U.S.C. § 5329 requires the creation of a legally and financially independent state authority for safety oversight of all fixed rail transit facilities;

"WHEREAS, the District of Columbia, the Commonwealth of Virginia, and the State of Maryland intend to create a Washington Metrorail Safety Commission to act as the state safety oversight authority for the Washington Metropolitan Area Transit Authority system under 49 U.S.C. § 5329; and

"WHEREAS, this compact is created for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and for the increase of their safety, commerce, and prosperity.

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"ARTICLE I
"DEFINITIONS

"1. As used in this MSC Compact, the following words and terms shall have the meanings set forth below, unless the context clearly requires a different meaning. Capitalized terms used herein, but not otherwise defined in this MSC Compact, shall have the definition set forth in regulations issued under 49 U.S.C. § 5329, as they may be revised from time to time.

"(a) "Alternate Member" means an alternate member of the Board;

"(b) "Board" means the board of directors of the Commission;

"(c) "Commission" means the Washington Metrorail Safety Commission;

"(d) "Member" means a member of the Board;

"(e) "MSC Compact" means this Washington Metrorail Safety Commission Interstate Compact;

"(f) "Public Transportation Agency Safety Plan" means the comprehensive agency safety plan for a rail transit agency required by 49 U.S.C. § 5329 and the regulations issued thereunder, as may be amended or revised from time to time;

"(g) "Public Transportation Safety Certification Training Program" means the federal certification training program, as established and amended from time and time by applicable federal laws and regulations, for federal and state employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight;

"(h) "Safety Sensitive Position" means any position held by a WMATA employee or contractor designated in the Public Transportation Agency Safety Plan for the WMATA Rail System and approved by the Commission as directly or indirectly affecting the safety of the passengers or employees of the WMATA Rail System;

"(i) "Signatory" means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia;

"(j) "State", "state", or "jurisdiction" means the District of Columbia, the State of Maryland, or the Commonwealth of Virginia;

"(k) "Washington Metropolitan Area Transit Authority" or "WMATA" is the entity created by the WMATA Compact, which entity is responsible for providing certain rail fixed guideway public transportation system services;

"(l) "WMATA Compact" means the Washington Metropolitan Area Transit Authority Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01 *et seq.*); and

"(m) "WMATA Rail System" or "Metrorail" means the rail fixed guideway public transportation system and all other real and personal property owned, leased, operated, or otherwise used by WMATA rail services and shall include WMATA rail projects under design or construction by owners other than WMATA.

"ARTICLE II
"PURPOSE AND FUNCTIONS

"2. The Signatories to the WMATA Compact hereby adopt this MSC Compact pursuant to 49 U.S.C. § 5329. The Commission created hereunder shall have safety regulatory and enforcement authority over the WMATA Rail System and shall act as the state safety oversight authority for WMATA under 49 U.S.C. § 5329, as may be amended from time to time. WMATA shall be subject to the Commission's rules, regulations, actions, and orders.

"3. The purpose of this MSC Compact is to create a state safety oversight authority for the WMATA Rail System, pursuant to the mandate of federal law, as a common agency of each Signatory, empowered in the manner hereinafter set forth to review, approve, oversee, and enforce the safety of the WMATA Rail System, including, without limitation, to:

"(a) Have exclusive safety oversight authority and responsibility over the WMATA Rail System pursuant to federal law, including, without limitation, the power to restrict, suspend, or prohibit rail service on all or part of the WMATA Rail System as set forth in this MSC Compact;

"(b) Develop and adopt a written state safety oversight program standard;

"(c) Review and approve the WMATA Public Transportation Agency Safety Plan;

"(d) Investigate hazards, incidents, and accidents on the WMATA Rail System;

"(e) Require, review, approve, oversee, and enforce Corrective Action Plans developed by WMATA; and

"(f) Meet other requirements of federal and State law relating to safety oversight of the WMATA Rail System.

"ARTICLE III
"ESTABLISHMENT AND ORGANIZATION

"A. Washington Metrorail Safety Commission

"4. The Commission is hereby created as an instrumentality of each Signatory, which shall be a public body corporate and politic, and which shall have the powers and duties set forth in this MSC Compact.

"5. The Commission shall be financially and legally independent from WMATA.

"B. Board Membership

"6. The Commission shall be governed by a Board of 6 Members with 2 Members appointed or reappointed (including to fill an unexpired term) by each Signatory pursuant to the Signatory's applicable laws.

"7. Each Signatory shall also appoint or reappoint (including to fill an unexpired term) one Alternate Member pursuant to the Signatory's applicable laws.

"8. An Alternate Member shall participate and take action as a Member only in the absence of one or both Members appointed from the same jurisdiction as the Alternate Member's appointing jurisdiction and, in such instances, may cast a single vote.

"9. Members and Alternate Members shall have backgrounds in transit safety, transportation, relevant engineering disciplines, or public finance.

"10. No Member or Alternate Member shall simultaneously hold an elected public office, serve on the WMATA board of directors, be employed by WMATA, or be a contractor to WMATA.

"11. Each Member and Alternate Member shall serve a 4-year term and may be reappointed for additional terms; except that, each Signatory shall make its initial appointments as follows:

"(a) One Member shall be appointed for a 4-year term;

"(b) One Member shall be appointed for a 2-year term; and

"(c) The Alternate Member shall be appointed for a 3-year term.

"12. Any person appointed to fill a vacancy shall serve for the unexpired term.

"13. Members and Alternate Members shall be entitled to reimbursement for reasonable and necessary expenses and shall be compensated for each day spent meeting on the business of the Commission at a rate of $200 per day or at such other rate as may be adjusted in appropriations approved by all of the Signatories.

"14. A Member or an Alternate Member may be removed or suspended from office only for cause in accordance with the laws of such Member's or Alternate Member's appointing jurisdiction.

"C. Quorum and Actions of the Board

"15. Four Members shall constitute a quorum, and the affirmative vote of 4 Members is required for action of the Board. Quorum and voting requirements under this paragraph may be met with one or more Alternate Members pursuant to section 8.

"16. The Commission action shall become effective upon enactment unless otherwise provided for by the Commission.

"D. Oath of Office

"17. Before entering office, each Member and Alternate Member shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation as the constitution or laws of the Signatory he or she represents shall provide:

"I, _____, hereby solemnly swear (or affirm) that I will support and defend the Constitution and the laws of the United States as a Member (or Alternate Member) of the Board of the Washington Metrorail Safety Commission and will faithfully discharge the duties of the office upon which I am about to enter."

"E. Organization and Procedure

"18. The Board shall provide for its own organization and procedure. Meetings of the Board shall be held as frequently as the Board determines, but in no event less than quarterly. The Board shall keep minutes of its meetings and establish rules and regulations governing its transactions and internal affairs, including, without limitation, policies regarding records retention that are not in conflict with applicable federal record retention laws.

"19. The Commission shall keep commercially reasonable records of its financial transactions in accordance with accounting principles generally accepted in the United States of America.

"20. The Commission shall establish an office for the conduct of its affairs at a location to be determined by the Commission.

"21. The Commission shall adopt 5 U.S.C. § 552(a)-(d) and (g), and 5 U.S.C. § 552b, as both may be amended from time to time, as its freedom-of-information policy and open-meeting policy, respectively, and shall not be subject to the comparable laws or policies of any Signatory.

"22. Reports of investigations or inquiries adopted by the Board shall be made publicly available.

"23. The Commission shall adopt a policy on conflict of interest that shall be consistent with the regulations issued under 49 U.S.C. § 5329, as they may be revised from time to time, which, among other things, places appropriate separation between Members, officers, employees, contractors, and agents of the Commission and WMATA.

"24. The Commission shall adopt and utilize its own administrative procedure and procurement policies in conformance with applicable federal regulations and shall not be subject to the administrative procedure or procurement laws of any Signatory.

"F. Officers and Employees

"25. The Board shall elect a Chairman, Vice Chairman, Secretary, and Treasurer from among its Members, each for a 2-year term and shall prescribe their powers and duties.

"26. The Board shall appoint and fix the compensation and benefits of a chief executive officer who shall be the chief administrative officer of the Commission and who shall have expertise in transportation safety and one or more industry-recognized transportation safety certifications.

"27. Consistent with 49 U.S.C. § 5329, as may be amended from time to time, the Commission may employ, under the direction of the chief executive officer, such other technical, legal, clerical, and other employees on a regular, part-time, or as-needed basis as it determines necessary or desirable for the discharge of its duties.

"28. The Commission shall not be bound by any statute or regulation of any Signatory in the employment or discharge of any officer or employee of the Commission, but shall develop its own policies in compliance with federal law. The MSC shall, however, consider the laws of the Signatories in devising its employment and discharge policies, and when it deems it practical, device policies consistent with the laws of the Signatories.

"29. The Board may fix and provide policies for the qualification, appointment, removal, term, tenure, compensation benefits, worker's compensation, pension, and retirement rights of its employees subject to federal law. The Board may also establish a personnel system based on merit and fitness and, subject to eligibility, participate in the pension, retirement, and worker's compensation plans of any Signatory or agency or political subdivision thereof.

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"ARTICLE IV
"POWERS

"A. Safety Oversight Powers

"30. In carrying out its purposes, the Commission, through its Board or designated employees or agents, shall, consistent with federal law:

"(a) Adopt, revise, and distribute a written State Safety Oversight Program;

"(b) Review, approve, oversee, and enforce the adoption and implementation of WMATA's Public Transportation Agency Safety Plan;

"(c) Require, review, approve, oversee, and enforce the adoption and implementation of any Corrective Action Plans that the Commission deems appropriate;

"(d) Implement and enforce relevant federal and State laws and regulations relating to safety of the WMATA Rail System; and

"(e) Audit every 3 years the compliance of WMATA with WMATA's Public Transportation Agency Safety Plan or conduct such an audit on an ongoing basis over a 3-year time frame.

"31. In performing its duties, the Commission, through its Board or designated employees or agents, may:

"(a) Conduct, or cause to be conducted, inspections, investigations, examinations, and testing of WMATA personnel and contractors, property, equipment, facilities, rolling stock, and operations of the WMATA Rail System, including, without limitation, electronic information and databases through reasonable means, which may include issuance of subpoenas;

"(b) Enter upon the WMATA Rail System and, upon reasonable notice and a finding by the chief executive officer that a need exists, upon any lands, waters, and premises adjacent to the WMATA Rail System, including, without limitation, property owned or occupied by the federal government, for the purpose of making inspections, investigations, examinations, and testing as the Commission may deem necessary to carry out the purposes of this MSC Compact, and such entry shall not be deemed a trespass. The Commission shall make reasonable reimbursement for any actual damage resulting to any such adjacent lands, waters, and premises as a result of such activities;

"(c) Compel WMATA's compliance with any Corrective Action Plan or order of the Commission by such means as the Commission deems appropriate, including, without limitation, by:

"(1) Taking legal action in a court of competent jurisdiction;

"(2) Issuing citations or fines with funds going into an escrow account for spending by WMATA on Commission-directed safety measures;

"(3) Directing WMATA to prioritize spending on safety-critical items;

"(4) Removing a specific vehicle, infrastructure element, or hazard from the WMATA Rail System; and

"(5) Compelling WMATA to restrict, suspend, or prohibit rail service on all or part of the WMATA Rail System with an appropriate notice period dictated by the circumstances;

"(d) Direct WMATA to suspend or disqualify from performing in any Safety Sensitive Position an individual who is alleged to or has violated safety rules, regulations, policies, or laws;

"(e) Compel WMATA's Office of the Inspector General, created under WMATA Board Resolution 2006-18, or any successor WMATA office or organization having similar duties, to conduct safety-related audits or investigations and to provide its findings to the Commission; and

"(f) Take such other actions as the Commission may deem appropriate consistent with its purpose and powers.

"32. Action by the Board under section 31(c)(5) shall require the unanimous vote of all Members present and voting. The Commission shall coordinate its enforcement activities with appropriate federal and State governmental authorities.

"B. General Powers

"33. In addition to the powers and duties set forth above, the Commission may:

"(a) Sue and be sued;

"(b) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this MSC Compact;

"(c) Create and abolish offices, employments, and positions (other than those specifically provided for in this MSC Compact) necessary or desirable for the purposes of the Commission;

"(d) Determine a staffing level for the Commission that is commensurate with the size and complexity of the WMATA Rail System, and require that employees and other designated personnel of the Commission, who are responsible for safety oversight, be qualified to perform such functions through appropriate training, including, without limitation, successful completion of the Public Transportation Safety Certification Training Program;

"(e) Contract for or employ consulting attorneys, inspectors, engineers, and such other experts necessary or desirable and, within the limitations prescribed in this MSC Compact, prescribe their powers and duties and fix their compensation;

"(f) Enter into and perform contracts, leases, and agreements necessary or desirable in the performance of its duties and in the execution of the powers granted under this MSC Compact;

"(g) Apply for, receive, and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual, subject to the limitations specified in section 42;

"(h) Adopt an official seal and alter the same at its pleasure;

"(i) Adopt and amend by-laws, policies, and procedures governing the regulation of its affairs;

"(j) Appoint one or more advisory committees; and

"(k) Do such other acts necessary or desirable for the performance of its duties and the execution of its powers under this MSC Compact.

"34. Consistent with this MSC Compact, the Commission shall promulgate rules and regulations to carry out the purposes of this MSC Compact.

"ARTICLE V
"GENERAL PROVISIONS

"A. Annual Safety Report

"35. The Commission shall make and publish annually a status report on the safety of the WMATA Rail System, which shall include, among other requirements established by the Commission and federal law, status updates of outstanding Corrective Action Plans, Commission directives, and on-going investigations. A copy of each such report shall be provided to:

"(a) The Administrator of the Federal Transit Administration;

"(b) The Governor of Virginia, the Governor of Maryland, and the Mayor of the District of Columbia;

"(c) The Chairman of the Council of the District of Columbia;

"(d) The President of the Maryland Senate and the Speaker of the Maryland House of Delegates;

"(e) The President of the Virginia Senate and the Speaker of the Virginia House of Delegates; and

"(f) The General Manager and each member of the board of directors of WMATA.

"36. The Commission may prepare, publish, and distribute such other safety reports that it deems necessary or desirable.

"B. Annual Report of Operations

"37. The Commission shall make and publish an annual report on its programs, operations, and finances, which shall be distributed in the same manner provided by section 35.

"38. The Commission may also prepare, publish, and distribute such other public reports and informational materials as it deems necessary or desirable.

"C. Annual Independent Audit

"39. An independent annual audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest, direct or indirect, in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with generally accepted auditing principles and shall be distributed in the same manner provided by section 35. Members, employees, agents, and contractors of the Commission shall provide access to information necessary or desirable for the conduct of the annual audit.

"D. Financing

"40. The Commission's operations shall be funded, independently of WMATA, by the Signatory jurisdictions and, when available, by federal funds. The Commission shall have no authority to levy taxes.

"41. The Signatories shall unanimously agree on adequate funding levels for the Commission and make equal contributions of such funding, subject to annual appropriation, to cover the portion of Commission operations not funded by federal funds.

"42. The Commission may borrow up to 5% of its last annual appropriations budget in anticipation of receipts, or as otherwise set forth in the appropriations budget approved by all of the Signatories, from any lawful lending institution for any purpose of this MSC Compact, including, without limitation, for administrative expenses. Such loans shall be for a term not to exceed 2 years, or at such longer term approved by each Signatory pursuant to its laws as evidenced by the written authorization by the Mayor of the District of Columbia and the Governors of Maryland and Virginia, and at such rates of interest as shall be acceptable to the Commission.

"43. With respect to the District of Columbia, the commitment or obligation to render financial assistance to the Commission shall be created, by appropriation or in such other manner, or by such other legislation, as the District of Columbia shall determine; provided, that any such commitment or obligation shall be approved by Congress pursuant to the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

"44. Pursuant to the requirements of 31 U.S.C. §§ 1341, 1342, 1349 to 1351, and 1511 to 1519, and D.C. Official Code §§ 47-105 and 47-355.01 to 355.08 (collectively, the "Anti-Deficiency Acts"), the District cannot obligate itself to any financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in the MSC Compact creates an obligation of the District in anticipation of an appropriation for such purpose, and the District's legal liability for the payment of any amount under this MSC Compact does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year.

"E. Tax Exemption

"45. The exercise of the powers granted by this MSC Compact shall in all respects be for the benefit of the people of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland and for the increase of their safety, commerce, and prosperity, and as the activities associated with this MSC Compact shall constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon the services or any property acquired or used by the Commission under the provisions of this MSC Compact or upon the income therefrom, and shall at all times be free from taxation within the District of Columbia, the Commonwealth of Virginia, and the State of Maryland.

"F. Reconsideration of Commission Orders

"46. WMATA shall have the right to petition the Commission for reconsideration of an order based on rules and procedures developed by the Commission.

"47. Consistent with section 16, the filing of a petition for reconsideration shall not act as a stay upon the execution of a Commission order, or any part of it, unless the Commission orders otherwise. WMATA may appeal any adverse action on a petition for reconsideration as set forth in section 48.

"G. Judicial Matters

"48. The United States District Court for the Eastern District of Virginia, Alexandria Division, the United States District Court for the District of Maryland, Southern Division, and the United States District Court for the District of Columbia shall have exclusive and original jurisdiction of all actions brought by or against the Commission and to enforce subpoenas under this MSC Compact.

"49. The commencement of a judicial proceeding shall not operate as a stay of a Commission order unless specifically ordered by the court.

"H. Liability and Indemnification

"50. The Commission and its Members, Alternate Members, officers, agents, employees, or representatives shall not be liable for suit or action or for any judgment or decree for damages, loss, or injury resulting from action taken within the scope of their employment or duties under this MSC Compact, nor required in any case arising or any appeal taken under this MSC Compact to give a supersedeas bond or security for damages. Nothing in this paragraph shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

"51. The Commission shall be liable for its contracts and for its torts and those of its Members, Alternate Members, officers, agents, employees, and representatives committed in the conduct of any proprietary function, in accordance with the law of the applicable Signatory (including, without limitation, rules on conflict of laws) but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contract or tort for which the Commission shall be liable, as herein provided, shall be by suit against the Commission. Nothing contained in this MSC Compact shall be construed as a waiver by the District of Columbia, the Commonwealth of Virginia, or the State of Maryland of any immunity from suit.

"I. Commitment of Parties

"52. Each of the Signatories pledges to each other faithful cooperation in providing safety oversight for the WMATA Rail System, and, to affect such purposes, agrees to consider in good faith and request any necessary legislation to achieve the objectives of this MSC Compact.

"J. Amendments and Supplements

"53. Amendments and supplements to this MSC Compact shall be adopted by legislative action of each of the Signatories and the consent of Congress. When one Signatory adopts an amendment or supplement to an existing section of this MSC Compact, that amendment or supplement shall not be immediately effective, and the previously enacted provision or provisions shall remain in effect in each jurisdiction until the amendment or supplement is approved by the other Signatories and is consented to by Congress.

"K. Withdrawal and Termination

"54. Any Signatory may withdraw from this MSC Compact, which action shall constitute a termination of this MSC Compact.

"55. Withdrawal from this MSC Compact shall be by a Signatory's repeal of this MSC Compact from its laws, but such repeal shall not take effect until 2 years after the effective date of the repealed statute and written notice of the withdrawal being given by the withdrawing Signatory to the governors or mayor, as appropriate, of the other Signatories.

"56. Prior to termination of this MSC Compact, the Commission shall provide each Signatory:

"(a) A mechanism for concluding the operations of the Commission;

"(b) A proposal to maintain state safety oversight of the WMATA Rail System in compliance with applicable federal law;

"(c) A plan to hold surplus funds in a trust for a successor regulatory entity for 4 years after the termination of this MSC Compact; and

"(d) A plan to return any surplus funds that remain 4 years after the creation of the trust.

"L. Construction and Severability

"57. This MSC Compact shall be liberally construed to effectuate the purposes for which it is created.

"58. If any part or provision of this MSC Compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this MSC Compact or the application thereof to other persons or circumstances, and the Signatories hereby declare that they would have entered into this MSC Compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

"M. Adoption; Effective Date

"59. This MSC Compact shall be adopted by the Signatories in the manner provided by law therefor and shall be signed and sealed in 4 duplicate original copies. One such copy shall be filed with the Secretary of State of the State of Maryland, the Secretary of the Commonwealth of Virginia, and the Secretary of the District of Columbia in accordance with the laws of each

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jurisdiction. One copy shall be filed and retained in the archives of the Commission upon its organization. This MSC Compact shall become effective upon the enactment of concurring legislation by the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, and consent thereto by Congress and when all other acts or actions have been taken, including, without limitation, the signing and execution of this MSC Compact by the Governors of Maryland and Virginia and the Mayor of the District of Columbia.

"N. Conflict of Laws

"60. Any conflict between any authority granted herein, or the exercise of such authority, and the provisions of the WMATA Compact shall be resolved in favor of the exercise of such authority by the Commission.

"61. All other general or special laws inconsistent with this MSC Compact are hereby declared to be inapplicable to the Commission or its activities.".

Sec. 3. Applicability.

This act shall apply:

(a)(1) After the enactment of concurring legislation by the State of Maryland and the Commonwealth of Virginia, the signing and execution of the Metrorail Safety Commission Interstate Compact by the Mayor of the District of Columbia and the Governors of Maryland and Virginia, and approval of the Metrorail Safety Commission Interstate Compact by the United States Congress; and

(2) Upon the date of inclusion of its fiscal effect in an approved budget and financial plan for the District of Columbia.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act; and

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-667

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Stun Gun Regulation Amendment Act of 2016".

Sec. 2. The Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 7-2501.01) is amended as follows:

(1) Paragraph (7)(D) is repealed.

(2) Paragraph (9) is amended as follows:

(A) Subparagraph (C) is amended by striking the word "or" at the end.

(B) Subparagraph (D) is amended by striking the phrase "a weapon." and inserting the phrase "a weapon; or" in its place.

(C) A new subparagraph (E) is added to read as follows:

"(E) A stun gun.".

(3) A new paragraph (17A) is added to read as follows:

"(17A) "Stun gun" means any device designed or redesigned, made or remade, or readily converted or restored, and used or intended to be used offensively or defensively to immobilize or incapacitate a person by the use of electric current or audible, optical, or electromagnetic pulse.".

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(b) Section 213 (D.C. Official Code § 7-2502.13) is amended by striking the phrase "18 years of age or older".

(c) Section 214 (D.C. Official Code § 7-2502.14) is repealed.

(d) New sections 215 and 216 are added to read as follows:

"Sec. 215. Possession of stun guns.

"(a) No person under 18 years of age shall possess a stun gun in the District; provided, that brief possession for self-defense in response to an immediate threat of harm shall not be a violation of this subsection.

"(b) No person who possesses a stun gun shall use that weapon except in the exercise of reasonable force in defense of person or property.

"(c) Unless permission specific to the individual and occasion is given, no person, except a law enforcement officer as defined in section 901, shall possess a stun gun in the following locations:

"(1) A building or office occupied by the District of Columbia, its agencies, or instrumentalities;

"(2) A penal institution, secure juvenile residential facility, or halfway house;

"(3) A building or portion thereof, occupied by a children's facility, preschool, or public or private elementary or secondary school; or

"(4) Any building or grounds clearly posted by the owner or occupant to prohibit the carrying of a stun gun.

"Sec. 216. Sale of stun guns.

"(a) In order to lawfully sell a stun gun in the District, a vendor shall obtain pursuant to D.C. Official Code § 47-2851.03(e) a stun gun endorsement on its basic business license from the Department of Consumer and Regulatory Affairs ("Department") on a form to be provided by the Department.

"(b) This section shall not apply to a vendor who sells fewer than 5 stun guns in a 12-month period.".

(e) Section 706(b)(1) (D.C. Official Code § 7-2507.06(b)(1)) is amended as follows:

(1) Subparagraph (B) is amended by striking the word "and" at the end.

(2) Subparagraph (C) is amended by striking the phrase "time of arrest." and inserting the phrase "time of arrest;" in its place.

(3) New subparagraphs (D) and (E) are added to read as follows:

"(D) Possession of a self-defense spray in violation of sections 213; and

"(E) Possession of a stun gun in violation of section 215.".

Sec. 3. Section 2(2)(A)(iii)(III) of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01(2)(A)(iii)(III)), is amended to read as follows;

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"(III) A stun gun, as defined in section 101(17A) of the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2501.01(17A));".

Sec. 4. Section 2(a) of An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4502(a)), is amended by striking the phrase "rifle, dirk," and inserting the phrase "rifle, stun gun, dirk," in its place.

Sec. 5. Section 47-2851.03 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended by adding a new paragraph (11A) to read as follows:

"(11A) Stun Gun;".

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

"(e) A vendor who sells more than 5 stun guns in a 12-month period shall obtain a stun gun endorsement under subsection (a)(11A) of this section on its basic business license from the Department on a form provided by the Department. No additional information shall be required for the issuance of a stun gun endorsement.".

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-668

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To enact the Uniform Electronic Legal Material Act, to provide for the official designation, authentication, and preservation of certain legal material in electronic records by an official publisher.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Electronic Legal Material Act of 2016".

Sec. 2. For the purposes of this act, the term:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

(A) The acts and resolutions of the Council;

(B) The District of Columbia Official Code;

(C) The District of Columbia Municipal Regulations;

(D) Other legal materials designated by the Mayor by rule; and

(E) Other legal materials designated by the Council by resolution.

(3) "Official publisher" means:

(A) For the acts and resolutions of the Council, the Secretary to the Council;

(B) For the District of Columbia Official Code, the General Counsel to the Council;

(C) For the District of Columbia Municipal Regulations, the Administrator of the District of Columbia Office of Documents, established by section 2 of the District of Columbia Documents Act, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code § 2-611);

(D) For other legal material designated by the Mayor pursuant to paragraph (2)(D) of this section, the Mayor; and

(E) For other legal material designated by the Council pursuant to paragraph (2)(E) of this section, the Secretary to the Council.

(4) "Publish" means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

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(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Sec. 3. Applicability.

This act applies to all legal material in an electronic record that is designated as official under section 4 and first published electronically on or after July 1, 2017.

Sec. 4. Legal material in official electronic record.

(a) If an official publisher publishes legal material only in an electronic record, the official publisher shall:

(1) Designate the electronic record as official; and

(2) Comply with sections 5, 7, and 8.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the official publisher complies with sections 5, 7, and 8.

Sec. 5. Authentication of official electronic record.

An official publisher of legal material in an electronic record that is designated as official under section 4 shall authenticate the record. To authenticate an electronic record, the official publisher shall provide a method for a user to determine that the record received by the user from the official publisher is unaltered from the official record published by the official publisher.

Sec. 6. Effect of authentication.

(a) Legal material in an electronic record that is authenticated under section 5 is presumed to be an accurate copy of the legal material.

(b) If another state has adopted a law substantially similar to this act, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under section 5 has the burden of proving by a preponderance of the evidence that the record is inauthentic.

Sec. 7. Preservation and security of legal material in official electronic record.

(a) An official publisher of legal material in an electronic record that is or was designated as official under section 4 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) of this section in an electronic record, the official publisher shall:

(1) Ensure the integrity of the record;
(2) Provide for backup and recovery of the record in the event of a disaster; and
(3) Ensure the continuing usability of the material.

Sec. 8. Public access to legal material in official electronic record.

An official publisher of legal material in an electronic record that is required to be preserved under section 7 shall ensure that the material is reasonably available for use by the public on a permanent basis.

Sec. 9. Standards.

In implementing this act, an official publisher of legal material in an electronic record shall consider:

(1) Standards and practices of other jurisdictions;
(2) The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
(3) The needs of users of legal material in an electronic record;
(4) The views of governmental officials and entities and other interested persons; and
(5) To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material that are compatible with the methods and technologies used by other official publishers in the District of Columbia and in states that have adopted a law substantially similar to this act.

Sec. 10. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may promulgate rules to carry out the purposes of this act pursuant to the Mayor's authority under section 2(3)(C) and (D).

(b) The Council may adopt its own rules or resolutions to implement the provisions of this act that are exclusively applicable to the Council pursuant to its authority under section 2(3)(A), (B), and (E).

Sec. 11. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 12. Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (144 Stat. 464; 15 U.S.C. § 7001 *et seq.*), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize

electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

Sec. 13. Fiscal impact statement.

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

Sec. 14. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-669

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To amend the State Board of Education Establishment Act of 2007 to update the State Board of Education authorizing statute to conform to federal law and clarify the board's authority with respect to the Office of Ombudsman for Public Education and the Office of the Student Advocate; to amend the Ombudsman for Public Education Establishment Act of 2007 to update the authority and responsibilities of the Office of Ombudsman for Public Education; to amend the Office of the Student Advocate Establishment Act of 2013 to update the authority and responsibilities of the Office of the Student Advocate; and to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "State Board of Education Omnibus Amendment Act of 2016".

Sec. 2. Section 403 of the State Board of Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652), is amended as follows:

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

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

"(1A) Oversee the Office of Ombudsman for Public Education and the Office of the Student Advocate in accordance with subsection (d) of this section and the Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351 *et seq.*), and the Office of the Student Advocate Establishment Act of 2013, effective February 22, 2014 (D.C. Law 20-76; D.C. Official Code § 38-371 *et seq.*), respectively.".

(2) Paragraph (5) is repealed.

(3) Paragraph (6) is amended by striking the semicolon at the end and inserting the phrase "or teacher preparation academies;" in its place.

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

(A) The lead-in language is amended to read as follows:

"(7) Approve the state accountability plan for the District of Columbia developed by the Office of the State Superintendent of Education pursuant to section 1111 of the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (115 Stat. 1444; 20 U.S.C. § 6311), ensuring that:".

(B) Subparagraph (A) is amended by striking the phrase "that will ensure all local education agencies make adequate yearly progress" and inserting the phrase "that establishes ambitious long-term student achievement goals, which include measurements of interim progress toward meeting those goals" in its place.

(C) Subparagraph (B) is amended by striking the phrase "academic standards, academic assessments, a standardized system of accountability across all local education agencies, and a system of sanctions and rewards" and inserting the phrase ", but is not limited to, challenging state academic standards, academic assessments, and a standardized system of accountability across all local education agencies" in its place.

(5) Paragraph (12) is amended by striking the phrase "the NCLB Act" and inserting the phrase "section 1111(h) of the Elementary and Secondary Education Act of 1965, approved January 8, 2002 (115 Stat. 1444; 20 U.S.C. § 6311(h))" in its place.

(b) Subsection (b) is amended by striking the phrase ", which may be conducted at a location in a ward" and inserting the phrase "at a location in the District designated by the Board" in its place.

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

(1) The existing text is designated as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

"(2) The Board shall have access to the public comments submitted during the public comment period on matters that the Office of the State Superintendent of Education submits to the Board for policy approval.".

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

(1) Paragraph (1) is amended by striking the period at the end and inserting the phrase "; provided, that such order shall not impair the exclusive budget and personnel authority granted to the Office of Ombudsman for Public Education pursuant to section 602 of the Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351), or the Office of the Student Advocate pursuant to section 202 of the Office of the Student Advocate Establishment Act of 2013, effective February 22, 2014 (D.C. Law 20-76; D.C. Official Code § 38-371)." in its place.

(2) Paragraph (2) is amended by striking the period at the end and inserting the phrase "; provided, that the Board shall have no personnel authority over the staff of the Office of Ombudsman for Public Education or the Office of the Student Advocate, except as provided in section 602 of the Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351), and section 202 of the Office of the Student Advocate Establishment Act of 2013, effective February 22, 2014 (D.C. Law 20-76; D.C. Official Code § 38-371), respectively." in its place.

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

(A) The existing text is designated as subparagraph (A).

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

"(B)(i) The Office of Ombudsman for Public Education and the Office of the Student Advocate shall be represented as separate program codes within the Board's budget.

(ii) The Board shall coordinate with the Ombudsman for Public Education and the Chief Advocate of the Office of the Student Advocate to ensure that the annual estimates prepared pursuant to subparagraph (A) of this paragraph reflect the expenditures and appropriations necessary for the operations of those offices.".

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

"(6) The Board shall provide personnel and resource support to the Office of Ombudsman for Public Education and the Office of the Student Advocate as necessary to facilitate the operations of those offices.".

Sec. 3. The Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351 *et seq.*), is amended as follows:

(a) Section 602 (D.C. Official Code § 38-351) is amended as follows:

(1) Subsection (a) is amended by striking the comma and inserting the phrase "("Office")," in its place.

(2) Subsection (b)(3) is amended by striking the word "majority" and inserting the number "2/3" in its place.

(3) Subsection (d) is amended by striking the period at the end and inserting the phrase "in a way that, in the opinion of the Office, furthers students' best interests." in its place.

(4) New subsections (d-1) and (d-2) are added to read as follows:

"(d-1) The Ombudsman shall serve as the exclusive personnel authority for employees of the Office, and may hire staff to support the Office's operations consistent with the Office's budget.

"(d-2) The Ombudsman shall have exclusive authority to administer the Office's budget, subject to the oversight of the State Board of Education to ensure compliance with District law.".

(b) Section 604 (D.C. Official Code § 38-353) is amended as follows:

(1) Paragraph (5) is amended by striking the phrase "personnel actions, policies, and procedures" and inserting the phrase "policies and procedures" in its place.

(2) Paragraph (10) is amended by striking the phrase "when the parties are involved in legal or administrative proceedings," and inserting the phrase "where the parties have initiated legal or administrative proceedings involving the complaint," in its place.

(3) Paragraph (13) is amended by striking the semicolon at the end and inserting the phrase "and communication between public schools and parents and guardians;" in its place.

(4) Paragraph (15) is amended as follows:

(A) Subparagraph (D) is amended to read as follows:

"(D) Complaints dismissed as unfounded;".

(B) Subparagraph (F) is amended by striking the word "and" at the end.

(5) Paragraph (16) is amended by striking the period and inserting the phrase "; and" in its place.

(6) A new paragraph (17) is added to read as follows:

"(17) Have the authority to issue reports and recommendations related to the Office of Ombudsman's work without prior review or approval by another entity.".

(c) Section 605 (D.C. Official Code § 38-354) is amended as follows:

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

"(4) Examine and investigate an act or failure to act of any public school official or employee, including whether actions or failures to act are unreasonable, unfair, or discriminatory, even though in accordance with the law;".

(2) Paragraph (5) is amended by striking the word "examination" and inserting the phrase "examination and investigation" in its place.

(d) Section 606 (D.C. Official Code § 38-355) is amended as follows:

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

(A) Paragraph (2) is repealed.

(B) Paragraph (4) is amended by striking the semicolon at the end and inserting the phrase ", except with regard to the employees of the Office of Ombudsman;" in its place.

(2) Subsection (b)(1) is amended to read as follows:

"(1) Be compelled to testify in a legal or administrative proceeding regarding a current or past Office of Ombudsman examination or investigation or to release information, including documents or records, gathered during the course of an examination or investigation;".

(e) Section 606a (D.C. Official Code § 38-356) is amended as follows:

(1) Subsection (e) is amended by striking the phrase "The Office of Ombudsman" and inserting the phrase "Except as provided in subsection (f) of this section, the Office of Ombudsman" in its place.

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

"(f) The Ombudsman may refrain from investigating a complaint if the Ombudsman reasonably believes one or more of the following:

"(1) It is plain from the face of the complaint that an adequate remedy is presently available, such that investigation is unwarranted;

"(2) The complaint relates to a matter that is outside the jurisdiction of the Ombudsman;

"(3) The complaint relates to an act of which the complainant has had knowledge for an unreasonable length of time before the complaint was submitted;

"(4) The complainant does not have a sufficient personal interest in the subject matter of the complaint;

"(5) Investigation of the complaint would not facilitate an action authorized pursuant to subsection (e) of this section;

"(6) The complaint is made in bad faith; or

"(7) The resources of the Ombudsman are insufficient for adequate investigation.".

Sec. 4. The Office of the Student Advocate Establishment Act of 2013, effective February 22, 2014 (D.C. Law 20-76; D.C. Official Code § 38-371 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 38-371) is amended as follows:

(1) Subsection (b) is amended by striking the word "majority" and inserting the number "2/3" in its place.

(2) New subsections (d-1) and (d-2) are added to read as follows:

"(d-1) The Chief Advocate shall serve as the exclusive personnel authority for employees of the Office and may hire staff to support the Office's operations consistent with the Office's budget.

"(d-2) The Chief Advocate shall have exclusive authority to administer the Office's budget, subject to the oversight of the State Board of Education to ensure compliance with District law.".

(b) Section 204 (D.C. Official Code § 38-373) is amended as follows:

(1) Paragraph (2) is amended by striking the semicolon at the end and inserting the phrase "that is not already publicly available, or is difficult to locate or identify;" in its place.

(2) Paragraph (7) is amended to read as follows:

"(7) Develop and maintain a database that tracks issues brought to the attention of the Office, identified by ward, name of public school, resource or referral given, and resolution of such issues;".

(3) Paragraph (8) is amended by striking the phrase "staff training, and strategies" and inserting the phrase "staff training, and strategies on family, student, and community engagement" in its place.

(4) Paragraph (9)(G) is amended by striking the phrase "; and" at the end and inserting a semicolon in its place.

(5) Paragraph (10) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(6) A new paragraph (11) is added to read as follows:

"(11) Have the authority to issue reports and recommendations related to the Office's work without prior review or approval by any entity.".

(c) Section 205(b) (D.C. Official Code § 38-374(b)) is amended by striking the phrase "parent or guardian volunteers" and inserting the phrase "student or parent or guardian volunteers" in its place.

Sec. 5. Section 406(b)(22) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-604.06(b)(22)), is amended to read as follows:

"(22)(A) For the Ombudsman for Public Education, the Chief Advocate of the Office of the Student Advocate, and employees of the State Board of Education, the personnel authority is the State Board of Education.

"(B) For employees of the Office of the Ombudsman for Public Education, the personnel authority is the Ombudsman for Public Education.

"(C) For employees of the Office of the Student Advocate, the personnel authority is the Chief Advocate of the Office of the Student Advocate.".

ENROLLED ORIGINAL

Sec. 6. Applicability.

(a) Section 2(d)(1) and (2), section 3(a)(4), section 4(a)(2), and section 5 shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 7. Fiscal impact statement.

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

Sec. 8. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-670

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 10, 2017

To amend Appendix N of Title 12A of the District of Columbia Municipal Regulations to authorize and establish guidelines governing signage within designated entertainment areas and to authorize Nationals Park and the Ballpark District as Designated Entertainment Areas.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Nationals Park and Ballpark District Designated Entertainment Area Signage Regulations Amendment Act of 2016".

Sec. 2. Appendix N of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § N101 *et seq.*), is amended by adding a new subsection N101.20 to read as follows:

"N101.20 Designated Entertainment Areas. The following areas are Designated Entertainment Areas for Designated Entertainment Area Sign Permits under section N101.20.1:

"(a) Nationals Park Entertainment Area. The Nationals Park Entertainment Area is the property and structure known as Nationals Park, located at squares 702 through 706 and Reservation 247, bounded by N Street, S.E., Potomac Avenue, S.E., South Capitol Street, S.E., and First Street, S.E. No more than five (5) Designated Entertainment Area Sign Permits shall be allowed in the Nationals Park Designated Entertainment Area subject to the requirements of this subsection as follows:

"(1) One (1) Designated Entertainment Area Sign, measuring no more than thirty-eight (38) feet in height and twenty-five (25) feet in width, mounted on the exterior panel of Nationals Park at the southwestern corner of Nationals Park grounds near the intersection of Potomac Avenue, S.E., and South Capitol Street, S.E.; provided, that the Designated Entertainment Area Sign shall not face within fifteen (15) degrees of parallel or perpendicular to South Capitol Street;

"(2) One (1) digital display, measuring no more than twenty-five (25) feet in height and twenty (20) feet in width, angled interior to Nationals Park and mounted on the exterior recessed southwest panel, of Nationals Park on South Capitol Street, S.E.; provided, that the Designated Entertainment Area Sign shall not be placed within fifteen (15) degrees of facing South Capitol Street;

"(3) One (1) Designated Entertainment Area Sign, measuring no more than twenty-five (25) feet in height and seventeen (17) feet in width, angled interior to Nationals Park

and mounted on the exterior panel of Nationals Park on South Capitol Street, S.E.; provided, that the Designated Entertainment Area Sign shall not face South Capitol Street or be visible travelling northbound on South Capitol Street;

"(4) One (1) Designated Entertainment Area Sign, measuring no more than fifteen (15) feet in height and twenty-five (25) feet in width, mounted on the exterior panel of the east parking structure adjacent to Nationals Park at the northeastern corner of Nationals Park grounds near the intersection of N Street, S.E., and First Street, S.E., facing N Street, S.E.; and

"(5) One (1) Designated Entertainment Area Sign, measuring no more than twenty-eight (28) feet in height and twenty-five (25) feet in width, mounted on the exterior panel of the east parking structure adjacent to Nationals Park at the northeastern corner of Nationals Park grounds near the intersection of N Street, S.E., and First Street, S.E., facing First Street, S.E.

"(b) The signs identified in 12A DCMR §§ N101.20(a)(1)-(5) shall not be subject to 12A DCMR § N101.20.4(b).

"(c) Ballpark District Entertainment Area. The Ballpark District Entertainment Area, located in Squares 700 and 701, is the area bounded by South Capitol Street, S.E.; First Street, S.E.; M Street, S.E.; and N Street, S.E. Designated Entertainment Area Sign Permits shall be allowed in the Ballpark District Designated Entertainment Area subject to the requirements of this subsection; provided, that no Designated Entertainment Area Signs shall be allowed on any façade located:

"(1) On South Capitol Street, S.E.;

"(2) On M Street, S.E., provided that one (1) sign may be allowed at the southwest corner of M Street, S.E., and Half Street, S.E., with the sign facing within fifteen (15) degrees of parallel or perpendicular to M Street, S.E.;

"(3) On First Street, S.E.; between M Street, S.E., and N Street, S.E.; provided, that one (1) sign may be allowed at the northwest corner of First Street S.E., and N Street, S.E.; provided, that the sign shall not face within fifteen (15) degrees of parallel or perpendicular to First Street; or

"(4) Within one hundred fifty (150) feet of the southeast corner of South Capitol Street, S.E., and N Street, S.E.

"(d) To designate, modify, or remove a Designated Entertainment Area, the Mayor shall submit a proposed change pursuant to these rules for approval by the Council by act.

"(e) The Mayor shall issue and transmit to the Council a report no less than once every ten (10) years on the advisability of maintaining each Designated Entertainment Area established pursuant to this subsection. The report should be issued in consultation with the Office of Planning, the District Department of Transportation, the Department of Consumer and Regulatory Affairs, and the appropriate Advisory Neighborhood Commissions.

"(f) If an existing Designated Entertainment Area Sign is no longer in a Designated Entertainment Area due to a modification or removal pursuant to subsection (d) of this subsection, the Designated Entertainment Area Sign Permit for that Designated Entertainment Area Sign shall remain valid until it expires; provided, that the Designated Entertainment Area Sign Permit shall not be renewed.

"N101.20.1 Designated Entertainment Area Sign Permits. The code official is authorized to issue a Designated Entertainment Area Sign Permit in one or more of the areas designated in section N101.20, subject to the limitations of this subsection and the following:

"(a) No signage shall be erected, installed, hung, placed, posted, painted, displayed, or maintained before the site property owner or the owner's designee has first obtained a Designated Entertainment Area Sign Permit from the Department in accordance with this subsection.

"(b) A Designated Entertainment Area Sign Permit shall authorize the location, size, and structural design of the Designated Entertainment Area Sign and shall be valid for three (3) years, with the option to renew pursuant to the process set forth in subsection (c) of this subsection.

"(c) Each renewal of a Designated Entertainment Area Sign Permit shall require a review under sections N101.20.12, N101.20.13, and N101.20.14 and upon approval shall be valid for three (3) years. In reviewing the renewal of a Designated Entertainment Area Sign Permit, the Department shall balance any impacts on residential units or properties with the fact that it is the renewal of an existing Designated Entertainment Area Sign.

"N101.20.2 Applicability. Designated Entertainment Area Signs shall not be subject to any provision of this appendix or any provision of Titles 10 or 12 with regard to the permitting, approval, erection, placing, painting, display, or maintenance of billboards, poster panels, wall signs, special signs, or any other types of outdoor signs, including, without limitation, section N101.10 (Maximum size of street signs) or any other provision of this appendix that limits the maximum size or height of signs, other than the limitations stated or incorporated into this subsection.

"N101.20.3 Compliance Requirements. Designated Entertainment Area Sign Permits shall comply with sections N101.3.4 (Permits for electrical signs), N101.7.1 (Projecting signs), N101.7.2 (Roof signs), N101.7.3 (Signs supported by projecting construction), N101.7.4 (Signs on awnings or similar projections), N101.7.8.1 (Signs on public space), N101.11 (Structural and materials requirements), N101.13 (Dangerous signs), and N101.14 (Obstructive signs) except as applied to windows.

"N101.20.4 Maximum Size of Designated Entertainment Area Signs.

"(a) A Designated Entertainment Area Sign shall not exceed a maximum area of 1200 square feet.

"(b) The aggregate maximum allowable Designated Entertainment Area Sign area shall not exceed twenty percent (20%) of a building wall or surface.

"(c) No sign shall have a width or height exceeding a maximum of 52 feet.

"N101.20.5 Spacing and Location of Designated Entertainment Area Signs. A Designated Entertainment Area Sign shall not:

"(a) Have less than two (2) feet of spacing between it and another Designated Entertainment Area Sign on the same wall face or surface; or

"(b) Cover any operable window.

"N101.20.6 Digital displays; restriction on full motion video. A Designated Entertainment Area Sign Permit may authorize a digital display, subject to the following restrictions:

"(a) No digital display shall be placed on the exterior or the exterior grounds of a property in a Designated Entertainment Area parallel to any residential building across the street from the property, or otherwise in the direct line-of-sight of the sign, that exists as of the effective date of the Nationals Park and Ballpark District Designated Entertainment Area Signage Regulations Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-919); and

"(b) A Designated Entertainment Area Sign with digital display shall ensure that the duration of each display shall not be less than eight (8) seconds and the transition time between messages shall not be greater than two (2) seconds; and

"(c) Except as provided in subsection (d) of this section, digital display Designated Entertainment Area Signs shall operate only between the hours of 7:00 a.m. and 11:00 p.m. or no longer than thirty (30) minutes after the end of an event held at Nationals Park as applicable to the Designated Entertainment Areas listed in section N101.20, whichever is later, or until such time as may be established by a special event permit for a specific event.

"(d) Full motion video Designated Entertainment Area Signs shall operate only between one (1) hour preceding and thirty (30) minutes after the end of an event held at Nationals Park as applicable to the Designated Entertainment Areas listed in section N101.20, or until such time as may be established by a special event permit for a specific event.

"N101.20.7 Luminance.

"(a) A Designated Entertainment Area Sign shall not exceed a maximum allowable luminance of:

"(1) Three hundred fifty (350) nits between sunset and sunrise; or

"(2) Three thousand (3000) nits between sunrise and sunset.

"(b) Lighting for an illuminated Designated Entertainment Area Sign installed or modified on or after the effective date of the Nationals Park and Ballpark District Designated Entertainment Area Signage Regulations Amendment Act of 2016, passed on 2nd reading on December 20, 2016 (Enrolled version of Bill 21-919), shall have a lighting control system that:

"(1) Includes an ambient light monitor;

"(2) Allows for automatic adjustment of the brightness of the sign based on ambient light conditions and adjustments and that reduces light levels at night and under cloudy or darkened conditions; and

"(3) Provides an accessible dimming controller to allow immediate corrections where maximum luminance levels are exceeded.

"(c)(1) All Designated Entertainment Area Sign lighting shall be controlled with a photocontrol switch and an automatic time-switch control or an astronomical time-switch control.

"(2) The photocontrol switch shall:

"(A) Be capable of reducing the power consumption in response to measured daylight either directly or by sending and receiving signals;

"(B) Automatically return to its most recent time delay settings within sixty (60) minutes when put in calibration mode;

"(C) Have a set point control that easily distinguishes settings to within ten percent (10%) of full-scale adjustment;

"(D) Have a light sensor that has a linear response within five percent (5%) accuracy over the range of illuminance measured by the light sensor; and

"(E) Have a light sensor that is physically separated from where the calibration adjustments are made, or is capable of being calibrated in a manner that the person initiating the calibration is remote from the sensor during calibration to avoid influencing calibration accuracy.

"(3) A lighting control system with automatic time-switch controls shall:

"(A) Have program backup capabilities that prevent the loss of the sign's schedule for at least seven (7) days, and the sign's date and time for at least seventy-two (72) hours if power is interrupted; and

"(B) Be capable of providing manual override to each connected sign and shall resume normally scheduled operation after manual override is initiated within two (2) hours for each connected sign.

"(4) A lighting system with astronomical time-switch controls shall:

"(A) Meet the requirements of an automatic time-switch control;

"(B) Have sunrise and sunset prediction accuracy within plus-or-minus fifteen (15) minutes and timekeeping accuracy within five (5) minutes per year;

"(C) Be capable of displaying date, current time, sunrise time, sunset time, and switching times for each step during programming;

"(D) Have an automatic daylight savings time adjustment; and

"(E) Have the ability to independently offset the on and off for each channel by at least ninety-nine (99) minutes before and after sunrise or sunset.

"(5) Sign lighting that is on both day and night shall also include a dimmer control that shall:

"(A) Be capable of reducing power consumption and luminance by a minimum of sixty-five percent (65%) when the dimmer is at its lowest level;

"(B) Include an off position that produces a zero (0) lumen output; and

"(C) Not consume more than one (1) watt per lighting dimmer switch leg when in the off position.

"(d) The sign's operation shall be controlled by a central management system that is:

"(1) Capable of storing data associated with the sign's operation for no less than thirty (30) days;

"(2) Accessible via an Internet browser; and

"(3) Capable of generating reports that include, at a minimum, the data elements listed in subsection (e) of this section. The permittee is responsible for maintaining these records for three (3) years and shall provide records of signs operational data to the code official upon request.

"(e) The operational data recorded and maintained for each sign shall include:

"(1) Location;

"(2) Status (on/off);

"(3) Energy consumption;

"(4) Luminance levels during operation measured in nits;

"(5) Schedule of dimming luminance levels and luminance levels established for hours with reduced luminance requirements; and

"(6) Instances when luminance levels exceed limitations imposed by this section.

"(f) Externally-illuminated Designated Entertainment Area Signs shall be illuminated only with steady, stationary, fully-shielded light sources directed solely onto the sign without causing glare.

"N101.20.8 Intensity or Brilliance of Graphics. No Designated Entertainment Area Sign shall have such intensity or brilliance as to create an unreasonable risk for vehicular traffic safety as determined by the Director of the District Department of Transportation pursuant to section N101.20.14.

"N101.20.9 Sound. No Designated Entertainment Area Sign Permit shall have audio or sound other than de minimis sounds caused by general operation.

"N101.20.10 Permit Application Process. An application for a Designated Entertainment Area Sign Permit shall be submitted by the owner, or the owner's designee, and shall include:

"(a) Identification of:

"(1) The applicant with contact information including the applicant's telephone number, e-mail address, and mailing address;

"(2) The proposed type and location of the sign and the face direction of the wall or surface;

"(3) The proposed linear dimensions of the sign and its projection from the building's façade;

"(4) The proposed structural design of the sign;

"(5) The luminance and lighting controls of the sign;

"(6) The proposed intensity or brilliance of the sign;

"(7) The potentially affected Advisory Neighborhood Commissions ("ANC(s)"); and

"(8) The amount of time that the applicant shall provide per year on digital displays for public service announcements and announcements regarding community, art, cultural, educational, and similar events, along with the display of relevant and useful public information such as news, real-time transit schedules, and weather; provided, that the minimum time provided shall be ten (10) percent of annual display time;

"(b) A three-dimensional rendering of the design and placement of the sign;

"(c) An affidavit signed by the applicant, or his or her duly authorized representative, certifying that the applicant is in compliance with Subchapter II of Chapter 28 of Title 47 of the District of Columbia Official Code, and has consulted with or attempted in good faith to consult with the potentially affected ANC(s) about the permit application;

"(d) A permit fee in the amount of ten dollars ($10.00) per square foot of sign area, which may be paid by check made payable to the order of the D.C. Treasurer; provided, that this permit fee may be amended by rulemaking or act consistent with permit fees for similar signs;

"(e) Five (5) copies of the application and all illustrations; and

"(f) Any other information required by the Director to assist in reviewing the permit application.

"N101.20.11 Permit Application Referrals.

"(a) The Director shall refer all Designated Entertainment Area Sign Permit applications to the District Department of Transportation and the Office of Planning within ten (10) days of receipt of the permit application by the Department.

"(b) The District Department of Transportation and the Office of Planning shall have 70 days from the date the Department receives the permit application to submit a written report to the Director; except, that the Director may allow for an extension of this period of up to thirty (30) days for good cause.

"(c) The Director of the District Department of Transportation and the Director of the Office of Planning shall not submit the written report required by this section until after the affected ANC(s) have submitted comments or the forty-five (45) day period required by section N101.20.12 has expired without submission of comments by the affected ANC(s).

"N101.20.12 Advisory Neighborhood Commission Notification.

"(a) The Director shall notify in writing potentially affected ANC(s) of the submission of an application for a Designated Entertainment Area Sign Permit within ten (10) days of receipt of such application and invite the submission of any written comments within forty-five (45) days of the date of such notice.

"(b) The ANC(s) shall submit one set of comments to the Director; electronic or paper copies of the written comments should be simultaneously submitted to the Director of the District Department of Transportation and the Director of the Office of Planning.

"(c) The District Department of Transportation and the Office of Planning shall address any comments or recommendations from an affected ANC submitted within the forty-five (45) day period set forth in this section in the written report submitted to the Director pursuant to section N101.20.11.

"(d) The Director shall give great weight to any comments or recommendations from an affected ANC submitted within the forty-five (45) day period set forth in this section in the written report.

"(e) When a Designated Entertainment Facility Sign Permit is resubmitted for consideration, the comments submitted by the ANC on the original application shall be considered with the resubmitted application.

"N101.20.13 Permit Review Processes; Operation. All permits shall comply with all permit review processes required by District or federal law. The operation of all Designated Entertainment Area Signs shall comply with all applicable District and federal laws and regulations, including the Highway Beautification Act of 1965, approved October 22, 1965 (79 Stat. 1028; 23 U.S.C. § 131), and other laws and regulations not directly referenced in this subsection.

"N101.20.14 Effect of Adverse Report. A Designated Entertainment Area Sign Permit application shall not be approved by the Department if:

"(a) The Director of the District Department of Transportation reports in a written statement the reasons that the location, size, spacing, height above grade, brilliance, or illumination of the sign would create an unreasonable risk for vehicular traffic safety;

"(b) The sign would violate applicable federal laws or regulations or the ruling or order of a commission or court of competent jurisdiction; or

"(c) The Director of the Office of Planning reports in a written statement the reasons that

the operation of the proposed sign is determined to adversely impact the character and integrity of the surrounding neighborhood as a whole for residential, business, and recreation uses. In making this determination, the Director shall consider the following criteria and shall ensure that the sign:

"(1) Protects and does not detract from views along prominent corridors and the Anacostia riverfront;

"(2) Creates vibrant public space through creative and artistic signs and the integration of new technologies into the built environment and prioritizing the pedestrian experience;

"(3) Minimizes its impact on the use and enjoyment of a residential unit or residential property, office property, or hotel property. Such impact may include light or glare being cast directly or indirectly into a residential unit or interference with the restful use of a residential unit at night; and

"(4) Complements the architecture of the Designated Entertainment Area and surrounding buildings, and complements public spaces through location, size, and design.

"N101.20.15 Review, Approval, or Denial of Designated Entertainment Sign Permit Applications.

"(a) The Director shall review and either approve or deny a Designated Entertainment Area Sign Permit application within twenty-one (21) days after the expiration of the time period provided in section N101.20.11. The approval or denial of the permit application shall be based on whether the permit application meets the requirements set forth in this subsection.

"(b) A Designated Entertainment Area Sign Permit shall be issued in the name of the applicant and shall pertain solely to the specific Designated Entertainment Area Sign Permit and specific location identified in the permit.

"N101.20.16 Denial of Application.

"(a) If the Director denies a Designated Entertainment Area Sign Permit application, the denial shall be issued in writing to the applicant and shall explain in detail the basis for the denial. The applicant shall have thirty (30) days from receipt of the denial to:

"(1) Correct any defect in the application identified by the Director and submit a corrected permit application to the Department; or

"(2) Seek review of the permit denial at the Office of Administrative Hearings.

"(b) If the applicant timely submits a corrected permit application to the Department, the Director, within five (5) days of receipt of the permit application, shall refer the permit application to the District Department of Transportation and the Office of Planning and each agency shall provide a report required under section N101.20.11, within fourteen (14) days. The Director shall review and either approve or deny the corrected permit application within thirty (30) days of receipt of the corrected permit application. If the Director denies the corrected permit application, the applicant shall have thirty (30) days from receipt of the denial to file a notice with the Office of Administrative Hearings for adjudication.

"N101.20.17 Display Changes. As part of a Designated Entertainment Area Sign Permit application, the sign owner or owner's designee may apply to the Director for a change in the number, location, and size of any of the Designated Entertainment Area Sign displays with the site property owner or the owner's designee's approval. The Director shall review such

application as if it were a new application, unless the proposed change reduces the size, number, or brightness of any previously approved sign plan without changing any location of any sign that continues in operation.

"N101.20.18 Energy Consumption Regulation Compliance. In the event any regulation to reduce energy consumption requires a permit holder to upgrade sign material or operation systems, the permit holder shall submit a certification from the Department of Energy and Environment that states the regulation requires upgrades and the chosen materials satisfy the regulatory requirements.

"N101.20.19 Enforcement of Regulations and Removal of Designated Entertainment Area Signs.

"(a) Any unauthorized Designated Entertainment Area Signs, including signs without a permit, or permitted Designated Entertainment Area Signs that are not in full compliance with provisions of the District of Columbia Official Code, District of Columbia Municipal Regulations, or federal law, including An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.*), and this subsection, that become effective within one (1) year of the issuance of the Designated Entertainment Area Sign Permit shall be taken down or removed within fourteen (14) days after receipt of written notification of violation from the Mayor directing that the signs be removed or taken down for persistent, continuous, or egregious violations of District law.

"(b) The Mayor shall determine whether a violation is persistent, continuous, or egregious, or whether the violation is individual and intermittent in nature. An individual, intermittent violation shall be addressed pursuant to section N101.20.20.

"(c) If the signs are not taken down or removed within the specified 14-day period, the Mayor shall impose civil fines of no more than ten dollars ($10) per square foot of sign, per day.

"(d) The permit holder, at its sole cost and expense, shall be responsible for taking down or removing unauthorized signs upon notification by the Mayor to do so and shall be solely and exclusively responsible for any expense incurred by the District of Columbia if the Mayor removes the unauthorized signs. The Designated Entertainment Area Sign Permit holder shall also be held solely and exclusively responsible for any penalties or fines imposed by this violation.

"(e) Any changes made to sign and advertising requirements under District of Columbia law after the issuance of a permit pursuant to this section shall not apply to the Designated Entertainment Area Sign Permit for the life of the permit or three (3) years from the issuance of the permit, whichever is shorter.

"N101.20.20 Enforcement of Individual and Intermittent Permit Violations. Any owner of a Designated Entertainment Area Sign whose signage, on an intermittent and individual basis, violates Designated Entertainment Area Sign Permit conditions, provisions of the District of Columbia Official Code, District of Columbia Municipal Regulations, or federal law, including An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.*), and this subsection, that are or become effective within one (1) year of the issuance of the Designated Entertainment Facility

Sign Permit shall be notified in writing of the suspected violation with request for operational data. The permit holder shall provide requested operational data to the Department within seven (7) days to verify or rebuke the suspected violation. Failure to provide operational data within seven (7) days shall be a Class 2 infraction and the Department shall impose civil fines as described in 16 DCMR 3201.1(b). Further, individual or intermittent violations of the provisions of this subsection shall be considered a Class 2 violation and the Department shall impose civil fines for intermittent sign permit violations as described in 16 DCMR 3201.1(b). The owner of an unauthorized sign or the permit holder of an authorized sign not in compliance shall also be held solely and exclusively responsible for any penalties or fines imposed by this violation.

"N101.20.21 Maintenance and Repair.

"(a) Whenever the code official finds that any Designated Entertainment Area Sign is not maintained in good ordinary repair and has not deteriorated more than fifty percent (50%) of its replacement value, the code official shall notify the property owner or designee and the permit holder, or designee, and order the repair of the sign within a specified time, but not less than twenty-one (21) days. If the value of a sign cannot be determined, the code official may request an appraisal from the sign's owner within a specified time period that shall be at least five (5) business days. If the owner fails to provide an appraisal within that time period, the signs shall be deemed to have deteriorated to less than 50% of the value of a replacement sign.

"(b) If the code official finds that any of the Designated Entertainment Area Signs are not maintained in good ordinary repair and have deteriorated more than fifty percent (50%) of their replacement value, or are not repaired within the time specified in the repair notice, the code official shall order the property owner or his designee and the permit holder, or designee, to remove such signs within a specified period of time, but not less than five (5) days.

"(c) Failure to comply with such order shall subject the property owner and the permit holder, upon adjudication, to civil fines, penalties, and fees pursuant to Titles I through III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*). The code official may extend the time periods stated in this section upon a written showing of good cause by the property owner and the permit holder.

"N101.20.22 Other Signs. Designated Entertainment Area Signs shall not affect signs authorized or prohibited elsewhere in this appendix or otherwise authorized or prohibited by law.

"N101.20.23 Rulemaking Authority. Notwithstanding section 10 of the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409), the Director may amend the provisions of sections N101.20 *et seq.* by rulemaking pursuant to section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505). Proposed rules shall be submitted to the Council for a 45-day review period. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day period, the rules shall be deemed approved.

"N101.20.99 Definitions. For the purposes of this section the term:

"Astronomical time-switch control" means an electric programming clock designed to control sign luminance levels automatically according to actual sunrise and sunset.

"Department" means the Department of Consumer and Regulatory Affairs.

"Director" means the Director of the Department or his or her designee.

"Designated Entertainment Area" means the property area defined in section N101.20.

"Designated Entertainment Area Sign" means an outdoor visual, digital, or static canvas display placed in a Designated Entertainment Area and authorized for permit under section N101.20.1.

"Digital display" means a sign that is internally illuminated and displays static images or variable messages on an alternating basis. Digital displays do not include full motion video, except as provided in section N101.20.6(d).

"Full motion video" means images presented on an internally illuminated device, including a television or video monitor, that change at a rate that makes objects appear to move smoothly and continuously.

"Ordinary repairs" means those that are customary to keep a sign in good operating order, or refurbishing. Ordinary repairs do not include, for example, enlargement, extension, adding illumination to an unilluminated sign, or those repairs requiring a permit under D.C. Building Code Supplement, 12-A DCMR § 105.2.2.

"Nit" means a unit of measurement of luminance, or the intensity of visible light, where one nit is equal to one candela per square meter.".

"Photocontrol switch" means a light responsive switch that provides automatic luminance levels that are responsive to the ambient light changes.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 10, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-1

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To approve, on an emergency basis, Modification Nos. 3, 4, and 5 and proposed Modification No. 6 to Human Care Agreement No. DCJM-2013-H-0007-06 with Community Multi-Services, Inc. to provide residential services to District citizens with intellectual and developmental disabilities, and to authorize payment for the goods and services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCJM-2013-H-0007-06 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 3, 4, and 5 and proposed Modification No. 6 to Human Care Agreement No. DCJM-2013-H-0007-06 with Community Multi-Services, Inc. to provide residential services to District citizens with intellectual and developmental disabilities, and authorizes payment in an estimated amount of $1,306,103.56 for goods and services received and to be received under the contract modifications for the period from June 1, 2016, through May 31, 2017.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To approve, on an emergency basis, Modification No. M029 and proposed Modification No. M030 to Human Care Agreement No. DCRL-2013-H-0039A with The National Center for Children and Families to provide case management and traditional and therapeutic family-based foster care services for children and youth, and to authorize payment for the services received and to be received under the modifications.

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

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. M029 and proposed Modification No. M030 to Human Care Agreement No. DCRL-2013-H-0039A with The National Center for Children and Families to provide case management and traditional and therapeutic family-based foster care services for children and youth, and authorizes payment in the total not-to-exceed amount of $10,291,149.48 for services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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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
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-3

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend, on an emergency basis, due to congressional review, the Student Access to Treatment Act of 2007 to authorize employees and agents of public schools certified under the Office of the State Superintendent of Education's epinephrine administration training program to administer a designated epinephrine auto-injector to a student to whom it is prescribed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Access to Emergency Epinephrine in Schools Clarification Congressional Review Emergency Amendment Act of 2017".

Sec. 2. The Student Access to Treatment Act of 2007, effective February 2, 2008 (D.C. Law 17-107; D.C. Official Code § 38-651.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 38-651.01) is amended as follows:

(1) The existing paragraph (1) is redesignated as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

"(1) "Designated epinephrine auto-injector" means a disposable drug delivery system with a spring-activated needle, which is obtained with a prescription for a particular person, that is designed for the emergency administration of epinephrine to a person suffering an episode of anaphylaxis.".

(b) Section 5a (D.C. Official Code § 38-651.04a) is amended as follows:

(1) Subsection (b)(2) is amended by striking the phrase "an undesignated" and inserting the phrase "a designated or undesignated" in its place.

(2) A new subsection (e) is added to read as follows:

"(e) An employee or agent of a public school who is certified pursuant to this section may administer a designated epinephrine auto-injector to the student to whom it is prescribed, who the employee or agent believes in good faith to be suffering or about to suffer an anaphylactic episode.".

Sec. 3. Applicability.

This act shall apply as of January 29, 2017

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Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-4

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 9, 2017

To amend, on an emergency basis, the Rental Housing Act of 1985 to authorize the Rental Housing Commission to certify and publish before March 1 of each year, the most recent annual cost-of-living adjustment of benefits for social security recipients and the maximum annual rent adjustment that may be imposed on a unit occupied by an elderly tenant or a tenant with a disability, and to add the Social Security cost-of-living adjustment as a third-lowest option of the cap on the annual standard rent increase for a unit occupied by an elderly tenant or a tenant with a disability, in addition to the Consumer Price Index and 5 % of the current rent charged.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Elderly Tenant and Tenant with a Disability Protection Emergency Amendment Act of 2017".

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3500 *et seq.*), is amended as follows:

(a) Section 202(a)(3) (D.C. Official Code § 42-3502.02(a)(3)) is amended to read as follows:

"(3) Certify and publish before March 1 of each year:

"(A) The annual adjustment of general applicability of the rent charged of a rental unit under section 206;

"(B) The most recent annual cost-of-living adjustment of benefits for social security recipients established pursuant to section 415(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i)); and

"(C) The maximum annual rent adjustment that may be imposed on a unit occupied by an elderly tenant or a tenant with a disability pursuant to section 208(h)(2).".

(b) Section 208(h)(2) (D.C. Official Code § 42-3502.08(h)(2)) is amended by striking the phrase "shall not exceed the lesser of 5% or the adjustment of general applicability" and inserting the phrase "shall not exceed the least of 5%, the adjustment of general applicability, or effective May 1, 2017, the most recent annual cost-of-living adjustment of benefits for social security recipients established pursuant to section 415(i) of the Social Security Act, approved August 28, 1950 (64 Stat. 506; 42 U.S.C. § 415(i))" in its place.

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 9, 2017

ENROLLED ORIGINAL

A RESOLUTION

22-14

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 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 2016-2017.

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 a registered nurse be assigned to each District of Columbia elementary and secondary public and public charter school 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 DC Public Charter School Board sent a joint letter to the Director of the Department of Health, the Deputy Mayor for Education, 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 hours 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 reiterating concerns about implementing 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 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.

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 had 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 November 1, 2016, the Council passed the Public School Nurse Assignment Emergency Amendment Act of 2016 (D.C. Act 21-535; 63 DCR 14347), 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 2016-2017. That emergency expires on February 16, 2017.

(n) Temporary legislation, the Public School Nurse Assignment Temporary Amendment Act of 2016 (D.C. Act 21-563; 63 DCR 15054), was signed by the Mayor on December 6, 2016. It is currently under congressional review and is projected to become law on February 20, 2017.

(o) Therefore, a congressional review emergency is needed to prevent a gap in the law. Currently, the Department of Health is not in compliance with the emergency legislation; however, the Executive is working to increase school nurse coverage at public schools.

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

22-15

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Retail Incentive Act of 2004 to modify the boundaries of the Bladensburg Road, N.E., Retail Priority Area; and to amend the H Street, N.E., Retail Priority Area Incentive Act of 2010 to clarify the location of businesses that are eligible to receive retail development project grants.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "H Street, N.E., Retail Priority Area Clarification Congressional Review Emergency Declaration Resolution of 2017".

Sec. 2. (a) There existed a need to amend the Retail Incentive Act of 2004, effective September 8, 2004 (D.C. Law 15-185; D.C. Official Code § 2-1217.73), to modify the boundaries of the Bladensburg Road, N.E., Retail Priority Area and to amend the H Street, N.E., Retail Priority Area Incentive Act of 2010, effective April 8, 2011 (D.C. Law 18-354; D.C. Official Code § 1-325.173), to clarify the location of businesses that are eligible to receive retail development project grants.

(b) In November 2016, the Council enacted the H Street, N.E., Retail Priority Area Clarification Emergency Amendment Act of 2016, effective November 29, 2016 (D.C. Act 21-550; 63 DCR 15020) ("emergency legislation"), and the H Street, N.E., Retail Priority Area Clarification Temporary Amendment Act of 2016, enacted on January 6, 2017 (D.C. Act 21-608; 64 DCR 184) ("temporary legislation"), to make the necessary amendments described in subsection (a) of this section.

(c) The emergency legislation expires on February 27, 2017. The temporary legislation was transmitted to Congress on January 25, 2017, for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and is not projected to become law until March 17, 2017.

(d) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

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 H

ENROLLED ORIGINAL

Street, N.E., Retail Priority Area Clarification 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

22-19

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $40 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist American Geophysical Union 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 Geophysical Union Revenue Bonds Project Approval Resolution of 2017".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

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

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

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

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

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

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

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

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

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

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

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

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

(A) Financing the renovation of the Borrower's facilities located at 2000 Florida Avenue, N.W., Washington, DC 20009, and consisting of: (i) an office building of approximately 51,300 square feet above grade, and (ii) the purchase of certain equipment and furnishings, together with other personal property related and subordinate thereto;

(B) Refinancing, in whole or in part, existing indebtedness, including certain District revenue bonds issued for the benefit of the Borrower;

(C) Paying certain expenditures associated therewith, to the extent financeable, including termination payments under an existing interest rate collar, and credit enhancement costs; and

(D) Paying allowable Issuance Costs.

Sec. 3. Findings.

The Council finds that:

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

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, in an aggregate principal amount not to exceed $40 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

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

(4) The Project is an undertaking that will contribute to the health, education, safety, or welfare, of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District within the meaning of section 490 of the Home Rule Act.

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

Sec. 4. Bond authorization.

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

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed $40 million; and

(2) The making of the Loan.

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

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

Sec. 5. Bond details.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. Sale of the Bonds.

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

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

matters and may authorize the distribution of the documents in connection with the sale of the Bonds.

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

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

Sec. 7. Payment and security.

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

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

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

Sec. 8. Financing and Closing Documents.

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

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

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

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

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and

delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 9. Authorized delegation of authority.

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

Sec. 10. Limited liability.

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

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

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

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

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

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

Sec. 11. District officials.

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

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

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

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

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

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

Sec. 15. Expiration.

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

Sec. 16. Severability.

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

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

Sec. 17. Compliance with public approval requirement.

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

Sec. 18. Transmittal.

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

Sec. 19. Fiscal impact statement.

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

Sec. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-20

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to Modification No. 7 to Contract No. CFOPD-14-C-031 with Fast Enterprises, Inc. to continue to provide hosting services and to purchase an optional integrated fund accounting system in support of the Modernized Integrated Tax System on behalf of the Office of Tax and Revenue, and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-14-C-031 Extension Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to approve Modification No. 7 to Contract No. CFOPD-14-C-031 with Fast Enterprises, Inc. to continue to provide hosting services and to purchase an optional integrated fund accounting system for the Office of the Chief Financial Officer on behalf of the Office of Tax and Revenue, and to authorize payment for the services received and to be received under the contract.

(b) Proposed Modification No. 7 will enable Fast Enterprises, Inc. to provide 3 additional years of hosting services and implement an optional integrated fund accounting system for the amount of $5.85 million, which will increase the dollar value of the base period to $45.8 million.

(c) Council approval is necessary because proposed Modification No. 7, which is in excess of $1 million, is for a multiyear term. Council approval is further necessary to allow the continuation of these vital services and to allow Fast Enterprises, Inc. to continue performance under the contract.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CFOPD-14-C-031 Extension 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

22-21

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve Modification No. M023 and proposed Modification No. M024 to Human Care Agreement No. DCRL-2013-H-0039O with PSI Family Services, Inc. to provide case management and therapeutic foster care services for children and youth, and to authorize payment for the 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 Human Care Agreement No. DCRL-2013-H-0039O Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification No. M023 and proposed Modification No. M024 to Human Care Agreement No. DCRL-2013-H-0039O with PSI Family Services, Inc. ("PSI") to provide case management and therapeutic foster care services for children and youth, and to authorize payment for the services received and to be received under the modifications.

(b) By Modification No. M023, dated December 15, 2016, the Child and Family Services Agency ("CFSA") partially exercised Option Year 3 for the period from December 16, 2016, through April 4, 2017, in the not-to-exceed amount of $992,500.30.

(c) By proposed Modification No. M024, CFSA intends to exercise the remainder of Option Year 3 for the period from April 5, 2017, through December 15, 2017, in the not-to-exceed amount of $2,300,794.79, making the total not-to-exceed amount for Option Year 3 $3,293,295.09 for the period from December 16, 2016, through December 15, 2017.

(d) Council approval is necessary because the moedifications increase the total contract amount to more than $1 million during a 12-month period.

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

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Human Care Agreement No. DCRL-2013-H-0039O 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

22-22

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve Modification No. M019 and proposed Modification No. M020 to Human Care Agreement No. DCRL-2013-H-0039C with PSI Family Services, Inc. to provide case management and traditional, family-based foster care services for children and youth, and to authorize payment for the 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 Human Care Agreement No. DCRL-2013-H-0039C Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification No. M019 and proposed Modification No. M020 to Human Care Agreement No. DCRL-2013-H-0039C with PSI Family Services, Inc. ("PSI") to provide case management and traditional, family-based foster care services for children and youth, and to authorize payment for the services received and to be received under the modifications.

(b) On December 13, 2013, the Child and Family Services Agency ("CFSA") awarded a letter contract to PSI, Human Care Agreement No. DCRL-2013-H-0039C, effective January 1, 2014, to provide case management and traditional, family-based foster care services for children and youth in the total not-to-exceed amount of $245,867.20.

(c) On February 25, 2014, CFSA definitized Human Care Agreement No. DCRL-2013-H-0039C for the period from January 1, 2014, through December 31, 2014, in the total not-to-exceed amount of $1,725,798.60.

(d) By Modification No. M08, dated December 30, 2014, CFSA partially exercised Option Year One of Human Care Agreement No. DCRL-2013-H-0039C to extend the contract term from January 1, 2015, through May 31, 2015, in the total not-to-exceed amount of $713,960.52.

(e) By Modification No. M09, dated May 1, 2015, CFSA exercised the remainder of Option Year One for the period from June 1, 2015, through December 31, 2015, in the total not-to-exceed amount of $986,886.28.

(f) By Modification No. M013, CFSA exercised Option Year 2 for the period from January 1, 2016, through December 31, 2016, in the total not-to-exceed amount of $1,826,531.94.

(g) By Modification No. M019, dated December 13, 2016, CFSA partially exercised Option Year 3 to extend the term of the contract from January 1, 2017, through April 30, 2017, in the not-to-exceed amount of $701,901.60.

(h) By proposed Modification No. M020, CFSA now intends to exercise the remainder of Option Year 3 for the period from May 1, 2017, through December 31, 2017, in the not-to-exceed amount of $1,433,049.81, making the total not-to-exceed amount for Option Year 3 $2,134,951.41.

(i) Council approval is necessary because the modifications increase the total contract amount to more than $1 million during a 12-month period.

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

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Human Care Agreement No. DCRL-2013-H-0039C 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

22-23

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve Modification No. M022 and proposed Modification No. M023 to Human Care Agreement No. DCRL-2013-H-0039I with Seraaj Family Homes, Inc. to provide case management and therapeutic, traditional, and specialized family-based foster care services for children and youth during Option Year 3, and to authorize payment for the services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Human Care Agreement No. DCRL-2013-H-0039I Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification No. M022 and proposed Modification No. M023 to Human Care Agreement No. DCRL-2013-H-0039I with Seraaj Family Homes, Inc. to provide case management and therapeutic, traditional, and specialized family-based foster care services for children and youth, and to authorize payment for the services received and to be received under the modifications.

(b) By Modification No. M022, issued on December 12, 2016, the Child and Family Services Agency ("CFSA") partially exercised Option Year 3 in the not-to-exceed amount of $969,918.60 for the period from January 1, 2017, through March 11, 2017.

(c) By Modification No. M023, CFSA proposes to exercise the remainder of Option Year 3 for the period from March 12, 2017, through December 31, 2017, in the not-to-exceed amount of $4,087,514.57, making the total not-to-exceed amount for Option Year 3 $5,057,433.17 for the period from January 1, 2017, through December 31, 2017.

(d) Council approval is necessary because the modifications increase the total contract amount to more than $1 million during a 12-month period.

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

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Human Care Agreement No. DCRL-2013-H-0039I 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

22-24

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve proposed Modification No. 1 to Contract No. DCJM-2016-E-0002 to provide certification reviews of Centers for Medicare and Medicaid Services Home and Community Based Services waiver service providers, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification to Contract No. DCJM-2016-E-0002 Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve proposed Modification No. 1 to Contract No. DCJM-2016-E-0002 with Liberty Healthcare Corporation to provide certification reviews of Centers for Medicare and Medicaid Services Home and Community Based Services waiver service providers, and to authorize payment for the goods and services received and to be received under the modification.

(b) Modification No. 1 is now necessary to extend the base period of Contract No. DCJM-2016-E-0002 by 6 months, from March 31, 2017, through September 30, 2017, in the not-to-exceed amount of $1,672,419.

(c) Council approval is necessary because the modification would increase the contract amount to more than $1 million during a 12-month period.

(d) Approval is necessary to allow the continuation of these vital services. Without this approval, Liberty Healthcare Corporation cannot be paid for services provided in excess of $1 million for the contract period from October 1, 2016, through September 30, 2017.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification to Contract No. DCJM-2016 E-0002 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

22-25

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve Modification Nos. 4 and 5 to Contract No. DCJM-2014-C-0019 with Georgetown University to advance the Quality Assurance Initiative Project to meet the regulatory and legal requirements under *Evans vs. Gray* and to authorize payment for the goods and services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. DCJM-2014-C-0019 with Georgetown University Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification Nos. 4 and 5 to Contract No. DCJM-2014-C-0019 with Georgetown University to advance the Quality Assurance Initiative Project to meet the regulatory and legal requirements under *Evans vs. Gray*, and to authorize payment for the goods and services received and to be received under Modification Nos. 4 and 5.

(b) By Modification No. 4, the Office of Contracting and Procurement, on behalf of the Department on Disability Services, exercised a partial option of Option Year 2 of Contract No. DCJM-2014-C-0019 to advance the Quality Assurance Initiative Project to meet the regulatory and legal requirements under *Evans vs. Gray* for the period from September 1, 2016, to February 28, 2017, in the estimated amount of $607,424.

(c) Modification No. 5 is now necessary to exercise the remainder of Option Year 2 in the estimated amount of $607,424, and increase the total estimated amount for the period from September 1, 2016, through August 31, 2017, to $1,214,848.

(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 contract to more than $1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Georgetown University cannot be paid for goods and services provided in excess of $1 million for the contract period from September 1, 2016, through August 31, 2017.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. DCJM-2014-C-0019 with Georgetown University 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

22-26

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to approve Modification Nos. 4, 5, and 6 to Contract No. DCJM-2013-H-0007-02 with St. John's Community Services to provide occupancy-related residential expenses and services to District residents with intellectual and developmental disabilities, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. DCJM-2013-H-0007-02 Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification Nos. 4, 5, and 6 to Contract No. DCJM-2013-H-0007-02 with St. John's Community Services to provide occupancy-related residential expenses and services to District residents with intellectual and developmental disabilities, and to authorize payment for the goods and services received and to be received under the modifications.

(b) By Modification No. 4, dated November 30, 2016, the Office of Contracting and Procurement ("OCP"), on behalf of the Department on Disability Services, partially exercised Option Year 3 for the period from December 1, 2016, to January 31, 2017, in the not-to-exceed amount of $427,115.

(c) By Modification No. 5, dated December 22, 2016, OCP exercised another partial option, for the period February 1, 2017, to February 28, 2017, in the not-to-exceed amount of $213,557.50.

(d) Modification No. 6 is now necessary to exercise the remainder of Option Year 3 and increase the total not-to-exceed amount for the period from December 1, 2016, through November 30, 2017, to $2,562,690.03.

(e) Council approval is required because these modifications increase the contract amount to more than $1 million during a 12-month period.

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, St. John's Community Services cannot be paid for goods and services provided in excess of $1 million for the contract period December 1, 2016, through November 30, 2017.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. DCJM-2013-H-0007-02 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

22-27

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To declare the existence of an emergency with respect to the need to clarify the requirements for protecting a dog from extreme weather conditions.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Extreme Weather Protection for Animals Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to strengthen the current definition of what constitutes protection from the weather for dogs.

(b) During the weekend of January 7th, 2017, in Ward 4, the Humane Rescue Alliance ("HRA"), by law, was unable to remove the pitbull, "Momma," from a property.

(c) Ward 4 neighbors called HRA multiple times over that weekend when temperatures dropped below freezing and there appeared to be no one around taking care of the dog.

(d) HRA visited the dog numerous times throughout the weekend to monitor her well-being.

(e) The HRA determined the outdoor structure that housed the dog complied with current District law, and, therefore, HRA had no grounds to remove the dog.

(f) The accompanying emergency bill, developed in consultation with the Department of Health and HRA, aims to address the gaps in the law by defining "protection from the weather" to ensure there is not another incident like this.

(g) The new definition requires that a space protect the dog from injury, rain, sleet, snow, hail, the adverse effects of cold, physical suffering, and impairment of health and that a shelter be raised at least 4 inches from the ground, include a heat-retaining, moisture-wicking substance such as straw, and have a covered wind block.

(h) While the District's animal laws are some of the strongest in the country, the current law does not have adequate safeguards for extreme weather conditions.

(i) The emergency bill includes a penalty for failure to provide protection from the weather during emergency cold alerts.

(j) This legislation will ensure that, for duration of winter, there will be safeguards in place until a permanent version can be enacted.

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 Extreme Weather Protection for Animals Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-9

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize, honor, and express the Council of the District of Columbia's overwhelming gratitude to Jack Requa, Executive Managing Officer for the Washington Metropolitan Area Transit Authority, for his untiring dedication and service to the residents of the District of Columbia on the occasion of his retirement, and to declare January 5, 2017, as "Jack Requa Day" in the District of Columbia.

WHEREAS, Jack Requa was twice called upon by the Washington Metropolitan Area Transit Authority ("WMATA") Board of Directors to serve as Interim General Manager/Chief Executive Officer during particularly challenging times for the agency from November 2006 to January 2007 and from January 2015 to November 2015, when his leadership was critical to providing stability to the organization;

WHEREAS, Jack Requa has been the Executive Managing Officer of WMATA since July 2016, after having served as Acting Chief Operating Officer since 2016;

WHEREAS, Jack Requa served in progressively senior roles in the Metrobus division from 1998 to 2015, including 9 years as Chief Operating Officer for Metrobus from 1998 to 1997, and ultimately serving as the head of the division as Assistant General Manager of Bus Service, where he was responsible for the operation and maintenance of 1,500 buses, in 10 garages and 2 shops, 3,600 employees, and an operating budget of $293 million;

WHEREAS, Jack Requa also served as Assistant General Manager, Operations Service, where he was responsible for the maintenance of WMATA facilities, elevators, and escalators, engineering and project management, customer service, planning training, and parking; and

WHEREAS, before coming to Washington, D.C., Jack Requa was Director of Bus Service for the Massachusetts Bay Transportation Authority in Boston, and, additionally, he has held senior management positions with transit authorities in Houston, St. Louis, Everett, Washington, and Saudi Arabia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Jack Requa Retirement Recognition Resolution of 2017".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes Jack Requa for his stellar service to the residents of and visitors to the District of Columbia, extends its sincere best wishes, and declares January 5, 2017, as "Jack Requa Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-10

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize and honor the life and contributions of Dr. Gladys Whitworth Bray.

WHEREAS, Dr. Gladys Whitworth Bray was born in Winston-Salem, North Carolina on September 2, 1933 to Handy and Ella Whitworth, and the family worshipped at the Mount Zion Baptist Church in their hometown;

WHEREAS, Dr. Gladys Whitworth Bray held her parents' emphasis on education as a lifelong, personal calling;

WHEREAS, Dr. Gladys Whitworth Bray, after completing high school, furthered her education and received an undergraduate degree in Biology at North Carolina College (North Carolina Central University), a master's degree in Science Education from Fisk University in 1964 and an earned a Doctorate in Education from The Catholic University of America in 1982, where her dissertation was "The Effects of Affective and Confluent Drug Education on Risk-Taking Attitudes of Inner City Eighth Grade Students;

WHEREAS, Dr. Gladys Whitworth Bray joined the Alpha Kappa Alpha Sorority, Incorporated and participated in many of its civic and charitable activities;

WHEREAS, Dr. Gladys Whitworth Bray, after graduating from college, taught at the Robert Smalls School in Beaufort, South Carolina;

WHEREAS, Dr. Gladys Whitworth Bray relocated to Washington, D.C. and continued teaching, including working as a classroom teacher and education support professional at the Duke Ellington School of the Arts/Western High School for more than 30 years, and holding other critical roles such as biology teacher and Science Department Chairman, procurement officer, Substance Abuse Prevention Coordinator, and Tutorial Program Coordinator;

WHEREAS, Dr. Gladys Whitworth Bray attended the New School of Afro-American Thought in the mid-1960s, an experience that catalyzed her desire to teach children their cultural heritage;

ENROLLED ORIGINAL

WHEREAS, Dr. Gladys Whitworth Bray established the East of the River Community Arts Program in 1981 that provided summer cultural arts programs in Ward 7, including public housing communities, and featured many local artists as interns and teachers over the years;

WHEREAS, Dr. Gladys Whitworth Bray, motivated by her firm belief in "Prevention through the Arts," created the East of the River Boys and Girls Steelband in 1993, a unique year-round youth arts training and performance program that provides instruction in steel pan music during after-school, Saturday sessions and a summer camp, and as a result, empowered more than 320 youths to learn steel pan music, gain cultural education and life skills, record 2 albums, take advantage of opportunities to travel regionally and internationally with the band, including visits to Trinidad and Tobago, the Gullah Festival in South Carolina, the Cherry Blossom Festival, the Kennedy Center, Smithsonian Folk Life Festival, Wolf Trap Performing Arts Center and the 1996 Olympic Games, and win several accolades, including the First Place Mayor's Arts Award for Emerging Artists, the President's Committee on the Arts and Humanities Certificate of Excellence, and second place at the Apollo Theater's Amateur Night;

WHEREAS, Dr. Gladys Whitworth Bray was also an active member of several community organizations, including the Far East Kiwanis Club, Fairfax Village Community Association, Ward 7 Education Council, the Ward 7 Democrats, receiving the Ward 7 Democrat of the Year award, the Washington Teachers Union, and Union Temple Baptist Church in Washington, D.C.; and

WHEREAS, Dr. Gladys Whitworth Bray departed into rest on January 3, 2017, leaving to cherish her memory a host of family members, relatives, and friends.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Dr. Gladys Whitworth Bray Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and honors Dr. Gladys Whitworth Bray for her tireless work, personal sacrifices and life-long contributions as a concerned public servant to the education and well-being of the youth in Ward 7 and the District of Columbia and to the betterment of the District.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-11

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize Mary E. Moss, in celebrating her 100th birthday, and to declare February 9, 2017, as "Mary E. Moss Day" in the District of Columbia.

WHEREAS, Mary E. Moss has resided at 229 14th Place, N.E., Washington, D.C. for over 70 years;

WHEREAS, Mary E. Moss has been a pillar in her community and an outstanding Ward 6 neighbor;

WHEREAS, Mary E. Moss is a proud retired worker from the federal government;

WHEREAS, Mary E. Moss is a world traveler, who has had the wonderful opportunity to travel to each of the 50 states in the United States and to many countries throughout the various continents; and

WHEREAS, the District of Columbia and Council of the District of Columbia are privileged and honored to recognize Mary E. Moss on this celebration of her 100th birthday.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Mary E. Moss Day Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes Mary E. Moss for her commitment to the District of Columbia, and declares February 9, 2017, as "Mary E. Moss Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-12

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize The Clash, a band from the United Kingdom, for its notable and important contributions to music, and to declare February 7, 2017, as "International Clash Day" in the District of Columbia.

WHEREAS, legendary United Kingdom band The Clash formed in 1976, establishing its unique sound combining punk with reggae, dub, funk, and ska, behind socially conscious lyrics;

WHEREAS, throughout its career, The Clash used the power of music to share messages of peace, unity, anti-imperialism, anti-racism, poverty awareness, and freedom of expression;

WHEREAS, The Clash chose to play The Ontario Theatre in Washington, D.C. on February 15, 1979, as the 6th show of its very first North American tour, and returned to The Lisner Auditorium on April 8, 1984, further endearing the band to a legion of fans that would go on to proclaim it "the only band that matters";

WHEREAS, The Clash inspired socially conscious bands such as Bad Brains to form in order to advocate for disadvantaged people in their city;

WHEREAS, the Council of the District of Columbia affirms that this city is a Hate Free Zone, committed to a set of values including inclusivity, tolerance, diversity, and hope;

WHEREAS, the civically and globally minded District of Columbia wishes to join with other like-minded cities across the globe in celebrating International Clash Day; and

WHEREAS, the District of Columbia adheres to the belief in the immortal words of Joe Strummer: "People can change anything they want to, and that means everything in the world."

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "International Clash Day Recognition Resolution of 2017".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes The Clash for its notable and important contributions to music, and declares February 7, 2017, as “International Clash Day” in the District of Columbia .

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-13

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize DC Tenants Advocacy Coalition on the occasion of its 25th anniversary.

WHEREAS, DC Tenants Advocacy Coalition ("TENAC") is a nonprofit, public service organization dedicated exclusively to tenant interests, tenant rights, and support for rent control in the District of Columbia, and is the only city-wide tenants organization representing all tenants in the District of Columbia;

WHEREAS, TENAC's mission is to assist tenants through education, legal information, and lobbying for tenant legislation, especially affordable housing and tenants' rights;

WHEREAS, TENAC prepares legislative proposals on behalf of tenants, and testifies frequently before the Council on matters of vital interest to tenants;

WHEREAS, TENAC believes that tenants in unorganized rental buildings are open for abuse by landlords, rental agents, and owners and helps tenants to form tenant associations throughout the city;

WHEREAS, TENAC is the legal successor to the Tenants' Organizations Political Action Committee;

WHEREAS, TENAC has been serving tenants for over 15 years, and, of critical importance, has been its TENAC hotline, which answers landlord/tenant questions; and

WHEREAS, Jim McGrath serves as the Chairman of TENAC, and his steadfast leadership is without contestation.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "DC Tenants Advocacy Coalition (TENAC) 25th Anniversary Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and honors Jim McGrath, and all of TENAC's front liners and supporters, whose collective efforts on behalf of the residents of the District of Columbia are responsible for TENAC's tremendous success.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-14

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To honor and congratulate Peter D. Rosenstein on the occasion of his 70th birthday, and to declare January 31, 2017, as "Peter D. Rosenstein Day" in the District of Columbia.

WHEREAS, Peter D. Rosenstein was born and educated in New York and began his career as a teacher in the New York City School System;

WHEREAS, Peter D. Rosenstein spent many years in government as an aide to Congresswoman Bella S. Abzug (D-NY), Coordinator of local government for the city of New York, Mayor's Office, and Executive Director of the White House Conference on Handicapped Individuals/Implementation Unit for the Carter Administration;

WHEREAS, Peter D. Rosenstein has 34 years of experience as chief executive officer of national associations including the American Academy of Physician Assistants, Accounts for the Public Interests, National Association for Gifted Children, and the American Academy of Orthotists and Prosthetists;

WHEREAS, Peter D. Rosenstein founded ARTS in ACTION, an organization focused on raising funds for HIV/AIDS education and care, served on the Community Board of Whitman Walker Health, served 5 years as Vice-Chair of the Board of Trustees of the University of the District of Columbia, and co-founded the Campaign for All DC Families, serving as its president to coordinate the fight for marriage equity in the District of Columbia;

WHEREAS, Peter D. Rosenstein chaired the issue committees and wrote the platforms for Mayor Anthony Williams and Mayor Adrian Fenty, has worked on numerous political campaigns, both locally and nationally, and served on the boards of many nonprofit organizations;

WHEREAS, Peter D. Rosenstein has presented on various issues to groups across the nation and has appeared on television as a commentator on issues including LGBT rights, politics, and education; and

ENROLLED ORIGINAL

WHEREAS, Peter D. Rosenstein is a columnist for the Washington Blade and the Georgetown Dish and a regulator contributor to the Huffington Post writing on politics, local government, healthcare, the media, LGBT issues, and the theater.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Peter D. Rosenstein Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia honors and congratulations Peter D. Rosenstein on the celebration of his 70th birthday, and declares January 31, 2017, as "Peter D. Rosenstein Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-15

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize and honor Major General Errol R. Schwartz for his outstanding dedication and service to the District of Columbia as the Commanding General of the District of Columbia National Guard.

WHEREAS, Major General Errol R. Schwartz was born in Georgetown, Guyana, and travelled to the United States to pursue higher education;

WHEREAS, Major General Errol R. Schwartz attended the former University of the District of Columbia, Federal City College, in 1980 and received a Bachelor of Science in Electrical Engineering;

WHEREAS, Major General Errol R. Schwartz attended Central Michigan University in 1984 and received a Master of Science in Business Management;

WHEREAS, Major General Errol R. Schwartz attended the National Defense University, receiving a Master of Science in National Security Strategy in 2000 and the CAPSTONE course in 2006;

WHEREAS, Major General Errol R. Schwartz began his military career when he enlisted in the District of Columbia Army National Guard in 1976;

WHEREAS, Major General Errol R. Schwartz's assignments included a myriad of details in the District of Columbia;

WHEREAS, Major General Errol R. Schwartz's career from 1979 to 2008 is marked by exceptional leadership, including several promotions such as Second Lieutenant Army National Guard in 1979, First Lieutenant Army National Guard in 1982, Captain Army National Guard in 1984, Major Army National Guard in 1989, Lieutenant Colonel Army National Guard in 1995, Colonel Army National Guard in 1999, and Brigadier General Army National Guard in 2005;

WHEREAS, Major General Errol R. Schwartz was appointed to serve as Commanding General of the District of Columbia National Guard by President George W. Bush in 2008 and remained in the position through President Barack Obama's 2 terms;

ENROLLED ORIGINAL

WHEREAS, Major General Errol R. Schwartz has been responsible for operational readiness and command and control of the District of Columbia Army and Air National Guard units with an authorized strength of 2,700 soldiers and airmen;

WHEREAS, Major General Errol R. Schwartz has received numerous awards, including: the Legion of Merit (with 1 Bronze Oak Leaf Cluster), the Meritorious Service Medal (with 1 Bronze Oak Leaf Cluster), the Army Commendation Medal (with 1 Bronze Oak Leaf Cluster), the Army Achievement Medal (with 1 Bronze Oak Leaf Cluster), the Army Reserve Component Achievement Medal (with 1 Silver and 1 Bronze Oak Leaf Cluster), the National Defense Service Medal (with Bronze Star Device), the Armed Forces Service Medal Armed Forces Reserve Medal (with Gold Hour Glass), and the Army Service Ribbon Army Reserves Component Overseas Training Ribbon (with Numeral 2);

WHEREAS, Major General Errol R. Schwartz has served as the Commanding General of the Capital Guardian Youth Challenge Academy to teach District youth responsible citizenship, academic excellence, life-coping skills, service to the community, health and hygiene, job skills training, leadership, and physical education;

WHEREAS, Major General Errol R. Schwartz serves on the Board of Trustees for the University of the District of Columbia;

WHEREAS, Major General Errol R. Schwartz previously served as the Chair of the Army Reserve Forces Policy Committee advising the Secretary of the Army;

WHEREAS, Major General Errol R. Schwartz was a member of the Board of Directors of the National Guard Association of the United States;

WHEREAS, Major General Errol R. Schwartz served as the Director of the National Security Incident Response Center at Fort George G. Meade, Maryland; and

WHEREAS, Major General Errol R. Schwartz is married to the former Norma Lawrence, and they have 3 children: Duane, Jason, and Shauna.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Major General Errol R. Schwartz Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia recognizes and honors Major General Errol R. Schwartz for his dedication to the District of Columbia National Guard, the residents of and visitors to the District of Columbia, and the United States of America.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-16

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize and honor Sandy Barrett Hassan, a resident of Ward 5, for 46 years of quilting and her contribution to the National Museum of African American History and Culture.

WHEREAS, Sandy Hassan is a native Washingtonian and began quilting in 1970 by making quilts for her daughters and friends;

WHEREAS, Sandy Hassan, in 1984, joined the Daughters of Dorcas, a DC Chapter of the National Quilting Association;

WHEREAS, Sandy Hassan is currently a member of Uhuru Quilters and Wee Bee, a 21-member organization, where members share their creative spirit and basic sewing and quilting skills;

WHEREAS, Sandy Hassan was commissioned by the DC Historian to make pictorial quilt blocks commemorating historic sites for the DC Bicentennial celebration;

WHEREAS, Sandy Hassan's art has been displayed in galleries and museums throughout the metropolitan area, including the Smithsonian and the Sumner Museums;

WHEREAS, Sandy Hassan's quilts are featured in 2 books, *Communion of the Spirits* by Roland Freeman and *Spirits of the Cloth* by Carolyn Mazloomi;

WHEREAS, Sandy Hassan was featured in a nationally televised segment of B. Smith Style where she noted that each quilt or piece is related to life – forgiveness, passion, freedom, justice;

WHEREAS, Sandy Hassan's quilts are currently sold in the gift shop of the new Smithsonian Museum of African American History and Culture;

WHEREAS, Sandy Hassan was a member of the African Heritage Dances and Drummers performance troupe and sang and recorded with *In Process*, an a cappella ensemble that grew out of a workshop with the renowned *Sweet Honey in the Rock*; and

ENROLLED ORIGINAL

WHEREAS, Sandy Hassan lives in Ward 5, is married to jazz educator and WPFW radio announcer, Rusty Hassan, and has 2 daughters and 2 grandchildren.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sandy Hassan Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and honors Sandy Barrett Hassan, for her extraordinary artistry, 46 years of quilting, and her contribution to the Smithsonian Museum of African American History and Culture

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-17

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize and honor Bruce DuPuyt for his award-winning dedication and service to the residents of the District of Columbia and the political journalism community.

WHEREAS, Bruce DePuyt graduated in 1984 from the University of Maryland, where he worked at the college radio station calling women's basketball;

WHEREAS, Bruce DePuyt was a reporter and anchor at WVIR in Charlottesville, Virginia, before he arrived at News Channel 8, where he produced an award-winning weekly talk show, "21 This Week" on "Cable 21" in Montgomery County, Md. and won a Cable Ace Award;

WHEREAS, Bruce DePuyt was named 'Best TV Personality' by the Washington Blade 2013;

WHEREAS, Washington City Paper readers named Bruce DePuyt best newsmaker;

WHEREAS, Bruce DePuyt received the Cronkite Award from the University of Southern California Annenberg;

WHEREAS, Bruce DePuyt received the Pillar of Faith Award from Howard University School of Divinity;

WHEREAS, Bruce DePuyt has demonstrated an unparalleled dedication to his church and community; and

WHEREAS, since 2002, Bruce DePuyt has demonstrated an unparalleled work ethic, as the host of "NewsTalk," proving his dedication with over 3,300 shows and more than 11,000 guests.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Bruce DePuyt Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes Bruce DePuyt for his stellar service to the field of political journalism, extends its sincere best wishes, and declares February 2, 2017, as "Bruce DePuyt Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-18

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize and commemorate the legacy of Harriet Tubman, the abolitionist, heroine, and Underground Railroad conductor, and to declare March 10, 2017 as "Harriet Tubman Day" in the District of Columbia.

WHEREAS, Harriet Tubman was born Araminta Harriet Ross to enslaved parents in Maryland in 1820, and successfully escaped the bondage of slavery in 1849;

WHEREAS, after escaping slavery in 1849, Harriet Tubman made 19 trips along the eastern coast of the United States and into Canada to rescue hundreds of slaves from slavery;

WHEREAS, Harriet Tubman risked her life and freedom and returned many times to rescue both family members and other slaves from the plantation system;

WHEREAS, Harriet Tubman led hundreds to freedom in the north as the most famous "conductor" on the Underground Railroad, an elaborate network of safe houses organized for that purpose;

WHEREAS, Harriet Tubman became an eloquent and effective speaker on behalf of the movement to abolish slavery;

WHEREAS, Harriet Tubman contributed to the Union cause during the Civil War, serving as a cook, nurse, scout, and spy;

WHEREAS, on June 2, 1863, Harriet Tubman, under the command of Union Colonel James Montgomery, led 150 black Union soldiers in the Combahee River Raid, which resulted in the liberation of 756 slaves in South Carolina;

WHEREAS, following the Civil War, Harriet Tubman focused her efforts on the women's rights movement, to promote women's suffrage;

ENROLLED ORIGINAL

WHEREAS, Harriet Tubman continued to care for African Americans through the establishment of the Harriet Tubman Home for the Aged in 1908; and

WHEREAS, Harriet Tubman died in Auburn, New York, on March 10, 1913, leaving a legacy that continues to inspire all people who cherish freedom.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Harriet Tubman Day Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and celebrates Harriet Tubman's life for her extraordinary courage and commitment to freedom.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-19

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize the Metropolitan Police Department, the Fire and Emergency Medical Services Department, the Office of Unified Communications, the Homeland Security and Emergency Management Agency, and the District of Columbia National Guard for their outstanding performance during the 2017 Presidential Inauguration.

WHEREAS, the Metropolitan Police Department ("MPD"), the Fire and Emergency Medical Services Department ("FEMS"), the Office of Unified Communications ("OUC"), the Homeland Security and Emergency Management Agency ("HSEMA"), and the District of Columbia National Guard ("DCNG") performed with great distinction during the 10 official inaugural events from January 19, 2017, to January 21, 2017;

WHEREAS, the members of MPD, FEMS, OUC, HSEMA, and DCNG worked long hours to ensure that the residents of the District of Columbia and visitors to the Inauguration would be safe, secure, and enjoy the Inaugural experience, forgoing the opportunity to spend time with their families;

WHEREAS, MPD officers in the police districts patrolled the city streets for 12-hour stretches to ensure appropriate staffing, giving up meal breaks to respond to calls for service and protect District residents;

WHEREAS, outside of the downtown perimeter, MPD officers provided protection at transportation centers and watched over thoroughfares to ensure that all visitors and residents were able to safely traverse the city;

WHEREAS, OUC received 3,320 911 calls on January 20 and 4,070 911 calls on January 21;

WHEREAS, OUC received 1,458 311 calls on January 20, with 699 service requests entered, and 1,102 311 calls on January 21, with 497 service requests entered;

WHEREAS, FEMS responded to more than 854 calls for service on January 20, a 50% greater response than on an average day;

ENROLLED ORIGINAL

WHEREAS, FEMS responded to more than 229 emergency calls on the National Mall, of which more than 94 resulted in transportation to area hospitals;

WHEREAS, HSEMA coordinated the Inauguration planning activities of 68 District, federal, and local government agencies, non-governmental organizations, and private sector entities;

WHEREAS, HSEMA maintained operational command of the Emergency Operations Center from 6:00 a.m. on Thursday, January 19, through Saturday, January 21, at 6 p.m. to ensure information-sharing, coordination, and communications with National Capital Region jurisdictions;

WHEREAS, the District of Columbia National Guard had more than 2,000 National Guard Soldiers and Airmen providing support for the Inaugural festivities;

WHEREAS, an additional 6,000 National Guard members from 41 states and 3 territories supported our Guard, providing medical support, consequence management planning and expertise, logistics support, military working dogs, and ceremonial support through the Armed Forces Inaugural Committee; and

WHEREAS, the District's first responders continually provide District of Columbia residents and visitors with high-quality and professional service.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Presidential Inauguration Excellence in Duty Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia recognizes and honors the Metropolitan Police Department, the Fire and Emergency Medical Services Department, the Office of Unified Communications, the Homeland Security and Emergency Management Agency, and the District of Columbia National Guard for their excellence in duty during the 2017 Presidential Inauguration.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-20

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 7, 2017

To recognize Washington Performing Arts as a supporter and nurturer of performing arts and their art forms, to congratulate Washington Performing Arts on the occasion of its 50th anniversary, and to declare March 11, 2017, as "Washington Performing Arts Day" in the District of Columbia.

WHEREAS, Washington Performing Arts has created profound opportunities for connecting the community to artists, in both education and performance;

WHEREAS, through live Washington Performing Arts events in venues that span the landscape of the District of Columbia metropolitan area, the careers of emerging artists are guided, and established artists who have a close relationship with local audiences are invited to return;

WHEREAS, Washington Performing Arts is one of the leading presenters in the nation and its inherent belief in the complete spectrum of the arts is revealed in performances of the highest quality, including classical music, jazz, gospel, contemporary dance, international music, and art forms;

WHEREAS, Washington Performing Arts education programs in the schools and beyond are a hallmark of the institution; and

WHEREAS, Washington Performing Arts has been honored for its work, having received Mayor's Arts Awards for Outstanding Contribution to Arts Education (2015) and Excellence in Service to the Arts (2012), and was honored by President Barack Obama with a 2012 National Medal of Arts (becoming only the fourth District of Columbia-based arts group and the first arts presenter of its kind to be so honored);

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Washington Performing Arts Recognition Resolution of 2017".

Sec. 2. The Council of the District of Columbia commends Washington Performing Arts for its dedication to the arts and sharing lifelong opportunities to deepen cultural knowledge, enrich lives, and expand understanding and compassion for the world through the universal

ENROLLED ORIGINAL

language of the arts, and declares March 11, 2017, as “Washington Performing Arts Day” in the District of Columbia.

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

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

B22-115	H Street, N.E., Retail Priority Area Clarification Amendment Act of 2017 Intro. 2-7-17 by Councilmembers Gray and McDuffie and referred to the Committee on Business and Economic Development
B22-116	Brishell Jones Way Designation Act of 2017 Intro. 2-8-17 by Chairman Mendelson and referred to the Committee of the Whole
B22-117	Walter Alley Designation Act of 2017 Intro. 2-14-17 by Councilmember Allen and referred to the Committee of the Whole

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 22-53, Glick Court Designation Act of 2017

Bill 22-56, Duvall Court Designation Act of 2017

Bill 22-59, McGill Alley Designation Act of 2017

Bill 22-91, Ebenezer Court Designation Act of 2017

Bill 22-116, Brishell Jones Way Designation Act of 2017

And

Bill 22-117, Walter Alley Designation Act of 2017

on

Thursday, March 23, 2017
12:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 22-53**, the "Glick Court Designation Act of 2017"; "**Bill 22-56**, the "Duvall Court Designation Act of 2017"; **Bill 22-59**, the "McGill Alley Designation Act of 2017;" **Bill 22-91**, the "Ebenezer Court Designation Act of 2017"; **Bill 22-116**, the "Brishell Jones Way Designation Act of 2017"; and **Bill 22-117**, the "Walter Way Designation Act of 2017." The hearing will be held at 12:00 p.m. on **Thursday, March 23, 2017** in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of **Bill 22-53** is to officially designate the alley in Square 442 that runs east/west between the 600 block of Rhode Island Avenue, N.W., and S Street, N.W., and the 1700 block of 6th and 7th Streets, N.W., in Ward 6, as Glick Court. The stated purpose of **Bill 22-56** is to officially designate the alleyway that runs east/west between the 400 block of 15th and 16th Streets, S.E., and the 1500 block of D and E Streets, S.E., in Ward 6, as Duvall Court. The stated purpose of **Bill 22-59** is to officially designate the alley in Square 376, parallel to F Street, N.W. and G Street, N.W. between 9th Street, N.W. and 10th Street, N.W., in Ward 2, as McGill Alley to honor the prolific 19th Century Washington architect, James McGill. The stated purpose of **Bill 22-91** is to officially designate the alley in Square 1089 that runs east/west between the 300 block of the 16th and 17th Streets, S.E., and the 1600 blocks of C and D Streets, S.E., in Ward 6, as Ebenezer Court. The stated purpose of **Bill 22-116** is to symbolically designate the unit block of Danbury Street, S.W., as Brishell Jones Way. The stated purpose of **Bill 22-117** is to officially designate the alleyway that runs east/west in Square 756, between Massachusetts

Avenue, N.E., and C Street, N.E., in Ward 6, as Walter Way in recognition of the family that owned the William Walter's Son Carriage Repository and Coach Shop in that alleyway at the turn of the last century.

The Committee originally held a hearing on the designations of "McGill Alley" and "Walter Way" on November 8, 2016 under Bill 21-765 and Bill 21-476, respectively. However, Bill 21-765 and Bill 21-476 did not specify the designation as an official naming. Thus, Bill 22-59 and Bill 22-117 have been introduced and the Committee is holding a new hearing pursuant to the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-204.01 *et seq.*). An official naming typically involves the designation of postal addresses and the primary entrance for residences or offices.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or to call Sydney Hawthorne, Legislative Counsel at (202) 724-7130, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by close of business **March 21, 2017**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on March 21, 2017 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at noon on Monday, April 3, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE

The District Department of Transportation's Second Proposed Vision Zero Regulations

March 3rd at 1:00 PM
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, March 3, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public oversight roundtable on the second iteration of the District Department of Transportation's Vision Zero regulations. The roundtable will begin at 1:00 PM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the roundtable is to discuss and to hear testimony regarding the District Department of Transportation's proposed Vision Zero regulations, which were issued for the second time on January 20, 2017. These regulations would, among other things, raise the fines for a number of traffic offenses; create several new traffic offenses; and reduce the maximum speed on roadways adjacent to school facilities and grounds serving youth, playgrounds, recreational facilities, pools, athletic fields, or senior centers. The proposed regulations are available at: http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?NoticeID=6369134.

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 March 17, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 22 - 08: Request to reprogram $2,738,739 of Fiscal Year 2017 Special Purpose Revenue funds budget authority within the Department of Housing and Community Development (DHCD) was filed in the Office of the Secretary on February 7, 2017. This reprogramming ensures that DHCD will be in compliance under the current grant agreement with the Greater Washington Urban League and be able to provide critical services to first-time homebuyers in the District Columbia.

RECEIVED: 14 day review begins February 8, 2017

Reprog. 22 - 09: Request to reprogram $150,000 of Pay-As-You-Go (Paygo) Capital Funds budget authority and allotment from the Department of General Services (DGS) to the Local funds budget of DGS was filed in the Office of the Secretary on February 7, 2017. This reprogramming is needed for improvements to the Department of Parks and Recreation (DPR) central headquarters office.

RECEIVED: 14 day review begins February 8, 2017

Reprog. 22 - 10: Request to reprogram $1,250,000 of Fiscal Year 2017 Special Purpose Revenue funds budget authority within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on February 7, 2017. This reprogramming ensures that DOEE is able to issue contracts for the implementation of stormwater management initiatives.

RECEIVED: 14 day review begins February 8, 2017

Reprog. 22 - 11: Request to reprogram $19,100 of Pay-As-You-Go (Paygo) Capital Funds budget authority and allotment from the Department of General Services (DGS) to the Local funds budget of DGS was filed in the Office of the Secretary on February 7, 2017. This reprogramming is needed to fund equipment for the Ballou High School Athletic Field Modernization project.

RECEIVED: 14 day review begins February 8, 2017

Reprog. 22 - 12: Request to reprogram $115,000 of Paygo Capital funds budget authority and allotment from the Washington Metropolitan Area Transit Authority (WMATA) to the Office of the Chief Medical Examiner (OCME) was filed in the Office of the Secretary on February 7, 2017. This reprogramming is needed to purchase vehicles that perform vital functions of OCME; the vehicles will replace existing fleet that is approaching or past their useful lifecycles.

RECEIVED: 14 day review begins February 8, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
2/24/2017

Notice is hereby given that:

License Number: ABRA-101583 **License Class/Type: C Restaurant**

Applicant: Bohemian Restaurants, LLC

Trade Name: Bistro Bohem

ANC: 6E02

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

1840 6TH STREET NW, WASHINGTON, DC 20001

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

4/10/2017

A HEARING WILL BE HELD ON:

4/24/2017

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

ENDORSEMENT(S): Entertainment, Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 am - 2 am	10 am - 2 am	6 pm - 2 am
Monday:	7 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Tuesday:	7 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Wednesday:	7 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Thursday:	7 am - 2 am	11:30 am - 2 am	6 pm - 2 am
Friday:	7 am - 3 am	11:30 am - 3 am	6 pm - 3 am
Saturday:	7 am - 3 am	10 am - 3 am	6 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	February 17, 2017
Protest Petition Deadline:	April 3, 2017
Roll Call Hearing Date:	April 18, 2017
License No.:	ABRA-093723
Licensee:	Dean & Deluca of Georgetown, Inc.
Trade Name:	Dean & Deluca
License Class:	Retailer's Class "D" Restaurant
Address:	3276 M Street, N.W.
Contact:	Andrew J. Kline, Esq.: (202) 686-7600

WARD 2 ANC 2E SMD 2E05

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 April 18, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests to increase the seating capacity of the Summer Garden by 50, for a new total seating capacity of 100.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND OUTSIDE SUMMER GARDEN
Sunday through Thursday 10 am – 11 pm, Friday & Saturday 10 am – 12 am

HOURS OF ENTERTAINMENT INSIDE PREMISES
Sunday through Thursday 6 pm – 11 pm, Friday & Saturday 6 pm – 12 am

HOURS OF ENTERTAINMEMENT OUTDOORS IN SUMMER GARDEN
Sunday through Thursday 10 am – 11 pm, and Friday & Saturday 10 am – 12 am

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

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

Case No. 17-04: The Smithsonian Quadrangle
950 and 1050 Independence Avenue SW
Parcel 316, Part of Lot 6
Affected Advisory Neighborhood Commission: 2C

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

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

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

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

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

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

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

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

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

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

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

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

Case No. 17-06: Federal Office Building No. 6
400 Maryland Avenue SW
Square 492, Lot 116
Applicant: U.S. General Services Administration
Affected Advisory Neighborhood Commission: 6D

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

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

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

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

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies

allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board (DC PCSB) hereby gives notice of KIPP DC Public Charter School's (KIPP DC PCS) request to amend its enrollment ceiling and replicate its program to add two new PK3-8 schools, and a new 9-12 school. KIPP DC PCS requests an enrollment ceiling increase from its current total of 6,584 students to a total of 9,554 students over the next nine years. By increasing its enrollment ceiling, KIPP DC PCS will be able to open a PK3-8 academy in Ward 7, and a High School in the Hillcrest neighborhood of DC. They will also be able to attain a turnaround school, if one was an option.

A public hearing regarding this item will be held on March 20, 2017 at 6:30 p.m.; a vote will be held on April 24, 2017 at 6:30 p.m. To submit public comments, you may do so by one of the actions below. All comments must be submitted on or before March 20, 2017 at 4:00pm. For questions, please contact Laterica (Teri) Quinn, Equity and Fidelity Specialist, at 202-328-2660 or lquinn@dcpcsb.org.

Submitting Public Comment:

1. Submit a comment by one of the following actions:
    a. E-mail: public.comment@dcpcsb.org
    b. Postal mail: Attn: Public Comment, DC Public Charter School Board, 3333 14th ST. NW., Suite 210, Washington, DC 20010
    c. Hand Delivery/Courier*: Same as postal address above
    d. Phone: 202-328-2660

2. Sign up to testify in-person at the public hearing on March 20, 2017, by emailing a request to public.comment@dcpcsb.org by no later than 4 p.m. on Thursday, March 16, 2017.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, APRIL 5, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD SIX

19467
ANC-6C

Application of Lori Steenhoek, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under Subtitle E § 5201, from the rear yard requirements of Subtitle E § 306.1, and the nonconforming structure requirements of Subtitle C § 202.2, and variances from the building height requirements of Subtitle E §§ 303.1 and 5203, and the lot occupancy requirements of Subtitle E § 304.1, to construct a third-story addition and fourth-story mezzanine to an existing two-story, one-family dwelling in the RF-1 Zone at premises 638 Orleans Place N.E. (Square 855, Lot 260).

PLEASE NOTE:

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

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

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

441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

Do you need assistance to participate?

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

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

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

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

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

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

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

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

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2016 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 928 (Electronic Payments Initiative) to Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This rule establishes guidelines for the enrollment of providers and suppliers serving District Medicaid beneficiaries in the Electronic Funds Transfer/Automated Clearing House (EFT/ACH) program.

Under 42 C.F.R. § 455.452, states can establish provider screening methods that are more stringent than the minimum requirements set forth in the federal regulations governing provider screening and enrollment. In accordance with this provision, DHCF is requiring its providers to participate in the EFT/ACH program, a federally regulated network for the processing of electronic payments, in order to become enrolled or continue to be enrolled as a D.C. Medicaid provider or supplier. Participation in the EFT/ACH program will facilitate faster access to Medicaid payments, ensure accurate delivery of payments to D.C. Medicaid providers and suppliers, eliminate reliance on the Postal Service, and decrease the possibility of lost paper checks. Furthermore, participation in the EFT/ACH program by Medicaid providers and suppliers will facilitate the use of electronic payment systems for financial transactions, as detailed in 27 DCMR § 1400. However, this rule does not require the electronic submission of claims.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 15, 2016 at 63 DCR 009536. No comments were received, and no substantive changes have been made for these final rules. One technical change was made in § 928.2 to update the effective date of the requirements contained in these rules for prospective Medicaid providers and suppliers. These rules were adopted by the Director on February 7, 2017, and shall become final upon publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

A new Section 928 is added to read as follows:

928 ELECTRONIC PAYMENTS INITIATIVE

928.1 This rule shall govern the requirements for enrollment of D.C. Medicaid providers and suppliers into the Electronic Funds Transfer /Automated Clearing House (EFT/ACH) program, a federally regulated network for the processing of electronic payments.

928.2 All prospective D.C. Medicaid providers and suppliers, except those identified in §§ 928.8 and 928.9, shall enroll in the EFT/ACH program by April 1, 2017 as a condition of execution of the D.C. Medicaid Provider Agreement.

928.3 Prospective providers and suppliers subject to the requirement of § 928.2 shall either:

(a) Provide documentation of enrollment in the EFT/ACH program with the D.C. Medicaid Provider/Supplier Application; or

(b) Submit the EFT/ACH enrollment form and all required attachments with the Application.

928.4 Prospective providers and suppliers subject to the requirement of § 928.2 who fail to meet the requirements set forth in § 928.3 shall be denied enrollment by the Department of Health Care Finance (DHCF) as D.C. Medicaid providers or suppliers.

928.5 All currently enrolled D.C. Medicaid providers and suppliers, except those identified in §§ 928.8 and 928.9, shall enroll in the EFT/ACH program by the date designated by DHCF for the individual provider or supplier in order to remain eligible for reimbursement from the D.C. Medicaid program.

928.6 DHCF shall provide written notice of the designated date for EFT/ACH program enrollment to all currently enrolled providers and suppliers subject to the requirement of § 928.5 ninety (90), sixty (60), and thirty (30) days prior to the designated date.

928.7 If a currently enrolled provider or supplier subject to the requirement of § 928.5 fails to enroll in the EFT/ACH program by the designated date, DHCF shall take action to terminate the provider or supplier's D.C. Medicaid Provider Agreement pursuant to Chapter 13 of Title 29 DCMR.

928.8 District government agencies currently enrolled as D.C. Medicaid providers or suppliers or intending to enroll as D.C. Medicaid providers or suppliers shall not be required to enroll in the EFT/ACH program.

928.9 Individuals or entities submitting the D.C. Medicaid Provider/Supplier Application for the sole purpose of obtaining reimbursement for goods or services provided on an emergency or one-time basis shall not be required to enroll in the EFT/ACH program.

928.10 DHCF may accept electronic signatures on the EFT/ACH enrollment form and all other required attachments.

928.99 DEFINITIONS

When used in this section, the following terms shall have the meanings ascribed:

Automated Clearing House - A funds transfer system governed by 31 C.F.R. Part 210 which provides for the interbank clearing of electronic entries for participating financial institutions.

Electronic Funds Transfer - The electronic transfer of money from one bank account to another, either within a single financial institution or across multiple institutions, through computer-based systems and without the direct intervention of bank staff.

Medicaid Provider/Supplier Application - The general or provider/supplier-specific application document developed by DHCF, and required in order to initiate participation as a D.C. Medicaid provider or supplier.

Provider Agreement – An official enrollment document establishing roles, responsibilities, and rights of a District Medicaid provider/supplier.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

Common Household Pet Ownership in Low-Income Public Housing Senior and/or Disabled-Only Properties

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 its adoption of the following amendments to Chapter 61 (Public Housing: Admission and Recertification) and of the repeal of Section 6211 (Pet Ownership in Public Housing) of Chapter 62 (Low Rent Housing: Rent and Lease) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to provide families in the Low-Income Public Housing program living at elderly and/or disabled-only properties the opportunity to own common household pets. Under the Urban-Rural Recovery Act of 1983, owners of federally assisted rental housing for the elderly or handicapped must permit tenants to own common household pets that are not otherwise registered as Service or Assistance Animals.

On December 23, 2016, these proposed amendments were published in the *D.C. Register* at 63 DCR 15786. During the thirty (30)-day public comment period, DCHA received 213 comments. Prior to drafting these regulations, DCHA also met with residents at each LIPH elderly and/or disabled-only property to discuss concerns and recommendations regarding pet ownership. The proposed amendments reflect the desires expressed by the LIPH residents living at senior and/or disabled-only properties as well as the comments received during the 30-day public comment period.

This rulemaking was adopted as final at the Board of Commissioners regular meeting on February 8, 2017. The final rules will become effective upon publication of this notice in the *D.C. Register*.

Chapter 62, LOW RENT HOUSING: RENT AND LEASE, of Title 14 DCMR, HOUSING, is amended as follows:

Section 6211, PET OWNERSHIP IN PUBLIC HOUSING, is repealed in its entirety.

Chapter 61, PUBLIC HOUSING: ADMISSION AND RECERTIFICATION, is amended as follows:

6126 PET OWNERSHIP IN PUBLIC HOUSING

6126.1 Pets Generally Prohibited. Except as provided in § 6126.2 and § 6126.3, pets are generally prohibited at DCHA properties. This policy does not apply to Service or Assistance Animals that reside in public housing units as a reasonable accommodation under 14 DCMR § 7409.

6126.2 Prior Pet Ownership. Residents who own a pet at any DCHA property prior to May 1, 2005 may continue to own a pet that is otherwise not prohibited under § 6126.3, provided the resident complies with the requirements of § 6126.3(a), (b), and (c). Residents who currently own a pet as of February 8, 2017, at a senior and/or disabled-only property may continue to own the pet provided they are compliant with these regulations within ninety (90) days of implementation, excluding § 6126.3(a)(5).

6126.3 Elderly-only and Disabled Housing Properties. Residents residing at these properties shall be permitted to own pets in accordance with the following provisions:

(a) Animal Limitations.

(1) Only domesticated animals that are commonly kept as household pets, such as a dogs, cats, birds, rodents, fish, or turtles, are permitted. The term "common household pet" shall not include reptiles, other than turtles.

(2) A resident is permitted to own a maximum of two (2) pets. A reasonable number of fish or other animals appropriately kept in an aquarium or cage shall be considered one (1) pet. The two (2) pet maximum does not include Service or Assistance Animals that reside in the unit.

(3) Aquariums that do not exceed twenty (20) gallons will be permitted if properly registered.

(4) Residents with more than one (1) registered aquarium must keep the aquariums in separate rooms.

(5) Residents may not own a dog that is expected to exceed forty (40) pounds and twenty (20) inches in height at maturity. Dogs expected to exceed this weight and height at maturity are only permitted if they are:

(i) Approved as a Service or Assistance Animal in accordance with Chapter 74 of this title as a reasonable accommodation; or

(ii) Otherwise are eligible under the prior ownership provisions of § 6126.2.

(b) Registration Requirements. Residents must comply with and meet the following requirements to qualify for pet ownership:

(1) Maintain good standing with their lease;

(2) Register the animal or the contents of an aquarium or cage with the property manager;

(3) Provide updated registration for the animal annually;

(4) Provide proof that the animal has been inoculated in accordance with applicable local laws;

(5) Provide proof that an animal older than six (6) months has been spayed or neutered unless the resident provides certification from a licensed veterinarian that such procedure would jeopardize the medical well-being of the pet;

(6) Pay a refundable pet ownership fee in monthly installments, limited to cats and dogs, as reflected in the DCHA Schedule of Maintenance Charges; and

(7) Execute and abide by the Pet Policy lease addendum providing for the proper care and maintenance of the animal and the unit in accordance with DCHA rules and policies. Failure to abide by the Pet Policy will be considered a violation of the lease.

(c) Ownership Responsibilities. Residents approved for pet ownership must abide by the following conditions, as well as DCHA's Pet Policy:

(1) The resident shall be responsible for paying for services related to any pet-related rodent and/or insect infestation, as well as any pet-related property damage, in their unit. The resident shall keep the apartment in a sanitary condition at all times and is responsible for keeping the surrounding areas free of pet odors, waste, and litter.

(2) The resident shall store all pet food in sealed containers.

(3) The resident shall be responsible for ensuring the rights of other residents to peace and quiet enjoyment, health, and/or safety are not infringed upon or diminished by a pet's noise, odors, waste or other nuisance.

(4) The resident shall continuously provide the proper maintenance and care for the pet.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-602.05, 1-604.01, and 1-604.06(a) (2016 Repl.)), hereby gives notice of proposed rulemaking action to adopt amendments to Chapter 1 (Organization of the Board of Elections) in Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the creation of Sections 106 and 107 is to reserve appropriate sections for future Board of Elections personnel regulations. The purpose of the creation of Section 108 is to establish an optional universal leave structure for the three statutorily defined employees of the Board of Elections: the Executive Director, the General Counsel, and the Director of Campaign Finance. By creating and permitting the option of this leave structure, the Board is allowing these statutorily defined employees to choose a leave structure that would be afforded to other agency heads serving at the pleasure of the Mayor in the Executive Service.

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

Chapter 1, ORGANIZATION OF THE BOARD OF ELECTIONS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 106, [RESERVED], is newly adopted to read as follows:

106 [RESERVED]

Section 107, [RESERVED], is newly adopted to read as follows:

107 [RESERVED]

Section 108, UNIVERSAL LEAVE, is newly adopted to read as follows:

108 UNIVERSAL LEAVE

108.1 The provisions of this section shall apply only to the employees serving in the following positions on or after January 3, 2017:

(a) Executive Director;

(b) General Counsel; and

(c) Director of Campaign Finance (Director).

108.2 For the purpose of this section, the term "qualified employee" or "qualified position" shall mean the Executive Director, General Counsel, or Director.

108.3 For the purpose of this section, the term "participating employee" shall mean any qualified employee who elects to have a universal leave account in lieu of accruing annual and sick leave.

108.4 An employee appointed to serve in an acting or interim capacity as Executive Director, General Counsel, or Director shall not become subject to the provisions of this section. If the acting Executive Director, General Counsel or Director is later hired by the Board to continue in a qualified position, the applicability of this section shall become effective as of the date of hire.

108.5 Each qualified employee may elect to have a universal leave account in lieu of accruing annual and sick leave.

108.6 On the first pay period of the leave year, each participating employee shall have his or her universal leave account credited with two hundred eight (208) hours of universal leave.

108.7 Each full biweekly pay period represents eight (8) hours of accrued universal leave.

108.8 Each participating employee hired after the first pay period of the leave year shall have his or her universal leave account credited with universal leave on a pro rata basis.

108.9 Universal leave shall be used on days on which a participating employee would otherwise work and received pay and shall be exclusive of official holidays and non-workdays established by statute or administrative order.

108.10 There shall be no charge to universal leave for absences of less than two (2) hours.

108.11 A participating employee may carry over not more than forty (40) hours of unused universal leave for use in succeeding years. Any unused universal leave hours in addition to the approved carry-over hours shall be forfeited at the end of the leave year.

108.12 Upon separation, a participating employee shall be paid for any universal leave remaining to his or her credit, less a pro-rated amount representing the portion of the universal leave that would be creditable for the remainder of the year. Payment for leave upon separation shall be at the employee's rate of pay at the time of separation.

108.13 Each participating employee serving in that role on January 3, 2017 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted. The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to this subsection, payable at the rate of pay in effect on the last day of the last pay period of the 2016 leave year.

108.14 Each participating employee appointed without a break in service to any qualified position from another position in the District government after January 3, 2017 shall have his or her accrued annual leave balance, up to a maximum of two hundred forty (240) hours, transferred to an annual leave escrow account for use at the discretion of the employee until exhausted. The employee shall be given a lump-sum payment for any annual leave in excess of the leave transferred pursuant to the subsection, payable at the rate of pay in effect immediately before his or her appointment to a qualified position.

108.15 Upon separation, a participating employee shall be paid for any annual leave remaining in the annual leave escrow account.

108.16 Each participating employee serving in that role on January 3, 2017, or each participating employee appointed without a break in service to any qualified position from another position in the District government after January 3, 2017, shall have his or her accrued sick leave balance transferred to a sick leave escrow account for use at the discretion of the employee until exhausted.

108.17 When a participating employee elects to use leave from either the annual leave escrow account or the sick leave escrow account, such usage shall only be charged for absences of more than two (2) hours.

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

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

RM-40-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 40 — DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES

and

FORMAL CASE NO. 1050, IN THE MATTER OF THE INVESTIGATION OF IMPLEMENTATION OF INTERCONNECTION STANDARDS IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under D.C. Official Code §§ 34-301, 34-302, 34-802, and 34-1516 (2001) ("D.C. Code") and in accordance with D.C. Code § 2-505,[1] hereby gives notice of its intent to amend Chapter 40 (District of Columbia Small Generator Interconnection Rules) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"). Amendments to the above referenced chapter shall take effect in not less than ninety (90) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments to Section 4000 address: (a) the enactment of the Renewable Portfolio Standard Expansion Amendment Act of 2016,[2] which increases the size of solar facilities qualified for solar renewable energy credits in D.C.; (b) the need for adding Authorization to Operate deadline as discussed in the merger commitments; (c) the evolution of best practice of interconnection of small generators over time; and (d) amendments to Institute of Electrical and Electronics Engineers ("IEEE") 1547 and the rapidly evolving nature of interconnection rules. Additionally, the proposed amendments contain several areas of significant changes, including, but not limited to the following: 1) integration of a Pre-Application report that helps developers identify more accommodating sites for installation; 2) updating several parts of the interconnection criteria; incorporating a Supplemental Review Process; 3) adding an Applicant Options Meeting prior to consideration as a Level 4 application and 4) updating the capacity size limit and other criteria for each level of review. Also, the proposed amendments introduce compressed timelines in a number of areas of the interconnection process and have incorporated a deadline for the Authorization to Operate timeline. Further, attached for comment are standard forms and agreements, which have been modified to comport with the amendments to Chapter 40.

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[1] D.C. Official Code §§ 34-301 and 302 (2001 Ed.); D.C. Official Code § 34-1516 (2001 Ed.); D.C. Official Code § 2-505 (a) (2001 Ed.) and D.C. Official Code § 34-802 (2001 Ed.).

[2] Renewable Portfolio Standard Expansion Amendment Act of 2016 was enacted July 25, 2016. *See D.C. Act A21-0466.* Renewable Portfolio Standard Expansion Amendment Act of 2016 became effective October 8, 2016.

The current Chapter 40 of Title 15 DCMR shall be repealed in its entirely, and the following amendments and new provisions shall be adopted for Chapter 40 for governing net energy metering in the District of Columbia upon the publication of the final version of these proposed rules in the *D.C. Register*. The current Chapter 40 shall remain in effect until the publication of the final version of these proposed rules.

Chapter 40, DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is repealed in its entirety.

A new Chapter 40 is proposed as follows:

CHAPTER 40 DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES

Section

4000 PURPOSE AND APPLICABILITY

4000.1 This chapter establishes the District of Columbia Small Generator Interconnection Rules ("DSGIR") which apply to facilities satisfying the following criteria:

(a) The total nameplate capacity of the small generator facility is equal to or less than fifteen (15) megawatts ("MW").

(b) The small generator facility is not subject to the interconnection requirements of PJM Interconnection.

(c) The small generator facility is designed to operate in parallel with the electric distribution system.

4001 INTERCONNECTION REQUESTS, FEES, AND FORMS

4001.1 Interconnection customers seeking to interconnect a small generator facility shall submit an interconnection request using a standard form approved by the Commission to the electric distribution company ("EDC") that owns the electric distribution system to which interconnection is sought. The EDC shall establish processes for accepting interconnection requests electronically.

4001.2 The Commission shall determine the appropriate interconnection fees, and the fees shall be posted on the EDC's website and listed in the electric utility's tariffs. There shall be no application fee for submitting Level 1 applications.

4001.3 In circumstances where standard forms and agreements are used as part of the interconnection process defined in this document, electronic versions of those forms shall be approved by the Commission and posted on the EDC's website. The EDC's interconnection application forms shall be provided in a format that allows for electronic entry of data.

4001.4 The EDC shall allow interconnection applications to be submitted through the EDC's website. The EDC shall allow electronic signatures to be used for interconnection applications.

4001.5 Interconnection customers may request an optional Pre-Application Report from the EDC to get information about the electric distribution system conditions at their proposed Point of Interconnection without submitting a completed interconnection request form.

4002 APPLICABLE STANDARDS

4002.1 Unless waived by the EDC, a small generator facility must comply with the following standards, as applicable:

(a) Institute of Electrical and Electronics Engineers ("IEEE") Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems for Generating Facilities up to 15 MW in size;

(b) IEEE 1547.1 Standard for Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems;

(c) Underwriters Laboratories ("UL") 6142 Standard for Small Wind Turbine Systems; and

(d) UL 1741 Standard for Inverters, Converters and Controllers for Use in Independent Power Systems. UL 1741 compliance must be recognized or Certified by a Nationally Recognized Testing Laboratory as designated by

the U.S. Occupational Safety and Health Administration. Certification of a particular model or a specific piece of equipment is sufficient. It is also sufficient for an inverter built into a Generating Facility to be recognized as being UL 1741 compliant by a Nationally Recognized Testing Laboratory.

4002.2-4002.4 [RESERVED]

4002.5 The interconnection equipment shall meet the requirements of the most current approved version of each document listed in Subsection 4002.1, as amended and supplemented at the time the interconnection request is submitted.

4002.6 Nothing herein shall preclude the need for an on-site Witness Test or operational test by the interconnection customer.

4003 INTERCONNECTION REVIEW LEVELS

4003.1 The EDC shall review interconnection requests using one (1) or more of the four (4) levels of review procedures established by this chapter. The EDC shall first use the level of agreement specified by the interconnection customer in the application form. The EDC may not impose additional requirements not specifically authorized unless the EDC and the interconnection customer mutually agree to do so in writing.

4003.2 If an interconnection customer requests a Pre-Application Report from the EDC, the request shall include:

(a) Contact information (name, address, phone and email).

(b) A proposed Point of Common Coupling, including latitude and longitude, site map, street address, utility equipment number (*e.g.*, pole number), meter number, account number or some combination of the above sufficient to clearly identify the location of the Point of Common Coupling.

(c) Generation technology and fuel source (if applicable).

(d) A three hundred dollar ($300) non-refundable processing fee.

4003.3 For each Pre-Application Report requested, which includes the requisite information and fee, the EDC shall furnish a report within ten (10) business days of receipt of the completed Pre-Application Report Request, which:

(a) Advises the interconnection customer that the existence of "Available Capacity" in no way implies that an interconnection up to this level may

be completed without impacts since there are many variables studied as part of the interconnection review procedures.

(b) Informs the interconnection customer that the Electric Distribution System is dynamic and subject to change.

(c) Advises that data provided in the Pre-Application Report may become outdated and not useful at the time of submission of the complete Interconnection Request.

(d) Includes the following information, if available:

(1) Total Capacity (MW) of substation/area bus or bank and distribution circuit likely to serve proposed Point of Common Coupling.

(2) Allocated Capacity (MW) of substation/area bus or bank and distribution circuit likely to serve proposed Point of Common Coupling.

(3) Queued Capacity (MW) of substation/area bus or bank and distribution circuit likely to serve proposed Point of Common Coupling.

(4) Available Capacity (MW) of substation/area bus or bank and distribution circuit most likely to serve proposed Point of Common Coupling.

(5) Whether the proposed Small Generator Facility is located on an area, spot or radial network.

(6) Substation nominal distribution voltage or transmission nominal voltage if applicable.

(7) Nominal distribution circuit voltage at the proposed Point of Common Coupling.

(8) Approximate distribution circuit distance between the proposed Point of Common Coupling and the substation.

(9) Relevant Line Section(s) peak load estimate, and minimum load data, when available.

(10) Number of protective devices and number of voltage regulating devices between the proposed Point of Common Coupling and the substation/area.

(11) Whether or not three-phase power is available at the proposed Point of Common Coupling and/or distance from three-phase service.

(12) Limiting conductor rating from proposed Point of Common Coupling to the electrical distribution substation.

(13) Based on proposed Point of Common Coupling, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

(14) The Pre-Application Report need only include pre-existing data. The EDC is not obligated in its preparation of a Pre-Application Report to conduct a study or other analysis of the proposed project in the event that data is not available. If the EDC cannot complete all or some of a Pre-Application Report due to lack of available data, the EDC will provide the potential Applicant with a Pre-Application Report that includes the information that is available and identify the information that is unavailable. Notwithstanding any of the provisions of this Section, the EDC shall, in good faith, provide Pre-Application Report data that represents the best available information at the time of reporting.

4004 LEVEL 1 INTERCONNECTION REVIEWS

4004.1 For Level 1 Interconnection Review, the EDC shall use Level 1 procedures for evaluation of all interconnection requests to connect inverter-based small generation facilities.

4004.2 For Level 1 Adverse Impact Screens, the EDC shall evaluate the potential for adverse system impacts using the following screens, which must be satisfied:

(a) The small generator facility has a nameplate capacity of twenty-five (25) kilowatts (“kW”) or less.

(b) For interconnection of a proposed small generator facility to a line section on a radial distribution circuit, the aggregated generation on the line section, including the proposed small generator facility and all other generator facilities capable of exporting energy on the line section, shall not exceed fifteen percent (15%) of the line section’s annual peak load as most recently measured at the substation or calculated for the line section.

(c) When a proposed small generator facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, may not exceed twenty (20) kW.

(d) When a proposed small generator facility is single-phase and is to be interconnected on a transformer center tap neutral of a two hundred forty (240) volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than twenty percent (20%) of the nameplate rating of the service transformer.

(e) For interconnection of a small generator facility within a spot network or area network, the aggregate generating capacity including the small generator facility may not exceed fifty percent (50%) of the network's anticipated minimum load. If solar energy small generator facilities are used, only the anticipated daytime minimum load shall be considered. The EDC may select any of the following methods to determine anticipated minimum load:

(1) The network's measured minimum load in the previous year, if available;

(2) Five percent (5%) of the network's maximum load in the previous year;

(3) The interconnection customer's good faith estimate, if provided; or

(4) The EDC's good faith estimate if provided in writing to the interconnection customer along with the reasons why the EDC considered the other methods to estimate minimum load inadequate.

(f) Construction of facilities by the EDC on its own system is not required in order to accommodate the small generator facility.

4004.3 The Level 1 Interconnection Review shall be conducted in accordance with the following procedures:

(a) The EDC shall, within three (3) business days after receipt of the interconnection request, notify the interconnection customer in writing or by electronic mail of the review results, which shall indicate that the interconnection request is complete or incomplete, whether the small generator facility meets all of the applicable Level 1 screens, and what materials, if any, are missing.

(b) If the proposed interconnection meets all of the applicable Level 1 Adverse Impact Screens and the EDC determines that the small generator facility can be interconnected safely and reliably to its system, the EDC shall provide the interconnection customer with an executable small generator interconnection agreement within the following timeframes:

(1) If the proposed interconnection requires no construction of facilities by the EDC on its own system, including any metering or commercial devices, the EDC shall provide an interconnection agreement within three (3) business days. If the EDC does not notify an interconnection customer in writing or by email within twenty (20) business days whether an interconnection request is approved or denied, the interconnection application and agreement signed by the interconnection customer as part of the Level 1 Interconnection Review shall be deemed effective.

4004.4 Modifications to proposed Level 1 interconnections shall be treated in the following manner:

(a) If the proposed interconnection requires only Interconnection Facilities or minor modifications to the electric distribution system, the small generator interconnection agreement, along with a non-binding good faith cost estimate and construction schedule for such upgrades, shall be provided within fifteen (15) business days after notification of the Level 1 Interconnection Review results.

(b) If the proposed interconnection requires more than Interconnection Facilities and minor modifications to the electric distribution system, the EDC may elect to either provide a small generator interconnection agreement along with a non-binding good faith cost estimate and construction schedule for such upgrades within thirty (30) business days after notification of the Level 1 review results, or the EDC may notify the interconnection customer that the EDC will need to complete a Facilities Study under Subsection 4007.2 paragraphs (d)(3)(B), (C), (D) and (E) to determine the necessary upgrades.

4004.5 The timing of inspections and interconnect operation shall be conducted as follows:

(a) Unless extended by mutual agreement of the interconnection customer and the EDC, within six (6) months of formation of a small generator interconnection agreement or six (6) months from the completion of any upgrades, whichever is later, the interconnection customer shall provide the EDC with at least ten (10) business day notice of the anticipated start date of the small generator facility. Receipt of a completed Level 1 PART

II - Small Generator Facility Interconnection Certificate of Completion Form by the EDC shall satisfy this requirement.

(b) The EDC may conduct a Witness Test within ten (10) business days of receiving the notice of the anticipated start date, at a time mutually agreeable to the parties. If the witness test fails to reveal that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes, the EDC shall offer to redo the witness test at the interconnection customer's expense at a time mutually agreeable to the parties. If the EDC determines that the small generator facility fails the inspection, it must provide a written explanation detailing the reasons and any standards violated. If the EDC does not perform the Witness Test within ten (10) business days or other time as is mutually agreed to by the parties, the Witness Test is deemed waived.

(c) An interconnection customer may begin interconnected operation of a small generator facility provided that there is a small generator interconnection agreement in effect, the EDC has received proof of the electrical code official's approval, and the small generator facility has passed any Witness Test by the EDC. Evidence of approval by an electric code official includes a signed certificate of completion. The EDC shall provide the interconnection customer with notification that its small generator facility is authorized to operate within twenty (20) business days of receiving a completed Level 1 PART II - Small Generator Facility Interconnection Certificate of Completion Form.

4004.6 The EDC, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability. If the EDC cannot determine that the small generator facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the EDC shall provide the interconnection customer with detailed information on the reason(s) for failure in writing. In addition, the EDC shall either:

(a) Notify interconnection customer that the EDC is continuing to evaluate the small generating facility under Supplemental Review if the EDC concludes that the Supplemental Review might determine that the small generator facility could continue to qualify for interconnection pursuant to Level 2; or

(b) Offer to continue evaluating the interconnection request under Level 4.

4004.7 If, on an annual basis, the electric utility fails to issue at least ninety percent (90%) of All Authorizations to Operate in the Level 1 interconnection process within the twenty (20) business days as required in § 4004.5(b), it shall be required to develop a corrective action plan.

4004.8 The corrective action plan shall describe the cause(s) of the electric utility's non-compliance with Subsection 4004.5(b), describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future, and set a target date for completion of the corrective measure(s).

4004.9 Progress on current corrective action plans shall be included in the electric utility's Small Generator Interconnection Annual Report.

4004.10 The electric utility shall report the actual performance of compliance with 15 DCMR § 4004.5(b) during the reporting period in the Small Generator Interconnection Annual Report of the following year.

4005 LEVEL 2 INTERCONNECTION REVIEWS

4005.1 For a Level 2 Interconnect Review, the EDC shall use the Level 2 procedures for an interconnection request.

4005.2 For Level 2 Adverse Impact Screens, the EDC shall evaluate the potential or adverse system impacts using the following screens which must be satisfied:

(a) The Small generator facility nameplate capacity rating does not exceed the limits identified in the table below, which vary according to the voltage of the line at the proposed Point of Common Coupling. Small generator facilities located within 2.5 miles of a substation and on a main distribution line with minimum six hundred (600)-amp capacity are eligible for Level 2 interconnection under higher thresholds.

Line Capacity	**Level 2 Eligibility**	
	Regardless of location	**On ≥ 600 amp line and ≤ 2.5 miles from substation**
≤ 4 kV	< 1 MW	< 2 MW
4.1 kV – 14 kV	< 2 MW	< 3 MW
15 kV – 30 kV	< 3 MW	< 4 MW
31 kV – 60 kV	≤ 4 MW	≤ 5 MW

(b) For interconnection of a proposed small generator facility to a radial distribution circuit, the small generator facility aggregated with all other generation capable of exporting energy on the line section may not exceed fifteen percent (15%) of the line section annual peak load as most recently measured at the substation or calculated for the line section.

(c) For interconnection of a proposed small generator facility within a spot or area network, the proposed small generator facility shall utilize an inverter-based equipment package and use a minimum import relay or other protective scheme that will ensure power imported from the EDC to

the network will, during normal EDC operations, remain above one percent (1%) of the network's maximum load over the past year, or will remain above a point reasonably set by the EDC in good faith. At the EDC's discretion, the requirement for minimum import relays or other protective schemes may be waived.

(d) The proposed small generator facility, in aggregation with other generation on the distribution circuit, may not contribute more than ten percent (10%) to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the point of common coupling.

(e) The proposed small generator facility, in aggregate with other generation on the distribution circuit, may not cause any distribution protective devices and equipment (including substation breakers, fuse cutouts, and line reclosers), or EDC customer equipment on the electric distribution system, to exceed ninety percent (90%) of the short circuit interrupting capability. The interconnection request may not receive approval for interconnection on a circuit that already exceeds 90% of the short circuit interrupting capability.

(f) The proposed small generator facility's point of common coupling may not be on a transmission line.

(g) The Generating Facility complies with the applicable type of interconnection, based on the table below. This screen includes a review of the type of electrical service provided to the Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the Utility's Electric Delivery System due to a loss of ground during the operating time of any Anti-Islanding function. This screen does not apply to Generating Facilities with a gross rating of 11 kVA or less.

Primary Distribution Line Configuration	**Type of Interconnection to be Made to the Primary Circuit**	**Results/Criteria**
Three-phase, three-wire	Any type	Pass Screen
Three-phase, four-wire	Single-phase, line-to-neutral	Pass Screen
Three-phase, four-wire (For any line that has such a section, or mixed three wire and four wire)	All Others	To pass, aggregate small generator facility nameplate rating must be less than or equal to

		10% of Line Section peak load

(h) When the proposed small generator facility is to be interconnected on single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed small generator facility, shall not exceed sixty-five percent (65%) of the transformer nameplate power rating.

(i) When a proposed small generator facility is single-phase and is to be interconnected on a transformer center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240-volt service of more than twenty (20) percent of the nameplate rating of the service transformer.

(j) A small generator facility, in aggregate with other generation interconnected to the distribution low-voltage side of a substation transformer feeding the electric distribution circuit where the small generator facility proposes to interconnect, may not exceed 15 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (e.g. three or four transmission voltage level buses from the point of common coupling), or the proposed small generator facility shall not have interdependencies, known to the EDC, with earlier-queued interconnection requests.

(k) Except as permitted by an additional review in Level 2 Procedures, Section 4005.7, no construction of facilities by the EDC on its own system shall be required to accommodate the small generator facility.

4005.3 **[RESERVED]**

4005.4 The Level 2 interconnection review shall be conducted in accordance with the following procedures:

(a) The EDC shall, within three (3) business days after receipt of the interconnection request, acknowledge receipt and inform the interconnection customer in writing or by electronic mail that the interconnection request is complete or incomplete.

(b) When the EDC determines that additional information is required to complete an evaluation, the EDC shall provide a written list detailing all information that must be provided to complete the request. The interconnection customer shall have ten (10) business days after receipt of the list to submit the listed information, or request an extension of time to provide such information. Otherwise, the interconnection request shall be

deemed withdrawn. The EDC shall notify the interconnection customer within three (3) business days of receipt of a revised interconnection request whether the request is complete or incomplete. The EDC may deem the request withdrawn if it remains incomplete.

(c) Within fifteen (15) business days after the EDC notifies the interconnection customer that it has received a completed interconnection request, the EDC shall evaluate the interconnection request using the Level 2 screening criteria and notify the interconnection customer whether the small generator facility meets all of the applicable Level 2 screens;

4005.5 When the EDC determines that the interconnection request passes the Level 2 screening criteria, the EDC shall provide the interconnection customer a small generator interconnection agreement within the following timeframes.

(a) If the proposed interconnection requires no construction of facilities by the EDC on its own system, including any metering or commercial devices, the EDC shall provide an interconnection agreement within three (3) business days after notification of Level 2 Interconnection Review results.

(b) If the proposed interconnection requires only Interconnection Facilities or minor modifications to the electric distribution system, the small generator interconnection agreement, along with a non-binding good faith cost estimate and construction schedule for such upgrades, shall be provided within fifteen (15) business days after notification of the Level 2 Interconnection Review results. Upon completion of such upgrades, the EDC shall issue a small generator interconnection agreement to the interconnection customer.

(c) If the proposed interconnection requires more than Interconnection Facilities and minor modifications to the electric distribution system, the EDC may elect to either provide a small generator interconnection agreement along with a non-binding good faith cost estimate and construction schedule for such upgrades within thirty (30) business days after notification of the Level 2 review results, or the EDC may notify the interconnection customer that the EDC will need to complete a Facilities Study under Subsection 4007.2 paragraphs (d)(3)(B), (C), (D) and (E) to determine the necessary upgrades, complete the construction, and issue a small generator interconnection agreement to the interconnection customer.

4005.6 The timing of inspections and interconnect operation shall be conducted under the following conditions:

(a) An interconnection customer that receives a small generator interconnection agreement executed by the EDC shall have ten (10)

business days to execute the agreement and return it to the EDC. When an interconnection customer does not sign the agreement within ten (10) business days, the interconnection request shall be deemed withdrawn unless the interconnection customer requests to have the deadline extended in writing prior to the expiration of the ten (10) business day period. The request for extension may not be unreasonably denied by the EDC. An interconnection customer shall communicate with the EDC no less frequently than every six (6) months regarding the status of a proposed small generator facility to which a small generator interconnection agreement refers. Within twenty-four (24) months from an interconnection customer's execution of a small generator interconnection agreement or six (6) months of completion of any upgrades, whichever is later, the Applicant shall provide the EDC with at least ten (10) business days' notice of the anticipated start date of the small generator facility.

(b) The EDC may conduct a witness test within ten (10) business days of receiving the notice of the anticipated start date, at a time mutually agreeable to the parties. If the witness test fails to reveal that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes, the EDC shall offer to redo the witness test at the interconnection customer's expense at a time mutually agreeable to the parties. If the EDC determines that the small generator facility fails the inspection it must provide a written explanation detailing the reasons and any standards violated. If the EDC does not perform the Witness Test within ten (10) business days or other such time as is mutually agreed to by the parties, the Witness Test is deemed waived.

(c) An interconnection customer may begin interconnected operation of a small generator facility provided that there is a small generator interconnection agreement in effect, the EDC has received proof of the electrical code official's approval, and the small generator facility has passed any Witness Test by the EDC. Evidence of approval by an electric code official includes a signed certificate of completion.

4005.7 When a small generator facility is not approved under a Level 2 review, the EDC, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability and shall provide the interconnection customer a small generator interconnection agreement within five (5) business days after the determination. If the EDC cannot determine that the small generator facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the EDC shall provide the interconnection customer with detailed information on the reason(s) for failure in writing. In addition, the EDC shall either:

(a) Notify interconnection customer that the EDC is continuing to evaluate the small generating facility under Supplemental Review if the EDC

concludes that the Supplemental Review might determine that the small generator facility could continue to qualify for interconnection pursuant to Level 2; or

(b) Offer to continue evaluating the interconnection request under Level 4.

4006 LEVEL 3 INTERCONNECTION REVIEWS

4006.1 The EDC shall use Level 2 review procedures for evaluating Level 3 interconnection requests, provided the proposed small generator facility has a nameplate capacity rating not greater than 15 MW and uses reverse power relays, minimum import relays or other protective devices to assure that power may never be exported from the small generator facility to the EDC's electrical distribution system. An interconnection customer proposing to interconnect a small generator facility to a spot or area network is not permitted under the Level 3 review process.

4006.2-4006.8 **[RESERVED]**

4007 LEVEL 4 INTERCONNECTION REVIEWS

4007.1 The EDC shall use the Level 4 study review procedures for evaluating interconnection requests when:

(a) The interconnection request was not approved under a Level 1, Level 2, or Level 3 review and the interconnection customer has submitted a new interconnection request for consideration under a Level 4 study review or requested that an existing interconnection request already in the EDC's possession be treated as a Level 4 request; and

(b) The interconnection request does not meet the criteria for qualifying for a review under Level 1, Level 2 or Level 3 review procedures.

4007.2 The Level 4 Interconnection Review shall be conducted in accordance with the following process:

(a) Within three (3) business days from receipt of an interconnection request or transfer of an existing request to a Level 4 request, the EDC shall notify the interconnection customer whether or not the request is complete. When the interconnection request is deemed not complete, the EDC shall provide the interconnection customer with a written list detailing information required to complete the interconnection request. The interconnection customer shall have twenty (20) business days to provide appropriate data in order to complete the interconnection request, or the interconnection request shall be considered withdrawn. The parties may agree to extend the time for receipt of the additional information. The

EDC shall notify the interconnection customer within (3) business days of receipt of the revised interconnection request whether or not the request is complete. The EDC may deem the interconnection request withdrawn if it remains incomplete.

(b) When an interconnection request is complete, the EDC shall assign a queue position. The queue position of an interconnection request shall be used to determine the cost responsibility necessary for the facilities to accommodate the interconnection. The EDC shall notify the interconnection customer about other higher-queued interconnection customers that have the potential to impact the cost responsibility.

(c) The following procedures shall be followed in performing a Level 4 study review:

(1) By mutual agreement of the parties, the scoping meeting, interconnection feasibility study, interconnection impact study, or interconnection facilities study provided for in a Level 4 review and discussed in this paragraph may be waived;

(2) If agreed to by the parties, a scoping meeting shall be held within ten (10) business days, or other mutually agreed to time, after the EDC has notified the interconnection customer that the interconnection request is deemed complete, or the interconnection customer has requested that its interconnection request proceed after failing the requirements of a Level 2 review or Level 3 review. The scoping meeting shall take place in person, by telephone, or electronically by a means mutually agreeable to the parties. The purpose of the meeting shall be to review the interconnection request; existing studies relevant to the interconnection request; the conditions at the proposed location including the available Fault Current at the proposed location, the existing peak loading on the lines in the general vicinity of the proposed Generating Facility, and the configuration of the distribution line at the proposed point of common coupling; and the results of the Level 1, Level 2 or Level 3 screening criteria;

(3) When the parties agree at a scoping meeting that an interconnection feasibility study shall be performed, and if the parties do not waive the interconnection impact study, the EDC shall provide to the interconnection customer, no later than five (5) business days after the scoping meeting, an interconnection feasibility study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost and time to perform the study;

(4) When the parties agree at a scoping meeting that an interconnection feasibility study is not required, the EDC shall provide to the interconnection customer, no later than five (5) business days after the scoping meeting, an interconnection system impact study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study; and

(5) When the parties agree at the scoping meeting that an interconnection feasibility study and system impact study are not required, the EDC shall provide to the interconnection customer, no later than five (5) business days after the scoping meeting, an interconnection facilities study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.

(d) Any required interconnection studies shall be carried out using the following guidelines:

(1) An interconnection feasibility study shall include the following analyses and conditions for the purpose of identifying and addressing potential adverse system impacts to the EDC's electric distribution system that would result from the interconnection:

(A) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

(B) Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

(C) Initial review of grounding requirements and system protection;

(D) Description and nonbinding estimated cost of facilities required to interconnect the small generator facility to the EDC's electric distribution system in a safe and reliable manner; and

(E) Additional evaluations at the expense of the interconnection customer, when an interconnection customer requests that the interconnection feasibility study evaluate multiple potential points of interconnection.

(2) An interconnection system impact study shall evaluate the impact of the proposed interconnection on both the safety and reliability of the EDC's electric distribution system. The study shall identify and

detail the system impacts that result when a small generator facility is interconnected without project or system modifications, focusing on the adverse system impacts identified in the interconnection feasibility study or potential impacts including those identified in the scoping meeting. The study shall consider all generating facilities that, on the date the interconnection system impact study is commenced, are directly interconnected with the EDC's system, have a pending higher queue position to interconnect to the system, or have a signed a small generator interconnection agreement.

(A) A distribution interconnection system impact study shall be performed when a potential distribution system adverse system impact is identified in the interconnection feasibility study. The EDC shall send the interconnection customer an interconnection system impact study agreement within five (5) business days of transmittal of the interconnection feasibility study report. The agreement shall include an outline of the scope of the study and a good faith estimate of the cost to perform the study. The impact study shall include:

(i) A load flow study;
(ii) Identification of affected systems;
(iii) An analysis of equipment interrupting ratings;
(iv) A protection coordination study;
(v) Voltage drop and flicker studies;
(vi) Protection and set point coordination studies;
(vii) Grounding reviews; and
(viii) Impact on system operation.

(B) An interconnection system impact study shall consider the following criteria:

(i) A short circuit analysis;
(ii) A stability analysis;
(iii) Alternatives for mitigating adverse system impacts on affected systems;
(iv) Voltage drop and flicker studies;
(v) Protection and set point coordination studies; and
(vi) Grounding reviews.

(C) The final interconnection system impact study shall provide the following:

(i) The underlying assumptions of the study;
(ii) The results of the analyses;

(iii) A list of any potential impediments to providing the requested interconnection service;
(iv) Required distribution upgrades; and
(v) A nonbinding good faith estimate of cost and time to construct any required distribution upgrades.

(D) The parties shall use an interconnection impact study agreement approved by the Commission.

(3) The interconnection facilities study shall be conducted as follows:

(A) Within five (5) business days of completion of the interconnection system impact study, the EDC shall transmit a report to the interconnection customer with an interconnection facilities study agreement, which includes an outline of the scope of the study and a nonbinding good faith estimate of the cost and time to perform the study;

(B) The interconnection facilities study shall estimate the cost of the equipment, engineering, procurement and construction work including overheads needed to implement the conclusions of the interconnection feasibility study and the interconnection system impact study to interconnect the small generator facility. The interconnection facilities study shall identify:

(i) The electrical switching configuration of the equipment, including transformer, switchgear, meters and other station equipment;

(ii) The nature and estimated cost of the EDC's interconnection facilities and distribution upgrades necessary to accomplish the interconnection; and

(iii) An estimate of the time required to complete the construction and installation of the facilities;

(C) The parties may agree to permit an interconnection customer to separately arrange for a third party to design and construct the required interconnection facilities. The EDC may review the design of the facilities under the interconnection facilities study agreement. When the parties agree to separately arrange for design and construction and to comply with security and confidentiality requirements, the EDC shall make all relevant information and required specifications available

to the interconnection customer to permit the interconnection customer to obtain an independent design and cost estimate for the facilities, which shall be built in accordance with the specifications;

(D) Upon completion of the interconnection facilities study, and with the agreement of the interconnection customer to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study, the EDC shall provide the interconnection customer with a small generator interconnection agreement within five (5) business days; and

(E) The parties shall use an interconnection facility study agreement approved by the Commission.

(e) When the EDC determines, as a result of the studies conducted under a Level 4 review, that it is appropriate to interconnect the small generator facility, the EDC shall provide the interconnection customer with a small generator interconnection agreement. If the interconnection request is denied, the EDC shall provide a written explanation;

(f) An interconnection customer shall have thirty (30) business days, or another mutually agreeable time frame, after submission of the small generator interconnection agreement to sign and return the agreement. If an interconnection customer does not sign the agreement within thirty (30) business days, the interconnection request shall be deemed withdrawn unless the interconnection customer requests to have the deadline extended by the thirtieth (30^{th}) business day. The request for extension may not be unreasonably denied by the EDC. When construction is required, the interconnection of the small generator facility shall proceed according to milestones agreed to by the parties in the small generator interconnection agreement. The small generator interconnection agreement may not be final until:

(1) The milestones agreed to in the small generator interconnection agreement are satisfied;

(2) The small generator facility is approved by electric code officials with jurisdiction over the interconnection;

(3) The interconnection customer provides a certificate of completion to the EDC. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and

(4) There is a successful completion of the witness test per the terms and conditions found in the Standard Agreement for Interconnection of Small Generator Facilities, unless waived.

4007.3 An interconnection system impact study is not required when the interconnection feasibility study concludes there is no adverse system impact, or when the study identifies an adverse system impact, but the EDC is able to identify a remedy without the need for an interconnection system impact study.

4007.4 The parties shall use a form of interconnection feasibility study agreement approved by the Commission.

4008 TECHNICAL REQUIREMENTS

4008.1 Unless waived by the EDC, a small generator facility must comply with the technical standards listed in Subsection 4002.1, as applicable. IEEE 1547.2, "Application Guide for IEEE 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems" and the PJM Interconnection Planning Manual 14A Attachment E, which is available at: https://www.pjm.com/~/media/documents/manuals/m14a.ashx, shall be used as a guide (but not a requirement) to detail and illustrate the interconnection protection requirements that are provided in IEEE 1547.

4008.2 When an interconnection request is for a small generator facility that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of common coupling, the interconnection request shall be evaluated on the basis of the aggregate nameplate capacity of multiple devices.

4008.3 When an interconnection request is for an increase in capacity for an existing small generator facility, the interconnection request shall be evaluated on the basis of the new total nameplate capacity of the small generator facility.

4008.4 The EDC shall maintain records of the following for a minimum of three (3) years:

(a) The total number of and the nameplate capacity of the interconnection requests received, approved and denied under Level 1, Level 2, Level 3 and Level 4 reviews;

(b) The number of interconnection requests that were not processed within the timelines established in this rule;

(c) The number of scoping meetings held and the number of feasibility studies, impact studies, and facility studies performed and the fees charged for these studies;

(d) The justifications for the actions taken to deny interconnection requests; and

(e) Any special operating requirements required in interconnection agreements that are not part of the EDC's written and published operating procedures applicable to small generator facilities.

4008.5 The EDC shall provide a report to the Commission containing the information required in Subsection 4008.4, paragraphs (a)-(c) within ninety (90) calendar days of the close of each year.

4008.6 The EDC shall designate a contact person and contact information on its website and the Commission's website for submission of all interconnection requests and from whom information on the interconnection request process and the EDC's electric distribution system can be obtained regarding a proposed project. The information shall include studies and other materials useful to an understanding of the feasibility of interconnecting a small generator facility at a particular point on the EDC's electric distribution system, except to the extent that providing the materials would violate security requirements or confidentiality agreements, or otherwise deemed contrary to District or federal law/regulations. In appropriate circumstances, the EDC may require confidentiality prior to release of information.

4008.7 When an interconnection request is deemed complete, a modification other than a minor equipment modification that is not agreed to in writing by the EDC, shall require submission of a new interconnection request.

4008.8 When an interconnection customer is not currently a customer of the EDC at the proposed site, the interconnection customer, upon request from the EDC, shall provide proof of site control evidenced by a property tax bill, deed, lease agreement, or other legally binding contract.

4008.9 To minimize the cost of interconnecting multiple small generator facilities, the EDC or the customer may propose a single point of common coupling for multiple small generator facilities located at a single site. If the interconnection customer rejects the EDC's proposal for a single point of common coupling, the interconnection customer shall pay the additional cost, if any, of providing a separate point of common coupling for each small generator facility. If the EDC rejects the customer's proposal for a single point of common coupling without providing a written technical explanation, the EDC shall pay the additional cost, if any, of providing a separate point of common coupling for each small generator facility.

4008.10 Small generator facilities shall be capable of being isolated from the EDC. For level 2-4 small generator facilities interconnecting to a primary line, the isolation

shall be by means of a lockable, visible-break isolation device accessible by the EDC. For level 2-4 small generator facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is clearly indicated and is accessible by the EDC. The isolation device shall be installed, owned and maintained by the owner of the small generation facility and located between the small generation facility and the point of common coupling. A draw-out type circuit breaker with a provision for padlocking at the draw-out position can be considered an isolation device for purposes of this requirement. Level 1 interconnections do not require an external isolation device.

4008.11 A level 2-4 interconnection customer may elect to provide the EDC access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise readily accessible to the EDC, by installing a lockbox provided by the EDC that shall provide ready access to the isolation device. The interconnection customer shall install the lockbox in a location that is readily accessible by the EDC, and the interconnection customer shall permit the EDC to affix a placard in a location of its choosing that provides clear instructions to the EDC's operating personnel on access to the isolation device. In the event that the interconnection customer fails to comply with the terms of this subsection and the EDC needs to gain access to the isolation device, the EDC shall not be held liable for any damages resulting from any necessary EDC action to isolate the interconnection customer.

4008.12 Any metering necessitated by a small generator interconnection shall be installed, operated and maintained in accordance with applicable tariffs. Any such metering requirements shall be clearly identified as part of the small generator interconnection agreement executed by the interconnection customer and the EDC.

4008.13 The EDC shall design, procure, construct, install, and own any Distribution Upgrades. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the interconnection customer. The interconnection customer may be entitled to financial contribution from any other EDC customers who may in the future utilize the upgrades paid for by the interconnection customer. Such contributions shall be governed by the rules, regulations, and decisions of the Commission.

4008.14 **[RESERVED]**

4008.15 The interconnection customer shall design its Small Generator Facility to maintain a composite power delivery at continuous rated power output at the Point of common coupling at a power factor within the power factor range required by the EDC's applicable tariff for a comparable load customer. The EDC may also require the Interconnection Customer to follow a voltage or VAR schedule if such schedules are applicable to similarly situated generators in the control area on a comparable basis and have been approved by the Commission.

The specific requirements for meeting a voltage or VAR schedule shall be clearly specified in Attachment 3 of the "District of Columbia Small Generator Interconnection Rule Level 2-4 Standard Agreement for Interconnection of Small Generator Facilities". (Under no circumstance shall these additional requirements for reactive power or voltage support exceed the normal operating capabilities of the Small Generator Facility.)

4008.16 For retail interconnection non-exporting Electric Storage devices, the load aspects of the storage devices will be treated the same as other load from customers, based on incremental net load.

4008.17 Interconnection of Electric Storage facilities should comply with IEEE Standard 1547 technical & test specifications and requirements.

4008.18 The Electric Storage overcurrent protection (charge/discharge) ratings from Inverter Nameplate shall not exceed EDC capabilities.

4008.19 In front of the meter Electric Storage exporting systems will be subject to Level 4 review requirements.

4008.20 When the Microgrid reconnects to the EDC, the Microgrid must be synchronized to the grid, matching: (1) voltage, (2) frequency, and (3) phase angle. This should require an asynchronous interconnection.

4008.21 At all interconnection levels, the power conversion system performing energy conversion/control at the point of interconnection must be equipped to communicate system characteristics over secured Transmission Control Protocol/Internet protocol (TCP/IP).

4008.22 Inverters shall meet the safety requirements of UL 1741 and twelve (12) months after the publication of UL 1741 SA (Supplement A) utility-interactive inverters shall meet the specifications of UL 1741 SA.

4009 DISPUTES

4009.1 A party shall attempt to resolve all disputes regarding interconnection as provided in the DCSGIR promptly, equitably, and in a good faith manner.

4009.2 When a dispute arises, a party may seek immediate resolution through complaint procedures available through the Commission by providing written notice to the Commission and the other party stating the issues in dispute.

4009.3 When disputes relate to the technical application of the DCSGIR, the Commission may designate a technical consultant to resolve the dispute. Upon Commission designation, the parties shall use the technical consultant to resolve disputes related to interconnection. Costs for a dispute resolution conducted by the

technical consultant shall be established by the technical consultant and subject to review by the Commission.

4009.4 Pursuit of dispute resolution shall not affect an interconnection customer with regard to consideration of an interconnection request or an interconnection customer's queue position.

4010 WAIVER

4010.1 The Commission may, in its discretion, waive any provisions of Chapter 40 upon notice to the affected persons.

4011 SUPPLEMENTAL REVIEW

Within twenty (20) business days of determining that Supplemental Review is appropriate, the EDC shall perform Supplemental Review using the screens set forth below, notify the interconnection customer of the results, and include with the notification a written report of the analysis and data underlying the EDC's determinations under the screens.

(a) Where twelve (12) months of line section minimum load data is available, can be calculated, can be estimated from existing data, or can be determined from a power flow model, the aggregate small generator facility nameplate capacity on the line section is less than one hundred percent (100%) of the minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed small generator facility. If the minimum load data is not available, or cannot be calculated or estimated, the aggregate small generator facility nameplate capacity on the line section is less than thirty percent (30%) of the peak load for all line sections bounded by automatic sectionalizing devices upstream of the proposed small generator facility.

(1) The type of generation used by the proposed small generator facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of this screen. Solar photovoltaic (PV) generation systems with no battery storage use daytime minimum load (*e.g.*, 8 a.m. to 6 p.m.), while all other generation uses absolute minimum load.

(2) When this screen is being applied to a small generator facility that serves some onsite electrical load, only the net export in kW, if known, which may flow into the EDC's system will be considered as part of the aggregate generation.

(3) The EDC will not consider as part of the aggregate generation for purposes of this screen small generator facility capacity, including combined heat and power (CHP) facility capacity, known to be already reflected in the minimum load data.

(b) In aggregate with existing generation on the line section:

(1) The voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions;

(2) The voltage fluctuation is within acceptable limits as defined by IEEE 1453 or utility practice similar to IEEE 1453; and

(3) The harmonic levels meet IEEE 519 limits at the Point of Common Coupling.

(c) The location of the proposed small generator facility and the aggregate small generator facility nameplate capacity on the line section do not create impacts to safety or reliability that cannot be adequately addressed without application of Level 4 review procedures. The EDC may consider the following factors and others in determining potential impacts to safety and reliability in applying this screen.

(1) Whether the line section has significant minimum loading levels dominated by a small number of customers (*i.e.*, several large commercial customers).

(2) If there is an even or uneven distribution of loading along the feeder.

(3) If the proposed small generator facility is located in close proximity to the substation (*i.e.*, < 2.5 electrical line miles), and if the distribution line from the substation to the small generator facility is composed of large conductor/feeder section (*i.e.*, 600A class cable).

(4) If the proposed small generator facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time.

(5) If operational flexibility is reduced by the proposed small generator facility, such that transfer of the line section(s) of the small generator facility to a neighboring distribution circuit/substation may trigger overloads or voltage issues.

(6) If the proposed small generator facility utilizes certified anti-islanding functions and equipment.

(d) If the proposed interconnection request passes the Supplemental Review screens, the interconnection request shall be approved and the EDC shall provide the interconnection customer an executable interconnection agreement within the timeframes established below.

(1) If the proposed interconnection request requires no construction of facilities by the EDC on its own electrical distribution system, the interconnection agreement shall be provided within five (5) business days after the notification of the Supplemental Review results.

(2) If the proposed interconnection request requires only Interconnection Facilities or minor modifications to the electrical distribution system, the interconnection agreement, along with a non-binding good faith cost estimate and construction schedule for the Interconnection Facilities and/or minor modifications to the electrical distribution system, shall be provided within fifteen (15) business days after notification of the Supplemental Review results.

(3) If the proposed interconnection request requires more than Supplemental Review, the EDC may elect to either provide an interconnection agreement along with a non-binding good faith cost estimate and construction schedule for such upgrades within thirty (30) business days after notification of the Supplemental Review results, or the EDC may notify the interconnection customer that the EDC will need to complete a facilities study under Level 4 Interconnection Review to determine the cost estimate and construction schedule for necessary upgrades.

(e) An interconnection customer that receives an interconnection agreement executed by the EDC shall have ten (10) business days to execute the agreement and return it to the EDC.

(1) For Level 1 requests: Unless extended by mutual agreement of the parties, within six (6) months of formation of an interconnection agreement or six (6) months from the completion of any upgrades, whichever is later, the interconnection customer shall provide the EDC with at least ten (10) business days' notice of the anticipated start date of the small generator facility.

(2) For Level 2 and 3 requests: an interconnection customer shall communicate with the EDC no less frequently than every six (6) months regarding the status of a proposed small generator facility to which an interconnection agreement refers. Within twenty-four (24) months from an interconnection customer's execution of an interconnection agreement or six (6) months of completion of any upgrades, whichever is later, the interconnection customer shall provide the EDC with at least ten (10) business days' notice of the anticipated start date of the small generator facility.

(f) The EDC may conduct a witness test within ten (10) business days' of receiving the notice of the anticipated start date at a time mutually agreeable to the parties. If a small generator facility initially fails the test, the EDC shall offer to redo the witness test at the interconnection customer's expense at a time mutually agreeable to the parties. If the EDC determines that the small generator facility fails the witness test it must provide a written explanation detailing the reasons and any standards violated.

(g) Upon EDC's receipt of proof of the electric code official's approval, an interconnection customer may begin interconnected operation of a small generator facility, provided that there is an interconnection agreement in effect and that the small generator facility has passed any inspection required by the EDC. Evidence of approval by an electric code official includes a signed certificate of completion.

4012 APPLICANT OPTIONS MEETING

If the EDC determines the interconnection request cannot be approved without evaluation under Level 4 review, at the time the EDC notifies the interconnection customer of either the Level 1, 2 or 3 review, or Supplemental Review, results, it shall provide the interconnection customer the option of proceeding to Level 4 review or of participating in an Applicant Options Meeting with the EDC to review possible small generator facility modifications or the screen analysis and related results, to determine what further steps are needed to permit the small generator facility to be connected safely and reliably. The interconnection customer shall notify the EDC that it requests an Applicant Options Meeting or that it would like to proceed to Level 4 review in writing within fifteen (15) business days of the EDC's notification or the interconnection request shall be deemed withdrawn. If the interconnection customer requests an Options Meeting, the EDC shall offer to convene a meeting at a mutually agreeable time within the next fifteen (15) business days.

4013-4098 [RESERVED]

4099 DEFINITIONS

4099.1 When used in this chapter, the following terms and phrases shall have the following meaning:

"Adverse System Impact" means a negative effect, due to technical or operational limits on conductors or equipment being exceeded, that compromises the safety and reliability of the electric distribution system.

"Affected System" means an electric system not owned or operated by the electric distribution company reviewing the interconnection request that may suffer an adverse system impact from the proposed interconnection.

"Area Network" means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, which is generally used in large metropolitan areas that are densely populated. Area networks are also known as grid networks. Area network has the same meaning as the term distribution secondary grid networks in 4.1.4.1 of IEEE Standard 1547.

"Authorized to Operate" means written notification that the Small Generator Facility is approved for operation under the terms and conditions of the District of Columbia Small Generator Interconnection Rules including 15 DCMR §§ 4004.3, 4004.4 and 4004.5(a).

"Certificate of Completion" means a certificate in a completed form approved by the Commission containing information about the interconnection equipment to be used, its installation and local inspections.

"Certified Equipment" means a designation that the interconnection equipment meets the requirements set forth in Section 4002 of this document

"Commission" means the Public Service Commission of the District of Columbia.

"Commissioning Test" means the tests applied to a small generator facility by the interconnection customer after construction is completed to verify that the facility does not create adverse system impacts. The scope of the commissioning tests performed shall include the commissioning test specified IEEE Standard 1547 section 5.4 "Commissioning tests".

"Distribution System Upgrade" means a required addition or modification to the EDC's electric distribution system at or beyond the point of common coupling to accommodate the interconnection of a small generator facility. Distribution upgrades do not include interconnection facilities.

"District of Columbia Small Generator Interconnection Rule (DCSGIR)" means the most current version of the procedures for interconnecting Small Generator Facilities adopted by the District of Columbia Public Service Commission.

"Draw-out Type Circuit Breaker" means a switching device capable of making, carrying and breaking currents under normal and abnormal circuit conditions such as those of a short circuit. A draw-out circuit breaker can be physically removed from its enclosure, creating a visible break in the circuit. For the purposes of these regulations, the draw-out circuit breaker shall be capable of being locked in the open, draw-out position.

"Electric Distribution Company" or "EDC" means an electric utility entity that distributes electricity to customers and is subject to the jurisdiction of the Commission.

"Electric Distribution System" means the facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally carry less than sixty-nine (69) kilovolts of electricity. Electric distribution system has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547.

"Electric Storage" means a resource capable of receiving electric energy from the Electric Distribution System and storing it for later injection of electricity back to the grid regardless of where the resource is located on the electric system. These resources encompasses all types of Electric Storage technologies, regardless of their size, storage medium or operational purpose, and includes, but is not limited to the following: batteries, flywheels, electric vehicles, and compressed air.

"Estimated Commissioning Date" means the date an interconnection customer is expected to start operation.

"Facilities Study" means an engineering study conducted by the EDC to determine the required modifications to the EDC's Electric Distribution System, including the cost and the time required to build and install such modifications as necessary to accommodate an Interconnection Request.

"Fault Current" means the electrical current that flows through a circuit during an electrical fault condition. A fault condition occurs when one or more electrical conductors contact ground or each other. Types of faults include phase to ground, double-phase to ground, three-phase to ground, phase-to-

phase, and three-phase. Fault current is several times larger in magnitude than the current that normally flows through a circuit.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

"Governmental Authority" means any federal, State, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, respective facilities, or services provided, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, EDC or any affiliate thereof.

"IEEE Standard 1547" means the Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems," as amended and supplemented at the time the interconnection request is submitted.

"IEEE Standard 1547.1" means the IEEE Standard 1547.1 (2005) "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems", as amended and supplemented at the time the interconnection request is submitted.

"Interconnection Customer" means an entity that has submitted either an interconnection request to interconnect a small generator facility to the EDC's electric distribution system or a pre-application report to get information about EDC's electrical distribution system at a proposed Point of Common Coupling.

"Interconnection Equipment" means a group of equipment, components, or an integrated system connecting an electric generator with a local electric power system or an electric distribution system that includes all interface equipment including switchgear, protective devices, inverters or other interface devices. Interconnection equipment may be installed as part of an

integrated equipment package that includes a generator or other electric source.

"Interconnection Facilities" means facilities and equipment required by the EDC to accommodate the interconnection of a small generator facility. Collectively, interconnection facilities include all facilities and equipment between the small generator facility and the point of common coupling, including modification, additions, or upgrades that are necessary to physically and electrically interconnect the small generator facility to the electric distribution system. Interconnection facilities are sole use facilities and do not include distribution upgrades.

"Interconnection Request" means an interconnection customer's request, in a form approved by the Commission, requesting the interconnection of a new small generator facility, or to increase the capacity or modify operating characteristics of an existing approved small generator facility that is interconnected with the EDC's electric distribution system.

"Line Section" means that portion of the EDC's distribution system connected to an interconnection customer, bounded by automatic sectionalizing devices or the end of the distribution line.

"Local Electric Power System" or "Local EPS" means facilities that deliver electric power to a load that are contained entirely within a single premises or group of premises. Local electric power system has the same meaning as the term local electric power system defined in 3.1.6.2 of IEEE Standard 1547.

"Microgrid" means a collection of interconnected loads, generation assets, and advanced control equipment, installed across a limited geographic area and within a defined electrical boundary that is capable of disconnecting from the EDC's distribution system at the Point of Common Coupling.

"Minor Equipment Modification" means changes to the proposed small generator facility that do not have a material impact on safety or reliability of the electric distribution system.

"Nameplate Capacity" means the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer and is usually indicated on a nameplate physically attached to the power production equipment.

"Nationally Recognized Testing Laboratory" or "NRTL" means a qualified private organization that meets the requirements of the Occupational Safety and Health Administration's (OSHA) regulations. NRTLs perform

independent safety testing and product certification. Each NRTL shall meet the requirements as set forth by OSHA in the NRTL program.

"Parallel Operation" or "Parallel" means the sustained state of operation over 100 milliseconds, which occurs when a small generator facility is connected electrically to the electric distribution system and thus has the ability for electricity to flow from the small generator facility to the electric distribution system.

"PJM Interconnection" means the regional transmission organization that is regulated by the Federal Energy Regulatory Commission and functionally controls the transmission system for the region that includes the District of Columbia.

"Point of Common Coupling" means the point where the small generator facility is electrically connected to the electric distribution system. Point of common coupling is has the same meaning as defined in 3.1.13 of IEEE Standard 1547.

"Primary Line" means a distribution line rated at greater than six hundred (600) volts.

"Production Test" is defined in IEEE Standard 1547.

"Queue Position" means the order of a valid interconnection request, relative to all other pending valid interconnection requests, that is established based upon the date and time of receipt of the valid interconnection request by the EDC.

"Radial Distribution Circuit" means a circuit configuration where independent feeders branch out radially from a common source of supply. From the standpoint of a utility system, the area described is between the generating source or intervening substations and the customer's entrance equipment. A radial distribution system is the most common type of connection between a utility and load in which power flows in one direction from the utility to the load.

"Scoping Meeting" means a meeting between representatives of the interconnection customer and EDC conducted for the purpose of discussing alternative interconnection options, exchanging information including any electric distribution system data and earlier study evaluations that would be reasonably expected to impact interconnection options, analyzing information, and determining the potential feasible points of interconnection.

"Secondary Line" means a service line subsequent to the primary line that is rated for six hundred (600) volts or less, also referred to as the customer's service line.

"Shared Transformer" means a transformer that supplies secondary source voltage to more than one customer.

"Small Generator Facility" means the equipment used by an interconnection customer to generate or store electricity that operates in parallel with the electric distribution system and, for the purposes of this standard, is rated 15 MW or less. A small generator facility typically includes an electric generator, Electric Storage, prime mover, and the interconnection equipment required to safely interconnect with the electric distribution system or local electric power system.

"Spot Network" means a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers. Spot network has the same meaning as the term distribution secondary spot networks defined in 4.1.4.2 of IEEE Standard 1547.

"Standard Agreement for Interconnection of Small Generator Facilities, Interconnection Agreement, or Agreement" means a set of standard forms of interconnection agreements approved by the Commission which are applicable to interconnection requests pertaining to small generating facilities. The agreement between the Interconnection Customer and the EDC, which governs the connection of the Small Generator Facility to the EDC's Electric Distribution System, as well as the ongoing operation of the Small Generator Facility after it is connected to the EDC's Electric Distribution System.

"UL Standard 1741" means Underwriters Laboratories' standard titled "Inverters Converters, and Controllers for Use in Independent Power Systems", as amended and supplemented at the time the interconnection request is submitted.

"Witness Test" means verification (either by an on-site observation or review of documents) by the EDC that the installation evaluation required by IEEE Standard 1547 Section 5.3 and the commissioning test required by IEEE Standard 1547 Section 5.4 have been adequately performed. For interconnection equipment that has not been certified, the witness test shall also include the verification by the EDC of the on-site design tests as required by IEEE Standard 1547 Section 5.1 and verification by the EDC of production tests required by IEEE Standard 1547 Section 5.2. All tests

verified by the EDC are to be performed in accordance with the applicable test procedures specified by IEEE Standard 1547.1.

3. All persons interested in commenting on the content of this NOPR are invited to submit written comments and reply comments no later than forty-five (45) and sixty (60) days, respectively, after the publication of this NOPR in the *D.C. Register*. Written comments should be filed with: Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, submitted via email to psc-commissionsecretary@dc.gov, or through the Commission's website at http://edocket.dcpsc.org/comments/submitpubliccomments.asp.

Level 1

Interconnection Request Application Form and Agreement

Interconnection Customer Contact Information

Name_____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Alternative Contact Information (if different from Customer Contact Information)

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Equipment Contractor

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Electrical Contractor (if Different from Equipment Contractor):

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

License number: _____

Active License? Yes ___ No ___

Facility Information (building where the small generator facility is located)

Electric Distribution Company (EDC) Serving Facility Site: _____

Electric Supplier (if different from EDC):_____

Account Number of Facility site (existing EDC customers): _____

Facility Address (building where the small generator facility is located)

Address: _____

City: _____ State: _____ Zip Code: _____

Small Generator Facility Information

Inverter Manufacturer:_____ Model:_____

Nameplate Rating: ____(kW) ____(kVA) ____(AC Volts)

System Design Capacity: _____ (kW) _____ (kVA)

Prime Mover: Photovoltaic ☐ Reciprocating Engine ☐ Fuel Cell ☐

Turbine ☐ Other _____

Energy Source: Solar ☐ Wind ☐ Hydro ☐ Diesel ☐ Natural Gas

Fuel Oil ☐ Other_____

Is the inverter lab certified? Yes☐

(If yes, attach manufacturer's cut sheet showing listing and label information from the appropriate listing authority, e.g. UL 1741 listing. If no, facility is not eligible for Level 1 Application.)

☐ Net Meter (Small generator facility will export power pursuant to District of Columbia Customer Net Energy Metering Contract.)

Estimated Commissioning Date: _____

Insurance Disclosure

The attached terms and conditions contain provisions related to liability, and indemnification and should be carefully considered by the interconnection customer. The interconnection customer is not required to obtain general liability insurance coverage as a precondition for interconnection approval; however, the interconnection customer is advised to consider obtaining appropriate insurance coverage to cover the interconnection customer's potential liability under this agreement.

Customer Signature

I hereby certify that: 1) I have read and understand the terms and conditions which are attached hereto by reference and are a part of this agreement; 2) I hereby agree to comply with the attached terms and conditions; and 3) to the best of my knowledge, all of the information provided in this application request form is complete and true.

Interconnection Customer Signature: _____

Title: _____ Date:_____

Conditional Agreement to Interconnect Small Generator Facility

By its signature below, the EDC has determined the interconnection request is complete. Interconnection of the small generator facility is conditionally approved contingent upon the attached terms and conditions of this agreement the return of the attached Certificate of Completion duly executed, verification of electrical inspection and successful witness test or EDC waiver thereof.

EDC Signature: _____Date: _____

Printed Name:_____Title:_____

Terms and Conditions for Interconnection

(1) **Construction of the Small Generator Facility**. The interconnection customer may proceed to construct (including operational testing not to exceed two (2) hours) the small generator facility once the conditional agreement to interconnect a small generator facility has been signed by the EDC.

(2) **Final Interconnection and Operation.** The interconnection customer may operate the small generator facility and interconnect with the EDC's electric distribution system once all of the following have occurred:

(a) Electrical Inspection**:** Upon completing construction, the interconnection customer will cause the small generator facility to be inspected by the local electrical wiring inspector with jurisdiction who shall establish that the small generator facility meets the requirements of the National Electrical Code.

(b) Certificate of Completion: The interconnection customer shall provide the EDC with a completed copy of the Certificate of Completion, including evidence of the electrical inspection performed by the local authority having jurisdiction. The evidence of completion of the electrical inspection may be provided on inspection forms used by local inspecting authorities. The interconnection request shall not be finally approved until the EDC's representative signs the Certificate of Completion.

(c) The EDC has either waived the right to a Witness Test in the interconnection request, or completed its Witness Test as per the following:

(i) Within ten (10) business days of receiving the notice of the anticipated start date, at a time mutually agreeable to the parties, the EDC may conduct a Witness Test of the small generator facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes.

(2) If the EDC does not perform the Witness Test within the 10 day period or other time as is mutually agreed to by the parties, the Witness Test is deemed waived.

(3) **IEEE 1547**. The small generator facility is installed, operated, and tested in accordance with the requirements of IEEE Standard 1547, "Standard for Interconnecting Distributed Resources with

Electric Power Systems", as amended and supplemented, at the time the interconnection request is submitted.

(4) **Access.** The EDC shall have direct, unabated access to the metering equipment of the small generator facility at all times. The EDC shall provide reasonable notice to the customer when possible prior to using its right of access.

(5) **Metering.** Any required metering shall be installed pursuant to appropriate tariffs and tested by the EDC pursuant to the EDCs meter testing requirements.

(6) **Disconnection.** The EDC may temporarily disconnect the small generator facility upon the following conditions:

(a) For scheduled outages upon reasonable notice;
(b) For unscheduled outages or emergency conditions;
(c) If the small generator facility does not operate in the manner consistent with this agreement;
(d) Improper installation or failure to pass the Witness Test;
(e) If the small generator facility is creating a safety, reliability or a power quality problem; or
(f) The interconnection equipment used by the small generator facility is de-listed by the Nationally Recognized Testing Laboratory that provided the listing at the time the interconnection was approved.

(7) **Indemnification**. The parties shall at all times indemnify, defend, and save the other party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other party's action or inactions of its obligations under this agreement on behalf of the indemnifying party, except in cases of gross negligence or intentional wrongdoing by the indemnified party.

(8) **Limitation of Liability**. Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever.

(9) **Termination**. This agreement may be terminated under the following conditions:

(a) By interconnection customer - The interconnection customer may terminate this application agreement by providing written notice to the EDC.

(b) By the EDC - The EDC may terminate this agreement if the interconnection customer fails to remedy a violation of terms of this agreement within thirty (30) calendar days after notice, or such other date as may be mutually agreed to prior to the expiration of the 30 calendar day remedy period. The termination date can be no less than 30 calendar days after the interconnection customer receives notice of its violation from the EDC.

(10) **Modification of Small Generator Facility**. The interconnection customer shall provide written notification to the EDC before making any modifications to the small generator facility. The EDC will determine if the modifications are minor or non-minor in nature. Written authorization from the EDC is required for non-minor changes if the EDC determines that the interconnection

customer's modifications may have a significant impact on the safety or reliability of the electric distribution system. If the interconnection customer makes such modifications without the EDC's prior written authorization the EDC shall have the right to temporarily disconnect the small generator facility until such time as the EDC reasonably concludes the modification poses no threat to the safety or reliability of its electric distribution system.

(11) **Permanent Disconnection.** In the event the agreement is terminated, the EDC shall have the right to disconnect its facilities or direct the customer to disconnect its small generator facility.

(12) **Disputes.** Each party agrees to attempt to resolve all disputes regarding the provisions of these interconnection procedures pursuant to the dispute resolution provisions of the District of Columbia Small Generator Interconnection Rules.

(13) **Governing Law, Regulatory Authority, and Rules.** The validity, interpretation and enforcement of this agreement and each of its provisions shall be governed by the laws of the District of Columbia. Nothing in this agreement is intended to affect any other agreement between the EDC and the interconnection customer. However, in the event that the provisions of this agreement are in conflict with the provisions of the EDC's tariff, the EDC tariff shall control.

(14) **Survival Rights**. This agreement shall continue in effect after termination to the extent necessary to allow or require either party to fulfill rights or obligations that arose under the agreement.

(15) **Assignment/Transfer of Ownership of the Small Generator Facility**: This agreement shall terminate upon the transfer of ownership of the small generator facility to a new owner unless the transferring owner assigns the agreement to the new owner and so notifies the EDC in writing prior to the transfer of electric service.

(16) **Definitions**. Any capitalized term used herein and not defined shall have the same meaning as the defined terms used in the District of Columbia Small Generator Interconnection Rule.

(17) **Notice**. Unless otherwise provided in this agreement, any written notice, demand, or request required or authorized in connection with this agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

(If Notice is sent to the Interconnection Customer)
Use the contact information provided in the agreement for the interconnection customer. The interconnection customer is responsible for notifying the EDC of any change in the contact party information, including change of ownership.

(If Notice is sent to the EDC)
Use the contact information provided on the EDC's web page for small generator interconnection.

District of Columbia Small Generator Interconnection Rule Level 2-4
Standard Agreement for Interconnection of Small Generator Facilities

This Agreement is made and entered into this ___ day of _____, by and between _____, a _____ organized and existing under the laws of _____, (''Interconnection Customer,'') and _____, a _____, existing under the laws of _____, (''EDC''). The Interconnection Customer and the EDC each may be referred to as a ''Party,'' or collectively as the ''Parties.''

Recitals:

Whereas, Interconnection Customer is proposing to, install or direct the installation of a Small Generator Facility, or is proposing a generating capacity addition to an existing Small Generator Facility, consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, the Interconnection Customer will operate and maintain, or cause the operation and maintenance of the Small Generator Facility; and

Whereas, Interconnection Customer desires to interconnect the Small Generator Facility with the EDC's Electric Distribution System.

Now, therefore, in consideration of the promises and mutual covenants set forth herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all approved Level 2, Level 3 and Level 4 Interconnection Requests according to the procedures set forth in the District of Columbia Small Generator Interconnection Rules.

1.2 This Agreement governs the terms and conditions under which the Small Generator Facility will interconnect to, and operate in Parallel with, the EDC's Electric Distribution System.

1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power.

1.4 Nothing in this Agreement is intended to affect any other agreement between the EDC and the Interconnection Customer. However, in the event that the provisions of this Agreement are in conflict with the provisions of the EDC's tariff, the EDC tariff shall control.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all

Applicable Laws and Regulations.

1.5.2 The EDC shall construct, own, operate, and maintain its Interconnection Facilities in accordance with this Agreement, IEEE Standard 1547, the National Electrical Safety Code and applicable standards promulgated by the District of Columbia Public Service Commission.

1.5.3 The Interconnection Customer shall construct, own, operate, and maintain its Interconnection Facilities in accordance with this Agreement, IEEE Standard 1547, the National Electrical Code and applicable standards promulgated by the District of Columbia Public Service Commission.

1.5.4 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point of Common Coupling.

1.5.5 The Interconnection Customer agrees to design, install, maintain and operate its Small Generator Facility so as to minimize the likelihood of causing an Adverse System Impact on an electric system that is not owned or operated by the EDC.

1.6 Metering

The Interconnection Customer shall be responsible for the cost of the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 4 and 5 of this Agreement.

1.7 Reactive Power

The Interconnection Customer shall design its Small Generator Facility to maintain a composite power delivery at continuous rated power output at the Point of common coupling at a power factor within the power factor range required by the EDC's applicable tariff for a comparable load customer. The EDC may also require the Interconnection Customer to follow a voltage or VAR schedule if such schedules are applicable to similarly situated generators in the control area on a comparable basis and have been approved by the Commission. The specific requirements for meeting a voltage or VAR schedule shall be clearly specified in Attachment 3. Under no circumstance shall these additional requirements for reactive power or voltage support exceed the normal operating capabilities of the Small Generator Facility.

1.8 Capitalized Terms

Capitalized terms used herein shall have the meanings specified in the Definitions section of the District of Columbia Small Generator Interconnection Rules or the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

The Interconnection Customer shall test and inspect its Small Generator Facility including the Interconnection Equipment prior to interconnection in accordance with IEEE Standard 1547, IEEE Standard 1547.1, and the technical and procedural requirements in the District of Columbia Small Generator Interconnection Rule. The Interconnection Customer shall not operate its Small Generator Facility in Parallel with the EDC's Electric Distribution System without prior written authorization by the EDC as provided for in Articles 2.1.1 – 2.1.3.

2.1.1 The EDC shall have the option of performing a Witness Test after construction of the small generator facility is completed. The Interconnection Customer shall provide the EDC at least twenty (20) days' notice of the planned Commissioning Test for the small generator facility. If the EDC elects to perform a Witness Test, it shall contact the Interconnection Customer to schedule the Witness Test at a mutually agreeable time within ten (10) business days of the scheduled commissioning test. If the EDC does not perform the Witness Test within 10 business days of the commissioning test, the Witness Test is deemed waived unless the parties mutually agree to extend the date for scheduling the Witness Test. If the witness test fails to reveal that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes, the EDC shall offer to redo the witness test at the interconnection customer's expense at a time mutually agreeable to the parties. If the EDC determines that the small generator facility fails the inspection it must provide a written explanation detailing the reasons and any standards violated. If the EDC does not perform the Witness Test within 10 business days or other time as is mutually agreed to by the parties, the Witness Test is deemed waived. After considering the "redo" option, if the Witness Test is still not acceptable to the EDC, the Interconnection Customer will be granted a period of thirty (30) calendar days to address and resolve any deficiencies. The time period for addressing and resolving any deficiencies may be extended upon the mutual agreement of the EDC and the Interconnection Customer. If the Interconnection Customer fails to address and resolve the deficiencies to the satisfaction of the EDC, the applicable termination provisions of Article 3.3.7 shall apply. If a Witness Test is not performed by the EDC or an entity approved by the EDC, the Interconnection Customer must still satisfy the interconnection test specifications and requirements set forth in IEEE Standard 1547 Section 5. The Interconnection Customer shall, if requested by the EDC, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

2.1.2 To the extent that the Interconnection Customer decides to conduct interim testing of the Small Generator Facility prior to the Witness Test, it may request that the EDC observe these tests and that these tests be deleted from the final Witness Test. The EDC may, at its own expense, send qualified personnel to the Small Generator Facility to observe such interim testing. Nothing in this Section 2.1.2 shall require the EDC to observe such interim testing or preclude the EDC from performing these

tests at the final Witness Test. Regardless of whether the EDC observes the interim testing, the Interconnection Customer shall obtain permission in advance of each occurrence of operating the Small Generator Facility in parallel with the EDC's system.

2.1.3 Upon successful completion of the Witness Test, the EDC shall affix an authorized signature to the Certificate of Completion and return it to the Interconnection Customer approving the interconnection and authorizing Parallel Operation. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.2 Commercial Operation

The interconnection customer shall not operate the Small Generator Facility, except for interim testing as provided in Article 2.1, until such time as the Certificate of Completion is signed by all Parties.

2.3 Right of Access

The EDC shall have access to the disconnect switch and metering equipment of the Small Generator Facility at all times. The EDC shall provide reasonable notice to the customer when possible prior to using its right of access.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by the Parties.

3.2 Term of Agreement

This Agreement shall become effective on the Effective Date and shall remain in effect in perpetuity unless terminated earlier in accordance with Article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the EDC thirty (30) calendar days' prior written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to Article 6.5.

3.3.3 The EDC may terminate upon sixty (60) calendar days' prior written notice for failure of the Interconnection Customer to complete construction of the Small Generator Facility within twelve (12) months of the in-service date as specified by the Parties in Attachment 1, which may be extended by mutual agreement of the Parties which shall not be unreasonably withheld.

3.3.4 The EDC may terminate this Agreement upon sixty (60) calendar days' prior written notice if the Interconnection Customer fails to operate the Small Generator Facility in parallel with EDC's electric system for three (3) consecutive years.

3.3.5 Upon termination of this Agreement, the Small Generator Facility will be disconnected from the EDC's Electric Distribution System. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.3.6 The provisions of this Article shall survive termination or expiration of this Agreement.

3.3.7 The EDC may terminate this Agreement if the Interconnection Customer fails to comply with the Witness Test requirement in Article 2.2.1.

3.4 Temporary Disconnection

A Party may temporarily disconnect the Small Generator Facility from the Electric Distribution System in the event of an Emergency Condition for as long as the Party determines it is reasonably necessary in the event one or more of the following conditions or events occurs:

3.4.1 Emergency Conditions - Emergency Conditions shall mean any condition or situation: (1) that in the judgment of the Party making the claim is reasonably likely to endanger life or property; or (2) that, in the case of the EDC, is reasonably likely to cause an Adverse System Impact; or (3) that, in the case of the Interconnection Customer, is reasonably likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Small Generator Facility or the Interconnection Equipment. Under Emergency Conditions, the EDC or the Interconnection Customer may immediately suspend interconnection service and temporarily disconnect the Small Generator Facility. The EDC shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of the Small Generator Facility. The Interconnection Customer shall notify the EDC promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the EDC's Electric Distribution System. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Scheduled Maintenance, Construction, or Repair – The EDC may interrupt interconnection service or curtail the output of the Small Generator Facility and temporarily disconnect the Small Generator Facility from the EDC's Electric Distribution System when necessary for scheduled maintenance, construction, or repairs on the EDC's Electric Distribution System. The EDC shall provide the Interconnection Customer with five (5) business days' notice prior to such

interruption. The EDC shall use reasonable efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

3.4.3 Forced Outages - With any forced outage, the EDC may suspend interconnection service to effect immediate repairs on the EDC's Electric Distribution System. The EDC shall use reasonable efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the EDC shall, upon written request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse Operating Effects – The EDC shall provide the Interconnection Customer with a written notice of its intention to disconnect the Small Generator Facility if, based on the operating requirements specified in Attachment 3, the EDC determines that operation of the Small Generator Facility will likely cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Small Generator Facility could cause damage to the EDC's Electric Distribution System. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer upon written request. The EDC may disconnect the Small Generator Facility if, after receipt of the notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time unless Emergency Conditions exist in which case the provisions of Article 3.4.1 apply.

3.4.5 Modification of the Small Generator Facility - The interconnection customer shall provide written notification to the EDC before making any modifications to the small generator facility. The EDC will determine if the modifications are minor or non-minor in nature. Written authorization from the EDC is required for non-minor changes if the EDC determines that the interconnection customer's modifications could cause an Adverse System Impact. If the interconnection customer makes such modifications without the EDC's prior written authorization the EDC shall have the right to temporarily disconnect the small generator facility until such time as the EDC reasonably concludes the modification poses no threat to the safety or reliability of its electric distribution system.

3.4.6 Reconnection - The Parties shall cooperate with each other to restore the Small Generator Facility, Interconnection Facilities, and EDC's Electric Distribution System to their normal operating state as soon as reasonably practicable following any disconnection pursuant to this section; provided, however, if such disconnection is done pursuant to Article 3.4.5 due to the Interconnection Customer's failure to obtain prior written authorization from the EDC for Non-Minor Equipment Modifications, the EDC shall reconnect the Interconnection Customer only after determining the modifications do not impact the safety or reliability of its Electric Distribution System.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The Interconnection Customer shall pay for the cost of the Interconnection Facilities itemized in Attachment 2 of this Agreement if required under the additional review procedures of a Level 2 review or under a Level 4 review. If a Facilities Study was performed, the EDC shall identify the Interconnection Facilities necessary to safely interconnect the Small Generator Facility with the EDC's Electric Distribution System, the cost of those facilities, and the time required to build and install those facilities.

4.1.2 The Interconnection Customer shall be responsible for its expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its Interconnection Equipment, and (2) its reasonable share of operating, maintaining, repairing, and replacing any Interconnection Facilities owned by the EDC as set forth in Attachment 2.

4.2 Distribution Upgrades

The EDC shall design, procure, construct, install, and own any Distribution Upgrades. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer. The Interconnection Customer may be entitled to financial contribution from any other EDC customers who may in the future utilize the upgrades paid for by the Interconnection Customer. Such contributions shall be governed by the rules, regulations and decisions of the District of Columbia Public Service Commission.

Article 5. Billing, Payment, Milestones, and Financial Security

5.1 Billing and Payment Procedures and Final Accounting (Applies to additional reviews conducted under Levels 2, 3 or 4)

5.1.1 The EDC shall bill the Interconnection Customer for the design, engineering, construction, and procurement costs of the EDC provided Interconnection Facilities and Distribution Upgrades contemplated by this Agreement as set forth in Attachment 2, on a monthly basis, or as otherwise agreed by the Parties. The Interconnection Customer shall pay each bill within thirty (30) calendar days of receipt, or as otherwise agreed to by the Parties.

5.1.2 Within ninety (90) calendar days of completing the construction and installation of the EDC's Interconnection Facilities and Distribution Upgrades described in the Attachments 1 and 2 to this Agreement, the EDC shall provide the Interconnection Customer with a final accounting report of any difference between (1) the actual cost incurred to complete the construction and installation and the budget estimate provided to the Interconnection Customer and a written explanation for any significant variation; and (2) the Interconnection Customer's previous deposit and aggregate payments to the EDC for such Interconnection Facilities and Distribution Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous deposit and aggregate payments, the EDC shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to the EDC within thirty (30) calendar days. If the Interconnection Customer's previous deposit and aggregate payments exceed its cost responsibility

under this Agreement, the EDC shall refund to the Interconnection Customer an amount equal to the difference within thirty (30) calendar days of the final accounting report.

5.1.3 If a Party in good faith disputes any portion of its payment obligation pursuant to this Article 5, such Party shall pay in a timely manner all non-disputed portions of its invoice, and such disputed amount shall be resolved pursuant to the dispute resolution provisions contained in Article 8. Provided such Party's dispute is in good faith, the disputing Party shall not be considered to be in default of its obligations pursuant to this Article.

5.2 Interconnection Customer Deposit

When a Level 4 Interconnection Feasibility Study, Interconnection System Impact Study, or Interconnection Facility Study or a Level 2 Review of Minor Modifications is required under the District of Columbia Small Generator Interconnection Rules, the EDC may require the Interconnection Customer to pay a deposit equal to fifty percent (50%) of the estimated cost to perform the study or review. At least twenty (20) business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the EDC's Interconnection Facilities and Distribution Upgrades, the Interconnection Customer shall provide the EDC with a deposit equal to 50% of the estimated costs prior to its beginning design of such facilities, provided the total cost is in excess of one thousand dollars ($1,000).

Article 6. Assignment, Limitation on Damages, Indemnity, Force Majeure, and Default

6.1 Assignment

This Agreement may be assigned by either Party upon fifteen (15) business days prior written notice, and with the opportunity to object by the other Party. Should the Interconnection Customer assign this agreement, the EDC has the right to request that the assignee agree to the assignment and the terms of this Agreement in writing. When required, consent to assignment shall not be unreasonably withheld; provided that:

6.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate (which shall include a merger of the Party with another entity), of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;

6.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the EDC, for collateral security purposes to aid in providing financing for the Small Generator Facility. For Small Generator systems that are integrated into a building facility, the sale of the building or property will result in an automatic transfer of this agreement to the new owner who shall be responsible for complying with the terms and conditions of this Agreement.

6.1.3 Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's

obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same obligations as the Interconnection Customer.

6.2 Limitation on Damages

Except for cases of gross negligence or willful misconduct, the liability of any Party to this Agreement shall be limited to direct actual damages, and all other damages at law are waived. Under no circumstances, except for cases of gross negligence or willful misconduct, shall any Party or its directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits, lost revenues, replacement power, cost of capital or replacement equipment. This limitation on damages shall not affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement. The provisions of this Article 6.2 shall survive the termination or expiration of the Agreement.

6.3 Indemnity

6.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 6.2.

6.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

6.3.3 Promptly after receipt by an indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply, the indemnified Party shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

6.3.4 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, such indemnified Party may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

6.3.5 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified person shall be the amount of such indemnified Party's actual loss, net of any insurance or other recovery.

6.4 Force Majeure

6.4.1 As used in this Article, a Force Majeure Event shall mean any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of gross negligence or intentional wrongdoing.

6.4.2 If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking and will take to mitigate the effects of the event on its performance, and if the initial notification was verbal, it should be promptly followed up with a written notification. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party shall be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure Event cannot be reasonably mitigated. The Affected Party shall use reasonable efforts to resume its performance as soon as possible.

6.5 Default

6.5.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement, or the result of an act or omission of the other Party.

6.5.2 Upon a default of this Agreement, the non-defaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Article 6.5.3 the defaulting Party shall have sixty (60) calendar days from receipt of the default notice within which to cure such default; provided however, if such default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within twenty (20) calendar days after notice and continuously and diligently complete such cure within six (6) months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.

6.5.3 If a Party has made an assignment of this Agreement not specifically authorized by Article 6.1, fails to provide reasonable access pursuant to Article 2.3, is in default of its obligations pursuant to Article 7, or if a Party is in default of its payment obligations pursuant to Article 5 of this Agreement, the defaulting Party shall have thirty (30) days from receipt of the default notice within which to cure such default.

6.5.4 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this Agreement.

Article 7. Insurance

For Small Generator Facilities with a Nameplate Capacity of 1 MW or above, the Interconnection Customer shall carry adequate insurance coverage that shall be acceptable to the EDC; provided, that the maximum comprehensive/general liability coverage that shall be continuously maintained by the Interconnection Customer during the term shall be not less than two million dollars ($2,000,000) for each occurrence, and an aggregate, if any, of at least four million dollars ($4,000,000). The EDC, its officers, employees and agents will be added as an additional insured on this policy.

Article 8. Dispute Resolution

8.1 A party shall attempt to resolve all disputes regarding interconnection as provided in this Agreement and the District of Columbia Small Generator Interconnection Rule promptly, equitably, and in a good faith manner.

8.2 When a dispute arises, a party may seek immediate resolution through complaint procedures available through the Commission, or an alternative dispute resolution process approved by the Commission, by providing written notice to the Commission and the other party stating the issues in dispute. Dispute resolution will be conducted in an informal, expeditious manner to reach resolution with minimal costs and delay. When available, dispute resolution may be conducted by phone.

8.3 When disputes relate to the technical application of this Agreement and the District of Columbia Small Generator Interconnection Rule, the Commission may designate a technical consultant to resolve the dispute. Upon Commission designation, the parties shall use the technical consultant to resolve disputes related to interconnection. Costs for a dispute resolution conducted by the technical consultant shall be established by the technical consultant, subject to review by the Commission.

8.4 Pursuit of dispute resolution may not affect an Interconnection Customer with regard to consideration of an Interconnection Request or an Interconnection Customer's queue position.

8.5 If the Parties fail to resolve their dispute under the dispute resolution provisions of this Article, nothing in this Article shall affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement.

Article 9. Miscellaneous

9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the District of Columbia, without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations.

9.2 Amendment

Modification of this Agreement shall be only by a written instrument duly executed by both Parties.

9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

9.4 Waiver

9.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

9.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from EDC. Any waiver of this Agreement shall, if requested, be provided in writing.

9.5 Entire Agreement

This Agreement, including all attachments, constitutes the entire Agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

9.9 Environmental Releases

Each Party shall notify the other Party, first orally and then in writing, of the release any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generator Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four (24) hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

9.10 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

9.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

9.10.2 The obligations under this Article will not be limited in any way by any limitation of subcontractor's insurance.

Article 10. Notices

10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____ E-mail_____

If to EDC:

EDC_____
Attention: _____
Address: _____

City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____E-mail_____

10.2 Billing and Payment

Billings and payments shall be sent to the addresses set forth below:

If to Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

If to EDC

EDC: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

10.3 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Attention: _____
Address: _____
City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____E-Mail_____

EDC's Operating Representative:

_____
Attention: _____

Address: _____
City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____

10.4 Changes to the Notice Information

Either Party may change this notice information by giving five business days written notice prior to the effective date of the change.

Article 11. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Interconnection Customer:

Name: _____
Title: _____
Date: _____

For EDC:

Name: _____
Title: _____
Date: _____

Attachment 1

Construction Schedule, Proposed Equipment & Settings

This attachment shall include the following:

1. The construction schedule for the Small Generator Facility
2. A one-line diagram indicating the Small Generator Facility, Interconnection Equipment, Interconnection Facilities, Metering Equipment, and Distribution Upgrades
3. Component specifications for equipment identified in the one-line diagram
4. Component settings
5. Proposed sequence of operations

Attachment 2

Description, Costs and Time Required to Build and Install the EDC's Interconnection Facilities

The EDC's Interconnection Facilities including any required metering shall be itemized and a best estimate of itemized costs, including overheads, shall be provided based on the Facilities Study.

Also, a best estimate for the time required to build and install the EDC's Interconnection Facilities will be provided based on the Facilities Study.

Attachment 3

Operating Requirements for Small Generator Facilities Operating in Parallel

Applicable sections of the EDC's operating manuals applying to the small generator interconnection shall be listed and Internet links shall be provided. Any special operating requirements not contained in the EDC's existing operating manuals shall be clearly identified. The EDC's operating requirements shall not impose additional technical or procedural requirements on the small generator facility beyond those found in the District of Columbia Small Generator Interconnection Rules, except those required for safety.

Attachment 4

Metering Requirements

Metering requirements for the Small Generator Facility shall be clearly indicated along with an identification of the appropriate tariffs that establish these requirements and an internet link to these tariffs.

Attachment 5

As Built Documents

After completion of the Small Generator Facility, the Interconnection Customer shall provide the EDC with documentation indicating the as-built status of the following when it returns the Certificate of Completion to the EDC:

1. A one-line diagram indicating the Small Generator Facility, Interconnection Equipment, Interconnection Facilities, Metering Equipment, and Distribution Upgrades
2. Component specifications for equipment identified in the one-line diagram
3. Component settings
4. Proposed sequence of operations

Level 2, Level 3 and Level 4
Interconnection Request Application Form

Interconnection Customer Contact Information

Name_____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Alternative Contact Information (if different from Customer Contact Information)

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Facility Address (Building where the small generator facility is located)

Address: _____

City: _____ State: _____ Zip Code: _____

Equipment Contractor

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

Electrical Contractor (if Different from Equipment Contractor):

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone (Daytime): _____ (Mobile): _____

Facsimile Number: _____ E-Mail Address: _____

License number: _____

Active License? Yes ___ No ___

Electric Service Information for Customer Facility Where Generator Will Be Interconnected

Electric Distribution Company (EDC) serving Facility site: _____

Electric Supplier (if different from EDC):_____

Account Number of Facility site (existing EDC customers): _____

Capacity: _____(Amps) Voltage: _____(Volts)

Type of Service: ☐ Single Phase ☐ Three Phase

If 3 Phase Transformer, Indicate Type

Primary Winding ☐ Wye ☐ Delta

Secondary Winding ☐ Wye ☐ Delta

Transformer Size:_____ Impedance: _____

Intent of Generation (choose one)

☐ Offset Load (Unit will operate in parallel, but will not export power to EDC.)

☐ Net Energy Metering (Small generator facility will export power pursuant to District of Columbia Customer Net Energy Metering Contract.)

☐ Community Net Metering (interconnection with EDC).

☐ Export Power (Unit will operate in parallel and will export power, but does not fit the criteria established in the District of Columbia Customer Net Energy Metering Contract for net metering.)

Note: if Unit will operate in parallel and participate in the PJM market(s), unit will need to obtain an interconnection agreement from PJM.

☐ Back-up Generation (Units that temporarily parallel for more than 100 milliseconds.)

Backup units that do not operate in parallel for more than 100 milliseconds do not need an interconnection agreement.

Requested Procedure Under Which to Evaluate Interconnection Request
Please indicate below which review procedure applies to the interconnection request.

☐ **Level 2 -** Certified interconnection equipment with an aggregate electric nameplate capacity less than or equal to 5 MW. Indicate type of certification below. (Application fee amount is $500.)

☐ **Level 3 –** Small generator facility does not export power. Nameplate capacity rating is equal to or less than 15 MW if connecting to a radial distribution feeder. An interconnection customer proposing to interconnect a small generator to a spot or area network is not permitted under the Level 3 review process. (Application fee amount is $500.)

☐ **Level 4 –** Nameplate capacity rating is less than 15 MW and the small generator facility does not qualify for a Level 1, Level 2 or Level 3 review or, the small generator facility has been reviewed but not approved under a Level 1, Level 2 or Level 3 review. (Application fee amount is $1,000, to be applied toward any subsequent studies related to this application.)

For Level 1, 2, 3 applications before EDC's considering a Level 4 review, the applicant can request a meeting based on "Applicant Options Meeting" section of Chapter 40.

Descriptions for interconnection review categories do not list all criteria that must be satisfied. For a complete list of criteria, please refer to the District of Columbia Small Generator Interconnection Rules.

Small Generator Facility Information

Energy Production Equipment/Inverter Information

Energy Source: ☐ Hydro ☐ Wind ☐ Solar ☐ Diesel ☐ Biomass ☐ Natural Gas
☐ Coal ☐ Oil ☐ Other _____

Energy Converter Type: ☐ Water Turbine ☐ Wind Turbine ☐ Photovoltaic Cell
☐ Steam Turbine ☐ Combustion Turbine ☐ Reciprocating Engine
☐ Other _____

Generator Type: ☐ Synchronous ☐ Induction ☐ Inverter ☐ Other _____

Rating: _____ kW Rating: _____ kVA Number of Units: _____

Rated Voltage: _____Volts

Rated Current: _____Amps

System Type Tested (Total System): ☐ Yes ☐ No; attach product literature

Interconnection components/system(s) to be used in the Small Generation Facility that are lab certified (required for Level 2 and Level 3 Interconnection requests only).

Component/System NRTL Providing Label & Listing

1._____

2._____

3._____

4._____

Please provide copies of manufacturer brochures or technical specifications.

For Synchronous Machines:

Note: Contact EDC to determine if all the information requested in this section is required for the proposed small generator facility.

Manufacturer: _____

Model No. _____ Version No. _____

Submit copies of the Saturation Curve and the Vee Curve
☐ Salient ☐ Non-Salient
Torque: _____ lb-ft Rated RPM: _____ Field Amperes: _____ at rated generator voltage and current and _____% PF over-excited
Type of Exciter: _____
Output Power of Exciter: _____
Type of Voltage Regulator: _____ Locked Rotor Current: _____ Amps Synchronous Speed: _____RPM
Winding Connection: _____ Min. Operating Freq./Time: _____
Generator Connection: ☐ Delta ☐ Wye ☐ Wye Grounded
Direct-axis Synchronous Reactance (Xd) _____ohms
Direct-axis Transient Reactance (X'd) _____ohms
Direct-axis Sub-transient Reactance (X"d) _____ohms
Negative Sequence Reactance: _____ ohms
Zere Sequence Reactance: _____ ohms
Neutral Impedance or Grounding Resister (if any): _____ ohms

For Induction Machines:
Note: Contact EDC to determine if all the information requested in this section is required for the proposed small generator facility.

Manufacturer: _____
Model No. _____ Version No. _____
Locked Rotor Current: _____ Amps
Rotor Resistance (Rr)_____ohms Exciting Current ____Amps
Rotor Reactance (Xr)_____ohms Reactive Power Required: _____
Magnetizing Reactance (Xm)_____ohms ___VARs (No Load)
Stator Resistance (Rs)_____ohms ___VARs (Full Load)
Stator Reactance (Xs)_____ohms
Short Circuit Reactance (X"d)_____ohms
Phases: ☐ Single ☐ Three-Phase
Frame Size: _____ Design Letter: ____ Temp. Rise: _____°C.

Reverse Power Relay Information (Level 3 Review Only)
Manufacturer: _____
Relay Type: _____ Model Number: _____
Reverse Power Setting: _____
Reverse Power Time Delay (if any): _____

Additional Information For Inverter Based Facilities
Inverter Information:
Manufacturer:_____ Model: _____
Type: ☐ Forced Commutated ☐ Line Commutated
Rated Output _____ Watts _____ Volts
Efficiency _____% Power Factor _____%
Inverter UL1547 Listed: ☐ Yes ☐ No

DC Source / Prime Mover:
Rating: _____ kW Rating: _____ kVA

Rated Voltage: _____Volts
Open Circuit Voltage (If applicable): _____Volts
Rated Current: _____Amps
Short Circuit Current (If applicable): _____Amps

Other Facility Information:

One Line Diagram attached: ☐ Yes

Plot Plan attached: ☐ Yes

Estimated Commissioning Date: _____

Customer Signature

I hereby certify that all of the information provided in this application request form is true.

Interconnection Customer Signature: _____

Title: _____ Date:_____

An application fee is required before the application can be processed. Please verify that the appropriate fee is included with the application:

Application fee included ☐

Amount_____

EDC Acknowledgement

Receipt of the application fee is acknowledged and the interconnection request is complete.

EDC Signature: _____ Date: _____

Printed Name:_____Title:_____

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING

RM46-2015-01-E, IN THE MATTER OF THE INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES GOVERNING THE LICENSURE AND BONDING OF ELECTRIC SUPPLIERS IN THE DISTRICT OF COLUMBIA;

AND

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code §§ 34-1501-1520 (2012 Repl.)) ("1999 Act"), hereby gives notice of its intent to adopt Chapter 46 (Licensure of Electricity Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR").

2. Chapter 46 establishes the rules governing the licensure and bonding of Electricity Suppliers in the District of Columbia. Currently, the requirements for licensing Electricity Suppliers are set forth in *Formal Case No. 945*, Order No. 11796, rel. September 18, 2000. Bonding requirements for Electric Suppliers are set forth in *Formal Case No. 945*, Order No. 11862, rel. December 18, 2000. This Notice of Second Proposed Rulemaking ("NOPR") combines the licensing and bonding requirements in a single chapter. This Notice of Second Proposed Rulemaking ("NOPR") includes the following attachments: (1) Supplier Application; (2) Form of Integrity Bond for Electric Suppliers other than Aggregators and Brokers-Surety Bond; (3) Form of Integrity Bond for Aggregators and Brokers-Surety Bond; (4) Form of Customer Payments Bond-Surety Bond; and (5) Notice of Application.

3. This Second NOPR supersedes the previous NOPR published on February 6, 2015 at 62 DCR 001712-001733. In this Second NOPR, the following sections were revised based upon recommendations put forth by interested persons at a technical conference and comments filed on the February 6, 2015 NOPR publication: (1) § 4600.2; (2) § 4600.3; (3) § 4601.2(I); (4) § 4602.3; (5) § 4602.5; (6) § 4602.6; (7) § 4602.7; (8) § 4602.8 (9) § 4602.9; (10) § 4602.10; (11) § 4602.11; (12) § 4602.12; (13) § 4602.13; (14) § 4602.14; (15) § 4602.15; (16) § 4602.16; (17) § 4602.17; (18) § 4603.1; (19) § 4604.2 (20) § 4606.1; (21) § 4607.1 B.; (22) § 4607.2; (23) § 4608.2 G; (24) § 4608.2 (H); (25) § 4608.2 (I); (26) § 4608.2 J.; (27) § 4608.2M.; (28) § 4608.2 (q); (29) § 4608.2(u).; (30) § 4608.2(v).; (31) § 4608.2(w); (32) § 4609.1(b)(2); and (33) § 4699.

4. The Commission notes that these proposed rules may be amended in the future depending on actions taken in Formal Case 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS proceeding).

A new Chapter 46 of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is proposed as follows:

CHAPTER 46 LICENSURE OF ELECTRICITY SUPPLIERS

4600 APPLICABILITY

4600.1 **Application.** These rules apply to a Person who engages in the business of an Electricity Supplier in the District of Columbia.

4600.2 **Purpose.** These rules provide uniform requirements for obtaining any form of an Electricity Supplier License in the District of Columbia, describe the administrative procedures available to the Applicants and Licensees, outline the grounds for Commission action regarding a Licensee, and describe the sanctions that may be imposed by the Commission.

4600.3 **Restrictions.** No Person shall present itself as a licensed retail Electricity Supplier, perform the duties of an Electricity Supplier, accept Deposits or prepayments from retail customers, contract with retail customers or arrange for contracts for retail customers, prior to receipt of a license from the Commission.

4601 LICENSING REQUIREMENTS

4601.1 **Persons Subject to Licensing Requirements.** Any Person who engages in the business of an Electricity Supplier in the District of Columbia shall hold an Electricity Supplier License issued by the Commission.

4601.2 **Application Information Requirements for Electricity Suppliers.** An Application for an Electricity Supplier License and an Application for renewal of an Electricity Supplier License shall include the following information, in a manner and form specified by the Commission:

(a) Proof of technical and managerial competence;

(b) Proof of compliance with all applicable requirements of the Federal Energy Regulatory Commission, and any Independent System Operator, or Regional Transmission Operator to be used by the Applicant;

(c) A sworn verification that the Applicant is currently in compliance with, and will comply with all, applicable federal and District of Columbia environmental laws and regulations;

(d) Proof of compliance with the Bonding Requirements set forth in §§ 4604 and 4605;

(e) Proof that the Applicant has registered with the Department of Consumer and Regulatory Affairs and the Department of Finance and Revenue to do business in the District of Columbia;

(f) A sworn verification that the Applicant is currently in compliance with, and will comply with, all applicable taxes;

(g) A sworn verification that the Applicant is currently in compliance with, and will comply with all of the requirements of the Act and all orders and regulations of the Commission issued under the Act;

(h) Applicant's web-site address;

(i) A sample copy each of the Electricity Supplier's electricity supply Customer contracts (*e.g.*, fixed, variable) and a sample bill;

(j) The name and contact information for the Electricity Supplier's designated contact Person for Customer and consumer complaints;

(k) The Trade name(s) or d/b/a ("doing business as name(s)") if the Applicant will be using either while doing business as an Electricity Supplier in the District of Columbia; and

(l) Any other information required by the Commission.

4602 LICENSING PROCEDURES

4602.1 **Scope.** These procedures apply to an Application for an Electricity Supplier License before the Commission and the renewal of an Electricity Supplier License.

4602.2 **Form.** An Application for a Electricity Supplier License shall be made to the Commission in writing on the applicable form provided by the Commission (See the form set out in Attachment A); be verified by oath or affirmation; and be accompanied by an Application fee of four hundred dollars ($400.00).

4602.3 **Number of Copies; Service.** Each Applicant shall file a signed and verified original and an electronic version of their application and attachments.

4602.4 **Change in Application Information.** The Applicant shall immediately inform the Commission of any change in the information provided in the Application during the pendency of the Application process.

4602.5 **Notice of Application and Notice of Incomplete Application (Deficiency Letter).** The Applicant shall provide to the Commission a proposed Notice of Application in the form set out in Attachment B along with its Application. With respect to the Application, the Commission shall review the submitted Application for completeness within fifteen (15) days of receipt of the Application and inform the Applicant if the Application is either complete or incomplete. If the Application is complete, the Commission shall notify the Applicant in writing that the Application is complete and has been accepted for filing and the Commission shall post the Notice of Application in the D.C. Register. If the Application is incomplete, the Commission shall notify the Applicant in writing of the deficiencies in the Application. The Applicant shall have ten (10) days, or such additional time as the Commission may designate if it extends the time period for good cause shown, to provide the information requested in the deficiency letter. Once the deficiency has been cured by the Applicant, the Commission will notify the Applicant in writing that the Application is now complete and has been accepted for filing and the Commission shall post the Notice of Application in the D.C. Register. If the Applicant does not provide the information to the Commission within ten (10) days or within the alternative time period set by the Commission, the Application shall be deemed dismissed without prejudice. An Applicant may submit a new Application at any time.

4602.6 **Comments and Objections Regarding Filed Application.** All persons interested in filing an objection or a comment regarding the filed Application or the licensure of an Applicant may submit written comments or objections to the Commission Secretary and to the Applicant no later than twenty (20) days after the Notice of Application has been posted on the Commission's website. An Applicant may file reply comments no later than ten (10) days after objections or comments are filed with the Commission Secretary. The Commission may waive this filing deadline at its discretion.

4602.7 **Review of Complete Application.** Upon determining that an Application is complete, the Commission shall conduct an appropriate investigation of the information provided by the Applicant in the complete Application and of any objections or comments received on the Application. Within fifteen (15) days after the comment period has expired, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application if no objections or comments are filed. If an objection to licensure or comments are filed, the Commission shall conclude its investigation and issue a Licensing Order approving or denying the Application within sixty (60) days after the comments or objection period has expired. In the event that the Commission denies a License to an Applicant, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission determination shall also be served on the Applicant and the Office of the People's Counsel.

4602.8 **Licensee's Update Information.** A licensed Electricity Supplier shall comply with any information update requirements or supplemental information requirements established by Commission rules or in Commission orders.

4602.9 **Term of Electricity Supplier License.** An Electricity Supplier License is valid until the expiration date of five years after issuance, or until revoked by the Commission or surrendered by the licensed Electricity Supplier. Prior to the expiration of the five year period, an Electricity Supplier shall renew its license pursuant to the licensing requirements and procedures set forth in Sections 4601 and 4602, respectively. Currently, licensed Electric Suppliers shall renew their license, pursuant to the licensing requirements and procedures set forth in Sections 4601 and 4602, respectively, prior to five years from the effective date of this chapter.

4602.10 **Transfer of Electricity Supplier License.** An Electricity Supplier License is not transferable without the prior approval of the Commission. To obtain the approval of the Commission, a Licensee shall file a Transfer Application with the Commission Secretary. After receiving the Transfer Application, the Commission shall give public notice of the Transfer Application by posting it on its website and in the *D.C. Register*. All Persons interested in filing an objection or a comment regarding the filed Transfer Application may submit written comments or objections to the Commission's Secretary no later than thirty (30) days after the posting of the Notice of Application on the Commission's website. The Licensee may file reply comments no later than seven (7) days after objections or comments are filed. The Commission may waive this filing deadline at its discretion. Within thirty (30) days after the comment period has expired, the Commission shall issue an order approving or denying the Transfer Application if no objections or comments are filed. If an objection to a Transfer Application or a comment is filed, the Commission shall conclude its investigation and issue an order approving or denying the Transfer Application within sixty (60) days after

the comments or objection period has expired. In the event that the Commission denies a Transfer Application, the Commission shall state in writing its reasons for such denial and file its determination with the Commission Secretary. A copy of the Commission's determination shall also be served on the Licensee and on the Office of the People's Counsel.

4602.11 **Solicitation of Customers.** A Licensee who has not initially started serving customers is required to notify the Commission as soon as the Licensee begins soliciting or marketing to customers directly or through an authorized representative in the District of Columbia. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting District consumers. The notice shall include the name of the licensed Electricity Supplier's designated contact person for pricing information if the Licensee is serving residential customers and small commercial customers and the URL address of the Electricity Supplier's website. The Licensee shall provide the Commission with a copy of its flyers, consumer pamphlets, scripts and other proposed marketing material at the time of notification. Also, each sales representatives, and marketing agent or representative conducting door to door solicitations shall be required to present a company photo identification to customers as part of the solicitation process. In addition, the Licensee is required to maintain a record of the identity of each sales representative and marketing agent or representative active in the District, including the company photo identification, and make it available upon request to the Commission.

4602.12 **Electronic Solicitation**. For the purpose of monitoring compliance with 15 DCMR Subsections 327.26, 327.27, 327.30, 327.31, 327.32, 327.33, 327.34 and 327.48 regarding electronic solicitation on the Licensee's website, each Licensee who contracts electronically with customers shall provide the Commission with the electronic accessibility necessary to monitor the Licensee's compliance with previous sections.

4602.13 **Serving Customers.** A Licensee is required to do the following before it begins to serve customers in the District of Columbia: (a) notify the Commission of the date when it will begin to serve customers in the District of Columbia; and (b) file an affidavit attesting that all sales and marketing and regulatory personnel have read the relevant provisions of Chapters 3 and 46 of Title 15 DCMR before they begin soliciting customers in the District of Columbia. Also, when a Licensee contracts with an independent contractor or vendor to perform marketing or sales activities on the Licensee's behalf, the Licensee shall confirm that all of the sales and marketing personnel of the contractor or vendor have also read the relevant provisions of Chapters 3 and 46 of Title 15 DCMR before they can begin soliciting customers in the District of Columbia.

4602.14 **Cessation of Business in the District of Columbia or Cessation of Business to a Customer Class.** A Licensee shall provide to the Commission at least sixty (60) days prior written notice of the Licensee's intention to cease providing

electricity (a) to all Customers in the District of Columbia; or (b) to all Customers within a specified Customer class. Upon receipt of such notice, the Commission may order the Licensee to provide such further notice to Customers or to the public as the Commission deems necessary, and/or take such other action that the Commission deems appropriate.

4602.15 **Electric Company and Licensee Responsibilities in the Event of Default.** In the event of a default, the Licensee and the Electric Company shall abide by the District of Columbia Electricity Supplier Coordination Tariff. Also, a Defaulted Licensee using consolidated billing services remains obligated to provide the Electric Company with information necessary to allow the Electric Company to continue consolidated billing through the conclusion of the billing cycle in which the default occurred. The Defaulted Licensee using consolidated billing services is prohibited from issuing bills to persons who were Customers at the time of the default unless specifically authorized by the Commission. A request to authorize a Defaulted Licensee to bill directly may be made to the Commission by the Defaulted Licensee or the Electric Company. In order that a Defaulted Licensee's charges may be included in Electric Company consolidated billing services, a Defaulted Licensee and the Electric Company shall abide by the District of Columbia Electricity Supplier Coordination Tariff.

4602.16 **Required Notices Upon Default.** Upon default, a Licensee shall immediately notify its Customers of its default by electronic mail, if possible, or by telephonic communication followed by written notice and send written notice by electronic mail to the Electric Company and Commission notifying them of its default. Upon receipt of notice of a Licensee's default from the defaulting Licensee or from the Regional Transmission Organization, the Electric Company shall immediately provide the defaulting Licensee's Customers Standard Offer Service in accordance with the SOS Administrator's Retail Electric Service Tariff, unless or until a Customer notifies the SOS Provider that the Customer has selected a new Electricity Supplier.

4602.17 **Accuracy of Information.** Any Applicant who knowingly or in reckless disregard submits misleading, incomplete, or inaccurate information to the Commission during the Application Process may have its Application rejected, its Electricity Supplier License suspended or revoked or be otherwise penalized in accordance with applicable law and the provisions of the Commission's rules in Subsection 4609.1(a).

4602.18 **Filing of Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement.** Every Licensee shall execute and file with the Commission Secretary a copy of the Electronic Data Interchange Trading Partner Agreement and Supplier Coordination Agreement entered into with the Electric Company within ten (10) days of execution of such agreements.

4602.19 **Proprietary and Confidential Information.** In its Application, the Applicant may designate as confidential information documents provided in response to Sections 4d and 14 of the Application related to the ownership of the Applicant (to the extent such information is not already public) and financial information If an interested party requests the release of this information, the Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information and will permit the Applicant to respond to the request through a written motion filed with the Commission prior to the Commission's determination on the request. The Commission may order the release of information if an Applicant does not meet its burden of proving that the information is confidential.

4603 ELECTRICITY SUPPLIER EDUCATION WORKSHOP

4603.1 **Electricity Supplier Education Workshop.** Within one (1) year of licensing or within one (1) year of the adoption of this rule, whichever is later, each Licensee's Regulatory Contact or Licensee's representative responsible for the Licensee's compliance with the Commission's rules shall complete the Electricity Supplier Education Workshop sponsored by the Commission. Successful completion of the workshop by the Licensee shall be evidenced by a certificate awarded by the Commission. Going forward, each Licensee shall certify annually that its Regulatory Contact or representative responsible for the Licensee's compliance with the Commission's rules has completed the Electricity Supplier Education Workshop sponsored by the Commission or is otherwise knowledgeable with respect to the Commission's Electricity Supplier rules.

4604 BOND REQUIREMENTS FOR ELECTRICITY SUPPLIERS COLLECTING DEPOSITS OR PREPAYMENTS ("CUSTOMER PAYMENTS BOND")

4604. 1 **Applicability.** Any Electricity Supplier that states on its Application that it intends to charge Deposits or collect Prepayments or that does in fact require a Deposit or collects any Prepayment, shall post a Customer Payments Bond with the Commission, in addition to any Integrity Bond that may be required or submitted and shall submit the certification described in this section. Any Electricity Supplier that states on its Application that it does not intend to charge Deposits or collect Prepayments and that does not in fact require a Deposit or collect any Prepayment will not be required to post a Customer Payments Bond or provide the certification described below. Any Licensee that actually charges a Deposit or collects a Prepayment without posting the required Customer Payments Bond may be subject to suspension, revocation, or other action against its license, as well as be held liable for restitution to any Customers who paid such Deposits or Prepayments. Any Licensee requiring, charging, collecting or holding Deposits, or Prepayments may not request return of a current Customer Payments Bond (as defined in this Chapter) or waiver of

the requirements for a future Customer Payments Bond, unless and until the Licensee returns the Deposits or Prepayments to its Customers or provides the services to which the Deposit or Prepayments applied.

4604.2 **Procedure for Determining Amount of a Customer Payments Bond.**

(a) **INITIAL BOND:** Before accepting any Deposits or Prepayments, a Licensee shall post an initial Customer Payments Bond of fifty thousand dollars ($50,000) in the form as set out in Attachment C (Form of Customer Payments Bond-Surety Bond).

(b) **SIX MONTH CERTIFICATION:** Within six (6) months after the initial Customer Payments Bond is posted, the Licensee shall provide to the Commission (with appropriate confidentiality protections): (1) a certification, subject to review by the Commission, of the amount of the Deposits and Prepayments held by the Licensee, and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

(c) **ANNUAL CERTIFICATION:** Annually thereafter, coinciding with the annual update requirements of the Commission's Application, the Licensee shall provide to the Commission (with appropriate confidentiality protections): (1) certification of the amount of the Deposits and Prepayments held by the Licensee and (2) a Customer Payments Bond in an amount that is at least equal to the amount reflected in that certification.

4604.3 **Form of the Bond.** Any Applicant or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, the bond form shall:

(a) Designate the Commission as the sole beneficiary of the bond;

(b) Be continuous in nature. If a Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;

(c) Cover payment of all District of Columbia Deposits and Prepayments of the Licensee that occurred while the bond was in force; as identified by the Commission under these standards; and

(d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission. See Attachment C (Form of Customer Payments Bond-Surety Bond).

4604.4 **Commission Verification.** Each Licensee shall provide appropriate certification, at the intervals discussed in the above paragraphs of funds collected by the Licensee for Prepayments and/or Deposits. Each Licensee shall certify the amount of funds held for Deposits and Prepayments through a notarized statement, subject to verification by the Commission. The certification and any audit by the Commission will verify the year to date collections and balances of Prepayments and Deposits as of a specific date, and will be used to verify whether the Licensee has the appropriate amount of Customer Payments Bond coverage. The Commission reserves the right, in its sole discretion, to order the Licensee to have a Certified Public Accountant review such balances, should conditions warrant such a review.

4604.5 **Compliance Investigations.** The Commission may initiate appropriate investigations if it determines an Electricity Supplier or a Licensee may be collecting Prepayments and/or Deposits from Customers without appropriate Customer Payments Bond coverage. The Commission may utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for appropriate Customer Payments Bond coverage.

4604.6 **Bond Foreclosure.** The Commission may foreclose upon any bond posted with the Commission when, in the Commission's discretion, foreclosure is necessary to ensure the fair and lawful treatment of the District of Columbia's Residential and/or Small Commercial Customers by a Licensee, to ensure that Deposits and Prepayments collected by a Licensee from a Customer will be paid. In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual and direct damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999 (D.C. Law 13-107) and any orders, regulations, rules or standards promulgated thereto.

4605 BOND REQUIREMENTS FOR FINANCIAL INTEGRITY ("INTEGRITY BOND")

4605.1 **Exclusion**

(a) An Electricity Supplier or Licensee who cannot provide credible evidence that it meets the standards listed in Subsection 4605.2 below will be required to submit an initial Integrity Bond of fifty thousand dollars ($50,000), unless that Electricity Supplier or Licensee is applying to provide service as an Aggregator (as defined in D.C. Official Code § 34-1501(2) and Section 4699) who does not take title to electricity or as a Broker (as defined in D.C. Official Code § 34-1501(7) and Section 4699), in which case a ten thousand dollar ($10,000) Integrity Bond will be required. However, an Electricity Supplier or Licensee that meets the standards listed

in Subsection 4605.2 below may still be required to provide a bond to demonstrate financial integrity for the Application on a case-by-case basis. This initial Integrity Bond is subject to the update requirements discussed below, except that Aggregators who do not take title and Brokers will not be required to update the initial ten thousand dollar ($10,000) Integrity Bond.

(b) After continuously providing service in the District for two years, any Licensee who has submitted an Integrity Bond to the Commission in compliance with these requirements may request that the Commission return the previously posted Integrity Bond and waive the requirement for a future bond based upon the Licensee's demonstrated record of continuous and high quality service in the District, without meaningful substantiated consumer complaints, as determined by and in the opinion of the Commission, and such other information as the Licensee may choose to present to the Commission. The Commission may accept or reject this request based on a review of information provided by the Licensee and such other information as the Commission may deem appropriate. The Commission retains the discretion to require an Integrity Bond of said Licensee at a later date if circumstances change, or if the Commission otherwise deems the re-institution of an Integrity Bond to be necessary and appropriate.

4605.2 **Applicability.** Any Electricity Supplier or Licensee that can provide credible evidence that it meets the following standards is not required to post an Integrity Bond in the District of Columbia:

(a) A current credit rating of BBB- or higher from a nationally-recognized credit rating service;

(b) A current commercial paper rating of A2 or higher by Standard & Poor's and/or P2 or higher by Moody's or similar rating by another nationally-recognized rating service;

(c) An unused line of bank credit or parent guarantees deemed adequate by the Commission; or

(d) Any other evidence of financial integrity that the Commission may deem appropriate.

4605.3 **Procedure for Determining Amount of a Financial Integrity Bond**

(a) **INITIAL INTEGRITY BOND:** Any Electricity Supplier that cannot meet the above criteria for financial integrity, and that is not applying to provide service as an Aggregator that does not take title to electricity or a Broker, shall post an initial Integrity Bond of fifty thousand dollars ($50,000). If the Electricity Supplier is applying to provide service as an Aggregator that

does not take title to electricity or as a Broker, the initial required Integrity Bond amount is ten thousand dollars ($10,000).

(b) **FUTURE UPDATES:** The Commission, in its sole discretion, shall determine whether or not to reevaluate the amount of the Integrity Bond in light of any changing conditions in the electricity market at the time that a Licensee submits updated information, taking into consideration the Licensee's past experience with the Commission and with its Customers. The Commission may request such information from the Licensee as may be necessary to make its evaluation.

4605.4 **Form of the Bond.** Any Electricity Supplier or Licensee required to provide a bond under this section shall provide a bond issued by a company authorized to do business in the District of Columbia in a form required by the Commission. At a minimum, this form shall:

(a) Designate the District of Columbia, or the Commission, as the sole beneficiary of the bond;

(b) Be continuous in nature. If any Licensee seeks to cease providing the bond it shall seek approval from the Commission at least sixty (60) days prior to the time it wants to discontinue maintaining the bond;

(c) Cover payment of all of the Licensee's District of Columbia Deposits and Prepayments that occurred while the bond was in force as identified by the Commission under these standards;

(d) State that the proceeds of the bond shall be paid or disbursed as directed by the Commission; and

(e) Be in the format set out in Attachment D (Form of Integrity Bond for Electricity Suppliers and Marketers-Surety Bond, or Attachment E (Form of Integrity Bond for Aggregators and Brokers-Surety Bond).

4605.5 **Commission Verification**. Each Licensee shall provide appropriate certification at the intervals discussed in the above paragraphs. The Commission may request such information from the Licensee as is necessary to verify the accuracy of the certification at any time.

4605.6 **Compliance Investigations.** The Commission has the right to initiate appropriate investigations if it has reason to believe that any Licensee may be providing service without appropriate Bond coverage. The Commission will utilize appropriate legal remedies both to investigate and, if appropriate, to enforce its requirements for an appropriate Integrity Bond.

4605.7 **Bond Foreclosure.** The Commission's foreclosure of an Integrity Bond shall be limited to those instances where damages to the Customers by the Licensee are "actual and direct". In order to draw funds on this Bond, the Commission Secretary shall present an affidavit sworn to and signed by the Commission Secretary to the surety stating that the Commission has determined that the Licensee has not satisfactorily performed its obligations to a Customer who has suffered actual and direct damages or loss of a Deposit or Prepayment in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999 (D.C. Law 13-107), and any orders, regulations, rules or standards promulgated thereto.

4606 PRIVACY PROTECTION POLICY

4606.1 All Applicants and current Licensees shall submit to the Commission Secretary a copy of their Privacy Protection Policy that demonstrates compliance with 15 DCMR § 308 (Use of Customer Information) and 15 DCMR § 309 (Privacy Protection Policy) within ninety (90) days of the adoption of this rule, or within sixty (60) days of receiving their Electricity Supplier License, whichever date is later. The Privacy Protection Policy shall protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of electricity.

4607 COMMISSION REPORTING REQUIREMENTS

4607.1 **Updates to an Approved Application.** After an Application has been approved, a Licensee shall inform the Commission of new information that changes or updates any part of the Application, including but not limited to the averment regarding any civil, criminal, or regulatory penalties imposed on the Licensee, within thirty (30) days of the change or the new information. An Applicant or a Licensee shall also inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings.

(a) If a Licensee changes any of its marketing materials, it shall provide the new materials to the Commission as soon as the Licensee starts using the new material to solicit Customers; and

(b) If a Licensee changes its trade name or the d/b/a name that it is using in the District of Columbia, the Licensee shall notify the Commission within ten (10) days of the effective date of the change and prior to soliciting Customers under that new name.

4607.2 **Annual Reporting Requirements.** The Licensee shall annually review its Application and submit updated information as needed. Annual updates shall be filed with the Commission Secretary within one hundred twenty (120) days after

the anniversary of the grant of the License. The Licensee shall, if it is serving Residential Customers and Small Commercial Customers, also submit the name of its Regulatory Contact, website address, the contact for pricing information, copies of its flyers, scripts, pamphlets and other marketing materials. The Licensee shall recertify annually that it has complied with Subsection 4604.2(c) of this chapter. A Licensee shall provide any information required by any other Commission order or regulation. The Licensee shall also annually file a copy of its Privacy Protection Policy with the Commission Secretary.

4608 COMMISSION ACTION REGARDING A LICENSEE

4608.1 **Commission Investigation.** The Commission may initiate an investigation of a Licensee upon its own motion or upon the complaint of the Office of the People's Counsel, the Office of the Attorney General, or any aggrieved party. The Commission shall provide written notice of the investigation to the Licensee, and shall provide the Licensee an opportunity for a hearing in accordance with District of Columbia law and Commission regulations.

4608.2 **Grounds for Commission Action.** The Commission may take action regarding a Licensee for just cause as determined by the Commission. "Just cause" includes, but is not limited to, the following:

(a) Knowingly or with reckless disregard, providing false or misleading information to the Commission;

(b) Switching, or causing to be switched, the electricity supply for a Customer without first obtaining the Customer's permission, a practice commonly known as slamming;

(c) Disclosing information about a Customer supplied to the Licensee by the Customer or using information about a Customer for any purpose other than the purpose for which the information was originally acquired, without the Customer's written consent, unless the disclosure is for bill collection or credit rating reporting purposes or is required by law or an order of the Commission;

(d) Adding services or new charges to a Customer's existing retail electric service options without the Customer's consent, a practice commonly known as cramming;

(e) Failure to provide adequate and accurate information to each Customer about the Licensee's available services and charges;

(f) Discriminating against any Customer based wholly or partly on the race, color, creed, national origin, sex, or sexual orientation of the Customer or for any arbitrary, capricious, or unfairly discriminatory reason;

(g) Refusing to provide electricity or related service to a Customer unless the refusal is based on standards reasonably related to the Licensee's economic and business purposes;

(h) Failure to post on the Internet adequate and accurate information about its services and rates for Small Commercial Customers and Residential Customers;

(i) Failure to provide electricity for its Customers when the failure is attributable to the actions of the Electricity Supplier;

(j) Committing fraud or engaging in sales, marketing, advertising, or trade practices that are unfair, false, misleading, or deceptive such as engaging in any solicitation that leads the Customer to believe that the Licensee is soliciting on behalf of, or is an agent of, the District of Columbia Electric Company when no such relationship exists;

(k) Failure to maintain financial integrity;

(l) Violating a Commission regulation or order including, but not limited to engaging in direct Solicitation to Customers without complying with the Commission's solicitation rules as provided in the Consumer Protection Standards Applicable to Energy Suppliers (15 DCMR §§ 327.7 - 327.13);

(m) Failure to pay, collect, remit, or accurately calculate applicable taxes;

(n) Violating an applicable provision of the D.C. Official Code or any other applicable consumer protection law;

(o) Conviction of the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers of offices of the Licensee) for any fraud-related crimes (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud);

(p) Imposition of a civil, criminal, or regulatory sanction(s) or penalties against the Licensee or any principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Company) pursuant to any state or Federal consumer protection law or regulation;

(q) Conviction by the Licensee or principal of the Licensee (including the general partners, corporate officers or directors, or limited liability managers or officers of the Licensee) of any felony that has some nexus with the Licensee's business;

(r) Filing of involuntary bankruptcy/insolvency proceedings against the Licensee or filing of voluntary bankruptcy/insolvency proceedings by the Licensee;

(s) Suspension or revocation of a license by any state or federal authority, including, but not limited to, suspension or revocation of a license to be a power marketer issued by the Federal Energy Regulatory Commission;

(t) Imposition of any enforcement action by any ISO or RTO used by the Licensee;

(u) Failure to provide annually an updated Privacy Protection Policy that complies with 15 DCMR § 308 (Use of Customer Information) and 15 DCMR § 309 (Privacy Protection Policy);

(v) Failure of a Licensee, who has not initially started serving customers in the District to notify the Commission as soon as the Licensee begins soliciting or marketing to customers directly or through an authorized representative per Subsection 4602.11. This is a one-time initial notice prior to the Licensee beginning its marketing to or soliciting District consumers; and

(w) Failure to comply with any Commission regulation or order.

4609 SANCTION AND ENFORCEMENT

4609.1 **Sanctions.** Electricity Suppliers and Licensees are subject to sanctions for violations of the District of Columbia Code, and applicable Commission regulations and orders. The following sanctions may be imposed by the Commission:

(a) **Civil Penalty.** The Commission may impose a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day a violation continues shall be considered a separate violation for purposes of this penalty. The Commission shall determine the amount of a civil penalty after consideration of the following:

(1) The number of previous violations on the part of the Licensee;

(2) The gravity and duration of the current violation; and

(3) The good faith of the Licensee in attempting to achieve compliance after the Commission provides notice of the violation.

(b) **Customer Refund or Credit**. The Commission may order a Licensee or an Electricity Supplier to issue a full refund for all charges billed or collected by the Licensee or Electricity Supplier or a credit to the Customer's account. Specifically,

(1) If slamming occurred, the Licensee or the Electricity Supplier shall refund to the Customer all monies paid to the Licensee or the Electricity Supplier; and

(2) If cramming occurred, the Licensee or the Electricity Supplier shall refund to the Customer three times the amount of the unauthorized charges paid to the Licensee or the Electricity Supplier.

(c) **Cease and Desist Order.** The Commission may order the Licensee or the Electricity Supplier to (1) cease adding or soliciting additional customers; (2) cease serving customers in the District of Columbia; and (3) cease any action found to be in violation of District of Columbia law, or Commission rules and regulations.

(d) **Cancellation of a contract or part of a contract between a Customer and a Licensee or an Electricity Supplier**;

(e) **Suspension of a Licensee's License**; and

(f) **Revocation of a Licensee's License**.

4609.2 **Commission Access to Records.** As part of any Commission investigation, the Commission shall have access to any accounts, books, papers, and documents of the Licensee or the Electricity Supplier that the Commission considers necessary in order to resolve the matter under investigation.

4609.3 **Emergency Action by the Commission.** The Commission may temporarily suspend a License, issue a temporary cease and desist order, or take any other appropriate temporary remedial action, pending a final determination after notice and hearing, if the Commission determines that there is reasonable cause to believe that Customers or the reliability of electric supply in the District of Columbia is or will be harmed by the actions of a Licensee or an Electricity Supplier.

4610 COMMISSION ASSESSMENT AND FEES

4610.1 The Licensee or the Electricity Supplier shall pay an assessment for the costs and expenses of the Commission and the Office of the People's Counsel as required by Title 34 of the District of Columbia Official Code.

4610.2 The Licensee or the Electricity Supplier shall pay any additional fees imposed by the Commission pursuant to the Commission's rules, regulations, or orders.

4699 DEFINITIONS

4699.1 For the Purposes of these rules, the following terms have the meanings indicated.

Act. "Act" means the "Retail Competition and Consumer Protection Act of 1999."

Affiliate. "Affiliate" means a Person who directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

Aggregator. "Aggregator" means a Person that acts on behalf of customers to purchase electricity.

Applicant. "Applicant" means the Person that applies for an Electricity Supplier License required by the Act.

Application. "Application" means the written request by a Person for an Electricity Supplier License in a form specified by the Commission. The Application form for an Electricity Supplier License in the District of Columbia is attached to these rules (See Attachment A).

Broker. "Broker" means a Person who acts as an agent or intermediary in the sale and purchase of electricity but who does not take title to electricity and who is not a Consolidator.

Commission. "Commission" means the Public Service Commission of the District of Columbia.

Competitive Billing. "Competitive Billing" means the right of a Customer to receive a single bill from the Electric Company, a single bill from the Electricity Supplier, or separate bills from the Electric Company and the Electricity Supplier.

Consolidator. "Consolidator" means any owner of, or property manager for multi-family residential, commercial office, industrial, and retail facilities who combines more than one property for the primary purpose of contracting with an aggregator or electric energy service provider for electric energy services for those properties, and who: (A) Does not take title to electric energy; (B) Does not sell electric energy to or purchase electric energy for buildings not owned or managed by such owner or property manager; (C) Does not offer aggregation of electric energy

services to other, unrelated end-users; and (D) Arranges for the purchase of electric energy services only from duly licensed Electricity Suppliers or Aggregators.

Customer. "Customer" means a purchaser of electricity for their own end use in the District of Columbia. The term excludes the nonresidential occupant or tenant of a nonresidential Rental Unit of a building where the owner, lessee, or manager manages the internal distribution system serving the building and supplies electricity solely to occupants of the building for use by the occupants.

Customer Payments Bond. "Customer Payments Bond" is a bond or other form of acceptable financial instrument such as a line of credit, sworn letter of guarantee, bank loan approval documents, recent bank statements, vendor financing agreements or underwriting agreements in an amount at least equal to the total amount of Deposits or Prepayments specified in this section.

Deposits. "Deposits" include all payments made by a customer to an Electricity Supplier to secure the receipt of electric energy services from the Electricity Supplier.

Defaulted Licensee. A Defaulted Licensee means that a Licensee is in default and is unable to deliver electricity because: (1) the Commission revokes or suspends the Electricity Supplier's retail Electricity Supplier License; or (2) the Licensee is unable to transact sales through the Regional Transmission Organization designated for the District of Columbia by the Federal Energy Regulatory Commission.

District of Columbia Electricity Supplier Coordination Tariff. "District of Columbia Electricity Supplier Coordination Tariff" means the document that sets forth the basic requirements for interaction and coordination between the Electric Company as the Local Distribution Company and each Electricity Supplier necessary for ensuring the delivery of competitive power supply from Electricity Suppliers to their customers via the Company's distribution system.

Electric Company. "Electric Company" includes every corporation, company, association, joint-stock company or association, partnership, or Person doing business in the District of Columbia, their lessees, trustees, or receivers appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other electricity related services solely to the occupants of the building for use

by the occupants. The term also excludes a Person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

Electricity Supplier. "Electricity Supplier" means a person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity or electric generation services 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 electricity solely to the occupants of the building for use by the occupants;

(b) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates and does not resell it to its subsidiaries or affiliates;

(c) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, or who does not: (I) Take title to electricity; (II) Market electric services to the individually-metered tenants of his or her building; or (III) Engage in the resale of electric services to others;

(d) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;

(e) A Consolidator;

(f) A Community Renewable Energy Facilities ("CREFs") as defined in Subsection 4199.1 and as described in Subsections 4109.1 through 4109.3 pursuant to the Community Renewable Energy Amendment Act of 2013;

(g) An Electric Company, and

(h) Nontraditional Marketers.

Electricity Supplier License. "Electricity Supplier License" means the authority granted by the Commission to a Person to do business as an Electricity Supplier in the District of Columbia.

Electronic Data Interchange Trading Partner Agreement. "Electronic Data Interchange Trading Partner Agreement" means the agreement between the Electric Company and the Electricity Supplier that sets out the terms

and conditions between the parties governing Electronic Data Interchange (EDI)

Independent System Operator or **"ISO". "**Independent System Operator" means an entity authorized by the Federal Energy Regulatory Commission to manage and control the electric transmission grid in a state or region.

Initiating Service in the District. "Initiating Service in the District," means the earliest calendar date on which a licensed Electricity Supplier is contractually obligated to provide electric service to any District of Columbia Customer or Consumer.

Integrity Bond. "Integrity Bond" is a bond that is required of an Electricity Supplier who cannot provide credible evidence that it meets the standards listed in Subsection 4605.2 of this chapter.

Licensee. "Licensee" means an Electricity Supplier who has been granted a valid Electricity Supplier License by the Commission.

Marketer. "Marketer" means a Person who purchases and takes title to electricity in order to resell electricity to Customers.

Market Participant. "Market Participant" means any Electricity Supplier (including an affiliate of the Electric Company) or any Person providing billing services or services declared by the Commission to be potentially competitive services.

Nontraditional Marketers. "Nontraditional Marketers" means a community-based organization, civic, fraternal or business association that works with a licensed Electricity Supplier as agent to market electricity to its members or constituents. A Nontraditional Marketer: (i) conducts its transactions through a licensed Electricity Supplier; (ii) does not collect revenue directly from retail customers; (iii) does not require its members or constituents to obtain its electricity through the Nontraditional Marketer or a specific licensed Electricity Supplier; and (iv) is not responsible for the payment of the costs of the electricity to its suppliers or producers.

Person. "Person" means every individual, corporation, company, association, joint stock company, association, firm, partnership, or other entity.

Prepayments. "Prepayments" include all payments other than a Deposit made by a residential and/or small commercial consumer to an Electricity Supplier for services that have not been rendered at the time of payment, subject to the following:

(a) Where an Electricity Supplier charges for services based on a quantity of electricity, such as a price per kilowatt/hour, then Prepayments include any payments for any quantity that has not been delivered to the Customer or Consumer at the time of payment;

(b) Where an Electricity Supplier charges for services based on a period of time, such as charging a membership fee, initiation fee or other fee for services for a time period, then Prepayments include the amount of the total charges collected by the Electricity Supplier for the period of time less the prorated value of the period of time for which services have been rendered;

(c) Where an Electricity Supplier charges for services based on a measure other than quantity of electricity delivered or a period of time, the Commission shall determine, on a case-by-case basis, whether the charges involve a prepayment; and

(d) Prepayments do not include any funds received in advance of the services being rendered as a result of the Customer's or Consumer's voluntary participation in a budget billing or level billing plan by which the consumer's anticipated electrical costs are averaged over a period of time.

Regional Transmission Organization or **"RTO".** **"**Regional Transmission Organization" or "RTO" means an entity designated by the Federal Energy Regulatory Commission to direct operations of the regional electric transmission grid in its area to ensure electric grid reliability.

Regulatory Contact. "Regulatory Contact" means the staff contact for the licensed Electricity Supplier that handles regulatory matters for that company or entity.

R**esidential Customers.** "Residential Customers" mean those customers served under Potomac Electric Power Company ("Pepco") Rate Schedule DC-R, DC-AE, DC-RAD, DC-RAD-AE, DC-R- TM, or DC-MMA, subject to any revisions made to those tariff sheets by the Commission in the latest rate case.

Small Commercial Customers. "Small commercial customers" means those customers served under Pepco Rate schedule DC-GS or DC-GS-3A, subject to any revisions made to those tariff sheets by the Commission in the latest rate case. Small commercial customers exclude accounts on the above rate schedules in: (1) apartment buildings with four or more units; (2) commercial office buildings; (3) accounts owned or managed by a Consolidator; and CREF subscribers.

Standard Offer Service or SOS. "Standard Offer Service" or SOS" means electricity supply made available to: (1) Customers who contract for electricity with an Electricity Supplier, but who fail to receive delivery of electricity under such contracts; (2) Customers who cannot arrange to purchase electricity from an Electricity Supplier; and (3) Customers who do not choose an Electricity Supplier.

SOS Administrator. "SOS Administrator" means the provider of Standard Offer Service mandated by Section 109 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1509).

Supplier Coordination Agreement. "Supplier Coordination Agreement" means the agreement between the Electric Company and the Electricity Supplier whereby the Electric Company agrees to supply, and the Electricity Supplier requests and agrees to take, all "Coordination Services" pursuant to the Electric Company's Electricity Supplier Tariff.

Transfer Application. "Transfer Application" means the formal submission by a licensed Electricity Supplier to the Commission to transfer its Electricity Supplier License to another licensed Electricity Supplier in the District.

2. All persons interested in commenting on the subject matter of this NOPR and Attachments may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after the publication of this Notice in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Eighth Floor, Washington, D.C. 20005, submitted via email to psc-commissionsecretary@dc.gov, or through the Commission's website at http://edocket.dcpsc.org/comments/submitpubliccomments.asp. Persons with questions concerning this Notice should call 202-626-5150.

ATTACHMENT A

Application for License to Supply Electricity or Electric Generation Services to the Public in the District of Columbia

You may use the attached form to submit your application. (Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form, then you can create an attachment to this application. You may also attach exhibits. All attachments/exhibits must be labeled or tabbed to identify the application item to which they respond. You are also required to file an electronic version of this document (excluding "confidential" information) which must be converted to the Portable Document Format ("PDF") before filing.

To file an application with the District of Columbia Public Service Commission ("Commission"), file a signed and verified original and an electronic version of your application and attachments, and a nonrefundable license fee of $400.00 (payable to "DC Public Service Commission") with the Commission Secretary in Washington, D.C.:

Commission Secretary
Public Service Commission of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, D.C. 20005

Questions pertaining to the completion of this application may be directed to the Commission at the above address or you may call the Commission at the following number: (202) 626-5100. You may reach the Commission electronically at www.websupport@psc.dc.gov

If your answer to any of the Application questions changes during the pendency of your Application, or if the information relative to any item herein changes while you are operating within the District of Columbia, you are under a duty to so inform the Commission immediately. After an Application has been approved a Licensee must inform the Commission of changes to all parts of the Application and the averment regarding any civil, criminal or regulatory penalties, etc. imposed on Applicant, *et al*. must be updated. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within twenty-four (24) hours of the institution of such proceedings. Also, a Licensee/Electricity Supplier must provide annual updates of all items that have changed in the Application. The annual update should be provided to the Commission within 120 days after the anniversary of the grant of the license. A Licensee/Electricity Supplier also is required to officially notify the Commission if it plans to cease doing business in the District of Columbia 60 days prior to ceasing operations.

Confidentiality: Sections 4d and 14 of this Application related to ownership of the Applicant (to the extent such information is not already public) and financial information, respectively, will be treated as confidential information by the Commission to the extent

permitted by law if the Applicant requests such treatment by stamping or marking the materials in question as "CONFIDENTIAL." Any interested person may request, however, release of this information by filing such a request with the Commission. If such a request is made, Applicant shall have the burden of proving the confidential nature of the information. The Commission will notify the Applicant of any request for release of this information, and will permit the Applicant the opportunity to respond to the request through written motion filed with the Commission prior to the Commission's determination on the request.

If you are applying to provide service as an Aggregator (as defined in the "Retail Electric Competition and Consumer Protection Act of 1999" at Section 101(2) and as defined in Commission regulations) who does not take title to electricity as part of providing that service or if you are providing service as a Broker (as defined in the "Retail Competition and Consumer Protection Act of 1999" as Section 101(7) as defined in Commission regulations), you do not need to fill out certain questions in this Application. The exempted questions are marked.

Applicable law: The provisions set forth in this application related to the licensing of Electricity Suppliers and the provision of electricity and electric generation services are addressed in detail in the "Retail Electric Competition and Consumer Protection Act of 1999," and in the Commission's regulations.

Statements made in this Application are made under penalty of perjury (D.C. Code Section 22-2402), false swearing (D.C. Code Section 22-2404), and false statements (D.C. Code Section 22-2405). Perjury is punishable by a fine of up to $5,000 or imprisonment for up to 10 years, or both. False statements are punishable by a fine not more than $1,000 or imprisonment for not more than 180 days, or both. Further amendments to these Code sections shall apply. If the Commission has reliable information that an Applicant has violated any or all of these sections of the Code, the Commission will forward the information to the appropriate law enforcement agency. Statements made in this Application are also subject to Commission regulations, which require the Applicant to certify the truthfulness of the contents of this Application. Any Applicant in violation of these regulations is subject to the penalties found in the "Retail Electric Competition and Consumer Protection Act of 1999," Section 108.

BEFORE THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application Docket No. _____

Application of _____, d/b/a ("doing business as")

_____
for approval to offer, render, furnish, or supply electricity or electric generation services as a(n)_____, [specified in item 10 below] to the public in the District of Columbia

To the District of Columbia Public Service Commission:

BUSINESS INFORMATION

1. IDENTITY OF THE APPLICANT:

a. Legal Name_____

Current Mailing Address:_____
_____
_____

Street Address (if different): _____

Telephone Number: _____

Website URL:_____

Other States, including District of Columbia, in which the Applicant is now or has been engaged in the retail sale of electricity or natural gas and the names under which the Applicant is engaged or has been engaged in such business(es) Applicant may limit response to the last three (3) years:

Name:_____

Business Address:_____

_____

License # State of Issuance:_____

Other states in which the Applicant has applied to provide retail electric or natural gas service but has been rejected. Applicant may limit response to the last three (3) years:

State(s):_____

Date of Application: _____

Attach additional sheets to the application if necessary.

b. Trade name (If Applicant will not be using a trade name, skip to question no. 2.a.):

Trade Name:_____

2.a. **CONTACT PERSON-REGULATORY CONTACT:**

Name and Title:_____

Address:_____
_____
_____

Telephone: ( )_____
Fax: ( )_____
E-mail _____

b. **CONTACT PERSON-CUSTOMER SERVICE and CONSUMER COMPLAINTS (not required for Aggregators who do not take title and/or Brokers):**

Name and Title:_____

Address:_____

Telephone: ( )_____
Fax: ( )_____
e-mail _____

3. RESIDENT AGENT:

Name and Title:_____

Address:_____

Telephone: ( )_____
Fax: ( )_____
E-mail _____

4. PRIMARY COMPANY OFFICIALS

President/General Partners:
Name(s)_____

Business Address:_____

_____

_____

CEO/Managing Partner:
Name_____

Business Address:_____

_____

_____

Secretary Name: _____

Business Address:_____

_____

_____

Treasurer Name: _____

Business Address:_____

_____

_____

a. **APPLICANT'S BUSINESS FORM: (select and complete appropriate statement)**

- □ Proprietorship
- □ Corporation
- □ Partnership
- □ Limited Partnership
- □ Limited Liability Company
- □ Limited Liability Partnership
- □ Other:_____

b. **STATE OF FORMATION: Applicant's business is formed under the laws of the State of _____**

c. **STATUS: Provide a certificate issued by the state of formation certifying that the Applicant is in good standing and qualified to do business in the state of formation.**

If formed under the laws of other than the District of Columbia, provide a certificate issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) certifying that the applicant is registered or qualified, to do business in the District of Columbia and is currently in good standing with DCRA and with the District Department of Finance and Revenue.

d. **OWNERSHIP:** Provide on a separate sheet the names and addresses of all persons and entities that directly or indirectly own ten percent (10%) or more of the ownership interests in the Applicant, or have the right to vote ten percent (10%) or more in the Applicant's voting securities, or who otherwise have the power to control ten percent (10%) or more of the Applicant.

5. AFFILIATES, OR PRECEDECESSOR(S), ENGAGED IN THE SALE ORTRANSPORTATION/TRANSMISSION OF ELECTRICITY OR NATURAL GAS AT WHOLESALE OR RETAIL OR THE PROVISION OF RETAIL TELEPHONE OR CABLE SERVICES TO THE PUBLIC: (select and complete appropriate statement) (Applicant may limit responses to the last five (5) years)

The Applicant has no such Affiliate(s) or Predecessors(s)

Applicant is an Affiliate of a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland. Please provide regulated utility's Name and the jurisdictions in which it operates:

_____

Affiliate(s), or Predecessor(s), other than a regulated utility in Pennsylvania, Virginia, Delaware, New Jersey or Maryland that provides, or provided, sale or transportation/transmission of electricity or natural gas at wholesale or retail to the public:

Name:_____

Business Address:_____

_____

_____

License #, State of Issuance:_____

Location of Operations (Utility Service Territory):_____

Name:_____

Business Address:_____

_____

_____

License #, State of Issuance:_____

Location of Operations (Utility Service Territory:_____

Attach additional sheets to the application if necessary.

6. ACTIONS AGAINST LICENSEES: Provide the following information for the Applicant, any Predecessor(s), and any unregulated Affiliate that engages in or engaged in the sale or transportation/transmission of electricity or natural gas at wholesale or retail or the provision of retail telephone or cable services to the public. (Applicant may limit responses to the last five (5) years).

□ Identify all actions against the Licensee, Predecessor or any regulated or unregulated affiliate(s) such as Suspensions/Revocations/Limitations/ Reprimands/Fines and describe the action in an attached statement, including docket numbers, offense dates, and case numbers, if applicable. Formal Investigations (defined as those investigations formally instituted in a public forum by way of the filing of a complaint, show cause order, or similar pleading) instituted by any regulatory agency or law enforcement agency relating to the Applicant, Predecessor(s), or unregulated affiliate(s) if, as a result of the investigation, Applicant's/Predecessor's/or affiliate's license to provide service to the public was in jeopardy are also listed. The license number, state of issuance, and name of license are identified below:

State(s):_____
Name(s):_____
License Number(s) (or other applicable identification):

□ No such action has been taken.

7. FERC FILING: Applicant has:

- □ Filed an Application with the Federal Energy Regulatory Commission ("FERC") to be a Power Marketer.
- □ Received approval from FERC to be a Power Marketer at Docket or Case Number: _____
- □ Not Applicable.

OPERATIONAL CAPABILITY

8. ISO/RTO AFFILIATION: Provide evidence that the Applicant has met all applicable requirements of any ISO and/or RTO for its use by the Applicant. Indicate the evidence provided (not required for aggregators who do not take title and/or brokers)

Evidence of having met all applicable requirements of the PJM Interconnection, L.L.C. or another RTO or ISO (Attach evidence of being a signatory to all applicable agreements)

9. SOURCE OF SUPPLY: (Check all that apply) (not required for aggregators who do not take title and/or brokers)

- □ Not applicable. Applicant will not be supplying retail electricity
- □ Applicant owns generation.
- □ Applicant contracts for generation.
- □ Applicant obtains generation on the spot market.
- □ Other – Applicant must attach a statement detailing its source of Generation.

SCOPE OF OPERATIONS

(Check all that apply)

10. APPLICANT'S PROPOSED OPERATIONS: The Applicant proposes to operate as a:

- □ Generator of electricity in the wholesale or retail market
- □ Marketer of electricity purchasing and taking title to electricity as an intermediary for sale to customers.
- □ Aggregator acting on behalf of customers to purchase electricity.

□ Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of electricity and who does not take title to electricity.

Does Applicant intend to offer competitive billing services?:_____

Is the Applicant proposing to offer any other services?_____
If so, please provide information regarding the proposed service in an attached statement.

11. AREA OF OPERATION: If the Applicant does not intend to offer services throughout the Potomac Electric Power Company territory in the District of Columbia, Applicant must, in an attached statement, describe in detail the area within the Electric Company's service territory in which Applicant's services will be offered.

□ Applicant intends to offer service throughout the Potomac Electric Power Company territory in the District of Columbia.

□ Applicant intends to offer services in only a portion of Potomac Electric Power Company's service territory in the District of Columbia. Please see attached statement.

12. CUSTOMERS: Applicant proposes to initially provide services to (check all that apply):

□ Residential Customers

□ Commercial Customers

□ Industrial Customers

□ Other (Describe in attachment)

Also, Applicant proposes:

□ Restrictions upon the number of end use customers (Describe in attachment)

□ No restrictions on the number of end use customers.

□ Restrictions upon the size of end use customers (Describe in attachment).

□ No restrictions regarding the size of the end use customers (Describe in attachment).

□ Other restrictions regarding customers (Describe in attachment).

13. START DATE: The Applicant proposes to begin delivering services:

□ Upon approval of the Application and receipt of License.

□ Other approximate date of commencement.

FINANCIAL INTEGRITY

14. REQUIRED DOCUMENTATION OF FINANCIAL INTEGRITY:

Check that the documents listed below are attached to the Application.

The Applicant shall provide the most recent versions of the following documents to the extent they are available:

□ Credit reports or ratings prepared by established credit bureaus or agencies regarding the Applicant's payment and credit history.

□ Balance sheets, income statements and statements of cash flow for the two (2) most recent 12 month periods for which information is available. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any financial statements subsequent to the most recent annual financial statements.

□ In the event that a parent or other company, person or entity has undertaken to guarantee the financial integrity of the Applicant, the Applicant must submit such entity's balance sheet, income statement and statement of cash flow, together with documentation of such guarantee to insure the financial integrity of the Applicant. Audited financial statements must be provided if they exist. In addition, the Applicant shall provide any available quarterly financial statements subsequent to the most recent annual financial statements.

□ If the Applicant, parent, or guarantor entity has not been in existence for at least two-12 month periods, it must provide balance sheets, income statements and statements of cash flow for the life of the business. Audited financial statements must be provided if they exist.

□ Organizational structure of Applicant. Include Applicant's parent, affiliate(s), and subsidiary(ies) if any .

□ Evidence of general liability insurance.

□ If the Applicant has engaged in the retail supply of electricity supply services in any other jurisdiction, evidence that the Applicant is a licensed supplier in good standing in those jurisdictions.

□ A current long-term bond rating, or other senior debt rating.

□ Any other evidence of financial integrity such as an unused line of bank credit or parent guarantees.

15. BONDING REQUIREMENTS (Note: Underlining below is provided to highlight differences between Integrity Bond and Customer Payments Bond requirements.)

Integrity Bond

An Applicant who cannot provide credible evidence that it meets the financial integrity standards listed in Section 4605 of Chapter 46 of Title 15 D.C.M.R. must submit a bond on the form attached to this Application ("Integrity Bond"). The Applicant, if licensed by the Commission as an electricity supplier, may be required to update/revise this initial Integrity Bond, by revising the initial Integrity Bond or posting an additional Integrity Bond, as set forth in Section 4606.

However, an Applicant who can provide credible evidence that it meets the financial integrity standards listed in Section 4605 will not be required to submit an Integrity Bond. (The Applicant may still be required to submit a separate Customer Payments Bond, as discussed below.)

Customer Payments Bond

A separate bond on the appropriate form attached to this Application is mandatory if an Applicant requires prepayments and/or deposits from residential or small commercial customers ("Customer Payments Bond"). Please check one of the boxes below to state whether you, the Applicant, intend to charge, collect, or hold prepayments and/or deposits, as such terms are defined in the Bonding Requirements Addendum attached to this Application:

□ Applicant will not accept prepayments or deposits from residential and small commercial customers.

□ Applicant intends to accept prepayments or deposits and/or deposits from residential and small commercial customers. Applicant must comply with Bonding Requirements Addendum governing the Customer Payment Bond.

Further details regarding the District of Columbia's bonding requirements are included in Sections 4604 and 4605 of Chapter 46 of Title 15 D.C.M.R.

16. NOTICE OF REQUIRED COMPLIANCE: The Applicant is hereby notified that it is required to comply with the following:

(a) The Applicant may be required to submit bond(s), as applicable as described in Section 15 herein.

(b) The Applicant must update this application with the Commission immediately if any of the information provided in this Application changes or an error or inaccuracy is noted during the pendency of the Application. After an Application has been approved, a Licensee must inform the Commission of changes to all

parts of the application and the averment regarding any civil, criminal, or regulatory penalties, etc. imposed on applicant, *et al.* within thirty days of the change or an error or inaccuracy is noted. A Licensee must inform the Commission of changes to the averment regarding bankruptcy proceedings instituted voluntarily or involuntarily within Twenty-four (24) hours of the institution of such proceedings.

(c) If the Applicant receives a License from the Commission, Licensee/Supplier must provide annual updates of all items that have changed in the application. The annual update must be provided to the Commission within 120 days after the anniversary of the grant of the License.

(d) Supplement this application in the event the Commission modifies the licensing requirements, or request further information.

(e) Agree that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market services, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

(f) Pay all fees imposed by the Commission and any applicable taxes.

(g) Ensure that a copy of each service agreement entered into with Potomac Electric Power Company is provided to the Commission.

(h) Agree to not transfer its license to sell electricity and electricity supply services without the prior approval of the District of Columbia Public Service Commission.

(i) Attend an Electricity Suppliers Education Workshop sponsored by the Commission.

(j) If certified, submit a Privacy Protection Policy that complies with 15 D.C.M.R. §308 (Use of Customer Information) and 309 (Privacy Protection Policy) within ninety (90) days of the adoption of Chapter 46 of Title 15 District Code of Municipal Regulations (D.C.M.R.) or within sixty (60) days of receiving their Electricity Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of service.

(k) Abide by 15 D.C.M.R. § 308 and not disclose information about a Customer or the Customer's use of electricity or electric generation services without the Customer's written consent.

(l) Agrees to comply with 15 D.C.M.R. §4602.15 Electric Company and Licensee Responsibilities in the event of a default after certification, and with the District of Columbia Electricity Supplier Coordination Tariff.

17. **AFFIDAVITS REQUIRED**. The Applicant must supply Affidavits of Tax Compliance and General Compliance to the Commission with the completed Application. The affidavits are included with this Application packet and must be executed by the Applicant or representative with authority to bind the Applicant in compliance with District of Columbia laws.

18. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

19. **FEE:** The Applicant has enclosed the required fee of $400.00.

Applicant:_____

By:_____

Printed Name:_____

Title:_____

AFFIDAVIT TAX COMPLIANCE

State of_____ :
: ss
County of_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the_____(office of Affiant) of _____(Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant:

That _____, the Applicant herein, certifies to the Public Service Commission of the District of Columbia ("Commission") that it is subject to, will pay, and in the past has paid, the full amount of taxes imposed by applicable statutes and ordinances, as may be amended from time to time. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of the District of Columbia, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall provide to the Commission its jurisdictional Gross Receipts and revenues from retail sales in the District, for the previous year or as otherwise required by the Commission.

As provided by applicable Law, Applicant, by filing of this application waives confidentiality with respect to its tax information in the possession of the (appropriate taxing authority), regardless of the source of the information, and shall consent to the (appropriate taxing authority) providing that information to the Commission. The Commission shall retain such information confidentially. This does not constitute a waiver of the confidentiality of such information with respect to any party other than the Commission.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____,_____.

_____
Signature of official administering oath

My commission expires_____.

AFFIDAVIT OF GENERAL COMPLIANCE

State of _____ _____:
: ss
County of_____:

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the _____(Officer/Affiant) of_____(Name of Applicant).

That he/she is authorized to and does make this affidavit for said Applicant.

That the Applicant herein certifies to the Public Service Commission of the District of Columbia ("Commission") that:

The Applicant agrees to comply with the terms and conditions of Potomac Electric Power's Company's tariff and agreements.

The Applicant is in compliance with and agrees to comply with all applicable Federal and District of Columbia consumer protection and environmental laws and regulations, and Commissions regulations, fees, assessments, order and requirements.

If certified, the Applicant agrees to submit a Privacy Protection Policy that complies with 15 D.C.M.R. §308 (Use of Customer Information) and 309 (Privacy Protection Policy) within ninety (90) days of the adoption of Chapter 46 of Title 15 District Code of Municipal Regulations or within sixty (60) days of receiving their Electricity Supplier license, whichever date is later. The Privacy Protection Policy must protect against the unauthorized disclosure or use of customer information about a Customer or a Customer's use of service.

The Applicant also agrees to abide by 15 D.C.M.R. §308 and not Disclose information about a Customer or a Customer's use of service without the Customer's written consent.

Applicant agrees, upon request by the Commission, to provide copies to the Commission, of its consumer forms and/or contracts, its marketing or advertising materials (flyers and solicitation scripts), consumer pamphlets and its consumer education materials.

Applicant agrees to abide by any periodic reporting requirements set by the Commission by regulation, including any required periodic reporting to the (appropriate taxing authority).

Applicant agrees to provide proposed notice of the filing of its Application to the Commission so that it may forward the notice to the District of Columbia Register for publication.

The Applicant has obtained all the licenses and permits required to operate the proposed business in the District of Columbia.

The Applicant agrees to comply with power pool, control area, regional transmission operator, and/or ISO standards and requirements, as applicable.

The Applicant agrees that it shall neither disclose nor resell customer data provided to the Applicant by Potomac Electric Power Company.

The Applicant agrees, if the Commission approves its Application, to post an appropriate bond or other form of financial guarantee as required by the Commission and its regulations.

If the Applicant is certified, but later defaults, the licensee/Supplier agrees to comply with 15 DCMR §4602.15, Electric Company and Licensee Responsibilities in the event of a default, and with the District of Columbia Electricity Supplier Coordination Tariff.

The Applicant agrees, that within one (1) year of licensing or within one (1) year of the adoption of Chapter 46 of Title 15 D.C.M.R., whichever is later, each Electricity Supplier shall notify the Commission of the successful completion of the Electricity Supplier Education Workshop sponsored by the Commission by the Licensee's Regulatory Contact or by the individual responsible for the Licensee's compliance with the Commission's rules. Successful completion of the Workshop shall be evidenced by a certificate awarded by the Commission.

The Applicant, including any of its Predecessor(s) and/or affiliate that engages in or engaged in the sale or transportation/transmission of electricity or natural gas at wholesale or retail or the provision of retail telephone or cable services to the public, the general partners, company officials corporate officers or directors, or limited liability company managers or officers of the Applicant, its predecessor(s) or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or Penalties imposed against it within the previous five (5) years pursuant to any state or federal consumer protection law or regulations, has not been convicted of any fraud-related crime (including, but not limited to, counterfeiting and forgery, embezzlement and theft, fraud and false statements, perjury, and securities fraud) within the last five (5) years; and has not ever been convicted of a felony; or alternatively.

2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the supplier, or a decree by such court adjudging the supplier bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the supplier; and

2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a supplier admits in writing its inability to pay its debt generally as they become due to consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That Applicant possesses the requisite managerial and financial fitness to provide service at retail in the District of Columbia.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

_____
Signature of Affiant

Sworn and subscribed before me this _____day of_____, _____.

_____
Signature of official administering oath

My commission expires_____.

VERIFICATION

State of_____ :
: ss
County of_____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

He/she is the_____ (Officer/Affiant) of _____ (Name of Applicant);

That he/she is authorized to and does make this affidavit for said corporation;

The Applicant understands that the making of a false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the District of Columbia Code as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Public Service Commission of the District of Columbia ("Commission") modifies the licensing requirements, or requests further information.

That the Applicant agrees that it will not present itself as a licensed retail supplier of electricity in the District of Columbia, sell or market electricity, accept deposits, prepayments, or contract with any end-use customers without a license from the Commission.

That the Applicant agrees that a license issued pursuant to this Application may not be transferred without prior approval by the Commission.

That the Applicant agrees to update information contained in this Application in accordance with the schedule set forth in the Application.

That the facts above set forth are true and correct to the best of his/her present knowledge, information, and belief after due inquiry and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

_____
Signature of Affiant

Sworn and subscribed before me this _____ day of_____, 20__.

_____
Signature of official administering oath

My commission expires_____.

APPLICANT'S GENERAL AUTHORIZATION FOR VERIFICATION OF FINANCIAL INFORMATION, ETC.

TO WHOM IT MAY CONCERN:

I/We have applied to the District of Columbia Public Service Commission (the "Commission") for a license to be an Electricity Supplier, or to provide certain Electricity Supply related services, and authorize you to release to the Staff of the Commission and its authorized representatives and agents any information or copies of records requested concerning:

> MY COMPANY OR BUSINESS AND ITS HISTORY, PERFORMANCE, OPERATIONS, CUSTOMER RELATIONS, FINANCIAL CONDITION, INCLUDING BANK ACCOUNT TRANSACTIONS AND BALANCES, PAYMENT HISTORY WITH SUPPLIERS AND OTHER CREDITORS, VERIFICATION OF NET WORTH AND OTHER INFORMATION AND RECORDS WHICH THE COMMISSION REQUIRES TO VERIFY OR MAKE INQUIRY CONCERNING MY/OUR FINANCIAL INTEGRITY AND THE INFORMATION CONTAINED IN MY/OUR LICENSE APPLICATION OR OTHER INFORMATION PROVIDED BY ME/US TO THE COMMISSION OR, STAFF OF THE COMMISSION OR ITS REPRESENTATIVES OR AGENTS.

This Authorization is continuing in nature and includes release of information following issuance of a license, for reverification, quality assurance, internal review, etc. The information is for the confidential use of the Commission and the Staff of the Commission in determining my/our financial integrity for being a licensee or to confirm information I/We have supplied and may not be released by order of the Commission or by order of a court of competent jurisdiction.

A photographic or fax copy of this authorization may be deemed to be the equivalent of the original and may be used as a duplicate original. The original signed form is maintained by the Staff of the Commission.

APPLICANT'S AUTHORIZATION TO RELEASE INFORMATION:

_____

APPLICANT (please print)

_____ _____

APPLICANT'S SIGNATURE **DATE**

_____

TITLE

ATTACHMENT B

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF APPLICATION

FORMAL CASE NO. EA [Application Number] IN THE MATTER OF THE APPLICATION OF [Application Name] FOR AN ELECTRICITY SUPPLIER LICENSE

1. The Public Service Commission of the District of Columbia ("Commission") gives notice that on [Month Day, Year], [Name of Applicant] filed its application to become a licensed retail Electricity Supplier in the District of Columbia.

2. All persons interested in filing an objection or comments to the licensure of [Name of Applicant] supplier may submit written and reply comments no later than (20) twenty and thirty-days (30) days, respectively, after the Notice has been posted on the Commission's website. Comments are to be addressed to Brenda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. Copies of the license application filing may be obtained by visiting the Commission's website at www.dcpsc.org and clicking on the tab, "e-docket system," then click on search current documents and then under the section identified as "select case type" click on Electric Applications ("EA") or at cost, by contacting the Commission Secretary at 202-626-5150 or bwestbrook@psc.dc.gov.

ATTACHMENT C - FORM OF CUSTOMER PAYMENTS BOND

SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND NO/100 ($50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in

the District of Columbia with the above named Principal is damaged or suffers any loss of a deposit or prepayment (as such terms are defined in) (Sections 4604 and 4605 of Chapter 46 of Title 15 D.C.M.R.) by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____, and may continue for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual and direct damages or loss of a deposit or prepayment (as such terms defined in Sections 4604 and 4605 of Chapter 46 of Title 15 D.C.M.R.) in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this_____ day of _____

Principal

_____

By:_____
(Signatory)

Surety

_____

Address of Surety:

_____

_____

_____

_____

By:_____
(Signatory)

Notary Seal

ATTACHMENT D - FORM OF INTEGRITY BOND
FOR ELECTRICITY SUPPLIERS AND MARKETERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of FIFTY THOUSAND AND 00/100 ($50,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually and directly damaged or suffers any actual or direct loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____ and terminating _____ , and may be continued for an annual period by a Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on,, _____, the Public Service Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations to a person or entity, who has suffered actual and direct damages or loss in a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety:_____

Address of Surety: _____

_____

_____

_____

By: _____
(Signatory)

Notary Seal

ATTACHMENT E - FORM OF INTEGRITY BOND
FOR AGGREGATORS AND BROKERS

INTEGRITY BOND-SURETY BOND

Bond No. _____

We,

_____
(Name of supplier)

_____
(Address of supplier)

as principal, and

_____
(Surety Company)

_____
(Address of surety)

as surety authorized to do business in the District of Columbia, are held and firmly bound to the Public Service Commission of the District of Columbia, as obligee for the use and benefit of all persons establishing legal rights hereunder, in the sum of TEN THOUSAND 00/100 ($ 10,000) lawful money of the United States of America, to the payments of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, severally, and firmly by this document.

WHEREAS, the Principal has applied to the Public Service Commission of the District of Columbia for a license to provide electric service to retail customers in the District of Columbia, and

WHEREAS, pursuant to the Retail Electric Competition and Consumer Protection Act of 1999, D.C. Law 13-107, Section 105, the Public Service Commission of the District of Columbia is authorized to require the Principal to maintain a bond in order to provide retail electric service.

NOW, THEREFORE, if the Principal shall faithfully and truly fulfill all of its service or product contracts and other contractual commitments to deliver retail electric services, and not file for bankruptcy or for similar protection under law, then this obligation shall be void, otherwise to remain in full force and effect as security for the use of the Public Service Commission of the District of Columbia or of any person or entity, who after entering into a service or product contract or third party supplier agreement for service in the District of Columbia with the above named Principal is actually and directly damaged or suffers any actual or direct loss by reason of failure of service or by other breach or bankruptcy by this Principal.

The aggregate liability of the Surety is limited to the foregoing sum which sum shall be reduced by any payment made in good faith hereunder.

The term of this bond is for the period beginning _____and terminating _____, and may be continued for an annual period by Continuation Certificate signed by the Principal and Surety, a copy of which must be served by registered mail upon the Secretary of the Public Service Commission of the District of Columbia.

In order to draw funds on this Bond, the Secretary of the Public Service Commission of the District of Columbia shall present the following document to the Surety, and attach thereto documentation in support thereof:

Affidavit sworn to and signed by the Secretary of the Public Service Commission of the District of Columbia, stating that at the public hearing on, _____, the Public Service
Commission of the District of Columbia determined that _____ has not satisfactorily performed its obligations a person or entity; who has suffered actual and direct damages or loss a specific amount by means of failure, or by reason of breach of contract or violation of the Retail Competition and Consumer Protection Act of 1999, D.C. Law 13-107 and/or regulations, rules or standards promulgated pursuant thereto.

SIGNED, SEALED AND DATED this _____ day of _____

Principal: _____

By: _____
(Signatory)

Surety: _____

Address of Surety: _____

_____

_____

_____

By: _____
(Signatory)

Notary Seal

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to repeal Chapter 51 (Medicaid Reimbursement for Services Provided by Home Health Aides) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR) and to create a new Chapter 99, entitled "Home Health Services," of Title 29 (Public Welfare) of the DCMR.

Home Health services consist of a variety of services including skilled nursing, home health aide, physical therapy, occupational therapy, durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), and speech pathology and audiology services. All of these services are delivered in a beneficiary's place of residence or a setting in which normal life activities take place with the goal of maintaining a beneficiary's general health outcomes. Home Health services are provided to some of the most vulnerable Medicaid beneficiaries. Several factors have contributed to inconsistent quality of care and limited DHCF's ability to effectively oversee and hold providers accountable for these services, including limited State Plan guidance, the absence of Skilled Nursing and therapy-related rules defining the services, and a lack of specificity in provider qualifications and billing requirements.

These emergency and proposed rules establish standards for Medicaid reimbursement of Home Health services that correlate to a proposed State Plan Amendment (SPA) that will update the amount, duration and scope of Home Health service delivery and implement new provider payment rates for Skilled Nursing services.

Skilled Nursing service rates have not kept pace with market rates in recent years, and have created access issues for some beneficiaries. DHCF is proposing this emergency rate increase and updated oversight standards to ensure that an adequate supply of qualified providers will be available to provide skilled nursing services to District Medicaid beneficiaries. Emergency adoption of this proposed rule is needed to protect the health and safety of District residents to ensure that Home Health service providers can hire and retain qualified staff, which will afford access to skilled nursing services authorized under the State Plan. Further, these rules include new federal standards that require face-to-face encounters between the ordering health practitioner and the beneficiary before Home Health services are delivered.

Emergency adoption is also required in order to ensure that providers of Home Health Aide services are compensated in accordance with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq*. (2012 Repl.)). The provisions of these rules reflecting increased compensation for providers of Home Health Aide services in

accordance with the Living Wage Act are not contingent upon approval of the corresponding SPA.

The new federal standards have resulted in Chapter 51 (Medicaid Reimbursement for Services Provided by Home Health Aides) containing outdated information for providers and beneficiaries of Home Health Aide services. As the revised standards governing provider qualifications, eligibility requirements, service descriptions and delivery parameters, and reimbursement for Home Health Aide services have been incorporated into the new chapter created through these emergency and proposed rules, DHCF is repealing Chapter 51 in its entirety.

The corresponding SPA requires approval by the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS). The State Plan Amendment was approved by the Council of the District of Columbia (Council) through the Fiscal Year 2016 Budget Support Act of 2015, enacted August 11, 2015 (D.C. Act 21-148; 62 DCR 10905). The Notice of Emergency and Proposed Rulemaking was adopted on February 7, 2017, and will become effective for dates of services rendered on or after March 1, 2017, if the corresponding State Plan Amendment has been approved by CMS with an effective date of March 1, 2017 or the effective date established by CMS, whichever is later. The emergency rules shall remain in effect not longer than one hundred and twenty days from the adoption date or until June 7, 2017, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The aggregate fiscal impact of the corresponding State Plan Amendment will be approximately $1,083,000 in Fiscal Year 2017 and $1,211,000 in Fiscal Year 2018.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Chapter 51, MEDICAID REIMBURSEMENT FOR SERVICES PROVIDED BY HOME HEALTH AIDES, is deleted in its entirety.

A new Chapter 99, Home Health Services, is added to read as follows:

CHAPTER 99 HOME HEALTH SERVICES

9900 GENERAL PROVISIONS

9900.1 This chapter establishes general standards for conditions of participation for Medicaid providers and delineates specific standards governing Medicaid reimbursement for the following Home Health services:

(a) Skilled Nursing services as described in Section 9901;

(b) Home Health Aide services as described in Section 9902;

(b) Physical Therapy services as described in Section 9903;

(c) Occupational Therapy services as described in Section 9904; and

(d) Speech Pathology and Audiology services as described in Section 9905.

9900.2 In addition to the services identified in Subsection 9900.1, Medicaid reimbursable Home Health services include Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS).

9900.3 The standards of participation and specific requirements governing reimbursement for Home Care agencies enrolled in the Medicaid program providing DMEPOS services are set forth in Sections 996 and 997 of Chapter 9 of Title 29 DCMR.

9900.4 In order to qualify for Medicaid reimbursement, Home Health services listed in Section 9900.1 are services that are:

(a) Ordered by a physician;

(b) Provided at the beneficiary's residence or in a setting in which normal life activities take place, unless the exceptions referenced in Subsections 9900.5 and 9900.6 are met; and

(c) Delivered in accordance with a plan of care developed by a Registered Nurse (R.N.) under a process that meets the requirements under Subsection 9900.11.

9900.5 Except as provided in Subsection 9900.6 and in accordance with 42 C.F.R. § 440.70(c)(1), Home Health services shall not be delivered in a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities (ICF/IID), or any setting in which payment is or could be made under Medicaid for beneficiary services that include room and board.

9900.6 Home Health services may be provided in an ICF/IID if the home health service is not provided as part of the facility's services as required under 42 C.F.R. § 483.460.

9900.7 A beneficiary shall be eligible for the Medicaid reimbursable Home Health services referenced in Subsection 9900.1 if the following conditions are met:

(a) DHCF or its designee receives an order for Home Health services from the beneficiary's physician establishing that the services are medically necessary in accordance with the requirements set forth in this chapter; and

(b) DHCF or its designee provides prior authorization in accordance with the service delivery requirements set forth in this chapter.

9900.8 In order for the services contained in the physician's order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the order must be signed and dated by a physician knowledgeable about the beneficiary's needs and conditions and must state the amount, frequency, scope and duration of the service. The physician's signature on the order constitutes certification by the physician that the services ordered reflect the health status and needs of the beneficiary, and that the beneficiary is eligible for the service.

9900.9 For all Medicaid reimbursable Home Health services described in Subsection 9900.1, in order to be reimbursed the ordering physician shall:

(a) Document that a face-to-face encounter, related to the primary reason the beneficiary requires Home Health services, occurred between the beneficiary and the health practitioner, as defined in Subsection 9900.10, within ninety (90) days before or within thirty (30) days after the start of services; and

(b) Indicate the name of the practitioner who conducted the face-to-face encounter and the date of the encounter on the order.

9900.10 In order for the services contained in the physician's order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the face-to-face encounter described in Subsection 9900.9 shall be related to the primary reason the beneficiary requires Home Health services and shall be conducted by one of the following health practitioners:

(a) The ordering physician;

(b) A nurse practitioner working in collaboration with the physician;

(c) A certified nurse mid-wife as authorized under District law;

(d) A physician assistant acting under the supervision of the ordering physician; or

(e) For beneficiaries receiving Home Health services immediately after an acute or post-acute stay, the attending acute or post-acute physician.

9900.11 In order for the services contained in the physicians' order described in Subsection 9900.7(a) to be reimbursed by Medicaid, the plan of care described in Subsection 9900.4 shall be developed and signed by an R.N. who is employed or under contract to the Home Health services provider. The signature of the R.N. on the plan of care constitutes a certification that the plan of care accurately reflects the assessed needs of the beneficiary and that the services identified in the plan of care are in accordance with the physician's order described in Subsections 9900.7 and 9900.8.

9900.12 The beneficiary's physician shall approve the initial plan of care by signing it within thirty (30) calendar days of the development of the plan of care, and noting his or her license number and National Provider Identification number on the plan of care.

9900.13 The plan of care for services described in Subsection 9900.1 shall be reviewed, updated and signed by the physician every sixty (60) calendar days.

9900.14 Home health services included in Subsection 9900.15 that are in the beneficiary's plan of care may not exceed thirty-six (36) visits per year for each beneficiary, except in cases where the beneficiary requests prior authorization and is approved by DHCF.

9900.15 The thirty six (36) visit home health service limitation includes any Physical Therapy, Occupational Therapy, or Speech Pathology and Audiology services provided during an annual period.

9900.16 Limitations on the delivery of Skilled Nursing services are described under Section 9901.

9900.17 Limitations on the delivery of DMEPOS are described under Section 9906.

9901 SKILLED NURSING SERVICES

9901.1 Medicaid reimbursable Skilled Nursing services are part-time or intermittent skilled nursing care services that are needed by a beneficiary due to an illness or injury, and are furnished by nurses in accordance with the beneficiary's plan of care described in Subsection 9900.4.

9901.2 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Skilled Nursing services shall meet the following requirements:

(a) Be enrolled as a Medicare Home Health Agency qualified to offer skilled nursing services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 C.F.R. Part 484;

(b) Have sufficient funds or "initial reserve operating funds" available for business expenses determined in accordance with federal special capitalization requirements for home care agencies participating in Medicare as set forth under 42 C.F.R. § 489.28;

(c) Meet the District of Columbia Department of Health licensure requirements in accordance with Chapter 39 (Home Care Agencies) of Title 22-B DCMR;

(d) Be enrolled as a Medicaid provider of Home Health services and meet all requirements as set forth under Chapter 94 (Medicaid Provider and Supplier, Screening, Enrollment, and Termination) of Title 29 DCMR; and

(e) Have a surety bond, in accordance with federal requirements for home care agencies participating in Medicaid as set forth under 42 C.F.R. § 441.16 and Subsection 9901.3.

9901.3 Except for government-operated Home Care Agencies, each Home Care Agency that is a Medicaid participating Home Care Agency or that seeks to become a Medicaid participating Home Care Agency shall:

(a) Obtain a fifty thousand dollar ($50,000) surety bond that meets the requirements as set forth under 42 C.F.R. § 441.16; and

(b) Furnish a copy of the surety bond to DHCF.

9901.4 Medicaid reimbursable Skilled Nursing services shall be provided by a R.N. or licensed practical nurse (L.P.N.) licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.) and implementing rules.

9901.5 Medicaid-reimbursable Skilled Nursing services shall consist of the following duties:

(a) Conducting initial assessments either prior to service provision or at the onset of care and reassessments every sixty (60) calendar days thereafter to develop and update a plan of care;

(b) Coordinating the beneficiary's care and referrals among all Home Care agency providers;

(c) Implementing preventive and rehabilitative nursing procedures;

(d) Administering medications and treatments as prescribed by a licensed physician, pursuant to the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as outlined under the plan of care;

(e) Recording progress notes at each visit and summary notes at least once every sixty (60) calendar days;

(f) Making necessary updates to the plan of care, and reporting any changes in the beneficiary's condition to his or her physician;

(g) Instructing the beneficiary on treatment regimens identified under the plan of care;

(h) Updating the physician on changes in the beneficiary's condition and obtaining orders to implement those changes; and

(i) For R.N.s who supervise nursing services delivered by a skilled nurse (R.N. or L.P.N.), duties shall include, at minimum, the following:

(1) Supervising the beneficiary's skilled nurse on-site, at least once every sixty (60) calendar days;

(2) Ensuring that new or revised physician orders have been obtained initially from the treating physician and then at least every sixty (60) calendar days thereafter, to promote continuity of care;

(3) Reviewing the beneficiary's plan of care;

(4) Monitoring the beneficiary's general health outcomes, including taking vital signs, conducting a comprehensive physical examination, and determining mental status;

(5) Determining if the beneficiary has any unmet medical needs;

(6) Ensuring that all home health services are provided safely and in accordance with the plan of care;

(7) Ensuring that the beneficiary has received education on any needed services;

(8) Ensuring the safe discharge or transfer of the beneficiary;

(9) Ensuring that the physician receives progress notes when the beneficiary's health condition changes, or when there are deviations from the plan of care;

(10) Ensuring that a summary report of the visit is sent to the physician every sixty (60) calendar days; and

(11) Reporting any instances of abuse, neglect, exploitation or fraud to DHCF and other appropriate District government agencies, including the Department of Health, to promote a safe and therapeutic environment in accordance with 17 DCMR § 5414.

9901.6 For Medicaid reimbursable services, the initial assessment to develop the plan of care and reassessments to update the plan of care shall only be conducted by an R.N. The R.N. conducting an initial assessment or periodic reassessment in accordance with this Chapter shall certify in writing that the statements made in the assessment are true and accurate.

9901.7 Consistent with the Department of Health regulations at 22-B DCMR § 3917, Medicaid reimbursable Skilled Nursing services provided by an L.P.N. shall be supervised by an R.N.

9901.8 When an L.P.N. provides Skilled Nursing services, the duties of the L.P.N. shall not include supervisory duties.

9901.9 When an R.N. is supervising a skilled nurse (L.P.N. or R.N.) providing Medicaid reimbursable services, the R.N. shall monitor and supervise the services provided by the L.P.N. or R.N., including conducting a site visit at least once every sixty (60) calendar days, or more frequently, if specified in the beneficiary's plan of care.

9901.10 The skilled nurse shall record progress notes during each visit which shall comply with the standards of nursing care established under 17 DCMR §§ 5414 and 5514, and which shall include the following information:

(a) Notations regarding any unusual health or behavioral events or changes in status;

(b) Notations regarding any matter requiring follow-up on the part of the service provider or DHCF; and

(c) A concise written statement of the beneficiary's progress or lack of progress, medical conditions, functional losses, and treatment goals as

outlined in the plan of care that demonstrates that the beneficiary's services continue to be reasonable and necessary.

9901.11 The skilled nurse shall prepare summary notes every sixty calendar (60) days summarizing the progress notes recorded at each visit and bringing attention to any matter requiring follow-up on the part of the Home Care Agency or DHCF.

9901.12 Skilled Nursing services shall be reimbursed by Medicaid for up to six (6) hours a day with prior authorization by DHCF, in accordance with the requirements set forth under Subsection 9901.13. Beneficiaries may also qualify for additional reimbursable hours if they meet the requirements referenced under Subsection 9901.16. The need for continuing Skilled Nursing services shall be reassessed and certified by the physician every sixty (60) calendar days.

9901.13 For Medicaid reimbursable services, a beneficiary or his/her physician shall obtain prior authorization for the initiation of Skilled Nursing services by submitting a physician's order as described in Section 9900 to DHCF or its agent to support the beneficiary's need for Skilled Nursing services which aligns with the beneficiary's assessed needs.

9901.14 A Home Care agency shall obtain prior authorization for continuing Medicaid reimbursable Skilled Nursing services every sixty (60) calendar days by submitting an updated physician's order and any supporting documentation to DHCF or its agent to support the beneficiary's need for ongoing Skilled Nursing services which align with the beneficiary's assessed needs, as outlined in the updated plan of care.

9901.15 Medicaid reimbursable Skilled Nursing services may be provided without a prior authorization for up to six (6) hours a day for a period not to exceed five (5) calendar days only when the beneficiary's need for Skilled Nursing services is immediate, such as an emergency situation or to ensure the safe and orderly discharge of the beneficiary from a hospital or nursing home to the beneficiary's home.

9901.16 Beneficiaries in need of more hours of Medicaid reimbursable Skilled Nursing services beyond the six (6) hour per day cap may request a health and safety review by DHCF or its designated agent to determine whether additional hours are medically necessary and that the beneficiary's needs can be safely met in the home. The Home Care agency shall submit documentation supporting the beneficiary's additional need for Skilled Nursing services which aligns with the physician's order and the health status and needs as outlined in the plan of care to DHCF's Long Term Care Administration.

9901.17 Beneficiaries enrolled in the § 1915(c) Individuals with Intellectual and Developmental Disabilities (IDD) Home and Community-Based Services Waiver in need of additional hours of Skilled Nursing services beyond those provided

under the State Plan may be eligible to receive Skilled Nursing services under the ID/DD Waiver to the extent the individual has first exhausted the State Plan benefit; qualifies for Skilled Nursing services or extended Skilled Nursing services under 29 DCMR §§ 1931 e*t seq.*; and such services are consistent with the individual's plan of care.

9901.18 The Medicaid reimbursement rate for Skilled Nursing services shall be fifteen dollars ($15.00) for each fifteen (15) minute unit of service for services provided by a R.N., and twelve dollars and fifty cents ($12.50) for each fifteen (15) minute unit of service provided by a L.P.N.

9901.19 The Medicaid reimbursement rate for an initial assessment by a R.N. shall be a flat rate of one hundred and twenty dollars ($120). The reimbursement rate for reassessments and supervisory visits shall be the R.N. rate for each fifteen (15) minute unit of service not to exceed a total of eight (8) units of service per reassessment or supervisory visit.

9901.20 A provider seeking Medicaid reimbursement shall provide and document at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

9901.21 Medicaid reimbursable Skilled Nursing services shall comply with the following service limitations:

(a) Assessments, reassessments or supervisory visits of a skilled nurse or aide shall not be included in the calculation of the daily Skilled Nursing cap;

(b) When a skilled nurse performs the duties described under Subsections 9901.5(b)-(h) during an initial assessment or reassessment, these services shall be included as part of the rate paid for an initial assessment or reassessment and shall not be billed separately; and

(c) When a skilled nurse provides assistance with activities of daily living during an assessment, supervisory, or Skilled Nursing visit, the Home Care agency shall ensure that activities performed during the assessment, supervisory, or Skilled Nursing visit are only billed as Skilled Nursing services and may not also be billed as personal care aide services.

9901.22 Beneficiaries who receive Medicaid-reimbursed Skilled Nursing services may not concurrently receive Medicaid-reimbursed Private Duty Nursing services under the State Plan.

9902 HOME HEALTH AIDE SERVICES

9902.1 Medicaid reimbursable Home Health Aide services are services that are required by a beneficiary due to an illness or injury, and include assistance with activities

of daily living, assistance with self-administered medications, or other clinical tasks to assist with the provision of nursing or skilled services such as cleaning around a feeding tube and assistance with oxygen therapy, on a part-time or intermittent basis.

9902.2 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Home Health Aide services shall meet all requirements of Subsection 9901.2.

9902.3 Medicaid reimbursable Home Health Aide services shall be provided by a home health aide certified in accordance with Chapter 93 (Home Health Aides) of Title 17 DCMR who is supervised in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) and implementing rules.

9902.4 Medicaid reimbursable Home Health Aide services shall consist of the following duties:

(a) Performing personal care including assistance with activities of daily living such as bathing, personal hygiene, toileting, transferring from the wheelchair, and instrumental activities such as meal preparation, laundry, grocery shopping, and telephone use;

(b) Changing urinary drainage bags;

(c) Assisting the beneficiary with transfer, ambulation, and exercise as prescribed;

(d) Assisting the beneficiary with self-administration of medication;

(e) Measuring and recording temperature, pulse, respiration, and blood pressure;

(f) Measuring and recording height and weight;

(g) Observing, recording, and reporting the beneficiary’s physical condition, behavior, or appearance;

(h) Preparing meals in accordance with dietary guidelines;

(i) Assisting with skills necessary for food consumption;

(j) Implementing universal precautions to ensure infection control;

(k) Performing tasks related to keeping the beneficiary's living area in a condition that promotes the beneficiary's health and comfort;

(l) Changing simple dressings that do not require the skills of a licensed nurse;

(m) Assisting the beneficiary with activities that are directly supportive of skilled therapy services;

(n) Assisting with routine care of prosthetic and orthotic devices

(o) Emptying and changing colostomy bags and performing care of the stoma;

(p) Cleaning around a gastrostomy tube site;

(q) Administering an enema; and

(r) Assisting with oxygen therapy.

9902.5 Home Health Aide services shall be reimbursed by Medicaid for up to four (4) hours per day with prior authorization by DHCF, in accordance with the requirements set forth under Subsection 9902.6. The need for continuing Home Health Aide services shall be reassessed and certified by the physician every sixty (60) days.

9902.6 A beneficiary and his/her physician shall obtain prior authorization for the initiation of Medicaid reimbursable Home Health Aide services by submitting a physician's order as described in Section 9900 to DHCF or its agent to support the beneficiary's need for Home Health Aide services which aligns with the beneficiary's assessed needs.

9902.7 The Home Care agency shall obtain prior authorization for continuing Medicaid reimbursable Home Health Aide services every sixty (60) calendar days by submitting an updated physician's order and any supporting documentation to DHCF or its agent to support the beneficiary's need for ongoing Home Health Aide services which aligns with the beneficiary's assessed needs, as outlined in the updated plan of care.

9902.8 Beneficiaries in need of additional hours of Medicaid reimbursable Home Health Aide services may request a health and safety review by DHCF or its designated agent to determine the need for additional hours beyond the four (4) hour per day cap on Home Health Aide services. The Home Care agency shall submit documentation supporting the beneficiary's additional need for Home Health Aide services which aligns with the physician's order and the beneficiary's health status and needs as outlined in the plan of care to DHCF's Long Term Care Administration.

9902.9 For dates of service prior to January 1, 2017, providers shall be reimbursed five dollars and two cents ($5.02) per unit of service for allowable Home Health Aide services as authorized in the approved plan of care, of which no less than three dollars and forty six cents ($3.46) per fifteen (15) minutes for services rendered by a home health aide shall be paid to the home health aide to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

9902.10 For dates of service beginning January 1, 2017, providers shall be reimbursed five dollars and five cents ($5.05) per unit of service for allowable Home Health Aide services as authorized in the approved plan of care, of which no less than three dollars and forty-nine cents ($3.49) per fifteen (15) minutes for services rendered by a home health aide shall be paid to the home health aide to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq*. (2012 Repl.)).

9902.11 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at www.dc-medicaid.com and DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s).

9902.12 If a beneficiary is receiving Adult Day Health Program (ADHP) services under Chapter 97 of Title 29 DCMR on the same day that Home Health Aide services are delivered, the combination of Medicaid reimbursable ADHP and Home Health Aide services shall not exceed a total of twelve (12) hours per day.

9902.13 A beneficiary shall not receive Personal Care Aide (PCA) services under Chapter 42 or Chapter 50 of Title 29 DCMR and Home Health Aide services concurrently. Medicaid claims for PCA services submitted by a provider for any hour in which the beneficiary was receiving Medicaid reimbursable Home Health Aide services shall be denied.

9903 PHYSICAL THERAPY SERVICES

9903.1 Medicaid reimbursable Physical Therapy services are skilled services designed to treat a beneficiary's identified physical dysfunction or reduce the degree of pain associated with movement, injury or long term disability. Physical Therapy services should also maximize independence and prevent further disability, maintain health, and promote mobility.

9903.2 Medicaid reimbursable Physical Therapy services shall be provided in accordance with the beneficiary's plan of care described in Subsection 9900.4.

9903.3 In accordance with the District's Medicaid State Plan, Physical Therapy is provided as part of a plan of care in a hospital, skilled care facility, intermediate care facility or through a Home Care agency.

9903.4 In order to be eligible for Medicaid reimbursement for Physical Therapy services, a Home Care agency shall meet the requirements under Subsection 9901.2.

9903.5 Medicaid-reimbursable Physical Therapy services shall be provided by a physical therapist with at least two (2) years of experience and licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.) and implementing rules.

9903.6 Medicaid-reimbursable Physical Therapy services shall consist of the following duties:

(a) Conducting an initial evaluation and assessment that summarizes the physician's order and documents the beneficiary's strength, range of motion, balance, coordination, muscle performance, respiration, and motor functions;

(b) Developing and describing therapy plans which explain therapeutic strategies, rationale, treatment approaches and activities to support treatment goals;

(c) Maintaining ongoing involvement and consulting with other service providers and caregivers;

(d) Consulting and instructing the beneficiary, family, or other caregivers on the therapy plan;

(e) Recording daily progress notes and summary notes at least quarterly, or more frequently as needed;

(f) Assessing the beneficiary's need for the use of adaptive equipment;

(g) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality, and functioning of adaptive equipment to ensure it addresses the beneficiary's needs;

(h) Accurately completing documentation required to obtain or repair adaptive equipment in accordance with established insurance, Medicare and Medicaid guidelines; and

(i) Conducting periodic examinations and modifying treatments for the beneficiary receiving services and ensuring that Physical Therapy recommendations are incorporated into the plan of care.

9903.7 Subject to the limitation set forth in Subsection 9900.15, Physical Therapy services may be reimbursed by Medicaid for up to thirty-six (36) visits per year without prior authorization and approval by DHCF.

9903.8 Requests for additional Physical Therapy visits may be approved by DHCF when the beneficiary requests prior authorization and a physician's order documents the need for additional Physical Therapy services.

9903.9 Physical Therapy services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at www.dc-medicaid.com.

9904 OCCUPATIONAL THERAPY SERVICES

9904.1 Medicaid reimbursable Occupational Therapy services are skilled services designed to maximize independence, gain skills, prevent further disability, and develop, restore, or maintain a beneficiary's daily living and work skills.

9904.2 Medicaid reimbursable Occupational Therapy services shall be provided in accordance with the beneficiary's plan of care as described in Subsection 9900.4.

9904.3 In accordance with the District's Medicaid State Plan, Occupational Therapy is provided as part of a plan of care in a hospital, skilled care facility, intermediate care facility or through a Home Care agency.

9904.4 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Occupational Therapy services shall meet the requirements under Subsection 9901.2.

9904.5 Medicaid reimbursable Occupational Therapy services shall be provided by an occupational therapist with at least two (2) years of experience and licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.) and implementing rules.

9904.6 Medicaid-reimbursable Occupational Therapy services shall consist of the following duties:

(a) Conducting an initial evaluation and assessment that:

(1) Summarizes the physician's order;

(2) Documents the beneficiary's strength, range of motion, balance, coordination, muscle performance, respiration, and motor functions; and

(3) Reflects the beneficiary's employment and living goals;

(b) Developing and describing therapy plans which explain therapeutic strategies, rationale, treatment approaches and activities to support treatment goals;

(c) Consulting and instructing the beneficiary, family, or other caregivers on the therapy plan;

(d) Recording daily progress notes t and summary notes at least quarterly, or more frequently as needed;

(e) Assessing the beneficiary's need for the use of adaptive equipment;

(f) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality, and functioning of adaptive equipment to ensure it addresses the beneficiary's needs;

(g) Completing documentation required to obtain or repair adaptive equipment in accordance with established insurance, Medicare and Medicaid guidelines;

(h) Conducting and documenting quarterly assessments to verify the condition of the adaptive equipment; and

(i) Conducting periodic examinations to modify treatments for the beneficiary, when necessary, and ensure that Occupational Therapy recommendations are incorporated into the plan of care.

9904.7 Subject to the limitation set forth in § 9900.15, Occupational Therapy services may be reimbursed by Medicaid for up to thirty-six (36) visits per year without a prior authorization and approval by DHCF.

9904.8 Requests for Medicaid reimbursement of additional Occupational Therapy visits may be approved by DHCF when a beneficiary requests prior authorization and a physician's order documents the need for additional Occupational Therapy services.

9904.9 Occupational Therapy services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at www.dc-medicaid.com.

9905 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES

9905.1 Medicaid reimbursable Speech Pathology and Audiology services are skilled therapeutic interventions to address communicative and speech disorders to maximize a beneficiary's expressive and receptive communication skills and are

intended to treat the beneficiary's medical or non-medical communicative disorder.

9905.2 Medicaid reimbursable Speech Pathology and Audiology services shall be provided in accordance with the beneficiary's plan of care as described in Subsection 9900.4.

9905.3 In accordance with the District of Columbia Medicaid State Plan, Speech Pathology and Audiology services shall be limited to beneficiaries eligible through the Early Periodic Screening Diagnostic Treatment (EPSDT) benefit.

9905.4 In accordance with the District of Columbia Medicaid State Plan, Speech Pathology and Audiology services shall only be provided by a facility licensed to provide medical rehabilitation services or a Home Care agency.

9905.5 In order to be eligible for Medicaid reimbursement, a Home Care agency providing Speech Pathology and Audiology services shall meet the requirements under Subsection 9901.2.

9905.6 Medicaid reimbursable Speech Pathology and Audiology services shall be provided by a speech language pathologist or audiologist with at least two (2) years of experience that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.) and implementing rules.

9905.7 Medicaid-reimbursable Speech Pathology and Audiology services shall consist of the following duties:

(a) Conducting a comprehensive assessment, which shall include the following:

(1) A background review and current functional review of communication capabilities in different environments, including employment, residence, and other settings in which normal life activities take place;

(2) An evaluation of the beneficiary's potential for using augmentative or alternative speech devices, methods, or strategies;

(3) An evaluation of the beneficiary's potential for using sign language or other expressive communication methods; and

(4) A needs assessment for the use of adaptive eating equipment.

(b) Developing and implementing the treatment plan that describes treatment strategies including, direct therapy, training caregivers, monitoring requirements, monitoring instructions, and anticipated outcomes;

(c) Assisting beneficiaries with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;

(d) Conducting aural rehabilitation by teaching sign language and/or lip reading to people who have hearing loss, if applicable;

(e) Recording daily progress notes and summary notes at least quarterly, or more frequently as needed;

(f) Conducting periodic examinations, modifying treatments for the beneficiary receiving services and ensuring that the recommendations are incorporated into the Plan of Care; when necessary; and

(g) Conducting discharge planning.

9905.8 Subject to the limitations set forth in Subsection 9900.15, Medicaid reimbursable Speech Pathology and Audiology services may be provided for up to thirty-six (36) visits per year without a prior authorization.

9905.9 Requests for Medicaid reimbursement for additional Speech Pathology and Audiology visits may be approved by DHCF when a beneficiary requests prior authorization and a physician's order documents the need for additional Speech Pathology and Audiology services.

9905.10 Speech Pathology and Audiology services shall be reimbursed pursuant to the District of Columbia's Medicaid fee schedule, available at www.dc-medicaid.com.

9906 AUDITS AND RECORD MAINTENANCE

9906.1 All Medicaid reimbursable Skilled Nursing, Home Health Aide, Physical Therapy, Occupational Therapy, Speech Pathology and Audiology services shall adhere to the audit and record maintenance requirements set forth in this section.

9906.2 Record maintenance requirements related to DMEPOS shall be governed under Subsection 996 of Chapter 9 (Medicaid Program) of Title 29 DCMR.

9906.3 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing the Medicaid program.

9906.4 DHCF shall routinely conduct the audit process to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid. These audits shall be conducted on-site or through an off-site desk review.

9906.5 Each Home Care Agency shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services (HHS).

9906.6 Each Home Care agency shall maintain complete and accurate records reflecting the specific Home Health services provided to each beneficiary for each unit of service billed. Such records shall be maintained for a period of ten (10) years or when all audits have been completed, whichever is longer.

9999 DEFINITIONS

9999.1 When used in this chapter, the following terms shall have the following meanings:

Adaptive Equipment - Medical devices used to assist the beneficiary in performing activities of daily living

Order – A formal, written instruction signed by the physician regarding a beneficiary's medical care, treatment or management which specifically requests the provision of a specific service.

Plan of Care - A written document developed by the R.N. hired by the Home Health services provider that delineates the various treatments of the beneficiary.

Skilled Nurse - An R.N. or L.P.N. licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.) and implementing rules or appropriately licensed in the jurisdiction where services are rendered.

Surety Bond - One or more bonds issued by one or more surety companies under 31 U.S.C. §§ 9304 to 9308 and 31 C.F.R. Parts 223, 224, and 225.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900 South, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

WASHINGTON CONVENTION AND SPORTS AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Directors of the Washington Convention and Sports Authority (Authority), pursuant to Section 203 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code §§ 10-1202.03(3) and (6) (2013 Repl. & 2016 Supp.)), as amended by the Fiscal Year 2010 Budget Support Act of 2009, effective March 3, 2010 (D.C. Law 18-111; D.C. Official Code §§ 10-1201.01 *et seq.* (2013 Repl. & 2016 Supp.)) (the Act), hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 3 (Washington Convention and Sports Authority: Procurement) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

The amendment would exempt from competition the procurement of certain goods and services essential to the Authority's statutory mission of promoting the District of Columbia as a destination for trade shows and conventions, tourism and leisure travel, recreational events, and sports and entertainment events. Under the Authority's current procurement rules, the Authority must procure goods, services, or construction by invitation for bid, request for proposals, small purchase, emergency procurement, or sole source procurement.

Since the 2009 merger of the Washington Convention Center Authority with the D.C. Sports and Entertainment Commission, the Authority's mission has expanded to include the hosting of sporting events, sports teams, recreational events and entertainment events in the District of Columbia. In particular, the Authority has undertaken the development and programing of original events, including the AT&T Nation's Football Classic, Embassy Chef Challenge, and Events DC Cherry Blast; it is the presenting sponsor of the National Cherry Blossom Festival; it has embarked on several sports and entertainment-related strategic initiatives including the Entertainment and Sports Arena to be constructed on the St. Elizabeths East Campus in Ward 8; and it has focused increasingly on marketing and promoting its Events DC brand through its participation in premier events such as the South by Southwest Conferences and Festivals (SXSW) taking place in Austin, Texas on March 10, 2017.

The amended regulations, which are an adaptation of those of D.C. Official Code § 2-354.13 and 27 DCMR § 1703, would exempt certain categories of contracts from competition, including contracts for many of the goods and services that the Authority regularly purchases in connection with its entertainment and sports events. The Authority's existing procurement rules on the other hand are primarily directed toward the competitive purchases of customary goods and services and do not easily permit it to engage the type of services – particularly hiring entertainment, conducting media buys and purchasing social media and other digital advertisements – that are necessary to carry out its mission. Further, there are several expenditures the Authority must make on a regular basis, such as membership dues, postage and subscriptions, which the District has clearly exempted from competition in its rules, but which have never been expressly included as exceptions in the Authority's procurement regulations.

Issuance of the rules on an emergency basis is necessary and essential for the preservation of the public welfare by providing the Authority the procurement flexibility required to fulfill its expanded statutory obligation of developing, promoting, hosting, and participating in sports, recreational, and entertainment events, particularly the upcoming SXSW event (during which the Authority will be joined by the District and various tourism and hospitality stakeholders), providing an economic benefit to the District through increased visitation and hotel and restaurant tax revenues.

The emergency rules were adopted on February 9, 2017 and shall remain in effect until June 9, 2017, unless superseded by another rulemaking notice. The Authority also gives notice of its intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 3, WASHINGTON CONVENTION AND SPORTS AUTHORITY: PROCUREMENT, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended as follows:

Section 301, GENERAL REQUIREMENTS: METHODS OF PROCUREMENT, Subsection 301.1, is amended to read as follows:

301.1 Unless the CCO elects to make a procurement pursuant to a contract of the U.S. General Services Administration or of the Chief Procurement Officer of the District of Columbia government, or unless otherwise exempt pursuant to Subsection 301.8 of these regulations, the CCO shall procure any goods, services or construction by one of the methods set forth in these regulations, namely:

(a) Invitation for bids;

(b) Request for proposals;

(c) Small purchase;

(d) Emergency procurement; or

(e) Sole source procurement.

Subsection 301.8 is newly adopted and shall read as follows:

301.8 Procurements for the following goods and services shall be exempt from the competition requirements established by this chapter:

(a) Artistic services or works of art;

(b) Commodities or contractual services if federal or District law prescribes with whom the Authority must contract;

(c) Legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators;

(d) Copyrighted or patented materials, including technical pamphlets, published books, maps, and testing or instructional materials; provided, that the materials are purchased directly from the owner of the copyright or patent;

(e) Memberships in trade or professional organizations;

(f) Entertainers, including speakers;

(g) Job-related seminars and training for Authority employees, when such seminars or training is offered to the general public;

(h) Maintenance and support of existing software and technology to the extent that the creator of the intellectual property is still protected and is the only source of the maintenance and support of the existing software and technology;

(i) Public transit farecards, passes and tokens;

(j) Personal property or services provided by another public entity, agency, or authority, or an organization consisting of such entities, agencies or authorities;

(k) Postage;

(l) Purchases of advertising in all media, including electronic, print, radio, and television; provided, that such purchases are made directly from the media outlet;

(m) Trade and career fairs for Authority employees;

(n) Special event venues and related services as dictated by the establishment;

(o) Subscriptions for periodicals and newspapers; and

(p) Ticket purchases for special events, tourist attractions, and amusement parks.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel,

Washington Convention and Sports Authority, Walter E. Washington Convention Center, 801 Mount Vernon Place N.W., Washington, D.C. 20001. Copies of this notice may be obtained by writing to the foregoing address, by sending an e-mail to rsmith@eventsdc.com, or by calling the Office of the General Counsel at 202-249-3000.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-032
February 8, 2017

SUBJECT: Appointment – Metropolitan Washington Airports Authority Board of Directors

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 6007(e) of the Metropolitan Washington Airports Act of 1986, effective October 30, 1986, D.C. Law 99-591, D.C. Official Code § 9-1006(e)(1)(B), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.)), it is hereby **ORDERED** that:

1. **WARNER SESSION,** pursuant to the Metropolitan Washington Airports Authority Board of Directors Warner H. Session Confirmation Resolution of 2017 effective February 7, 2017, Resolution PR22-0056, is reappointed as a member of Metropolitan Washington Airports Authority Board of Directors, for a term to end January 5, 2023.

2. **EFFECTIVE DATE:** This Order shall become effective *nunc pro tunc* to February 7, 2017.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-033
February 13, 2017

SUBJECT: Appointments — Science Advisory Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1- 523.01 (2016 Repl.), and section 12 of the Department of Forensic Sciences Establishment Act of 2011, approved August 17, 2011, D.C. Law 19-18; D.C. Official Code § 5-1501.11 (2012 Repl.), which established the Science Advisory Board ("**Board**"), it is hereby **ORDERED** that:

1. **DR. NAMANDJE BUMPUS,** pursuant to the Science Advisory Board Dr. Namandje Bumpus Confirmation Resolution of 2016, effective January 9, 2017, PR 22-0037, is appointed as a scientist member to the Board, replacing Michael Coble, for a term to end April 18, 2019.

2. **DR. MARIE FIDELIA-LAMBERT,** pursuant to the Science Advisory Board Dr. Marie N. Fidelia-Lambert Confirmation Resolution of 2016, effective January 9, 2017, PR 22-0036, is appointed as a scientist with expertise in quality assurance member of the Board, replacing Joseph Bono for a term to end April 18, 2019.

3. **DR. JEANNE JORDAN,** pursuant to the Science Advisory Board Dr. Jeanne Jordan Confirmation Resolution of 2016, effective January 9, 2017, PR22-0035, is appointed as a scientist member with expertise in statistics to the Board, replacing Sandy Zabell for a term to end April 18, 2019.

4. **SIMONE GITTELSON,** pursuant to the Science Advisory Board Simone Gittelson Confirmation Resolution of 2016, effective March 5, 2016, PR 21-0531, is appointed as a forensic scientist member to the Board, replacing Jay Siegel, for a term to end November 25, 2017.

5. **BURTON WILCKE,** pursuant to the Science Advisory Board Burton W. Wilcke Confirmation Resolution of 2015, effective February 8, 2016, PR21-0473, is appointed as a forensic scientist member to the Board, replacing Charlotte Word, for a term to end November 25, 2017.

6. **EFFECTIVE DATE:** Each section of this Order shall be effective *nunc pro tunc* to confirmation date of the corresponding section.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-034
February 13, 2017

SUBJECT: Reappointments and Appointments — Board of Nursing

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 204 of the District Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.04 (2016 Repl.), which established the Board of Nursing ("**Board**"), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **AMANDA LIDDLE**, pursuant to the Board of Nursing Amanda Liddle Confirmation Resolution of 2016, effective January 30, 2017, PR 22-0038, is appointed as a licensed registered nurse member of the Board of Nursing, filling a vacant seat, for a term to end July 21, 2019.

2. **ELIZABETH LAMME**, pursuant to the Board of Nursing Elizabeth Lamme Confirmation Resolution of 2016, effective January 30, 2017, PR 22-0020, is appointed as a licensed registered nurse member of the Board of Nursing, replacing Cathy Borris-Hale, for a term to end July 21, 2017.

3. **MEEDIE LAVERNE BARDONILLE**, pursuant to the Board of Nursing Meedie Bardonille Confirmation Resolution of 2016, effective January 30, 2017, PR22-021, is appointed as a licensed registered nurse member of the Board of Nursing, replacing Chioma Nwachukwu, for a term to end July 21, 2019.

4. **VERA MAYER**, pursuant to the Board of Nursing Vera Mayer Confirmation Resolution of 2016, effective February 13, 2017, PR 22-0033, is reappointed as a consumer member of the Board of Nursing, for a term to end July 7, 2018.

5. **AMANDA LIDDLE**, is appointed as chairperson of the Board of Nursing, and shall serve in that capacity at the pleasure of the Mayor.

6. **EFFECTIVE DATE:** Section 1, 2, 3, and 5 of this Order shall be effective *nunc pro tunc* to January 30, 2017. Section 4 of this Order shall be effective February 13, 2017.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-035
February 13, 2017

SUBJECT: Reappointments and Appointment — Mayor's Advisory Committee on Child Abuse and Neglect

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2012-164, dated October 3, 2012, as amended by Mayor's Order 2014-074, dated April 9, 2014, it is hereby **ORDERED** that:

1. The following persons are reappointed as non-governmental members of the Mayor's Advisory Committee on Child Abuse and Neglect ("**Committee**") for terms to end September 24, 2019:

   a. **SHARRA GREER**, as a representative of a university, public policy organization, or research center;

   b. **LOURDES GREEN,** as a representative of an advocacy organization that works on behalf of children and youth.

2. **STACEY JOY GRAHAM,** is appointed as a non-governmental member of the Committee, filling a vacant seat, for a term to end September 24, 2019.

3. **EFFECTIVE DATE:**

   a. Section 1 of this Order shall become effective immediately.

b. Section 2 of this Order shall be *nunc pro tunc to* December 15, 2016.

MURIEL BOWSER
MAYOR

ATTEST: _____
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

CITY ARTS & PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

The City Arts & Prep Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from Vendors or Consultants for the following tasks and services:

- Architectural Services

Please send an email to bids@cityartspcs.org to receive a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 pm, Friday, March 3, 2017.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
bids@cityartspcs.org

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Grant Writing and Foundation Relations Consultant

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide contractual grant writing and foundation relations support including, but not limited to: developing institutional relations strategy; helping to define fundraising messages; conducting research to identify new prospects; and providing fundraising writing services, including but not limited to grant proposals, letters of inquiry, outreach letters, prospect reports, and strategy memos.

The contract will be assigned to a successful bidder who can provide service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, February 24, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Email: kyochum@elhaynes.org

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Event Catering Services

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide catering services, including food, for our annual fundraising event Toast to Transformation.

The contract will be assigned to a successful bidder who can provide service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, March 3, 2017. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Email: kyochum@elhaynes.org

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO AWARD SOLE SOURCE CONTRACT

Eagle Academy Public Charter School intends to award a sole source contract to VIKA Capitol, LLC for the period of February 2017 – December 2017 for Civil Engineering Services. When Eagle Academy PCS purchased the Naylor Road site out of bankruptcy, the purchase agreement required an ALTA Survey, a Soil and Engineering Survey, and related services which were conducted by VIKA. VIKA gained extensive knowledge of the site, its conditions and topography. To interject another service provider to replace VIKA would result in substantial delays and additional costs that Eagle could not recoup through the competitive bidding process. VIKA's earlier work on the Site is not licensed for third-party certification purposes.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be directed to: Joe Smith jsmith@eagleacademypcs.org via email only. Please indicate in the Subject of email: Notice of Intent Question Submission.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3D07

Petition Circulation Period: **Tuesday, February 21, 2017 thru Monday, March 13, 2017**
Petition Challenge Period: **Thursday, March 16, 2017 thru Wednesday, March 22, 2017**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancies have been filled in the following single-member districts by the individuals listed below:

Abraham Clayman
Single-Member District 3G01

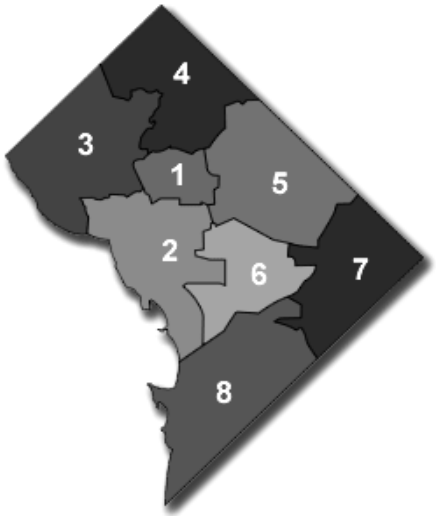
LaVerne Glenn
Single-Member District 8D06

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of JANUARY 31, 2017

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	47,134	3,073	660	138	184	11,998	**63,187**
2	32,109	6,124	216	164	166	11,500	**50,279**
3	39,362	6,885	355	137	165	11,675	**58,579**
4	50,511	2,362	538	74	168	9,220	**62,873**
5	53,002	2,401	578	89	226	9,451	**65,747**
6	55,886	7,242	502	200	251	14,153	**78,234**
7	48,929	1,300	432	38	167	6,836	**57,702**
8	47,238	1,401	432	32	186	7,467	**56,756**
Totals	374,171	30,788	3,713	872	1,513	82,300	**493,357**
Percentage By Party	**75.84%**	**6.24%**	**.75%**	**.18%**	**.31%**	**16.68%**	**100.00%**

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF JANUARY 31, 2017

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY



ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
http://www.dcboee.org

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 1 REGISTRATION SUMMARY

As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,897	33	11	4	7	325	**2,277**
22	4,020	413	31	14	11	1,072	**5,561**
23	2,983	212	45	15	11	824	**4,090**
24	2,770	268	31	15	16	840	**3,940**
25	3,854	451	47	8	16	1,104	**5,480**
35	3,655	237	51	15	7	872	**4,837**
36	4,478	282	61	6	19	1,127	**5,973**
37	3,462	164	49	9	12	824	**4,520**
38	2,948	132	47	14	11	760	**3,912**
39	4,326	222	75	7	15	991	**5,636**
40	4,120	196	93	10	19	1,078	**5,516**
41	3,717	219	59	10	17	1,067	**5,089**
42	1,904	83	34	3	12	473	**2,509**
43	1,846	70	18	3	7	384	**2,328**
137	1,154	91	8	5	4	257	**1,519**
TOTALS	**47,134**	**3,073**	**660**	**138**	**184**	**11,998**	**63,187**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 2 REGISTRATION SUMMARY

As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	1,045	211	9	10	12	630	**1,917**
3	1,775	418	22	8	17	724	**2,964**
4	1,951	505	6	13	8	773	**3,256**
5	2,214	651	13	13	11	829	**3,731**
6	2,470	936	19	12	16	1,362	**4,815**
13	1,322	250	5	3	6	431	**2,017**
14	3,031	520	22	13	12	1,017	**4,615**
15	3,147	421	29	18	16	928	**4,559**
16	3,665	456	23	18	16	1,017	**5,195**
17	4,961	653	31	20	20	1,557	**7,242**
129	2,453	402	14	12	12	942	**3,835**
141	2,452	319	12	11	11	658	**3,463**
143	1,623	382	11	13	9	632	**2,670**
TOTALS	**32,109**	**6,124**	**216**	**164**	**166**	**11,500**	**50,279**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 3 REGISTRATION SUMMARY

As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,315	410	16	3	8	576	**2,328**
8	2,518	658	30	6	10	809	**4,031**
9	1,198	508	7	13	8	487	**2,221**
10	1,914	443	19	8	13	728	**3,125**
11	3,601	993	40	24	25	1,352	**6,035**
12	489	201	0	1	5	215	**911**
26	3,020	372	21	10	7	935	**4,365**
27	2,564	263	24	10	3	641	**3,505**
28	2,539	514	38	5	10	795	**3,901**
29	1,400	256	13	8	11	449	**2,137**
30	1,327	218	12	4	6	312	**1,879**
31	2,473	309	20	6	11	576	**3,395**
32	2,783	307	21	4	10	591	**3,716**
33	3,019	320	24	5	5	727	**4,100**
34	3,820	461	34	14	11	1,154	**5,494**
50	2,193	272	16	6	7	505	**2,999**
136	881	105	7	1	2	289	**1,285**
138	2,308	275	13	9	13	534	**3,152**
TOTALS	**39,362**	**6,885**	**355**	**137**	**165**	**11,675**	**58,579**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,315	70	32	5	9	401	**2,832**
46	2,968	98	36	5	13	535	**3,655**
47	3,469	166	42	10	15	789	**4,491**
48	2,907	137	28	4	6	577	**3,659**
49	948	51	17	0	7	217	**1,240**
51	3,424	535	26	6	8	652	**4,651**
52	1,290	164	8	0	2	246	**1,710**
53	1,296	75	22	1	5	251	**1,650**
54	2,479	102	25	1	5	469	**3,081**
55	2,561	83	20	1	11	458	**3,134**
56	3,190	95	34	9	14	649	**3,991**
57	2,564	81	33	4	12	479	**3,173**
58	2,315	66	20	3	8	366	**2,778**
59	2,678	89	31	7	7	437	**3,249**
60	2,228	74	23	4	9	619	**2,957**
61	1,638	56	14	0	3	285	**1,996**
62	3,260	130	25	2	5	392	**3,814**
63	3,826	134	56	2	18	681	**4,717**
64	2,393	76	20	7	6	352	**2,854**
65	2,762	80	26	3	5	365	**3,241**
Totals	**50,511**	**2,362**	**538**	**74**	**168**	**9,220**	**62,873**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,492	200	62	7	14	1,009	**5,784**
44	2,882	244	28	8	18	682	**3,862**
66	4,539	104	43	4	15	573	**5,278**
67	2,910	109	23	3	10	410	**3,465**
68	1,935	171	22	7	5	404	**2,544**
69	2,112	71	21	1	10	283	**2,498**
70	1,492	79	22	1	4	232	**1,830**
71	2,412	71	25	2	11	320	**2,841**
72	4,411	146	38	6	27	739	**5,367**
73	1,945	98	21	4	10	361	**2,439**
74	4,600	255	57	9	19	953	**5,893**
75	3,986	226	51	13	18	869	**5,163**
76	1,652	85	26	5	8	342	**2,118**
77	2,928	121	24	3	13	499	**3,588**
78	3,083	99	43	4	13	500	**3,742**
79	2,158	86	21	3	14	378	**2,660**
135	3,059	185	37	7	11	602	**3,901**
139	2,406	51	14	2	6	295	**2,774**
TOTALS	**53,002**	**2,401**	**578**	**89**	**226**	**9,451**	**65,747**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 6 REGISTRATION SUMMARY

As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,924	598	49	24	25	1,361	**6,981**
18	5,063	389	45	17	20	1,126	**6,660**
21	1,228	60	11	5	1	282	**1,587**
81	4,777	395	46	9	23	1,002	**6,252**
82	2,696	275	36	7	11	609	**3,634**
83	5,022	709	35	20	25	1,369	**7,180**
84	2,042	419	22	5	10	582	**3,080**
85	2,797	534	17	10	10	768	**4,136**
86	2,218	269	28	11	9	491	**3,026**
87	2,799	280	19	2	13	598	**3,711**
88	2,211	293	16	3	6	541	**3,070**
89	2,654	672	21	10	10	806	**4,173**
90	1,644	262	12	5	9	497	**2,429**
91	4,139	398	39	17	20	1,011	**5,624**
127	4,096	309	40	20	18	864	**5,347**
128	2,611	219	30	9	11	683	**3,563**
130	820	324	6	2	3	308	**1,463**
131	2,540	662	15	16	19	815	**4,067**
142	1,605	175	15	8	8	440	**2,251**
TOTALS	**55,886**	**7,242**	**502**	**200**	**251**	**14,153**	**78,234**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,592	89	18	3	6	274	**1,982**
92	1,634	34	13	1	5	238	**1,925**
93	1,607	40	18	2	5	238	**1,910**
94	2,042	58	20	0	6	299	**2,425**
95	1,675	49	15	0	5	292	**2,036**
96	2,452	67	19	2	10	373	**2,923**
97	1,492	42	14	1	7	209	**1,765**
98	1,893	44	23	2	7	251	**2,220**
99	1,488	51	14	4	7	215	**1,779**
100	2,347	47	16	3	8	284	**2,705**
101	1,617	29	12	1	6	183	**1,848**
102	2,413	55	20	0	9	328	**2,825**
103	3,563	84	42	2	10	531	**4,232**
104	3,124	91	30	0	20	447	**3,712**
105	2,478	64	22	3	8	385	**2,960**
106	2,895	58	17	3	11	406	**3,390**
107	1,803	64	16	1	9	224	**2,117**
108	1,132	29	6	1	2	133	**1,303**
109	957	36	5	0	0	93	**1,091**
110	3,747	94	20	5	9	416	**4,291**
111	2,693	70	31	0	7	415	**3,216**
113	2,174	53	22	2	7	280	**2,538**
132	2,111	52	19	2	3	322	**2,509**
TOTALS	**48,929**	**1,300**	**432**	**38**	**167**	**6,836**	**57,702**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of JANUARY 31, 2017

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,212	64	18	0	11	309	**2,614**
114	3,528	128	30	1	21	575	**4,283**
115	2,985	73	23	5	12	613	**3,711**
116	4,210	102	36	5	13	656	**5,022**
117	2,113	50	18	2	12	342	**2,537**
118	2,779	75	32	1	12	423	**3,322**
119	2,910	115	37	1	14	528	**3,605**
120	2,062	39	17	1	3	282	**2,404**
121	3,493	82	27	3	7	492	**4,104**
122	1,792	43	19	0	9	245	**2,108**
123	2,396	165	25	6	19	391	**3,002**
124	2,676	64	20	0	8	362	**3,130**
125	4,675	108	36	2	16	738	**5,575**
126	3,915	143	45	3	17	727	**4,850**
133	1,348	43	12	0	0	188	**1,591**
134	2,255	50	27	1	5	300	**2,638**
140	1,889	57	10	1	7	296	**2,260**
TOTALS	**47,238**	**1,401**	**432**	**32**	**186**	**7,467**	**56,756**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 12/31/2016 and 1/31/2017

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	**366,695**	**30,086**	**3,641**	**850**	**1,534**	**79,551**	**482,357**
Board of Elections Over the Counter	5	0	0	0	0	2	**7**
Board of Elections by Mail	5	0	0	0	0	1	**6**
Board of Elections Online Registration	30	2	0	0	0	13	**45**
Department of Motor Vehicle	68	7	1	3	0	21	**100**
Department of Disability Services	0	0	0	0	0	0	**0**
Office of Aging	0	0	0	0	0	0	**0**
Federal Postcard Application	0	0	0	0	0	0	**0**
Department of Parks and Recreation	0	0	0	0	0	0	**0**
Nursing Home Program	0	0	0	0	0	0	**0**
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	**0**
Department of Corrections	0	0	0	0	0	0	**0**
Department of Human Services	0	0	0	0	0	0	**0**
Special / Provisional	0	0	0	0	0	0	**0**
All Other Sources	12,964	1,242	111	25	29	4,262	**18,633**
+Total New Registrations	**13,047**	**1,250**	**112**	**28**	**29**	**4,290**	**18,744**

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	1,062	52	15	1	1	203	**1,334**
Administrative Corrections	3	0	0	0	0	3,193	**3,196**
+TOTAL ACTIVATIONS	**1,065**	**52**	**15**	**1**	**1**	**3,396**	**4530**

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	4	0	0	0	0	0	**4**
Moved Out of District (Deleted)	0	0	0	0	0	0	**0**
Felon (Deleted)	0	0	0	0	0	0	**0**
Deceased (Deleted)	7	0	0	0	0	1	**8**
Administrative Corrections	11,257	1,036	99	24	15	25	**12,456**
-TOTAL DEACTIVATIONS	**11,268**	**1,036**	**99**	**24**	**15**	**26**	**12,468**

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	5623	605	79	31	18	1149	
- Changed From Party	-991	-169	-35	-14	-54	-6060	
ENDING TOTALS	**374,171**	**30,788**	**3,713**	**872**	**1,513**	**82,300**	**493,357**

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

Analysis of Fish Tissue for Contaminants of Concern

The Department of Energy and Environment (the Department) seeks eligible entities to determine the concentration levels of contaminants of concern found in the tissue of fish collected from the Anacostia and Potomac Rivers. The amount available for the project is approximately $100,000.00. This amount is subject to availability of funding and approval by the appropriate agencies.

Beginning 2/17/2017, 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 the announcement for this RFA. Click on *Read More* to download this RFA and related information from the *Attachments* section.

Email a request to 2017FishRFA.grants@dc.gov with "Request copy of RFA 2017-1711-WQD" 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 Lucretia Brown at (202) 535-1807 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Lucretia Brown RE:2017-1711-WQD" on the outside of the envelope.

An informational conference call and opportunity for question and answers will be held on Thursday, February 23, 2017, at 10AM. The call number is (877) 929-9264 and conference code is 5908558.

The deadline for application submissions is 3/20/2017, 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 2017FishRFA.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
☐-Faith-based organizations;
☒-Government agencies
☒-Universities/educational institutions; and
☒-Private Enterprises.

For additional information regarding this RFA, write to: 2017FishRFA.grants@dc.gov.

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 13-22: The Scheele-Brown Farmhouse
2207 Foxhall Road NW (Square 1341, Lot 855)
Designated March 23, 2017

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 16-03: The Holzbeierlein Bakery
1815-1817 Wiltberger Street NW (Square 441, Lot 853)
Designated January 26, 2017
Affected Advisory Neighborhood Commission: 6E

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF FILING OF APPLICATION TO DESIGNATE HISTORIC DISTRICT

The D.C. Historic Preservation Review Board has received an application from Advisory Neighborhood Commission 6A to designate the property/properties below above as a historic district in the District of Columbia Inventory of Historic Sites. A digital copy is available to the public on the Historic Preservation Office website at http://planning.dc.gov/page/pending-landmarks-and-districts.

Case No. 17-05: Emerald Street Historic District

Including all addresses on Emerald Street NE; 517 and 519 13th Street NE; and 518 and 520 14th Street NE; also presently known as: Square 1029, Lots 73-107, 111, 112, 116-151, 200 and 201

The affected Advisory Neighborhood Commission is ANC 6A.

The principal purposes of designation are: the recognition of the historic or architectural importance of properties, and their protection through the future review, by the Historic Preservation Office and/or the Historic Preservation Review Board, of proposed subdivisions and of permit applications for construction, alteration and demolition.

The Historic Preservation Review Board will eventually schedule a hearing to consider the application in accordance with the Historic Landmark and Historic District Protection Act of 1978, and with the criteria set forth in Title 10C, D.C. Municipal Regulations, Chapter 2, to determine whether the property merits designation. The Board will also then consider the nomination of the properties to the National Register of Historic Places.

At least 45 days prior to a hearing the Historic Preservation Office will mail notice to the affected owners and Advisory Neighborhood Commissions.

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

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Reappointment Evaluation Of Judge Robert R. Rigsby

This is to notify members of the bar and the general public that the Commission has begun inquiries into the qualifications of Judge Robert R. Rigsby of the Superior Court of the District of Columbia, who is a declared candidate for reappointment as an Associate Judge upon the expiration of his term on July 28, 2017.

Under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 796 (1973), §443(c) as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §12(1) provides in part as follows:

> "…If a declaration (of candidacy) is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written statement of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Judge Rigsby which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission no later than **March 27, 2017**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
Fax: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

In addition, comments may be submitted by an online survey available on the Commission's website, https://www.cjdt.dc.gov, and using the link "Evaluate Candidates", or using the link https://www.surveymonkey.com/r/AsociateJudge SuperiorCourt1219.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson
Anthony T. Pierce, Esq., Vice Chairperson
Hon. Joan L. Goldfrank
Hon. Colleen Kollar-Kotelly
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.
Chairperson

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Review Of Judge John M. Ferren

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge John M. Ferren** of the District of Columbia Court of Appeals, who has requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

> "…A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.
>
> (2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.
>
> (3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judge Ferren which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **March 27, 2017**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

In addition, comments may be submitted by an online survey available on the Commission's website, https://www.cjdt.dc.gov, and using the link "Evaluate Candidates", or using the link https://www.surveymonkey.com/r/SeniorJudgeCourtof Appeals1217.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson
Anthony T. Pierce, Esq., Vice Chairperson
Hon. Joan L. Goldfrank
Hon. Colleen Kollar-Kotelly
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.
Chairperson

KIPP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

School Leaders Retreat Venue

KIPP DC is soliciting proposals from qualified venues for a School Leaders Retreat for 75+ people in November 2017 (meeting space, lodging, meals). Proposals will be accepted until 2pm EST on February 28, 2017. Please find the full RFP at www.kippdc.org/procurement or by contacting joseph.hassine@kippdc.org.

Cyber Security Assessment Services

KIPP DC is soliciting proposals from qualified vendors for Cyber Security Assessment Services. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5pm EST on February 28, 2017. Questions can be addressed to adam.roberts@kippdc.org.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY ("NOFA")

Qualified High Technology Company Security Deposit Assistance Grant Program

Grant Identification No.: **DMPED - 017 – QHTC- 28937**

Background Information: The Office of the Deputy Mayor for Planning and Economic Development ("**DMPED**") invites the submission of applications for the Qualified High Technology Company ("**QHTC**") Security Deposit Assistance Grant Program. Funding for this program is authorized from the Economic Development Special Account Revival Amendment Act of 2012 (D.C. Law 19-168; D.C. Official Code §2-1225.01 *et seq.*).

Purpose of Grant Program: The purpose of the QHTC Security Deposit Assistance Grant Program is to foster the development of creative and technology-focused businesses in the District, increase the District's tax base, and create new job opportunities for District residents.

Length of Award: **Date of grant execution through September 30, 2017.**

Anticipated Number of Awards: DMPED will award individual grants of up to a maximum of $750,000 each per qualified business. Grant funds will be utilized to assist grantees with security deposit assistance for an initial lease. Total funding availability for this grant program is $750,000.

Eligibility Criteria

Applicants must meet the following criteria:

(1) Be a QHTC, as defined by D.C. Official Code § 47-1817.01(5);

(2) Lease at least 25,000 square feet of office space within the District of Columbia;

(3) Show a strong business model with likelihood for significant growth;

(4) Maintain occupancy of the office space for at least ten (10) years;

(5) Provide benefits that will serve as in-kind repayment focused on creating educational opportunities, training, and jobs for District residents. The focus of these should be on residents from under-represented backgrounds and for the provision of advanced technical skills;

(6) Comply with District Certified Business Entity and First Source requirements.

Availability of RFA:	The Request for Applications ("**RFA**") will be released on March 2, 2017. The RFA will be posted on DMPED's website (www.dmped.dc.gov).
Contact Name:	LaToyia Hampton, Grants Manager dmpedgrants@dc.gov 202.724.8111
Deadline for Electronic Submission:	Applicants must submit a completed online application to DMPED via the GiftsOnline system by **Friday, March 17, 2017 at 6:00 PM.**

DMPED reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that the Commission will hold a Town Hall on Modernizing the Energy Delivery System for Increased Sustainability ("MEDSIS").[1] The MEDSIS Town Hall will focus on garnering comments on Section VII ("Proposed MEDSIS Grant Funding Parameters & Proposed Demonstration Projects") of the MEDSIS Staff Report which was released by the Commission on January 25, 2017, and which is publically available on the Commission's website at www.dcpsc.org/medsis.

The MEDSIS Town Hall will convene on Tuesday, February 28, 2017, from 5:30 p.m. to 8:30 p.m. in the Commission Hearing Room, 1325 G Street, N.W., Suite 800, Washington, DC 20005. The MEDSIS Town Hall is open to the public and the Commission encourages participation from interested Community Organizations as well as individual District ratepayers.

BACKGROUND

On June 12, 2015, the Commission issued Order No. 17912 which opened *Formal Case No. 1130* to identify technologies and policies that can be implemented in the District to modernize the distribution energy delivery system for increased sustainability; and, in the near-term, to make the distribution energy delivery system more reliable, efficient, cost effective, and interactive.[2] The Order also established a series of three workshops which were held between October 2015 and March 2016.

At the conclusion of the workshops, the Commission announced the development of a MEDSIS Staff Report which would incorporate information presented at the workshops and comments filed in the *Formal Case No. 1130* docket, provide guidance as to how the MEDSIS Initiative would proceed, as well as present Staff's recommendations for achieving MEDSIS goals. Staff completed the MEDSIS Staff Report and submitted it to the Commission for consideration in January 2017. On January 25, 2017, the Commission released the MEDSIS Staff Report for public comment with extended comment and reply comment periods; initial comments on the

[1] *See generally, Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* ("*Formal Case No. 1130*").

[2] *Formal Case No. 1130*, Order No. 17912, rel. June 12, 2015.

entirety of the MEDSIS Staff Report are due by March 27, 2017, and reply comments are due 30 days thereafter.[3]

On January 25, 2017, the Commission also announced that a MEDSIS Town Hall would be held in the Commission's Hearing Room on February 28, 2017, to garner public comment on Section VII of the MEDSIS Staff Report which specifically addresses Staff's proposals on how to select District-specific pilot and demonstration projects and allocate funds from the $21.55 million MEDSIS Pilot Project Fund Subaccount, that was created as a condition of the PHI-Exelon Merger approved by the Commission in Order No. 18148.[4]

THE MEDSIS TOWN HALL

The purpose of the MEDSIS Town Hall is to garner broad public input on Section VII of the MEDSIS Staff Report ("Proposed MEDSIS Grant Funding Parameters & Proposed Demonstration Projects") which was released for public comment on January 25, 2017.

The MEDSIS Town Hall will convene on Tuesday, February 28, 2017, from 5:30 p.m. to 8:30 p.m. in the Commission Hearing Room, 1325 G Street, N.W., Suite 800, Washington, DC 20005.[5]

The Commission will allot ten (10) minutes to representatives from Community Organizations to give oral comments and five (5) minutes for individual District ratepayers to provide oral comments. In order to ensure that the MEDSIS Town Hall proceeds in an orderly and productive manner, those wishing to provide oral comments should submit their name and corresponding organization, if applicable, via email with "MEDSIS Town Hall" in the subject line, to the Office of the Commission Secretary (psc-commissionsecretary@dc.gov) by 12 noon Monday, February 27, 2017. While walk-ins are welcome, priority to present oral comments will be given to those who have signed-up with the Commission Secretary's Office ahead of time.

Translation and interpretation services are available to the public and should be requested by Wednesday, February 22, 2017, by contacting the Commission Secretary's Office via email at psc-commissionsecretary@dc.gov.

The MEDSIS Town Hall will be streamed live on the Commission's website, www.dcpsc.org, and video archived at www.dcpsc.org/medsis.
General inquires related to the MEDSIS Town Hall should be directed to Kellie Armstead Didigu, Media Relations Specialist, (202) 626-5124.

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[3] *See Formal Case No. 1130*, Order No. 18673, rel. January 25, 2017.

[4] *Formal Case No. 1119*, Order No. 18148, rel. March 23, 2016.

[5] The MEDSIS Town Hall may conclude before 8:30 p.m. if all attendants wishing to provide oral comments have been given the opportunity to do so and all presentations have been made.

ADDITIONAL INFORMATION

The MEDSIS Staff Report is publically accessible online through the MEDSIS webpage at www.dcpsc.org/medsis. Copies of the MEDSIS Staff Report may also be obtained by contacting the Office of the Commission Secretary at (202) 626- 5150 or psc-commissionsecretary@dc.gov.

Any person desiring to submit written comments on the MEDSIS Staff Report, in whole or in part, shall file comments no later March 27, 2017, as directed in Order No. 18673. Written comments can be mailed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, sent via email to psc-commissionsecretary@dc.gov, or filed electronically through the Commission's website at www.dcpsc.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF COMMUNITY HEARINGS

PUBLIC INPUT SOUGHT ON PEPCO'S RATE APPLICATION

FORMAL CASE NO. 1139, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO INCREASE EXISTING RETAIL RATES AND CHARGES FOR ELECTRIC DISTRIBUTION SERVICE

This Notice informs the public that the Public Service Commission of the District of Columbia ("Commission") seeks input on the application submitted on June 30, 2016, by the Potomac Electric Power Company ("Pepco") requesting authority to increase existing distribution service rates and charges for electric service in the District of Columbia by $76.766 million, representing an increase of approximately 21.24% in Pepco's distribution revenues of $361.5 million. The requested rates are designed to collect $438 million in total distribution revenues. Pepco requests authority to earn an 8.00% rate of return, including a return on common equity of 10.6%. Pepco represents that its application would translate to an increase in distribution rates of approximately $3.84 per month for a typical residential customer who uses 675 kWh per month.

The Commission published a Public Notice on July 8, 2016, regarding this application in the *D.C. Register* in *Formal Case No. 1139*, the formal case established to adjudicate Pepco's application. Pepco's application can be viewed on the Commission website at www.dcpsc.org.

The Commission will convene four (4) community hearings at the following locations on the specified dates:

Thursday, February 23, 2017
Allen AME Church
2498 Alabama Avenue, SE
Washington, D.C. 20020
6:00 p.m. - 8:00 p.m.

Wednesday, March 1, 2017
Providence Hospital
Ross Auditorium
1150 Varnum Street NE
Washington, D.C. 20017
6:00 p.m. - 8:00 p.m.

Saturday, March 4, 2017
D.C. Public Service Commission
Hearing Room
1325 G Street, NW, 8th Floor
Washington, D.C. 20005
11:00 a.m. – 1:00 p.m.

Tuesday, March 7, 2017
D.C. Public Service Commission
Hearing Room
1325 G Street, NW, 8th Floor
Washington, D.C. 20005
6:00 p.m. - 8 p.m.

FC 1139 – Community Hearings

Those who wish to testify at the community hearings should contact the Commission Secretary by 5 p.m. three (3) business days prior to the date of the hearings by calling (202) 626-5150. Representatives of organizations shall be permitted a maximum of five (5) minutes for oral presentations. Individuals shall be permitted a maximum of three (3) minutes for oral presentations. If an organization or an individual is unable to offer comments at the community hearings, written statements may be submitted to the Public Service Commission of the District of Columbia, 1325 G Street, NW, Suite 800, Washington D.C. 20005 until March 24. 2017.

Any person who is deaf or hearing-impaired, and cannot readily understand or communicate in spoken English, and persons with disabilities who need special accommodations in order to participate in the hearing, must contact the Commission Secretary by 5 p.m. seven (7) business days prior to the date of the hearing. Persons who wish to testify in Spanish, Chinese, Amharic, or Korean must also contact the Commission Secretary by 5 p.m. three (3) business days before the day of the hearing so arrangements can be made for translation services. **The number to call to request special accommodations and interpretation services is (202) 626-5150.**

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENT AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after March 15, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on February 17, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

Arthurs	Lyndsey	Stewart Title Guaranty Company 1730 Rhode Island Avenue, NW, Suite 610	22204
Austin	Samantha D.	U.S. Department of Health and Human Services 200 Independence Avenue, SW	20201
Aydelotte	Nanci	Quercus 1010 Wisconsin Avenue, NW	20007
Barr	Corrine E.	Greenpeace Fund, Inc. 702 H Street, NW, Suite 300	20001
Batson	Lawana Rene	Squire Patton Boggs 2550 M Street, NW	20037
Belskiy	Nataliia	Levick Strategic Communications 1900 M Street, NW	20036
Belyea	Jeffrey A.	Diversified Reporting Services, Inc. 2611 11th Street, NW	20001
Berry	Nadine A. E.	Arent Fox LLP 1717 K Street, NW	20006
Bethel	Pamela J.	O'Ridordan Bethel Law Firm, LLP 1314 19th Street, NW	20036
Brainard	Jeffrey	Liaison Capitol Hill 415 New Jersey Avenue, NW	20001
Buckley	Janet	Van Scoyoc Associates, Inc 101 Constitution Avenue, NW, 600W	20001
Calhoun	Marian J.	U.S. House of Representatives U.S. Capitol Room HT-60	20515
Carter	Robin	Self 4842 Texas Avenue, SE	20019
Castrina	Gail R.	Frommer Lawrence & Haug, LLP 1667 K Street, NW, Suite 500	20006
Coayla	Cecillo	Latino Tax Multiservice 3615 14th Street, NE	20010

Cowan	Moses	The Cowan Firm, PLLC 50 Hanover Place, NW	20001
Cullison	Elizabeth K.	Boston House Condominium Association, Inc. 1711 Massachusetts Avenue, NW	20036
Cunningham	Brenda V.	Self 1280 Delafield Place, NE	20017
DeYoung	Courtney A.	J.P. Morgan 800 Connecticut Avenue, NW, 9th Floor	20006
Diaz	Verna L.	Cahill Gordon & Reindel, LLP 1990 K Street, NW	20006
Dorsey	Gail Andrea	Self 2111 Suitland Terrace, SE #301	20020
Dunleavey	Jennifer	Direct Selling Association 1667 K Street, NW, #1100	20006
Ehrlich	Sarah Adelaide	Miss America Organization 1432 K Street, NW, Suite 900	20005
Evans	Michelle Lynn	McArthur Franklin, PLLC 1101 17th Street, NW, Suite 820	20036
Ferguson	Ronnell	Office of the Secretary of the District of Columbia, Office of Notary Commissions and Authentications 441 4th Street, NW, Suite 810South	20001
Fielding	Maria N.	Ruddy Gregory, PLLC 1225 15th Street, NW	20005
Fink	Daniel Richard	Blackboard 1111 19th Street, NW	20036
Foley	John	Skadden, Arps, Slate, Meagher & Flom 1440 New York Avenue, NW	20005
Gaither	Barbara J.	Tully Rinckey, PLLC 815 Connecticut Avenue, NW, Suite 720	20006

Hall	Sandra	Hogan Lovells, US, LLP 555 13th Street, NW	20004
Halpert	Adrienne J.	International City/County Management Association 777 North Capitol Street, NW	20002
Hames	Melissa A.	Sutherland Asbill & Brennan, LLP 700 6th Street, NW, Suite 700	20001
Harris	Joyce A.	Washington Metropolitan Area Transit Authority 600 5th Street, NW	20001
Hernandez	John-Paul	One Source Process, Inc. 1801 18th Street, NW, 2nd Floor	20009
Higgins	Maryna	Quona Capital 1101 15th Street, NW, Suite 403	20005
Hooks	Marcia C.	Law Office of Giannina Lynn 1008 Pennsylvania Avenue, SE	20003
Huber	Barbara A.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Jackson	Vanessa F.	Office of Financial Operations and Systems 1100 4th Street, SW, Suite E800	20024
Jackson	Lynn S.	I.A.T.S.E. Local 22 1810 Hamlin Street, NE	20018
Jenkins	Alisha	Penzance Management, LLC 2400 N Street, NW, Suite 600	20037
Jenkins	Madeline	Peckar & Abramson, PC 2005 L Street, NW, Suite 750	20009
Jennings	Terrica R.	Self 3346 Alden Place, NE	20019
Johnson	Cynthia A.	Endocrine Society 2055 L Street, NW, Suite 600	20036
Jones	Gay E.	Avalon Consulting Group, Inc 805 15th Street, NW, Suite 700	20005

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Recommendations for appointment as DC Notaries Public **Page 5**

Kriegel	Theresa C.	Palladium International, LLC 1331 Pennsylvania Avenue, NW, Suite 600	20004
Landro-Santomauro	Ivy A.	Danaher Corporation 2200 Pennsylvania Avenue, Suite 800	20037
Lease	Heather E.	Amazon 601 New Jersey Avenue, NW, Suite 900	20001
Lee	Lela Valencia	United States Secret Service 245 Murray Lane, SW	20223
Marchese	Anthony	O'Riordan Bethel Law Firm, LLP 1314 19th Street, NW	20036
Mielke	Dawn Marie	Executive Office of the President 1650 Pennsylvania Avenue, NW	20503
Miller	Reagan R.	Agriculture Federal Credit Union USDA South Building Branch,1400 Independence Avenue, SW	20250
Montano	Karina L.	O'Riordan Bethel Law Firm, LLP 1314 19th Street, NW	20036
Morales	Victor L.	Association of Corporate Counsel 1025 Connecticut Avenue, NW, Suite 200	20036
Moreno	Claudia E.	Department of Labor Federal Credit Union 200 Constitution Avenue, NW, Room S - 3220	20017
Morton	Johnnice	Kingsmans Academy Public Chart 1375 K Street, NE	20002
Mosby-Washington	Sharon	United States Conference of Catholic Bishops 3211 4th Street, NE	20017
Mulato	Peter Alonso	State Farm Insurance, Jon Laskin Agent 5600 Connecticut Avenue, NW, Suite 400	20015

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Mullen	Amanda	Stout Risius Ross 1015 15th Street, NW	20005
Murray	Rita Mary	Blackboard 1111 19th Street, NW	20036
Norman	Carla F.	Morvillo, LLP 1101 17th Street, NW, Suite 705	20036
Onley	Marcus D.	Freshfields Bruckhaus Deringer 700 13th Street, NW	20005
Oumarou	Adamou	Global Legalization Services 1629 K Street, NW, Suite 300	20006
Paulo	Stacy	Utility Workers Union of America, AFL- CIO 1300 L Street, NW, Suite 1200	20005
Piercy	Samantha M.	O'Riordan Bethel Law Firm, LLP 1314 19th Street, NW	20036
Prieto	Zully	OAS Staff Federal Credit Union 1889 F Street, NW	20006
Prince	Urzula D.	MedStar Sitel 3007 Tilden Street, NW, Suite 3L	20008
Rabbani	Taimur	O'Riordan Bethel Law Firm, LLP 1314 19th Street, NW	20036
Rada	David J.	National Gallery of Art 6th & Constitution Avenue, NW	20785
Rice	Keisha C.	Self 225 Division Avenue, NE	20019
Richards	Jo Ann F.	Export-Import Bank of the United States 811 Vermont Avenue, NW, Room 847	20571
Ross	Tracey Prince	Trinity Washington University 125 Michigan Avenue, NE	20017
Sacks	Michael W.	National Capital Title & Escrow, LLC, Suite 101 1405 Rhode Island Avenue, NW	20005

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Recommendations for appointment as DC Notaries Public **Page 7**

Sands	Peter	Northfield Construction and Development 1156 15th Street, NW, Suite 1000	20005
Saunders	Kelly	Skadden, Arps, Slate, Meagher & Flom, LLP 1440 New York Avenue, NW	20005
Shpak	Rachael	DC Resources, LLC 1910 15th Street, NW	20009
Strasberg	Theresa L.	Hogan Lovells, US, LLP 555 13th Street, NW	20004
Sun	Howard C.	Executive Office of the President, Council on Environmental Quality 722 Jackson Place, NW	20506
Syphax	Diana R.	BP America 1101 New York Avenue, NW	20005
Taylor-Scott	Shannon	United House of Representatives - Office of Official Reporters HT- 59 The Capitol	20515
Thompson	Sade Renee	Department of Justice - Office of International Affairs 1301 New York Avenue, NW	20530
Tolson	Tama V.	DC Department of General Services Reeves Center - 2000 14th Street, NW, 8th Floor	20746
Tritapoe	Tammy D.	Amtrak 1401 W Street, NE	20018
Turner	Ilona D.	Mt. Vernon United Methodist Church 4147 Minnesota Avenue, NE	20019
Ulmer	Robert J.	Highland Title and Escrow, Century 21 Redwood Realty 1701 Q Street, NW	20009
Vo	Kim-Phuong Thuy	American Chemistry Council 700 Second Street, NE	20002

Wade	Michelle	TD International LLC 818 Eighteenth Street, NW #900	20006
Wheeler	Lauren P.	National Gallery of Art 6th & Constitution Avenue, NW	20565
Williams	Kate A.	Kipp DC 2600 Virginia Avenue, NW, Suite 900	20037
Wilson	Lawrence	Howard University 500 Howard Place, NW	20059
Woodard	Rochelle J.	Capital One Bank 1100 New Jersey Avenue, SE	20003

UNIVERSITY OF THE DISTRICT OF COLUMBIA
REGULAR MEETING OF THE BOARD OF TRUSTEES
NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Wednesday, February 22, 2017 at 5:00 p.m. in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call
II. Approval of the Minutes – November 22 and December 2, 2016
III. Action Items
- a. Resolutions: Approval of Proposed Honorary Degree Recipients
- b. Resolution: UDC David A. Clarke School of Law Tenure Approval for Professor LaShanda Taylor Adams

IV. Report of the Chairperson
V. Report of the President
VI. Committee Reports
- a. Executive – Dr. Crider
- b. Committee of the Whole – Dr. Crider
- c. Academic and Student Affairs – Mr. Wyner
  - i. Alumni Task Force – Mr. Shelton
  - ii. Communications Task Force – Mr. Mills
- d. Audit, Budget and Finance – Mr. Felton
- e. Community College – Dr. Tardd
- f. Operations – Mr. Bell

VII. Unfinished Business
VIII. New Business
IX. Closing Remarks

Adjournment

Expected Meeting Closure
In accordance with Section 2-575 (b) (10) of the D. C. Code, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance, evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, February 23, 2017 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	January 2017 Financial Report	Director of Finance & Budget
3.	Agenda for February Committee Meeting	Chairman
4.	Adjournment	Chairman

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, February 21, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairman
2.	Monthly Updates	Chief Financial Officer
3.	Committee Work plan	Chief Financial Officer
4.	Other Business	Chief Financial Officer
5.	Adjournment	Chief Financial Officer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19103-A of TPC 5th & I Partners LLC, as amended, pursuant to 11 DCMR §§ 3103.2[1] for variances from the rear yard requirements under § 774.1, the closed court requirements under §§ 776.1 and 776.2, the off-street parking requirements under § 2101.1, and the parking access requirements under § 2117, and pursuant to § 3104.1 and § 411.11 for special exception relief from the penthouse regulations under §§ 411.18, and 411.9[2], and the penthouse use requirements under § 411.4(c)[3], to allow a new mixed-use development in the DD/C-2-C zone, at premises located at 901 5th Street, N.W. (Square 0516, Lot 0059).

HEARING DATES: November 10, 2015 and December 15, 2015
DECISION DATES: December 15, 2015 and January 12, 2016

CORRECTED DECISION AND ORDER[4]

On July 31, 2015, the Applicant filed an application with the Board of Zoning Adjustment ("Board" or "BZA") requesting variance and special exception relief to allow a new mixed-use building containing hotel and apartment house uses. The Applicant later amended its application to request that a portion of the proposed penthouse be devoted to a nightclub, bar, cocktail lounge, and/or restaurant use. Following a public hearing on December 15, 2015, the Applicant also made several modifications to its proposed roof plans, resulting in a reduction in the extent of requested penthouse setback relief, but adding a request for relief from the penthouse height requirements to allow enclosing walls to have unequal heights. At a decision meeting on January 12, 2016, the Board voted to approve the amended application, subject to various conditions.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case, as amended, was self-certified pursuant to 11 DCMR §3114.2. (Exhibits 12, 14, and 15.)

[1] This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text ("the 2016 Regulations"). Also all zone districts described in this Order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board's decision or the validity of this Order.

[2] Relief under this provision was requested after the initial hearing on December 15, 2015. (Exhibit 38.)

[3] Relief under this provision was requested in an amendment to the initial application. (Exhibits 14 and 15.)

[4] This Corrected Decision and Order replaces the Decision and Order issued in Application No. 19103, dated December 14, 2016. It is issued to correct inadvertent errors in certain citation references contained in the caption, Findings of Fact 40 and 42, and in the final Order of relief on page 14. In all other substantive respects, this order remains the same.

Notice of Public Hearing Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission ("ANC") 6E, and the District of Columbia Office of Planning ("OP"). The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.4 through 3113.20. (Exhibit 32.)

ANC 6E Report

The property is located within the area served by ANC 6E, which is automatically a party to this application. ANC filed two reports in this case. The first report, dated October 9, 2015, indicated that, at a properly noticed meeting on September 1, 2015, with a quorum present, the ANC voted 4-1-2 to oppose the application due to its opposition to the parking reduction variance that was requested. (Exhibit 33.) In its report, the ANC stated that a minimum of 127 parking spaces was required at the project and that only 86 spaces were proposed. The ANC noted concerns that the proposed uses would "generate additional parking burdens in an area [that] has a demonstrated parking deficit", and that the Applicant had not proposed any off-site parking to offset the proposed parking reduction.

The initial ANC report did not address the request for special exception relief from the penthouse use requirements. Thus, the Board requested that the ANC also consider this relief, and the ANC submitted a second report. This undated report was submitted on January 11, 2016 and indicated that, at a properly noticed meeting on January 5, 2016, with a quorum present, the ANC voted unanimously (7-0) to support the Applicant's request for a special exception to allow a restaurant, bar, and/or cocktail lounge use within the habitable portion of the proposed penthouse, but that no portion of the space be devoted to a nightclub use. (Exhibit 40.)

Requests for Party Status There were no requests for party status, either in opposition or in support.

Persons in Support/Opposition No persons appeared at the hearing to testify in opposition or in support to the application. Nor were any letters received from persons in support of, or in opposition to, the application.

Government Reports

Office of Planning ("OP") Report

OP reviewed the application and submitted a report recommending approval of the requested relief, including the request for amended relief under the penthouse use requirements. (Exhibit 30.) OP's representative, Stephen Cochran, discussed OP's position during testimony at the public hearing on December 15, 2015.

Department of Transportation ("DDOT") Report

DDOT reviewed the application and submitted a report[5] stating that it had no objection to the approval of the requested relief, subject to specific conditions designed to mitigate any potential vehicle traffic impacts. (Exhibit 37.) DDOT's representative, Evelyn Israel, appeared during the public hearing to confirm DDOT's position. (Hearing Transcript of December 15, 2015, ("Tr."), p. 326-329.)

[5] DDOT acknowledged that its report, which was filed on November 6, 2015, was not filed seven days before the initial public hearing (as required) on November 10, 2015. However, because the Board continued the initial hearing to December 15, 2015, the parties and the Board had ample time to consider the report.

DDOT recommended, and the Applicant agreed to the following conditions: (1) The Applicant will appoint a Transportation Demand Management Coordinator to work with residents, hotel guests, and employees to distribute and market various transportation alternatives and options; (2) The Applicant will provide a public transportation screen, showing real-time information on nearby transit services, in the residential and hotel lobbies; (3) The Applicant will provide all hotel guests free Capital Bikeshare passes upon request for the life of the hotel project and actively promote this incentive through the marketing plan outlined by the Applicant; and (4) The Applicant will provide a one-year bike share membership, car share membership, or $100 SmarTrip card to all lessees on a yearly basis for a total of 10 years or a three-year membership at the initial sale of the units.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this Application (the "subject property") is owned by the District of Columbia and is being used by a private entity as a surface parking lot.

2. The Applicant was selected by the District as the developer of the subject property after demonstrating, among other things, that it would develop a "transit oriented development that reflects the project's adjacency to multiple metro stations". (Exhibit 29.) The subject property will either be ground leased or sold to the Applicant. (Exhibit 29 Tab A.)

3. The subject property is located at 901 5th Street, N.W., Square 516, Lot 59, in the Downtown Development Overlay (DD) /C-2-C zone district.

4. The subject property is part of the Mount Vernon Triangle Historic District and any demolition, alteration, or new construction on or subdivision of the property is subject to review by Mayor's Agent for Historic Preservation ("Mayor's Agent"), who is required to consider the advice of the Historic Preservation Review Board ("HPRB").

5. The subject property consists of an irregular L-shaped, 20,614 square foot ("sf") lot that is on the northeast corner of the intersection of 5th and I Streets, N.W.

6. The size of the lot is relatively small for a downtown location. (OP Report, Exhibit 30.)

7. The Square in which the subject property is located is served by an alley system. The subject property has very limited alley access at the northeast corner.

8. The subject property has approximately 110 feet of frontage along 5th Street, which is 80 feet wide, and approximately 170 feet of frontage along I Street, which is 90 feet wide.

9. The Applicant has selected 5th Street (to the west of the site) as the "front" of the building. Subsection 199.1 defines "Street frontage".[6] As a result, the lot line east of the subject property would be designated as the "rear" lot line. The rear lot line is adjacent to a building.

[6] The definition of "street frontage is as follows:

10. The lot's northern lot line includes a six-foot deep by four-foot wide "bumpout" from that lot line into the neighboring property. The northern lot line also has several odd jogs along the portion adjacent to the alley.

11. Prior use of the site has led to some soil contamination that will require remediation.

The Surrounding Area

12. The area surrounding the subject property consists of a high-density, mixed-use neighborhood comprised of commercial, residential, and retail and service uses.

13. A surface parking lot is located to the northwest of the subject property.

14. A one-story commercial property is located to the east of the subject property on a site that has been assembled for larger-scale development under previous Mayor's Agent and Board approvals.

15. The subject property confronts a park reservation to the south, adjacent to Massachusetts Avenue.

16. A 12-story apartment-hotel building is located to the west of the subject property.

17. The nearby area contains several 12- and 13-story apartment buildings and some similarly sized office buildings.

18. The Gallery Place metro station is three blocks to the southwest of the subject property.

19. The subject property is also accessible by several Metrobus routes, as well as the DC Circulator which operates along Massachusetts Avenue and 7th Street.

20. A Capital Bikeshare station is located to the south along Massachusetts Avenue.

The Proposed Project

21. The Applicant proposes to construct a 130-foot-high, 12-story building containing hotel and apartment house uses.

22. No rear yard will be provided.

23. Because the subject property's north lot line follows an irregular path with several odd jogs, there is a small area of the lot that is too small to build on. The north wall of the proposed building does not encompass this area, which will result in a closed court being formed, as defined under

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Street frontage - the property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

the Zoning Regulations. (*See*, 11 DCMR § 199.1 Definition of "Court, closed"[7].) The closed court will be four feet wide and approximately 24 square feet in area.

24. The hotel use will occupy floors two - eight of the proposed building and will contain approximately 175 guest rooms.

25. The apartment house use will occupy floors nine - 12 of the proposed building and will contain approximately 48 dwelling units.

26. The proposed hotel will contain approximately 108,810 square feet of gross floor area ("GFA"), and the residential component of the project will consist of approximately 65,093 square feet of GFA.

27. The ground floor of the proposed building will contain lobby space for the hotel and residential uses, as well as a restaurant, a fire control room, and loading facilities.

28. There will be one level of the building, plus a mezzanine, that will be located immediately below the ground floor. The below grade level will contain, among other things, a 5,500 square foot ballroom.

29. The Applicant proposes to provide 92 parking spaces located on one level, located below the ballroom.

30. The parking spaces will be accessed through a vehicular elevator system.

31. The Applicant proposes to provide 28 long term bicycle spaces.

32. The roof level of the building will contain residential and hotel outdoor terraces, a pool, and two roof structures.

33. The main roof structure contains the elevator cores for the hotel and apartment house uses, mechanical equipment, and residential amenity space.

34. As revised, only a small portion of the elevator core enclosure will not be set back from the exterior wall at a ratio of one foot of setback from an exterior wall, for each one foot of the enclosure height. (Exhibits 38 and Revised Plans, Exhibit 39, p.26.)

35. The revised rooftop plan results in multiple mechanical penthouse heights and multiple habitable penthouse heights. (Exhibit 38 and Revised Plans, Exhibit 39.)

[7] The definition of a closed court is as follows:

> **Court, closed** - a court surrounded on all sides by the exterior walls of a building, or by exterior walls of a building and side or rear lot lines, or by alley lines where the alley is less than ten feet (10 ft.) in width.

36. The Applicant proposes that a portion of the proposed penthouse be devoted to a bar, cocktail lounge, and/or restaurant use.

The Zoning Relief

37. Subsection 774.1 of the Zoning Regulations requires that a minimum rear yard of 15 feet be provided in the C-2-C zone. Because no rear yard is proposed, relief is required under this provision.

38. Subsection 776.1 of the Zoning Regulations requires a minimum closed court width of 21 feet for a closed court at a non-residential building. Because the closed court width for the proposed building is only four feet, relief is required under this provision.

39. Subsection 776.2 of the Zoning Regulations provides that the area of the closed court for a non-residential building be two times the square of the required width (i.e. 21 ft. squared times two), or 882 square feet. Because the area of the proposed closed court is only 24.3 square feet, relief is required under this provision.

40. Subsection 2101.1 of the Zoning Regulations provides that the proposal will include one parking space for each four dwelling units (12 spaces for 48 dwelling units), one parking space for each two sleeping rooms (88 spaces for 175 sleeping rooms), and one parking space for each 150 square feet of floor area in the largest function room (37 spaces for 5,500 sf ballroom), for a total of 127 parking spaces. Because the Applicant proposes to provide 92 parking spaces, relief is required under this provision.

41. Section 2117 of the Zoning Regulations provides that access to parking spaces be provided with a continuous driveway from a street or alley. Because the Applicant proposes to provide access with a vehicle lift system, and no ramp or driveway will be provided, relief is required under this provision.

42. Subsection 411.18 requires that roof structures be setback at a 1:1 ratio from the nearest exterior building wall. As revised by the Applicant, a small portion of the elevator core will be set back at less than a 1:1 ratio from the nearest building wall. However, § 411.11 of the Zoning Regulations allows for special exception relief from the setback requirements, subject to specified criteria. The Applicant seeks relief from § 411.18 under § 411.11.

43. Subsection 411.9 allows special exception relief to allow penthouse enclosure walls of unequal heights. As the Applicant's revised rooftop plans provide for unequal heights of the penthouse enclosures, the Applicant seeks relief under this provision.

44. Subsection 411.4(c) allows a portion of a rooftop penthouse to be used as a bar/cocktail lounge/restaurant[8]. The Applicant seeks approval for this use.

[8] Subsection 411.1(c) also allows a nightclub use, if approved by the Board as a special exception. However, the Applicant states it will not seek to operate a nightclub.

Constraints of the Subject Property

45. If the Applicant were to provide a rear yard to the east, there would be a 15-foot wide and 130-foot tall gap in the streetwall on I Street. Such a gap would be inconsistent with the traditional building pattern in the Mount Vernon Triangle historic district. (OP Report, Exhibit 30.)

46. It is impractical to fill in the noncompliant 24-square foot closed court area to the building's height of 130 feet, as the result would be either a solid block of construction material or an unusable interior space that would be approximately two feet wide, five feet deep, and 130 feet high. Alternatively, were the Applicant to provide an 884 square foot compliant open court, an unusable and difficult to maintain exterior space would be created.

47. The geotechnical engineering and groundwater investigation reports submitted by the Applicant (Pre-Hearing Statement, Exhibit 29, Tabs I and J) demonstrate the presence of below-grade soil contaminants and infiltrating groundwater at the prospective third below-grade level, with such infiltration increasing at a fourth below-grade level. The combination of the two would disproportionately result in greater construction-mitigation and operating expenses for each below-grade level, were the Applicant to provide additional levels of underground parking.

48. The Historic Preservation Office ("HPO") prepared a staff report noting that a prior archeological investigation at the site yielded a high concentration of artifacts and remnants of former structures. The existence of these artifacts will impact the cost of the project and the construction timing, due to the additional steps that are required in carrying out the excavation, as well as additional documentation and reporting that is required.

49. Were the Applicant to provide a conforming ramping system to provide continuous access to the parking spaces, the required ramp and aisle widths would significantly reduce the number of vehicles that could be parked on any below-grade level.

50. A zoning compliant penthouse setback for the elevator core enclosure would require the relocation of the elevator core. This would negatively impact the corridor widths and parking aisle widths on the western side of the building, and, in turn, would reduce the number of hotel rooms and parking spaces that could be provided.

The Impact of the Proposed Project

51. HPRB conducted a concept review[9] of the project and found that its scale and massing was compatible with the Mount Vernon Triangle Historic District.

52. The final revised plans submitted by the Applicant reflect refinements made to the building façade to address comments made by HPRB. (Exhibit 38.)

[9] D.C. Official Code § 6-1108(b) permits prospective building permit applicants to apply to the Historic Preservation Review Board for conceptual review of a project for compliance with the historic preservation law.

53. The Mount Vernon Triangle's design principles stress the importance of continuous ground floor frontages on 5th Street. (11 DCMR § 1722.)

54. The lack of a rear yard will not significantly affect available light and air, given the subject property's corner location and the large open court that is provided on the alley side of the building.

55. Because no hotel guest rooms or dwelling units will face the court area, the noncompliant closed court will not result in a lack of light and air being provided to interior spaces that face or open onto the court.

56. Should there be a need to provide more than the 92 parking spaces that are proposed, the Applicant has worked with nearby parking garage operators to confirm the availability of both daily and monthly parking spaces. Paradigm Management Limited Partnership and LAZ Parking have confirmed their ability to accommodate any potential parking demand with nearby garages. (Exhibit 35.)

57. The light and air available to adjacent buildings would not be impacted by the minimal penthouse setback relief that is requested. The side property line of the nearest building to the north will be at least 37 feet from the edge of the proposed roof structure.

CONCLUSIONS OF LAW

The Requested Variances

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3) (2008) to grant variance relief from the strict application of the Zoning Regulations. As noted by the Court of Appeals, the Applicant must meet a three-prong test for the Board to grant relief:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987).

An applicant for a use variance must show that strict compliance with the applicable regulation will result in an undue hardship, while an applicant for an area variance must meet the less stringent standard that compliance will result in exceptional practical difficulties. (11 DCMR § 3103.7.)

As noted, the Applicant is seeking area variances from the rear yard requirements under § 774.1, the closed court requirements under §§ 776.1 and 776.2, the parking requirements under § 2101, and the parking access requirements under § 2117.4. Therefore, the "practical difficult[y]" standard will be applied.

As discussed below, the Board finds that the Applicant has met its burden of proof for the requested area variances in this case.

Rear Yard Variance

The Board concludes that an exceptional circumstance exists at the subject property. The site is relatively small for a downtown location (Finding of Fact 6) and has a very irregular northern boundary line (Finding of Fact 10.) Particularly given the core-factor requirement for the proposed mixed use development, it would be practically difficult to provide a rear yard to the east of the lot. Furthermore, were the Applicant to provide a rear yard to the east, there would be a 15-foot wide and 130-foot tall gap in the streetwall on I Street. This gap would be inconsistent with the building pattern in the Mount Vernon Triangle historic district (Finding of Fact 45.) As such, granting the requested variance will not harm the public good or the zone plan, and, in fact, furthers both.

Closed Court Width and Area Variances

The noncompliant closed court on the northern boundary stems from an exceptional condition. As explained in the Findings of Fact, a four-foot wide section of the northern lot line jogs six feet deep into the lot to the north. (Finding of Fact 10.) The northern lot line also has several odd jogs along the portion adjacent to the alley. (Finding of Fact 10.) The unusual shape of the northern lot line would lead to a practical difficulty were the closed court regulations strictly applied. It would be impractical to fill in this closed court area, a 24-square-foot area built to the building's height of 130 square feet, consisting of either a solid block of construction material or an unusable interior space that would be two feet wide, five feet deep, and 130 feet high. (Finding of Fact 46.) Because no hotel guest rooms or interior dwelling units will face the proposed court, the noncompliant court will not result in a lack of light and air being provided to interior spaces that face or open onto the court. (Finding of Fact 55.) Thus, granting the requested variances would not harm the public good or the zone plan.

Parking Reduction Variance

As explained, the Applicant proposes 92 parking spaces (of the required 127 spaces). (Finding of Fact 40.) All of the proposed spaces will be located on one level, located below the ballroom. (Finding of Fact 29.) Given the small size of the site, the only way additional parking could be provided would be to provide additional levels of underground parking. However, the Applicant has demonstrated the practical difficulty of providing additional underground levels. Geotechnical engineering reports and groundwater investigation reports show the presence of below-grade soil contaminants and infiltrating groundwater, with such infiltration increasing at each additional below grade level. (Finding of Fact 47.) Furthermore, archeological investigation at the site indicates a high concentration of artifacts at the site. (Finding of Fact 48.) These factors would necessitate greater construction-mitigation and increased operating expenses for any additional below grade levels constructed, which the Board concludes would be unduly burdensome.

The Board concludes that granting the requested parking reduction variance will not harm the public good or the zone plan. As noted previously, the Gallery Place metro station is near the proposed project, as are several Metrobus routes, the DC Circulator, and a Capitol Bikeshare station. (Findings of Fact 18-20.) In addition, information submitted by the Applicant shows that any additional parking demand could be satisfied using off-site parking garages. (Finding of Fact 56.) Finally, DDOT reviewed the application and stated that it had no objection to the project, provided the Applicant adheres to specific conditions

that will mitigate any potential vehicle traffic impacts. Because the Board is imposing the conditions recommended by DDOT as part of its approval, the Board concludes that, as conditioned, the requested parking variance will not result in adverse transportation impacts.

Parking Access Variance

As explained previously, the Applicant proposes that the parking spaces will be accessed through a vehicular elevator, and not a ramp or driveway. Therefore, the Applicant seeks relief from § 2117 of the Regulations, which requires that access to parking spaces be provided by a continuous driveway from a street or alley. However, the subject property has only limited alley access at its northeast corner. (Finding of Fact 7.) Given the location of the alley access, the turning radii required for vehicles, and the required ramp and aisle widths, it would be difficult to provide the continuous access that is required by the Zoning Regulations. (OP Report, Exhibit 30.) In fact, the Board credits OP's finding that, if a conforming ramping system were provided, it would significantly reduce the amount of space available for parking vehicles. (Finding of Fact 49.)

The Board also concludes that the lack of continuous access to the spaces will not be against the zone plan or the public good. The Applicant proposes to utilize a combination of valet parking, two vehicular elevators and a parking space lift. (Pre-Hearing Statement, Exhibit 29, Tabs K and L.) The Board credits OP's finding that more parking spaces will be provided than with a zoning compliant ramping, and that vehicle entry and exiting will be achieved during peak hour operations. (Exhibit 30.) Thus, it is not likely that granting the requested relief will result in adverse impacts.

Requested Special Exceptions

As revised, the Applicant is also seeking special exceptions from the penthouse setback regulations of § 411.18, the penthouse height regulations of § 411.9, and the penthouse use regulations of § 411.4(c).

As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board "is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) … to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title." In this case, the "special conditions" are those specified in § 411.11 with respect to the setback and height relief. Subsection 411.4(c) authorizes the Board to grant a special exception for penthouse use without regard to "special conditions".

As noted by the Court of Appeals:

> In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. "The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C.2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C.1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802 A.2d 359, 363 (D.C. 2002).

Special exceptions for Penthouse Setbacks, Penthouse Height

In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 411.11.

As to the general test, the Board concludes that the requested special exceptions will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.) The proposed penthouse design will not change the nature of the mixed use development, and will be in harmony with the existing neighborhood, which is a high density, mixed-use neighborhood comprised of commercial, residential, and retail service uses. (Finding of Fact 12.) With respect to whether the special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, the Board concludes that this standard is satisfied because, as discussed below, the specific conditions of § 411.11 are met.

The "special conditions" for § 411.11

The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and 411.18 upon a showing that:

(a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable;

Subsection 411.18 requires that penthouses and screening around unenclosed mechanical equipment be set back from the edge of the roof at a 1:1 ratio from the wall of the top story of the building. The Applicant substantially reduced the extent of the setback relief it initially requested, following direction from the Board on December 15, 2015. The only area of the penthouse now requiring setback relief is a relatively small portion of the elevator core, which cannot be set back further due to operational constraints if the elevator core were shifted. (Exhibit 38.) As OP concluded, providing a 1:1 setback would require relocation of the elevator core, which would negatively impact corridor widths on the western side of the building and reduce the number of hotel room and parking spaces that could be provided.

Relief is also required from § 411.9 to allow enclosing walls to have unequal heights. The Applicant only was able to reduce the extent of setback relief required, through a combination of increased setbacks and unequal penthouse heights. (Exhibit 38.)

(b) The intent and purpose of this chapter and this title will not be materially impaired by the structure;

The penthouse setback relief and the penthouse height relief is minimal.

(c) The light and air of adjacent buildings will not be affected adversely.

Granting the special exceptions will not impact the light and air of adjacent properties. The side property line of the nearest building to the north would be at least 37 feet from the edge of the proposed roof structures. (Exhibit 30.)

Special Exception for Penthouse Use

Subsection 411.4(c) of the Zoning Regulations allows the Board to approve a special exception permitting a portion of a penthouse to be used as a "nightclub, bar, cocktail lounge, or restaurant. The Applicant has indicated that it will not establish a nightclub use and there is nothing in the record to suggest that either a cocktail lounge or restaurant would result in adverse impacts. The uses are otherwise permitted in the zone district and there is no reason to believe that having these uses on the roof of this building would prove more impactful than if the uses were on the ground floor.

ANC

Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code §1-309.10(d)(3)(B) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC.

In this case ANC 6E initially recommended denial of the application. However, the issues and concerns raised by the ANC relate to the variance to reduce the required minimum parking, and not the other relief requested by the Applicant. Indeed, the ANC submitted a supplemental report indicating that it recommended approval of the special exception requesting use of the penthouse.

The concerns raised by the ANC relating to the parking variance pertain to the third prong of the variance test discussed above; i.e., whether the proposal will result in a substantial detriment to the public good. The ANC raised two specific concerns. First, the ANC stated that the Applicant was proposing to provide 86 of the 127 required parking spaces, in an area which it states already has a "parking deficit". Second, the ANC states that the Applicant did not propose "the use of any offsite parking to offset the lack of sufficient parking on site for the proposed uses." (Exhibit 33.) While each of these concerns may have had some merit at the time the report was written, the Applicant later modified its proposal to address these concerns. First, regarding the number of proposed parking spaces, the Applicant increased the number of proposed spaces from 86 to 92. (Exhibit 29, Applicant's Pre-Hearing Statement, p. 10.) Second, after the Applicant presented the project to the ANC and heard the ANC's concerns relating to parking, the Applicant worked with nearby parking garage operators to confirm the availability of both daily and monthly parking spaces, should there be a need for more than the 92 spaces provided on-site. (Exhibit 35, Finding of Fact 56.) The Board finds that by increasing the number of proposed spaces and by confirming that additional off-site spaces would be available if necessary, the Applicant has established that granting the variance will not result in a substantial detriment to the public good.

OP

The Board is also required under D.C. Official Code §6-623.04(2001) to give "great weight" to OP recommendations. For reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application, as amended, is hereby **GRANTED,** to allow variance relief from the rear yard requirements under § 774.1, the closed

court requirements under §§ 776.1 and 776.2, the off-street parking requirements under § 2101.1, and the parking access requirements under § 2117, and special exception relief pursuant to § 411.11 from the roof structure requirements under §§ 411.18 and 411.9, and the penthouse use requirements under § 411.4(c), **AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 39 AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall appoint a Transportation Demand Management Coordinator to work with residents, hotel guests, and employees to distribute and market various transportation alternatives and options;

2. The Applicant shall provide a public transportation screen, showing real-time information on nearby transit services, in the residential and hotel lobbies;

3. The Applicant shall provide all hotel guests free Capital Bikeshare passes upon request for the life of the hotel project and actively promote this incentive through the marketing plan outlined by the Applicant; and

4. The Applicant shall provide a one-year bike share membership, car share membership, or $100 SmarTrip card to all lessees on a yearly basis for a total of 10 years, or a three-year membership at the initial sale of the units.

5. The penthouse shall not be used as a nightclub.

Vote taken on December 15, 2016:

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE the variance relief; one Board seat vacant).

Vote taken on January 12, 2016:

VOTE: **4-0-1** (Marnique Y. Heath, Peter G. May, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE the special exception relief; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 3, 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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-29
Z.C. Case No. 15-29
Jemal's Gateway DC, LLC
(Consolidated PUD and Related Map Amendment
@ Square 2960, Lot 17)
September 12, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 16, 2016, to consider applications for a consolidated planned unit development ("PUD") and a related zoning map amendment filed by Jemal's Gateway DC, LLC ("Applicant"). The Commission considered the applications pursuant to Chapters 1, 24, and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR")[1]. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission **HEREBY APPROVES** the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On November 4, 2015, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-2-A and R-1-B Zone Districts to the C-2-B Zone District for Lot 17 and a portion of a public alley to be closed in Square 2960 ("PUD Site").

2. On January 11, 2015, Advisory Neighborhood Commission ("ANC") 4A submitted a resolution to the record (Exhibit ["Ex."] 11), the contents of which are discussed below.

3. By report dated January 15, 2016 (Ex. 12), the District of Columbia Office of Planning ("OP") recommended that the application be set down for a public hearing. At its public meeting on February 8, 2016, the Commission voted to schedule a public hearing on the application.

4. The Applicant filed a prehearing submission on March 24, 2016 and a public hearing was timely scheduled for the matter. (Ex. 14.) On April 21, 2016, the notice of public hearing was mailed to all owners of property located within 200 feet of the PUD Site; ANC 4A, the ANC in which the PUD Site is located; ANC 4B, the ANC located adjacent to the PUD Site; Commissioner Dwayne Toliver, the Single Member District Commissioner for 4A02, and to Councilmember Brandon Todd. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on April 29, 2016.

[1] Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

5. On May 27, 2016, the Applicant filed a supplemental prehearing submission. (Ex. 22-22B.) The supplemental prehearing submission included revised architectural plans and elevations and a comprehensive transportation review ("CTR") report dated March 11, 2016 prepared by Gorove/Slade Associates and submitted to the District Department of Transportation ("DDOT") on March 23, 2016. (Ex. 22B.)

6. On June 6, 2016, OP and DDOT each submitted a report on the application. The OP report recommended approval of the application subject to the conditions set forth in Finding of Fact ("FF") No. 89 of this Order. (Ex. 24.) The DDOT report indicated no objection to the application subject to the conditions set forth in FF No. 94 of this Order. (Ex. 23.) The contents of these reports are discussed below.

7. On June 9, 2016, ANC 4A submitted a second submission dated June 8, 2016, the contents of which are discussed below. (Ex. 26.)

8. ANC 4B, the ANC located adjacent to the PUD Site, submitted a letter dated June 15, 2016 (Ex. 28), stating that it was unable to vote on the project and requesting that the Commission hold the record open after the public hearing to permit ANC 4B to submit a resolution no later than the close of business on June 29, 2016.

9. ANC 4B submitted three separate resolutions (dated June 27, 2016, July 15, 2016, and August 12, 2016) in this case. (Ex. 36, 44, 54.) The final resolution (dated August 12, 2016) requested that the Commission "treat this resolution as its original submission," and conditioned ANC 4B's support of the project on the Applicant agreeing to include certain conditions in the Zoning Commission Order approving the application. The contents of these resolutions are discussed below.

10. The parties to the case were the Applicant and ANC 4A.

11. The Commission convened a public hearing on June 16, 2016, which concluded that same evening. At the hearing, the Applicant presented three witnesses in support of the applications: Paul Millstein on behalf of the Applicant; Lawrence Caudle of Hickok Cole Architects, architect for the project; and Erwin Andres of Gorove/Slade Associates, Inc., transportation consultant for the project. Based upon their professional experience and qualifications, the Commission qualified Mr. Caudle as an expert in architecture and Mr. Andres as an expert in transportation planning and engineering.

12. At the conclusion of the public hearing, the Commission closed the record except for the limited purposes of allowing: (a) the Applicant to submit the specific items filed in Exhibits 37-39, including a report regarding the Applicant's further meetings after the public hearing with Mrs. Naima Jefferson and Rev. David Jefferson (residents of 1121 Kalmia Road), who testified as individuals at the public hearing ("Jeffersons"); (b) the Jeffersons to submit a report regarding the outcome of its further meetings with the Applicant; and (c) specific items from ANC 4A, ANC 4B, and DDOT.

13. On July 5, 2016, the Applicant submitted its post-hearing submission, which included the following materials and information requested by the Commission at the public hearing: (a) revised Architectural Plan and Elevation Sheets (the "Revised Plan Sheets") showing revised façade materials, an updated elevator tower, and an updated landscape plan; (b) a plan and corresponding chart showing the location, size, and subsidy of the project's affordable dwelling units; (c) new street level renderings from Kalmia Street, 12th Street, and Eastern Avenue; (d) an analysis demonstrating that the project is consistent with the Comprehensive Plan and the Georgia Avenue Small Area Plan; (e) an update on the Applicant's community outreach and a report on the Applicant's meetings with the Jeffersons; and (f) the Applicant's response to ANC 4B's first resolution. (Ex. 37-37C.)

14. On July 11, 2016, the Applicant submitted its proposed findings of fact and conclusions of law. (Ex. 39.)

15. On July 11, 2016, DDOT submitted a memorandum providing additional information about the landscaping on Georgia Avenue. (Ex. 41.)

16. On July 11, 2016, the Jeffersons submitted a post-hearing submission, which set forth a number of claims against the project and the Applicant. (Ex. 40, 40A.)

17. On July 18, 2016, the Applicant submitted a motion to strike the Jefferson's July 11, 2016 submission, since it exceeded the limited scope of what the Commission asked the Jeffersons to submit. (Ex. 42.) The Applicant also filed a response to the Jeffersons' submission, which responded to the allegations contained therein and further addressed the substance of the Jeffersons' concerns. (Ex. 43, 43A.) The Commission denied the Applicant's request to strike the Jefferson's July 11, 2016 submission and granted the Applicant's request to submit a response to the Jeffersons' submission.

18. On July 22, 2016, the Jeffersons submitted a request to reopen the record to respond to the Applicant's July 18, 2016 submission, which the Commission approved. (Ex. 47-48.)

19. At the public meeting of July 25, 2016, the Commission reviewed the additional materials submitted to the record and took proposed action to approve the application. The Commission also requested that prior to final action on the application, the Applicant and the Jeffersons continue to work together, and for each to submit another letter to the record updating the Commission on their further communications following proposed action.

20. The proposed action was referred to the National Capital Planning Commission ("NCPC") on July 26, 2016 pursuant to § 492 of the Home Rule Act. NCPC did not submit any comments within 30 days after the Commission's referral, and the Commission proceeded to approve the application, as authorized by § 492 of the Home Rule Act.

21. On August 8, 2016, the Applicant submitted a letter updating the Commission on its further communications with the Jeffersons. (Ex. 52.) In that letter, the Applicant set forth two options that it offered to the Jeffersons to address their concerns: (a) entering into a proposed agreement that included significant benefits for the Jeffersons, or (b) purchasing the Jeffersons' property for its appraised value plus a reasonable premium over the appraised value. The Applicant indicated in the letter that the Jeffersons were unwilling to accept either option. The Applicant's August 8, 2016 letter also addressed the Jeffersons' concerns related to noise, respiratory health, parking and traffic, and compliance with the PUD requirements of the Zoning Regulations.

22. On August 8, 2016, the Jeffersons submitted a letter updating the Commission on their further communications with the Applicant. (Ex. 53.) In their letter, the Jeffersons raised the following issues: (a) doubt as to whether the Applicant has a valid Basic Business License; (b) the "increased" community interest in the project through ANC 4A and ANC 4B; and (c) the need for a new traffic study.

23. On August 31, 2016, the Applicant submitted a request to reopen the record to respond to ANC 4B's final resolution, and to agree to each of the conditions set forth in ANC 4B's August 12th resolution. (Ex. 56-57.) Later that day, the Commission's Chairman reopened the record to accept the Applicant's submission.

24. The Applicant's August 31, 2016 submission also stated that the Applicant had attended a public meeting hosted by the Single Member District Commissioner for ANC 4A02 and that in response to questions relating to the construction of the PUD that were raised by some community members at that meeting, the Applicant was submitting a Construction Management Plan, and that the Applicant would comply with the plan during the construction of the project. (Ex. 58.) The Construction Management Plan includes provisions regarding construction traffic, community updates, surveying of adjacent properties, and other provisions to ensure that all construction-related activities for the project will be consistent with the Building Code and other applicable laws and regulations.

25. During its deliberations at the public meeting on September 12, 2016, the Commission requested that the Applicant submit additional information regarding the color palette proposed for the project's fiber cement panels. The Applicant submitted plan sheets showing the requested information. (Ex. 59.)

26. The Commission took final action to approve the PUD on September 12, 2016.

27. On October 31, 2016, the Applicant submitted a request to re-open the record to accept an updated CTR report prepared by Gorove/Slade Associates dated May 31, 2016 that

was submitted to and reviewed by DDOT. (Ex. 60.) At a public meeting held on November 14, 2016, the Commission denied the request.[2]

The PUD Site and Surrounding Area

28. The PUD Site consists of Lot 17 and a portion of a public alley to be closed in Square 2960. The PUD Site has a land area of approximately 87,522 square feet and is bounded to the northeast by Eastern Avenue, N.W., to the east by Georgia Avenue, N.W. and Alaska Avenue, N.W., to the south by Kalmia Road, N.W., and to the west by an alley and private property. The PUD Site is located in a context that varies in use and scale, and is situated on Georgia Avenue, which is designated as a Great Street by the District and serves as a major commuter gateway into the city.

29. The Applicant requested to rezone the PUD Site from the C-2-A and R-1-B Zone Districts to the C-2-B Zone District. As detailed in FF Nos. 62-82, the Commission finds that the requested map amendment is consistent with the Comprehensive Plan's Future Land Use Map designation of the PUD Site as mixed-use Low-Density Commercial and Moderate-Density Residential, and is also consistent with the Comprehensive Plan's Generalized Policy Map designation of the PUD Site as a Main Street Mixed-Use Corridor and a Neighborhood Conservation Area. Further, the map amendment is consistent with the Upper Georgia Avenue Great Streets Redevelopment Plan ("Georgia Avenue Plan"), which recommends developing the PUD Site with "moderate to medium density development, incorporating street level retail with residential or office uses above." (*See* Georgia Avenue Plan, p. 45.)

Existing and Proposed Zoning

30. The PUD Site is currently zoned C-2-A and R-1-B. Approximately 46,858 square feet (56%) of the PUD Site is currently zoned C-2-A, and this portion is primarily located along Georgia and Eastern Avenues. Approximately 36,908 square feet (44%) of the PUD Site is currently zoned R-1-B, and this portion is primarily internal to the PUD Site, abutting private property, the adjacent public alley, and a small portion of Kalmia Road.

31. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core. The C-2-A Zone Districts are located in low- and medium-density residential areas with access to main highways or rapid transit stops. The C-2-A Zone Districts permit development to medium proportions and accommodate commercial strip

[2] The Commission denied the request because its findings and conclusions about the transportation related impacts of the project were based on DDOT's analysis of those impacts, and the data included in DDOT's report. DDOT's report included the information contained in the Applicant's updated May 31, 2016 CTR report. DDOT's report was submitted into the record, and presented by DDOT's representative at the hearing. The parties had an opportunity to cross-examine the DDOT representative and the Applicant's traffic representative at the hearing.

developments. (11 DCMR §§ 720.2-720.5.) As a matter of right, property in C-2-A Zone Districts can be developed with a maximum density of 2.5 floor area ratio ("FAR"); to a maximum building height of 50 feet; and with a maximum lot occupancy of 60%. (11 DCMR §§ 771.2, 770.1, and 772.1.)

32. The R-1 Zone Districts are designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes. They are intended to stabilize the residential areas and to promote a suitable environment for family life. (11 DCMR §§ 200.1 and 200.2.) As a matter of right, property in the R-1-B Zone Districts may be developed with a maximum lot occupancy of 60% and to a maximum height of 40 feet (three stories). (11 DCMR §§ 400.1 and 403.2.)

33. The Applicant proposes to rezone the PUD Site to C-2-B. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed uses. The C-2-B Zone Districts shall be compact and located on arterial streets, in uptown centers, and at rapid transit stops. In the C-2-B Zone Districts, building use may be entirely residential or a mixture of commercial and residential uses. (11 DCMR §§ 720.6-720.8.) As a matter of right, property in the C-2-B Zone Districts can be developed with a maximum density of 3.5 FAR; to a maximum building height of 65 feet; and with a maximum lot occupancy of 80%. (11 DCMR §§ 771.2, 770.1, and 772.1.) A PUD in the C-2-B Zone District may be developed with a maximum density of 6.0 FAR and to a maximum building height of 90 feet. (11 DCMR §§ 2405.1 and 2405.2.)

34. Rear yards in the C-2-B Zone District must have a minimum depth of 15 feet. (11 DCMR § 774.1.) In the case of a through lot or a corner lot abutting three or more streets, the depth of rear yard may be measured from the centerline of the street abutting the lot at the rear of the building or other structure. (11 DCMR § 774.11.) A side yard is generally not required in the C-2-B Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR §775.5.)

35. The parking and loading requirements for buildings are based upon the proposed use of the property. For example, an apartment house or multiple dwelling in the C-2-B Zone District requires one parking space for each three dwelling units. (11 DCMR § 2101.1.) Retail or service establishments in excess of 3,000 square feet are required to provide one parking space for each additional 750 square feet of gross floor area. (*Id*.) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. (11 DCMR § 2201.1.) A retail or service establishment with 5,000 to 20,000 square feet of gross floor area must provide one loading berth at 30 feet in depth and one loading platform at 100 square feet. (*Id*.)

36. Consistent with the C-2-B development parameters, the Applicant will develop the PUD Site with a mix of residential and retail uses. A tabulation of the PUD's development data is included on Sheet A-01 of the Architectural Plans and Elevations dated May 27, 2016. (Ex. 22A1.)

Description of the PUD Project

37. The Applicant is seeking consolidated PUD approval and a zoning map amendment to redevelop the PUD Site with a mixed-use residential and retail building. The building will contain approximately 273,308 square feet of gross floor area (3.12 FAR) and a maximum building height of 74 feet, three inches. Approximately 189,099 square feet of gross floor area will be devoted to residential use (approximately 199 units, plus or minus 10%) and approximately 58,400 square feet of gross floor area will be devoted to retail use. Approximately 271 off-street parking spaces will be located in a below-grade parking garage.

38. The project is sensitive to its varied context and responds in size, form, and in its use of materials. The building's massing represents an unusual yet unique footprint. The majority of the building will sit at the intersection of Georgia and Eastern Avenues, and will follow the PUD Site's irregular shape to the west and north, such that the building will also have frontage on Eastern Avenue. The building's ground floor will be activated by a full-service grocery store, plus a small retail and residential lobby space serving the five-story residential tower over the ground-floor retail. The primary residential lobby entrance is located on Kalmia Road, which is a quieter residential street, and the grocery store entrance is located along the active commercial portion of Eastern Avenue. The grocery store will engage the community with active storefront facades and an outdoor café along the Alaska Avenue façade.

39. The project's massing addresses the residential neighborhood to the west and the commercial uses along the major thoroughfares of Georgia and Eastern Avenues. The height of the building steps down from east to west as follows: The maximum building height is located at the intersection of the commercial corridors of Georgia/Eastern/Alaska Avenues and is 73 feet, four inches tall. The building then steps down in height to 41 feet, four inches for the western-most north-south leg of the residential tower and for the ancillary building on Eastern Avenue; it then steps down again to 20 feet along the western perimeter of the residential tower above the grocery store, directly adjacent to the row dwellings on Kalmia Road; and steps down a final time to 16 feet for the one-story portion of the building that connects the residential tower to the ancillary building, directly adjacent to and behind the row dwellings on Kalmia Road. The project also provides a private residential courtyard, located above the ground-floor retail storefronts, opens towards the single-family dwellings on Kalmia Road and is surrounded by the building's residential units with views to the west. A landscaped buffer is also provided along the property line between the subject property and the adjacent residential dwelling at 1121 Kalmia Road.

40. Given the architectural prominence of the PUD Site, namely the visibility when approached from the north and south, the proposed building will effectively become a new landmark at the edge of the District. To create an architecture that can "hold" this location, the design accentuates the north and south corners of the Georgia Avenue façade with a prominent corner of projecting bays and window wall glazing. The architectural language is otherwise a blend of traditional brick and stone materials and detailing with transitional elements such as entry canopies, storefront glazing bays, and punches of metal panel at projecting bays and at the upper residential floor.

41. The building will be designed to meet the LEED-Gold standard under the LEED v.4 for Building Design and Construction ("BD+C") rating system, and will integrate a host of sustainable features, including green roofs, street-level stormwater collection, bioretention planting areas, sustainable materials, street and interior bike parking, two 240-volt electric car-charging stations in the parking garage, and energy-efficient building systems. The project will also include extensive and intensive green roofs and a residential courtyard. The green roofs will provide visual interest to residents and neighboring properties while concealing required mechanical equipment. The residential courtyard will have amenities for users including lounge areas, a fire pit, and grilling areas.

42. The proposed streetscape will be an aesthetically pleasing environment that facilitates and reinforces the building's architecture while creating a sense of neighborhood at the street level. The streetscape elements include new tree boxes and street trees, mixed plantings, lighting, and pedestrian-oriented furnishings, all of which will comply with DDOT standards and the Georgia Avenue Plan. The project is required to comply with a 15-foot building restriction line on Alaska Avenue and Kalmia Road. The area within the building restriction line will have outdoor gathering spaces and significant new landscaping with native species. Special paving is proposed to be located along Eastern Avenue to further define the grocery store entrance, and along Kalmia Road to feature the residential entrance.

Zoning Flexibility

43. The Applicant requested areas of flexibility from the Zoning Regulations discussed below.

44. Flexibility from the Compact Parking Space Requirements. Subsection 2115.4 of the Zoning Regulations provides that compact parking spaces shall be placed in groups of at least five contiguous spaces with access from the same aisle. The Applicant proposed to provide 271 total parking spaces, 32 of which would be compact in size, but not all of which would be in groupings of five or more, thus requiring flexibility.

45. The Commission finds that providing the compact spaces in the proposed locations is necessary to: maximize the efficiency of the garage, provide as many parking spaces as possible, maintain a drive aisle width of 20 feet, and accommodate a greater amount of

compact, fuel-efficient vehicles that have a lower carbon footprint than full-size vehicles. This requested flexibility will not have any adverse effects, and will instead allow the Applicant to best accommodate parking for the project's residential and retail users. Moreover, the Commission notes OP's support for the requested flexibility in its assertion that the "[p]rovision of compact parking spaces in groups of less than five allows the applicant to more efficiently design the garage and maximize the amount of on-site parking provided without requiring the construction of additional garage space while providing a minimum drive aisle width of twenty feet." (Ex. 24, p. 7.)

46. Flexibility from the Loading Requirements. Subsection 2201.1 of the Zoning Regulations requires the following loading facilities: (a) one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep (residential requirement); and (b) one loading berth at 30 feet deep and one loading berth at 55 feet deep; one loading platform at 100 square feet and one loading platform at 200 square feet; and one service/delivery space at 20 feet deep (grocery requirement). The project includes all of the required residential and grocery loading facilities, except for the residential service delivery space.

47. The Commission finds that the requested flexibility is directly in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use buildings. Given the nature and size of the residential units, it is unlikely that residents will need to use the required service/delivery space, particularly since the loading areas will be used by residents for move-ins and move-outs only, and any other use by residents will be infrequent and can be restricted to times which pose the least potential conflicts with retail users. The OP report noted its support for the flexibility, stating that "[l]oading for the residential portion of the building would largely be restricted to move-in and move-outs, for which a 55-foot deep loading berth would be available, and the use of this space could be coordinated by a TDM leader." (Ex. 24, p. 7.). DDOT also referenced the need for loading flexibility and stated no concerns with the "one service/delivery space [] proposed to be shared by the residential and retail uses." (Ex. 23, p. 5.)

48. Flexibility from the Court Requirements. The Applicant requested flexibility from the open court width requirements for the open court facing Kalmia Road adjacent to the parking garage entrance. When provided, open courts in the C-2-B Zone District dedicated to residential use must have a minimum width of four inches per foot of height, or a minimum of 15 feet. (11 DCMR § 776.3.) In this case, based on the court's height of 26 feet, eight inches, a minimum width of 15 feet is required. However, the court is only six feet, 11 inches wide.

49. The Commission finds that this court was designed to break up the massing of the building and provide greater façade articulation. The proposed court introduces light, air, and ventilation into the building, particularly into the larger open court in the center of the building, and provides space for additional landscaping and green space. Thus, the

Commission finds that providing this court with a non-compliant width will not result in any adverse impacts to the public good or zone plan.

50. Flexibility from the Penthouse Setback Requirements. The Applicant requested flexibility pursuant to 11 DCMR § 411.18 to provide non-compliant penthouse setbacks in two locations at the interior of the PUD Site as follows:

a. Flexibility was requested from 11 DCMR § 411.18(d) for the penthouse enclosing an eight-foot-tall stair tower and a five-foot-tall elevator overrun. This penthouse is not setback from the adjacent side building wall; and

b. Flexibility was requested from 11 DCMR § 411.18(c)(5) for the penthouse enclosing a five-foot-tall elevator overrun. This penthouse is not set back from the adjacent open court wall.

51. The Commission finds that flexibility in both cases is a result of the PUD Site's extremely irregular shape and the resultant irregularly shaped building with long narrow corridors. The setback relief is requested for mechanical equipment only, not for penthouse habitable space. This equipment cannot be relocated to be closer to the center of the roof, since both the stair tower and the elevator shafts run through the entire building. Thus, moving them towards the center of the building would push them into the middle of the double-loaded corridors on the residential levels below, resulting in blocked access to residential units. It would also result in the stair tower and elevators being located in the middle of the drive aisles in the below-grade parking garage, thus creating significant operating difficulties for the building. Moreover, as set forth in the Applicant's post-hearing submission and as shown in the revised plan, the Applicant lowered the stair tower from 10 feet to eight feet, which is the minimum height needed to provide head clearance. (Ex. 37; 37A, Sheets A23, A30.)

52. The Commission notes that the building provides stair access to the roof only, which is necessary to allow for the installation and maintenance of the green roof and condensers. The building does not include elevator access to the roof, which limits the potential height of the penthouses to the height of the overrun only (in this case, five feet) instead of the height of a full elevator and its overrun (potentially 18 feet, six inches). As a result, the Commission finds that the requested flexibility will not impair the purpose and intent of the Zoning Regulations, since the non-compliant setbacks are interior to the site and significantly set back from the property line.

Development Flexibility

53. The Applicant also requests flexibility in the following additional areas:

a. To be able to provide a range in the number of residential units of plus or minus 10%;

b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;

c. To vary the sustainable design features of the project, provided the total number of LEED points achievable for the project is not below 60 points under the LEED v.4 for BD+C Gold rating standards;

d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: curtain wall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

e. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and

f. To be able to adjust the color of the high-density fiber cement panel used on the inside face of the balconies on the main elevations of the building, so long as the final color selected by the Applicant is consistent with the overall color scheme proposed for the building and shown on the plan sheet presented at the ANC meeting on August 11, 2016.

Project Benefits and Amenities

54. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The project will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The project includes a significant amount of landscape, garden, and open space features. Streetscape elements include new tree boxes and street trees, mixed plantings, lighting, and pedestrian-oriented furnishings. The hardscape materials will complement the building, and the landscape areas will include native plantings to enhance the sense of neighborhood. All streetscape elements will comply with DDOT standards and with the Georgia Avenue Plan. Moreover, replacing the existing single-story buildings and surface parking with a new visually interesting and efficient building constitutes a significant urban design benefit.

55. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The project will include a total of approximately 189,099 square feet of residential gross floor area consisting of approximately 199 units. Approximately 16% of the residential floor area will be designated as affordable housing units as follows: (a) a minimum of four percent of the residential gross floor area will be devoted to households earning up to 80% of the AMI; (b) a minimum of four percent of the residential gross floor area will be devoted to households earning up to 50% of the AMI; (c) a minimum of four percent of the residential gross floor area will be devoted households earning up to 80% of the AMI with units designed to include features such as grab bars, lower sinks, walk-in showers, higher toilets, and will be advertised in traditional rental guides, as well as publications such as AARP Magazine, Senior Living Magazine, and other similar publications; and (d) a minimum of four percent of the residential gross floor area will be devoted to households earning up to 50% of the AMI and will be designed to include the features listed in (c) above.

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	189,099 sf of GFA (approx. 149,633 sf of net residential area) (100%)	199	NA	NA	NA
Market Rate	157,967 sf of GFA (84%)	166	Market Rate	NA	NA
50% AMI (IZ)	7,817 sf of GFA (4%)	8	50% AMI	For the life of the project	Rental
50% AMI (Non-IZ)[3]	7,749 sf of GFA (4%)	8	50% AMI	For the life of the project	Rental
80% AMI (IZ)	7,817 sf of GFA (4%)	8	80% AMI	For the life of the project	Rental
80% AMI (Non-IZ)	7,749 sf of GFA (4%)	9	80% AMI	For the life of the project	Rental

56. Pursuant to 11 DCMR §§ 2603.2 and 2603.4, the project is required to allocate the greater of eight percent of the residential gross floor area or 50% of the bonus density utilized to IZ units set aside for households earning up to 80% of the AMI. Thus, the Applicant is providing double the square footage of required affordable housing, and at a significantly steeper subsidy.

57. Environmental Benefits (11 DCMR § 2403.9(h)). The Applicant will ensure environmental sustainability through the implementation of sustainable design features and strategies to enhance the sustainable nature of the PUD Site's walkable, mixed-use location, and to promote a healthy lifestyle that will holistically benefit the project's residents while minimizing impact on the environment. The project provides a host of

[3] The Non-IZ Units will be the units designed to include features such as grab bars, lower sinks, walk-in showers, higher toilets, and will be advertised in traditional rental guides, as well as publications such as AARP Magazine, Senior Living Magazine, and other similar publications.

environmental benefits consistent with recommendations of 11 DCMR § 2403.9(h), which include street tree planting and maintenance, landscaping, energy efficiency and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. In addition, the building will integrate many sustainable features, including green roofs, street-level stormwater collection, bioretention planting areas, sustainable materials, energy-efficient building systems, and street and interior bike parking. The project will be designed to include no fewer than the minimum number of points necessary to achieve the equivalent of LEED-Gold under the LEED v.4 for BD+C rating system.

58. Transportation Benefits (11 DCMR § 2403.9(c)). The Applicant incorporated a number of elements into the project designed to promote effective and safe access to the PUD Site, convenient connections to public transit services, and onsite amenities such as bicycle parking. The Applicant will undertake the following transportation improvements:

a. Install two 240-volt electric car charging stations in the parking garage of the building;

b. Install traffic management cameras at 16th Street and Kalmia Road, Alaska Avenue and Kalmia Road, and Georgia Avenue and Geranium Street for integration into the DDOT traffic management program;

c. Install a new northbound left-turn signal head at the intersection of Alaska Avenue and Kalmia Road;

d. Create two east-bound approaches on the north side of Kalmia Road at the intersection of Alaska Avenue and Georgia Avenue; and

e. Offer each of the five existing homeowners on the north side of the 1100 block of Kalmia Road a free parking space within the proposed building, or other mutually agreeable form of mitigation not to exceed $25,000.

59. The Applicant will also implement the following TDM strategies:

a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan and provide TDM marketing materials to new residents;

b. Unbundle parking costs from the price of a lease and set the price at no less than the charges of the lowest fee garage located within a quarter-mile of the site;

c. Install one transportation information screen in the residential lobby and one transportation information screen in the grocery store, which will display real-time transportation alternative information;

d. Supply 88 long-term (secure, indoor) and 22 short-term (exterior) bicycle parking spaces;

e. Dedicate two parking spaces in the parking garage for car sharing services for use by building residents. If no carshare providers are willing to operate in those spaces, the dedicated spaces may be returned to the general residential parking supply;

f. Provide two showers and changing facilities for grocery store employees;

g. Include in the residential leases a provision that prohibits tenants from obtaining a Residential Parking Permit ("RPP") from the D.C. Department of Motor Vehicles ("DMV"), under penalty of lease termination; and

h. Offer each unit's incoming residents an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years.

60. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(i)). The Applicant has worked with ANC 4A to develop benefits and amenities identified as needs within the community, and proposes the following:

a. Provide a community room within the building that will be available to ANC 4A and other community organizations located within the boundaries of ANC 4A;

b. Contribute $25,000 to Shepherd Elementary School ("SES") to be used for improvements to the school's cafeteria and/or gymnasium, as determined by SES;

c. Maintain the grass and landscaped areas located within the curb line of the triangular median within the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue;

d. Submit to DDOT, ANC 4A, and ANC 4B, a concept site plan showing a design for the triangular median at the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue, which includes landscaping details, a new "Welcome to Washington" sign, and relates to the design of the front of the building;

e. If requested by DDOT, ANC 4A, and the majority of the homeowners on the north side of Kalmia Road (i.e., 1121, 1123, 1125, 1129, and 1133 Kalmia Road) and 12th Street (i.e., 7801, 7811, 7815, 7819, 7823, 7829, 7831, and 7833 12th Street), demonstrate to the Zoning Administrator that it has submitted a letter to DDOT indicating that it does not object to designating the public alley located between Eastern Avenue and Kalmia Road as a one-way alley; and

f. Assist SES with applying for an Adult School Crossing Guard at an intersection adjacent to the PUD Site to be determined by DDOT, SES, and the SES PTA. If

payment is required for the Adult School Crossing Guard, the Applicant will pay up to $25,000, divided over up to three years, to be used solely to support paying for the DDOT-approved crossing guard.

Comprehensive Plan

61. The Commission finds that the PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan and the Georgia Avenue Plan. The project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality residential development with ground-floor retail on the PUD Site, without generating any adverse impacts. The project will create new neighborhood-serving retail opportunities to meet the demand for basic goods and services, and will promote the vitality, diversity, and economic development of the surrounding area. Moreover, the project will create new jobs for District residents, provide public health benefits that achieve community goals, and will help to improve the surrounding neighborhood.

62. Future Land Use Map. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site in the mixed-use Low-Density Commercial and Moderate-Density Residential land use categories.

63. The Low-Density Commercial designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts' uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply. (10A DCMR § 225.8.)

64. The Moderate-Density Residential designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two-four unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate-Density Residential category; the R-5-B Zone District and other zones may also apply in some locations. (10A DCMR § 225.4.)

65. The Project's Density is Consistent with the Future Land Use Map. The Commission finds that the C-2-B Zone District is consistent with the Low-Density Commercial designation regarding project density. The C-2-A Zone District (which is specifically listed within the Low-Density Commercial category) permits a maximum matter-of-right

commercial density of 1.5 FAR and 2.0 FAR as a PUD. (11 DCMR §§ 771.2 and 2405.2.) The project has a maximum commercial density of 1.0 FAR. Thus, the Commission concludes that because the project's commercial density is within maximum density permitted for zone districts specifically listed as consistent with the Low-Density Residential designation, that the C-2-B Zone District and the project's proposed commercial density are consistent with the Future Land Use Map's designations for the PUD Site.

66. The Commission finds that the C-2-B Zone District is also consistent with the Moderate-Density Residential designation regarding project density. The R-5-B Zone District (which is specifically listed in the Moderate-Density Residential category) permits a maximum matter-of-right residential density of 1.8 FAR and 3.0 FAR as a PUD. (11 DCMR §§ 402.4 and 2405.2.) The project has a maximum residential density of 2.12 FAR, which is well below the maximum density permitted by a zone district specifically listed as being compatible with the Moderate-Density Residential designation. Thus, the Commission concludes that although the C-2-B Zone District is not specifically listed as a zone that is consistent with the Moderate-Density Residential designation, the project is still within the density limitations that the Comprehensive Plan anticipated for this land use designation. The Commission finds that the C-2-B Zone District and the project's proposed residential density are consistent with the Future Land Use Map's designations for the PUD Site.

67. The Project's Height is Consistent with the Future Land Use Map. The Commission finds that the C-2-B Zone District is consistent with the land use designations for the PUD Site regarding maximum building height. The Low-Density Commercial designation permits zones having a maximum building height of 65 feet for a PUD (e.g. C-2-A). The Moderate-Density Residential designation permits zones having a maximum building height of 60 feet for a PUD (e.g. R-5-B). The p has a maximum building height of 73 feet, four inches. However, the building provides significant setbacks and height step-downs that result in an overall massing that is appropriate for the PUD Site, in context with the surrounding neighborhood, and consistent with the Future Land Use Map designations.

68. Due to the PUD Site's irregular shape, the building has 11 distinct exterior elevations that abut a street, alley, or adjacent private property. Of those 11 elevations, only five elevations rise to the maximum proposed building height of 73 feet, four inches, and those elevations are located at the intersection of the commercial corridors of Georgia/Eastern/Alaska Avenues. Moreover, the building has significant height step-downs as it approaches the residentially-scaled streets to the south and west, as follows: (a) 52 feet for a small portion of the building above the residential entrance on Kalmia Road; (b) 41 feet, four inches for the western-most north-south leg of the residential tower and for the ancillary building on Eastern Avenue; (c) 20 feet along the western perimeter of the residential tower above the grocery store (directly adjacent to the row dwellings on Kalmia Road); and (d) 16 feet for the one-story portion of the building that connects the residential tower to the ancillary building (directly adjacent to

and behind the row dwellings on Kalmia Road). (*See* Attachment A to Ex. 37B.) Thus, the building's height closest to the public alley and the existing row dwellings on Kalmia Road is only 16-20 feet in height.

69. The significant height step-downs result in an average building height of approximately 44 feet. (*See* Attachment A to Ex. 37B.) This average height is well below the maximum permitted PUD heights for zones specifically listed as being consistent with the Low-Density Commercial and Moderate-Density Residential designations (65 feet for C-2-A and 60 feet for R-5-B, respectively). Moreover, the building reaches its maximum height of 73 feet, four inches for only 40% of the building area. (*See* Attachment A to Ex. 37B.) The predominant building height is 52 feet or less, which is also well below the maximum permitted PUD heights for zones specifically listed as being consistent with the Low-Density Commercial and Moderate-Density Residential designations. Therefore, the Commission concludes that the proposed height step-downs result in an overall building height that is consistent with the Future Land Use Map designations for the PUD Site.

70. The Commission also finds that the height step-downs to allow for increased PUD density are specifically anticipated by the Comprehensive Plan: "the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. *The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here*. (10A DCMR § 226(c) (emphasis added).)

71. The intended result of the height step-downs described above is to shift the PUD Site's density towards the commercial corridors to the north and east and away from the existing row dwellings to the south and west. The Commission finds that shifting density in this manner ensures that the building's physical characteristics are consistent with its mixed-use land use designation and in harmony with the surrounding neighborhood. As set forth in the OP report, the "building would be at its greatest height on the east side, along Georgia Avenue, before tapering down to a height of one to three stories, respecting the adjacent one-family dwellings of Shepherd Park." (Ex. 12, p. 8.) The Commission agrees with OP's finding that the project's varying heights and step-downs are consistent with the mixed-use neighborhood and respect the adjacent residential uses.

72. Furthermore, the Commission notes that the Framework Element of the Comprehensive Plan provides that the Land Use Map is not a zoning map. (*See* 10A DCMR § 226(a); *see also* Z.C. Order No. 11-13; Z.C. Order No. 10-28.) The Future Land Use Map is intended to provide generalized guides for development and conservative decisions. (10A DCMR § 226.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the Map is to be interpreted broadly. (*Id.* at § 226(a).*)* Thus, the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements

and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).) The Georgia Avenue Plan, which is the Small Area Plan approved for the PUD Site, specifically states that "[h]eights of up to a maximum of 90 feet are limited to properties fronting Georgia Avenue and Eastern Avenue," and that "new development at the 7800 and 7700 blocks of Georgia Avenue should consist of moderate to medium density development, incorporating street level retail with residential or office uses above." (*See* Georgia Avenue Plan, pp. 45, 49.) Thus, for the reasons stated above, the Commission finds that the project and associated map amendment have been appropriately guided by the Future Land Use Map, particularly when evaluated in conjunction with the text of the Comprehensive Plan and the Georgia Avenue Plan.

73. Generalized Policy Map. The Comprehensive Plan Generalized Policy Map designates the majority of the PUD Site fronting Georgia Avenue, Eastern Avenue, and Kalmia Road as a Main Street Mixed Use Corridor. The Generalized Policy Map designates the remaining portions of the PUD Site along Kalmia Road and the public alley as a Neighborhood Conservation Area.

74. Main Street Mixed-Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper-story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment. (10A DCMR § 223.14.)

75. The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. Limited development and redevelopment opportunities do exist within these areas but they are small in scale. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the Future Land Use Map. (10A DCMR § 223.5.)

76. The Commission finds that the proposed rezoning and redevelopment of the PUD Site is consistent with the policies indicated for Main Street Mixed-Use Corridors. The proposed C-2-B Zone District will allow for development that will maintain the traditional commercial business corridors on which the PUD Site is located by providing ground-floor retail, including an outdoor sidewalk café. The project also incorporates upper-story residential uses and significant streetscape improvements that will enhance the pedestrian environment and support transit use through its location in a mixed-use, walkable neighborhood with convenient access to Metrorail and Metrobus routes (*see* Sheet L-1 of the Architectural Plans and Elevations). Together, the mix of uses in the project will foster economic and housing opportunities to serve the needs of District residents. Thus, the Commission finds that the project's overall characteristics and the

proposed map amendment are consistent with the policies indicated for Main Street Mixed-Use Corridors.

77. The Commission finds that the C-2-B Zone District is also consistent with the policies indicated for Neighborhood Conservation Areas, since the portion of the project located in the Neighborhood Conservation Area is compatible with the existing scale and architectural character of the surrounding neighborhood. The portion of the building that falls within the Neighborhood Conservation Area designation is small in scale, with a maximum height of 20 feet. This portion of the building will be clad in brick to establish consistency with brick row houses that surround the PUD Site. Moreover, this portion of PUD Site is interior to the site or abuts the public alley and does not have any direct street frontage. Given that "[d]ensities in Neighborhood Conservation Areas are guided by the Future Land Use Map," the Commission concludes that this portion of the project is well within the height and density limits prescribed by the Low-Density Commercial and Moderate-Density Residential designations on the Future Land Use Map.

78. Guiding Principles and Major Elements of the Comprehensive Plan. The Commission further finds that the PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as discussed in the paragraphs below.

79. Managing Growth and Change. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the project is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant mixed-use development with residential and retail uses will further the revitalization of the neighborhood. The proposed retail spaces will create new jobs for District residents, further increase the District's tax base, and will help to reinvigorate the existing neighborhood fabric.

80. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development from development of the Comprehensive Plan to implementation of the Plan's elements. The project furthers this goal since, as part of the PUD process, the Applicant worked closely with ANCs 4A and 4B, the Shepherd Park Citizens Association, and a number of other community groups and neighborhood residents to ensure that the project results in a positive impact on the immediate neighborhood.

81. Building Green and Healthy Communities. A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (10A DCMR § 221.3.) The project will include a significant number of sustainable design features and is located in a walkable,

mixed-use neighborhood, which inherently reduces the need to use a private vehicle to access the PUD Site. Moreover, the project will achieve LEED-Gold equivalent status.

82. The Commission also finds that the PUD furthers the objectives and policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Economic Development and Urban Design Citywide elements, and the Rock Creek East Area Element, as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 3, 12, 24.)

Georgia Avenue Plan

83. The Comprehensive Plan requires zoning to be "interpreted in conjunction with… approved Small Area Plans" (10A DCMR § 266.1(d)) and the Zoning Regulations further require consistency with "other adopted public policies and active programs related to the subject site." (*See* 11 DCMR § 2403.4.) The Comprehensive Plan also states that small area policies appear in "separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city's municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document." (10A DCMR § 104.2.)

84. The PUD Site is located within the Georgia Avenue Plan. The Commission finds that the project is consistent with many specific recommendations and policies in the Georgia Avenue Plan. With respect to height and density, the Georgia Avenue Plan states that "new development at the 7800 and 7700 blocks of Georgia Avenue should consist of moderate to medium density development, incorporating street level retail with residential or office uses above. Development in the medium density range should be placed at the intersection along Georgia… [b]uilding height should step down towards the rear of the properties in order to provide an appropriate scale transition to adjacent residential areas." Georgia Avenue Plan, p. 45. More specifically, the Georgia Avenue Plan states that "[h]eights of up to a maximum of 90 feet are limited to properties fronting Georgia Avenue and Eastern Avenue and should step down in height at the rear of the site to provide a scale transition to surrounding residential neighborhoods." (*Id.* at 49.) Indeed, the Georgia Avenue Plan anticipates that taller heights are to be achieved through the PUD and Zoning Map amendment process: "[i]t is important to note that proposed development that exceeds the existing C-2-A zoning category is discretionary and must receive approval from the District's Zoning Commission." (*Id.)*

85. The Commission finds that the project is consistent with these recommendations. The project will consist of moderate-density development and incorporate street-level retail with residential uses above. Density on the PUD Site has been shifted to Georgia and Eastern Avenues, and the building's height steps down as it moves away from the Georgia Avenue corridor to provide an appropriate scale transition to the adjacent residential dwellings. Although the Georgia Avenue Plan envisions a maximum building height of 90 feet for properties fronting Georgia and Eastern Avenue, the project's maximum building height is only 73 feet, four inches, which is more than 16 feet less

than the Georgia Avenue Plan's recommendation. Moreover, as set forth in the Applicant's post-hearing submission, the project complies with many other elements of the Georgia Avenue Plan related to overall development, height, density, architectural character, and mix of uses. (Ex. 37.) Thus, the Commission concludes that the project is consistent with numerous policies and vision set forth in the Georgia Avenue Plan.

Office of Planning Reports

86. On January 15, 2016, OP submitted a report recommending setdown of the application. (Ex. 12.) The OP setdown report stated that the project is consistent with major policies from various elements of the Comprehensive Plan, including the Land Use, Transportation, Housing, Environmental Protection, Economic Development, and Urban Design Citywide Elements, and the Rock Creek East Area Element. OP also found that the project is consistent with the Low-Density Commercial and Moderate-Density Residential designations on the Future Land Use Map. (Ex. 12, p. 10.) Finally, OP asserted that it supports the mix of uses proposed for the PUD Site. (*Id.)*

87. The OP setdown report also requested that the Applicant submit the following information prior to the public hearing:

a. Consider designing the building to read horizontally, providing for a separation between the retail and residential sections of the building, as opposed to the verticality of the design, where the ground-floor retail "reads up," resulting in a commercial or office appearance to the façade;

b. Provide details to activate the area between the public space and the building, including the area contained within the building restriction line along the Alaska Avenue frontage. Such details could include outdoor seating and plantings, and how that space would be integrated into the building and the sidewalk;

c. Consider designing the residential windows on the west side of the building facing the Georgian-style residences to be more contextual with those residences; and

d. Provide a more detailed and comprehensive benefits and amenities proffer, commensurate with the flexibility gained through the PUD.

88. On March 24, 2016, the Applicant submitted revised architectural plans and elevations with its Prehearing Submission, which incorporated the following changes in response to OP's comments: (a) a strong metal band above the retail storefront; (b) additional detail on the proposed building materials; (c) transparent glazing for the building's retail storefront; (d) additional balconies and brick coursing to give the masonry façade an additional layer of interest and create a more residential appearance; and (e) an outdoor cafe on Alaska Avenue with at-grade defined seating and planting areas. (Ex. 14, 14A.)

89. On June 6, 2016, OP submitted a hearing report recommending approval of the application subject to the following conditions:

    a. Provision of assurances in the Order that the supermarket windows adjacent to the outdoor café along the Alaska Avenue frontage remain transparent to the interior of the retail space;

    b. Resolution of TDM issues with DDOT;

    c. Unbundling of parking costs from the apartment leases, with the cost of parking set at no less than the lowest fee garage located within a quarter-mile of the PUD Site;

    d. Dedication of two parking spaces within public space adjacent to the PUD Site for car sharing services to use with the right of first refusal;

    e. Provision of additional long-term bicycle parking within the garage and short-term bicycle parking along the interior and perimeter of the PUD Site;

    f. Provision of specific information regarding the proposed locations of the electric car charging stations, including whether they would be located inside or outside of the building; and

    g. Management of the building shall employ a TDM Manager responsible for coordinating use of the service/delivery space and implementing the [sic] as recommended in the CTR Report. (Ex. 24.)

90. At the public hearing, the Applicant stated that it agreed to each of the conditions set forth in the OP hearing report, except that the two dedicated car-share spaces would be located within the building's garage rather than in public space adjacent to the PUD Site.

91. The OP hearing report also reaffirmed that the project furthers several major policies from various elements of the Comprehensive Plan, and that the project is not inconsistent with the Generalized Policy Map or Future Land Use Map designations for the PUD Site. (Ex. 24, p. 8.) The report acknowledged that the project would further policy direction from the Georgia Avenue Plan by providing a grocery store and new dwelling units and addressing off-street parking needs. (*Id.)* The report also noted that the Applicant appropriately modified the building's architecture to evoke a more residential appearance (e.g. the incorporation of more balconies, the use of red brick on the western façade, the addition of bands to provide a visual separation between the commercial ground floor and the upper residential floors). (*Id.* at 10.)

92. Finally, the OP hearing report noted that the Department of Housing and Community Development submitted an email dated May 26, 2016, asserting that it had no comments

on the application, and considered the 16% residential gross floor area dedicated to affordable housing as a substantive public benefit. (Ex. 24, p. 10.)

93. Stephen Mordfin and Jennifer Steingasser of OP testified in support of the application at the public hearing.

DDOT Reports

94. On June 6, 2016, DDOT submitted a report. (Ex. 23.) The DDOT report found that vehicle traffic impacts from the project would degrade vehicle operations at three intersections surrounding the PUD Site; however, DDOT suggested a combination of signal changes and physical improvements that would address the vehicle impacts and sufficiently diminish the project's impact. (Ex. 23, pp. 10-11.) The Applicant agreed to each of these improvements at the public hearing. In addition, DDOT also found that: the PUD Site "generally has excellent pedestrian access to nearby destinations and transit. Pedestrian facilities — sidewalks, curb ramps, and crosswalks — are generally in good condition and meet current DDOT standards" (Ex. 23, p. 9); the Applicant "proposes to provide an adequate number of short- and long-term bicycle parking spaces" (Ex. 23, p. 2); with respect to loading, "all truck maneuvers can be accommodated with head-in, head-out movements consistent with DDOT standards" (Ex. 23, p. 5); and "existing transit service, pedestrian infrastructure, and bicycle infrastructure has capacity to accommodate future demand" (Ex. 23, p. 2). Moreover, DDOT indicated no objection to the application with the following conditions:

a. Ensure full access out of the parking garage driveway on Kalmia Road;

b. Install traffic management cameras at 16th Street and Kalmia Road, Alaska Avenue and Kalmia Road, and Georgia Avenue and Geranium Street for integration into the DDOT traffic management program to provide real-time traffic signal updates in coordination with other signals in the District;

c. Implement the signal and physical improvements at the Alaska Avenue/Kalmia Road/Georgia Avenue intersection, subject to DDOT approval;

d. Remove from the TDM plan the commitment to coordinate with DDOT to identify carsharing spaces within the public space;

e. Strengthen the TDM plan to include the following:

i. Dedicate two parking spaces in the parking garage for car sharing services to use with right of first refusal;

ii. Install a transportation information screen in the grocery store;

iii. Provide showers and changing facilities for grocery store employees; and

iv. Offer each unit's incoming residents an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years.

95. At the public hearing, the Applicant agreed to all of DDOT's conditions. Jonathan Rogers of DDOT testified in support of the application.

96. On July 11, 2016, DDOT submitted a memorandum providing additional information about landscaping on Georgia Avenue, as requested by the Commission at its public hearing. (Ex. 41.) In its memo, DDOT indicated that it would work with property owners along Georgia Avenue to improve the streetscape design in the public right-of-way.

ANC Reports

ANC 4A Reports

97. ANC 4A, the ANC in which the PUD Site is located, submitted a resolution to the record stating that at its regularly scheduled public meeting of September 1, 2016, at which notice was properly given and a quorum was present, ANC 4A voted 5:2 to support the application. (Ex. 11.) ANC 4A's resolution stated that the project "would be an improvement over the existing condition of the site, will help continue the positive development of the area, and will result in a number of important public benefits." (Ex. 11, p. 4.) The resolution supported the location of the proposed location of curb cuts on Kalmia Road for vehicular access into the parking garage, and on Eastern Avenue for commercial and residential loading, and also noted that the on-site parking garage would provide adequate parking for the project's residents and retail employees/customers, and would eliminate any potential parking spillover onto the surrounding streets. (Ex. 11, p. 3.)

98. ANC 4A submitted a second letter dated June 8, 2016 stating that at its regularly scheduled meeting of June 7, 2016, for which proper notice was given and a quorum was present, ANC 4A voted to submit the letter into the record. (Ex. 26.) The letter stated that ANC 4A was concerned about the potential loss of parking on the 1100 block of Kalmia Road due to potential traffic modifications caused by the project. The ANC's letter requested that the Applicant provide off-street parking spaces within the project to five existing residents on the north side of the 1100 block of Kalmia Road. The Commission finds that the Applicant adequately responded to this concern by the offering each of the five existing homeowners on the north side of the 1100 block of Kalmia Road a free parking space within the proposed building. (Ex. 37.)

99. On August 21, 2016, the Applicant attended a public meeting hosted by the Single Member District Commissioner for ANC 4A02. During the meeting, some community members raised concerns regarding impacts caused by the project's construction. In response, the Applicant submitted a Construction Management Plan, with which the Applicant will comply during construction of the project. (Ex. 58.) The Construction

Management Plan includes provisions regarding construction traffic, community updates, surveying of adjacent properties, and other provisions that will ensure that all construction-related activities will be consistent with the Building Code, other applicable laws and regulations, and will address all concerns raised by the community.

ANC 4B Reports

100. ANC 4B, the ANC located adjacent to the PUD Site, submitted a letter dated June 15, 2016, stating that it was unable to vote on the project and requesting that the Commission hold the record open to permit ANC 4B to submit a resolution by June 29, 2016. At the public hearing, the Commission left the record open to accept a report from ANC 4B.

101. On June 28, 2016, ANC 4B submitted a report. (Ex. 36). The report stated that at its regularly scheduled public meeting, for which notice was properly given and a quorum was present it voted 9:0 to adopt a resolution, which provided several recommendations on the application.

102. On July 18, 2016, ANC 4B submitted a second report. (Ex. 44.) It stated that on July 12, 2016, ANC 4B held a special public meeting, for which proper notice was given and a quorum was present, at which it rescinded its first resolution and adopted a second resolution. The resolution reaffirmed the recommendations in the June 27, 2016 resolution and also addressed several new issues not previously raised.

103. On August 15, 2016, ANC 4B submitted a third report. (Ex. 54). The report stated that at a special public meeting on August 11, 2016, for which proper notice was given and a quorum was present, it adopted a third resolution which superseded its prior resolutions. The resolution stated that it was "reaffirming some key elements of earlier resolutions and replacing others" and listed the following issues and concerns:

a. The project will sit at a major entrance to the District, identified as a gateway in the 2008 Upper Georgia Avenue Land Development Plan, and that the project does not create a prominent gateway as detailed in the plan;

b. The landscaping along Georgia Avenue, including the median triangle with the monument located near the intersection of Kalmia Road is inadequate and poorly maintained;

c. The square footage of affordable housing should total 16% of the building with half reserved for those with 30% to 50 % of AMI;

d. The traffic impact the project will have on the streets east of Georgia Avenue in ANC 4B. The Applicant's traffic study included little information about ANC 4B streets. A comprehensive traffic study should be repeated and resubmitted to DDOT for analysis; and

e. Residents' concerns about the protection of property values and quality of life, including issues related to parking and traffic mitigation, as well as construction, site management and communication, legal fees, rodent control, and liability insurance.

104. The resolution further stated that ANC 4B, "cannot support the application as it is currently presented unless the following provisions are included" in this Order:

a. Develop and submit to appropriate DC government agencies and ANC 4A and 4B a concept site plan showing a design for the Kalmia Road median triangle that includes a new "Welcome to Washington" sign that relates to the front of the building;

b. Support making the public alley located off of Kalmia Road one way, if the community ANC 4A, and DDOT support the change;

c. Work with SES and DDOT to apply for an Adult School Crossing Guard at an intersection adjacent to the PUD Site, to be determined by DDOT, SES, and the SES PTA. If payment is required for the crossing guard, commit to paying $25,000 to be used solely to support paying for the DDOT-approved crossing guard for a period of up to three years to assist students walking to schools in the immediate area;

d. Continue to work with and resolve concerns of those most affected by the building; and

e. Request flexibility to alter the colors of the building's exterior with the objective of simplifying the color palate, particularly the high-density fiber cement panels used on the inside face of the balconies on the main elevations of the building.

105. By letter dated August 31, 2016, the Applicant agreed to each of ANC 4B's recommended conditions, which are included as conditions of this Order. (Ex. 57.)

106. With respect to the issues and concerns expressed in ANC 4B's third resolution, the Commission finds as follows:

a. Architectural "Gateway" Design and Compliance with the Georgia Avenue Plan. The Commission finds that the design of the building employs high-quality materials and features that articulate the building's façades and that recognize the prominence of the PUD Site. For example, the majority of the building's massing is located at the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue, which reflects the prominence of this intersection. The building incorporates a number of high-quality materials, including metal panels, glass bays, and wire cut iron spot brick (which is a highly durable and textured brick). The building also includes multiple façades that are clad in a variety of materials

in order to create visual interest and to enhance the articulation of these facades. The building's façades include detailing elements such as entry canopies, storefront glazing bays, punches of metal panels at projecting bays, a distinct pattern of glazing, vertical and horizontal mullion patterns, rain screens, balconies that inset into and project from the building, and integrated brick coursing around each opening. Finally, at the sidewalk level, two of the most prominent angled corners along Georgia Avenue and Alaska Avenue include bas relief engraved panel art, hallmarking the prominence of the corners of the building.

The Applicant presented a materials board at the public hearing and also provided multiple renderings and perspectives. (Ex. 3A, 14A, 22A, 31.) As requested by ANC 4B, the Applicant also agreed to request flexibility to this Order to be able to adjust the color of the high-density fiber cement panel used on the inside face of the balconies on the main elevation of the building.

The Commission finds that the project is consistent with numerous recommendations and policies specifically listed in the Georgia Avenue Plan for the PUD Site and the surrounding area. For example, the project is consistent with the recommendation that "new development at the 7800 and 7700 blocks of Georgia Avenue should consist of moderate to medium density development, incorporating street level retail with residential or office uses above." (*See* Georgia Avenue Plan, p. 45.) The project is also consistent with the vision that building heights "should step down towards the rear of the properties in order to provide an appropriate scale transition to adjacent residential areas… subtle setbacks above the ground floor are encouraged to provide visual relief and highlights ground floor commercial use." (*Id.)* Therefore, the Commission concludes that the project as a whole is consistent with the vision and recommendations set forth in the Georgia Avenue Plan;

b. Landscaping along Georgia Avenue. The Applicant agreed to maintain the grass and landscaped areas located within the curb line of the triangular median within the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue. This commitment will be enforced through the corresponding condition set forth in this Order. The Commission finds this is adequate to address this concern;

c. Affordable Housing. ANC 4B requested that the Applicant increase the affordable housing proffer to dedicate 16% of the residential gross floor area as affordable housing units, with half of that reserved for households earning between 30% and 50% of the AMI. In this case, the Commission finds that the Applicant is providing double the amount of square footage required for affordable housing units, and at a significantly steeper subsidy. As the Commission has previously stated, and has now codified at 11-X DCMR § 305.11 for post-September 6, 2016 PUD applications:

> The Zoning Commission may not compel an applicant to add to proffered public benefits, but shall deny a PUD application if the proffered benefits do not justify the degree of development incentives requested (including any requested map amendment).

For this application, the Commission has found that the public benefits proffered meet this test. In fact, with respect to affordable housing, the Applicant is offering twice the gross floor area required by IZ, half of which will be offered at a deeper level of the affordability required;

d. Traffic impact and adequacy of the traffic study. The Commission finds that DDOT's report provided a thorough analysis of the project's impact on the surrounding transportation infrastructure. DDOT suggested a variety of signal changes and physical improvements to mitigate potential vehicular impacts caused by the PUD, and at the public hearing, the Applicant agreed to all of DDOT's recommendations. Moreover, the Applicant offered each of the five existing homeowners on the north side of the 1100 block of Kalmia Road a free parking space within the proposed building, and has agreed to restrict building residents from obtaining RPPs. Moreover, DDOT found that the PUD Site "generally has excellent pedestrian access to nearby destinations and transit," that the Applicant "proposes to provide an adequate number of short- and long-term bicycle parking spaces;" and that "existing transit service, pedestrian infrastructure, and bicycle infrastructure has capacity to accommodate future demand." (Ex. 23, pp. 2, 9.) Thus, the Commission finds that the Applicant adequately addressed the traffic and parking issues; and

e. Residents' concerns about the protection of property values and quality of life. The July resolution also raised concerns related to parking and traffic issues, construction, site management, lighting plans, rodent proofing, and liability insurance. The Commission finds that the Applicant has adequately addressed all the project's traffic and parking issues. The comments related to construction, site management, lighting plans, rodent proofing, and liability insurance all pertain to the construction of the project. Neither the Zoning Regulations in general, nor the PUD regulations in particular, address the construction of buildings. And although the Commission must find that "[t]he impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable" the phrase "impact on the surrounding area and the operation of the city services and facilities" refers only to the impact of the PUD project, once it is operating. Therefore, issues pertaining to the impact of the construction of this project are not relevant to the Commission's review. Construction issues are governed by the Construction Codes which "safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, accessibility, sustainability, and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire

fighters and emergency responders during emergency operations." (12-A DCMR § 101-2.4.)

Contested Issues

107. In addition to the issues raised by ANCs 4A and 4B, several residents of the surrounding neighborhood, including the Jeffersons, raised concerns about the project. The concerns raised by the community included the following issues: (a) impacts of traffic, noise, and respiratory health due to project construction; (b) spillover parking on the surrounding streets; (c) increased traffic and the impact on response times for emergency vehicles; (d) increased public transportation usage; (e) additional noise and night-life infiltrating the quiet residential neighborhood; (f) that the project would not be desirable to future tenants; (g) inadequate landscaping in public space; (h) disappointing building design; (i) insufficient affordable housing; (j) inadequate communication with the surrounding community; (k) the Applicant's lack of a valid business permit or business license; (l) a general failure to provide adequate evidence on the project's impact on the environment and surrounding neighborhood; and (m) the Applicant did not provide statutorily required information such that the PUD could not be adequately evaluated. The Commission has carefully reviewed the written and oral testimony presented by members of the surrounding community and makes the following findings.

108. Construction issues. Community residents raised concerns about impacts caused by project construction. The Jeffersons specifically alleged that construction activities would have adverse effects on Rev. Jeffersons' sensitivity to noise and the respiratory health of the Jeffersons' daughter.

109. For the reasons explained in FF No. 106(e), the impact of the construction of a PUD is not a relevant criterion for the Commission to consider. As noted above, the Applicant will also comply with all applicable regulations within the Construction Code, and with all other laws and regulations regarding building construction, operation, management, lighting, rodent proofing, and liability insurance. Nonetheless, the Applicant has agreed to abide by a Construction Management Plan.

110. Similarly, the Commission may not deny a PUD because it happens to be situated near a person who might be more impacted by construction activities than the general public, any more than a building permit may be denied for matter-of-right development with these same impacts.

111. Moreover, the Applicant offered a number of concessions to the Jeffersons, including (a) monitoring the Jefferson's property during and after construction to determine whether construction damaged the Jefferson's home, and if so, repairing any damage directly caused by construction of the project; (b) indemnifying the Jeffersons from any and all liabilities or damages directly caused by construction of the project; (c) maintaining insurance during construction of the project and adding the Jeffersons as additional insureds to its policy; (d) complying with all applicable construction and notice

provisions regarding noise, trash, rodent control, and hours of construction; and (e) paying for specific home improvements following construction. (Ex. 52.)

112. With respect to noise concerns, none of the asserted noise generating actions pertained to the PUD use and therefore, for the reasons stated above, are not germane to the Applicant that in any case must comply with all applicable laws and regulations associated with noise generated by building construction activities. In addition, the Applicant will pay $50,000 to the Jeffersons to select and hire a contractor to replace their windows; repair or replace their HVAC system; install Quietrock to reduce noise entering their home; and to make any other improvements the Jeffersons deem necessary to their home to ensure appropriate noise mitigations are in place during construction. The Applicant also proposed to drill all piles surrounding the PUD Site, in lieu of driving piles for sheeting and shoring, which will substantially reduce the amount of noise generated during project construction.

113. With respect to respiratory impacts, the Applicant is required to comply with all applicable requirements regarding air quality and dust mitigation set forth in the Construction Code, the DC Municipal Regulations, and the DC Air Pollution Control Act, in order to limit the impact of construction on the health of the Jeffersons' daughter's. Specifically, the Applicant is required to comply with the Construction Code requirement that all exhaust shall be located at least 10 feet above the ground for public safety along sidewalks and property lines. The Applicant will ensure that all construction activities comply with D.C. Standards and Specifications for Soil Erosion and Sediment Control (2003) promulgated by the Department of Environmental Health Administration Bureau of Environmental Quality Watershed Protection Division, specifically Section K (Other Practices), Subsection 44.0 (Standards and Specifications for Dust Control). During building operations, the Applicant will comply with all requirements of the Mechanical Code and all applicable referenced standards such as ASHREA. Moreover, since the project is designed to be LEED-Gold, the building will incorporate highly efficient equipment that will not emit toxins into the atmosphere. Finally, the Applicant offered to pay the Jeffersons to have their HVAC replaced, and also agreed to remove the trees that were originally proposed to be located along the Jeffersons' eastern property line, in order to further reduce any impacts on the respiratory health of their daughter.

114. Thus, the Commission finds that the Applicant's specific offered concessions to the Jeffersons, together with compliance with the Construction Management Plan and all applicable laws and regulations, far exceed what is required by law, reasonably address all relevant concerns, and go beyond the scope of any zoning issues. The Applicant's proposal also demonstrates the Applicant's good-faith attempt to work with the neighborhood residents, including the Jeffersons. The Commission therefore finds that the Applicant has adequately addressed this concern.

115. Spillover on-street parking. Several individuals also testified that project residents, visitors, retail patrons, and retail employees would drive to the PUD Site, thus resulting in spillover parking on surrounding residential streets. However, the Commission finds

that the project includes significant on-site parking in its below-grade garage, such that individuals driving to the PUD Site will not take up existing residential on-street parking spaces. Indeed, the project provides significantly more on-site parking than is required by the Zoning Regulations in order to help combat spillover parking. The garage accommodates 130 parking spaces for the grocery store use, whereas only 71 spaces are required, and 141 spaces for the residential use, whereas only 67 spaces are required. As set forth in the DDOT report, the residential parking provision "equates to a parking supply of 0.7 parking spaces per unit, which is higher than what is typical for other multi-family developments in close proximity to high quality transit." (Ex. 23, p. 6.)

116. In addition, the Applicant will implement an extensive TDM plan that includes restricting building residents from obtaining RPP permits, such that project residents will not be able to park on the surrounding streets for extended periods of time when the RPP limits are in effect. The Applicant offered each of the five existing homeowners on the north side of the 1100 block of Kalmia Road a free parking space within the proposed building, or a mutually agreeable form of mitigation not to exceed $25,000. Therefore, based on the large number of on-site parking spaces, the parking demand analysis provided in the DDOT report, the RPP restriction, the offer to provide on-site parking to residents of Kalmia Road, and the testimony provided at the public hearing, the Commission finds that the proposed number of parking spaces in the building will adequately accommodate individuals driving to the PUD Site such that they will not unreasonably take up on-street residential parking.

117. Increased traffic. Individuals at the public hearing asserted that the project would result in significantly more traffic congestion on the streets surrounding the PUD Site. However, the Commission finds that the project incorporates significant traffic management measures that will effectively mitigate any potential increased traffic congestion created by the project. DDOT specifically noted in its report that it requires applicants to mitigate the impacts of their developments in order to positively contribute to the District's transportation network, and that the mitigations must sufficiently diminish the action's vehicle impact and promote non-auto travel modes. (Ex. 23, p. 10.) DDOT reviewed each of the traffic mitigation measures proposed by the Applicant, and requested that the Applicant implement each of them. At the public hearing, the Applicant agreed to do so. The mitigation measures are as follows:

a. Install traffic management cameras at 16th Street and Kalmia Road, Alaska Avenue and Kalmia Road, and Georgia Avenue and Geranium Street for integration into the DDOT traffic management program;

b. Install a new northbound left-turn signal head at the intersection of Alaska Avenue and Kalmia Road; and

c. Create two eastbound approaches on the north side of Kalmia Road at the intersection of Alaska Avenue and Georgia Avenue.

118. DDOT testified in support of these actions and found that the combination of signal changes and physical improvements would address vehicle impacts and diminish the project's impact. (Ex. 23, pp. 10-11.) DDOT also asserted that full access out of the project's parking garage, as proposed, would allow for site traffic to distribute through the network, thus reducing focused vehicle impacts from a particular intersection. (Ex. 23, p. 6.)

119. In addition to the traffic mitigation measures listed above, the Applicant will incorporate an extensive TDM plan that will limit the overall number of individuals driving to and from the PUD Site. Therefore, the Commission finds that based on the results set forth in the DDOT Report, DDOT's support, and testimony provided at the public hearing, the project will not create adverse traffic impacts on the surrounding streets.

120. Neighborhood residents also asserted that due to the increase in traffic, response times for emergency management vehicles would be increased. As discussed above, the Commission finds that because of the traffic mitigation measures and TDM plan, the project will not create adverse traffic impacts. Accordingly, the Commission finds the project will not create adverse impacts on emergency management vehicle response times.

121. Public transportation capacity. Individuals asserted that project residents would add to already overcrowded Metrobus routes in the area. However, as described in the DDOT Report, the Commission finds that existing transit service has capacity to accommodate future demand. (Ex. 23.) The PUD Site is well served by multiple Metrobus routes that run on nearby primary corridors and connect the PUD Site to many areas of the District. Limited stop service bus lines have recently been added to several nearby lines, which have stops adjacent to the PUD Site and have shorter headways during peak periods. (Ex. 23, p. 9.) Moreover, as stated in DDOT's report, the site is "well-served by high-frequency bus routes… The S9 and 79 offer[] very frequent express peak hour headways with stops immediately adjacent to the site. The 70 and S2 line provide local transit service." (Ex. 23, p. 9.) Thus, based on findings from the DDOT report that nearby bus lines have capacity to accommodate future demand created by project residents and visitors, the Commission concludes that the project will not cause detrimental impacts to Metrobus service.

122. Noise and nightlife. Several nearby residents claimed that the grocery store and associated sidewalk café would be open late and would disturb the quiet residential neighborhood. The Commission finds that the claims that the noise from the grocery store and associated café would disturb the neighborhood are speculative. The grocery store and café must comply with District noise regulations. The sidewalk café must also comply with rules related to use of public space. The Commission finds that these restrictions are sufficient to ensure that possible adverse impacts of the project related to noise from the grocery store and café are adequately mitigated.

123. Attractiveness of the project to future tenants. Residents also alleged that future tenants would not move into the project due to the lack of public transportation, social activities, and quality retail in the surrounding area. They also asserted that vacant apartment complexes already exist on Georgia Avenue, such that another apartment house is undesirable and unnecessary. However, the Commission finds that the project will be an attractive residential option for a variety of tenants, and that the mixed-use apartment building specifically advances the recommendation set forth in the Georgia Avenue Plan of "incorporating street level retail with residential or office uses above." (*See* Georgia Avenue Plan, p. 45.)

124. Landscaping in the public space. At the public hearing, individuals requested that the Applicant provide additional landscaping along and within the Georgia Avenue right-of-way. In response, the Applicant agreed to maintain the grass and landscaped area located within the curb line of the triangular median within the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue. The Commission finds that this proffer will result in a significant benefit to the surrounding community. As a condition of this Order, the Applicant will be required to maintain the landscaping for the life of the project, and will begin to do so prior to receiving a Certificate of Occupancy for the building. Moreover, the Commission notes that the landscape plan included as Sheet L1 of the Revised Plan Sheets has already been approved by DDOT's Public Space Committee and includes significant new street trees, tree boxes, and landscaping of mixed native plantings. (Ex. 37A.)

125. Building design. One individual asserted that the project's architecture is not sufficiently attractive or bold for a true "gateway" building. However, the Commission finds that the design of the building employs high-quality materials and features that articulate the building's facades and that recognize the prominence of the PUD Site. For example, the majority of the building's massing is located at the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue, which reflects the prominence of this intersection. The building incorporates a number of high-quality materials, including metal panels, glass bays, and wire cut iron spot brick. The building also includes multiple facades, which are clad in a variety of materials in order to create visual interest and to enhance the articulation of these facades. The façades include detailing elements, such as entry canopies, storefront glazing bays, punches of metal panels at projecting bays, a distinct pattern of glazing, vertical and horizontal mullion patterns, rain screens, balconies that inset into and project from the building, and integrated brick coursing around each opening. Finally, at the sidewalk level, two of the most prominent angled corners along Georgia Avenue and Alaska Avenue include bas relief engraved panel art, hallmarking the prominence of the corners of the building. Therefore, the Commission finds that the project will have a positive impact on the visual and aesthetic character of the neighborhood, will further the goals of urban design, and will enhance the streetscape leading into the District to create a true gateway project.

126. Affordable housing. Residents asserted that the project did not provide enough affordable housing for District residents. For the reasons stated in FF No. 106(c) the Commission finds the Applicant's affordable housing proffer is sufficient.

127. Community meetings. Several nearby residents asserted that the Applicant did not provide adequate information to the community about the project or notice of the public hearing. However, the Commission finds that the Applicant has presented evidence demonstrating that it has engaged in significant community outreach for the project. (Ex. 37C.) Moreover, the Applicant formally notified all owners of property within 200 feet of the PUD Site of its intent to file a zoning application, posted and maintained notice on the PUD Site leading up to the public hearing, and maintained and updated a public website with all applicable project updates. (Ex. 3F, 18, 20.) ANC 4A also commended the Applicant in its September 1, 2016 Resolution, stating that the Applicant "engaged in extensive community outreach efforts in addition to meeting with ANC 4A" and listing community meetings beginning in May, 2013. (Ex. 11.) Thus, the Commission finds that the Applicant made substantial efforts to meet with neighbors to discuss the project and that the Applicant complied with all applicable notice requirements.

128. Business License. One of the allegations set forth by the Jeffersons was that the Applicant does not have a valid business permit or business license to transact business in the District of Columbia, and that this somehow raised issues regarding the Applicant's solvency, insurability, and ability to legally transact business to ensure the safety of the Jeffersons, other adjoining property owners, and the public. (*See* Ex. 40, Footnote 1.) However, as indicated in the Applicant's Certificate of Organization and Articles of Organization, dated October 1, 1997, the Applicant's organization is a validly existing limited liability company in the District of Columbia. (Ex. 43A.) Therefore, the Commission finds that the Jeffersons' claim that the Applicant is unable to conduct business in the District of Columbia or is otherwise unable to keep any of the commitments that the Applicant has made is meritless.

129. General Impact on Environment and Surrounding Neighborhood. The Jeffersons specifically alleged that the Applicant failed to produce "statutorily required impact studies" related to the alleged "environmental damage" and to the PUD's impact on the "nature of the neighborhood." (Ex. 40, p. 2). To the extent the Jeffersons are referring to the District of Columbia Environmental Policy Act ("DCEPA"), the District of Columbia Court of Appeals has previously held the Commission does not err in declining to postpone consideration of a PUD application until an environmental review under that act had been conducted. (*Foggy Bottom Ass'n v. D.C. Zoning Comm'n*, 979 A.2d 1160, 1167 (D.C. 2009).) As required by the DCEPA and 20 DCMR Chapter 72, the Applicant will submit an Environmental Impact Screening Form ("EISF") to DCRA prior to obtaining a building permit for the PUD, in order to assess all potential environmental impacts that could be caused by the project. The EISF will be reviewed by the Department of Energy and the Environment and other agencies and utilities as part of the permitting process.

130. As to the Zoning Regulations, no such formal impact studies are required. Rather, the Commission's jurisdiction is focused on considering "[t]he 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." (11 DCMR § 2403.3.) Among the public benefits to be considered pursuant to 11 DCMR § 2403.3 are environmental benefits, such as stormwater runoff controls, use of natural design techniques that treat runoff, and preservation of open space or trees. (11 DCMR § 2403.9(h).) As demonstrated by the record in this case, and as set forth above, the Applicant has submitted substantial evidence indicating that the PUD meets the standards set forth in 11 DCMR § 2403.

131. With respect to environmental impacts, the project incorporates a host of sustainable features, including green roofs, street-level stormwater collection systems, bioretention planting areas, sustainable materials, and energy-efficient building systems, which collectively will limit negative impacts to the environment. (*See*, e.g. Applicant's Statement in Support at Ex. 3 and the OP reports at Ex. 12 and 24.) The PUD will also be designed to achieve the LEED-Gold equivalent rating standard. Thus, the Commission finds that the project will not have an adverse impact on the environment.

132. With respect to the Jeffersons' concern with the PUD's impact on the existing neighborhood, there is substantial evidence in the record regarding the PUD's consistency with the District's vision for the PUD Site, as set forth in the Comprehensive Plan, Future Land Use Map, Generalized Policy Map, and the Georgia Avenue Plan. The project has also been designed to minimize potential adverse impacts on the existing neighborhood in terms of traffic and design. In addition, the project will provide significant public benefits and amenities so that in fact it will have a positive impact on the environment and surrounding neighborhood.

133. Complete Case Record and Compliance with PUD Requirements. The Jeffersons alleged that they were not able to complete a thorough review of the PUD due to the Applicant's purported failure to provide information on prior relevant Commission orders or submit the CTR Report within the regulatory deadline. (Ex. 43, pp. 5-6.) However, the Commission finds that the Applicant prepared a thorough and complete case record that permitted a full and fair opportunity to review the project. Pursuant to 11 DCMR § 2406, the Applicant submitted all of the information required for a PUD application, formally notified all owners of property within 200 feet of the PUD Site of its intent to file the zoning application, posted and maintained notice on the PUD Site, and met with the affected ANCs, community groups, and adjacent neighbors on multiple occasions. The Applicant presented testimony at the public hearing, responded to questions from the Commission and community members, and submitted all requested information following the public hearing. Thus, the Commission finds that the Jeffersons' claim that they could not complete a thorough review of the project is meritless.

134. Section 2406 does not require an Applicant to provide prior Commission orders. All but one of the orders cited by the Jeffersons have been expired for decades (of those, the most recent order was approved in 1989), involved entirely different development and design concepts, and were put forward by different owner/applicants. The only order cited that was submitted by the Applicant was in 2001 to the Board of Zoning Adjustment for a special exception. None of the prior cases, including the one put forward by the Applicant, have any bearing on the PUD currently under review, and are not necessary for the Commission or anyone else to fairly review the project. And, all orders are publicly available on the Office of Zoning website and are searchable by address.

135. The Jeffersons' claim that the Applicant's CTR Report was posted past the deadline is also untrue. Pursuant to 11 DCMR § 3013.8, the Applicant was permitted to submit the CTR Report 20 days prior to the public hearing. The CTR Report, dated March 11, 2016 (Ex. 22B), was submitted on May 27, 2016, which was exactly 20 days prior to the public hearing, and was thus submitted in compliance with 11 DCMR § 3013.8. Therefore, the Applicant met all requirements related to the filing and timing of the CTR Report.[4]

136. With respect to compliance with the PUD requirements, the Jeffersons requested that the Commission convert the application to a "two-step PUD process," and claimed that the Applicant did not request, and there was no ruling, on whether the PUD is a one- or two-step process. Subsection 2402.3 of the PUD rules provides that an "applicant may elect to file a single application for consolidated PUD review, consolidating the two-stage review into one proceeding." In this case, the application was made by filing a Form 104 – Application for Review of a Consolidated Planned Unit Development. Although 11 DCMR § 2402.6 allows the Commission to "direct an applicant to revise a one-stage application into a two-stage application, if in the opinion of the Commission the circumstances and issues surrounding the proposal require a two-stage review," the Jeffersons provided no basis for concluding that such circumstances and issues exist.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

[4] The Applicant presented an updated CTR Report dated March 31, 2016 to DDOT, and this updated CTR Report formed the basis of DDOT's report. DDOT's report contained a very thorough analysis of the Applicant's March 31, 2016 CTR Report. The Jeffersons had an opportunity to raise any issues about the content of DDOT's report, including the contents of the Applicant's CTR Report, in their hearing testimony. The Jeffersons also had the opportunity to raise these issues in a post-hearing submission to the record.

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards, which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mixed uses for the project are appropriate for the PUD Site. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.

5. The applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.

7. Approval of the PUD is appropriate because the project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. There were two affected ANCs in this case, ANC 4A and ANC 4B:

   (a) ANC 4A. The Commission carefully considered ANC 4A's two reports. The first recommended approval of the project and the Commission concurs with this

recommendation. The second expressed concern about the potential loss of parking on the 1100 block of Kalmia Road. The ANC's letter requested that the Applicant provide off-street parking spaces within the project to five existing residents on the north side of the 1100 block of Kalmia Road. The Commission finds that the Applicant adequately responded to this concern by the offering each of the five existing homeowners on the north side of the 1100 block of Kalmia Road a free parking space within the proposed building, and a condition requiring the Applicant to do so is included in this Order; and

(b) ANC 4B. ANC 4B submitted three reports. Its third report rescinded its previous two reports, listed the ANC's issues and concerns, and stated that it "cannot support the application unless" the Applicant agreed to several listed conditions. The Commission carefully considered the issues and concerns expressed by the ANC in its resolution, and in FF 106 above, explained why they were or were not persuasive under the circumstances. The Applicant agreed to abide with all the ANC's conditions, and they have been incorporated as conditions of this Order.

10. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2- 1401 et seq. (2007 Repl.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-2-A and R-1-B Zone Districts to the C-2-B Zone District for Lot 17 and a portion of a public alley to be closed in Square 2960. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The project shall be developed in accordance with the Architectural Plans and Elevations dated May 27, 2016 (Ex. 22A), as modified by the supplemental architectural drawings dated July 5, 2016 (Ex. 37A), and as modified by the supplemental architectural drawings showing the balcony colors and materials submitted on September 12, 2016 (Ex. 59) (the "Plans") and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of approximately 273,308 square feet of gross floor area (3.12 FAR), with approximately 189,099 square feet of gross floor area devoted to residential use and approximately 58,400 square feet of gross floor area devoted to retail use. The project shall have 199 residential units (plus or minus 10%) and shall have a maximum height of 74 feet, three inches, not including penthouses.

3. The Applicant is granted flexibility from the compact parking space requirements, the loading requirements, the open court width requirements, and the penthouse setback requirements, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.

4. The Applicant shall also have flexibility with the design of the PUD in the following areas:

   a. To be able to provide a range in the number of residential units of plus or minus 10%;

   b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structure;

   c. To vary the sustainable design features of the project, provided the total number of LEED points achievable for the project is not below 60 points under the LEED v.4 for BD+C Gold rating standards;

   d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: curtain wall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

   e. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and

   f. To be able to adjust the color of the high-density fiber cement panel used on the inside face of the balconies on the main elevations of the building, so long as the final color selected by the Applicant is consistent with the overall color scheme proposed for the building and shown on the plan sheet submitted on September 12, 2016. (Ex 59.)

B. Public Benefits

1. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall provide the following housing and affordable housing:

a. The project shall provide a total of approximately 189,099 square feet of residential gross floor area (and no habitable penthouse space). Approximately 157,967 square feet of gross floor area of this total will be market-rate housing, and approximately 31,132 square feet of gross floor area will be affordable housing;

b. The Applicant shall set aside a minimum of 16% of the residential gross floor area as affordable units for the life of the project. Of the affordable units, a minimum of four percent of the residential gross floor area (approximately eight units) shall be reserved for households with incomes not exceeding 50% of the AMI; a minimum of four percent of the residential gross floor area (approximately eight units) shall be reserved for households with incomes not exceeding 50% of the AMI and shall be designed to include features such as grab bars, lower sinks, walk-in showers, higher toilets, and will be advertised in traditional rental guides, as well as publications such as AARP Magazine, Senior Living Magazine, and other similar publications; a minimum of four percent of the residential gross floor area (approximately eight units) shall be reserved for households with incomes not exceeding 80% of the AMI; and a minimum of four percent of the residential gross floor area (approximately nine units) shall be reserved for households with incomes not exceeding 80% of the AMI and shall be designed to include features such as grab bars, lower sinks, walk-in showers, higher toilets, and will be advertised in traditional rental guides, as well as publications such as AARP Magazine, Senior Living Magazine, and other similar publications;

c. The distribution of the affordable housing units shall be in substantial accordance with the matrix and plans marked as Exhibit 37A of the record, and substantially in accordance with the following chart:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	189,099 sf of GFA (100%)	199	NA	NA	NA
Market Rate	157,967 sf of GFA (84%)	166	Market Rate	NA	NA
50% AMI (IZ)	7,817 sf of GFA (4%)	8	50% AMI	For the life of the project	Rental

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
50% AMI (Non-IZ)[5]	7,749 sf of GFA (4%)	8	50% AMI	For the life of the project	Rental
80% AMI (IZ)	7,817 sf of GFA (4%)	8	80% AMI	For the life of the project	Rental
80% AMI (Non-IZ)	7,749 sf of GFA (4%)	9	80% AMI	For the life of the project	Rental

d. The monitoring and enforcement documents required by 11 DCMR § 2409.10 for the Non-IZ Units and the inclusionary zoning covenant required for the IZ Units shall include a provision requiring compliance with Conditions B.1.b and B.1.c.

2. **Prior to the issuance of a building permit and for the life of the project**, the Applicant shall provide proof to the Zoning Administrator that the building has been designed to:

a. Include no fewer than the minimum number of points necessary to achieve the equivalent of LEED-Gold under the LEED v.4 for BD+C Gold rating standards. The Applicant shall put forth its best efforts to design the project so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council; and

b. Comply with the landscape plans included as Sheets L1 through L12 of the Architectural Plans and Elevations dated May 27, 2016 (Ex. 22A).

3. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall undertake the following transportation improvements:

a. Demonstrate to the Zoning Administrator that it has installed or has expended the funds necessary to install two 240-volt electric car charging stations in the parking garage;

b. Demonstrate to the Zoning Administrator that it has installed or has expended the funds necessary to install traffic management cameras at 16th Street and Kalmia Road, Alaska Avenue and Kalmia Road, and Georgia Avenue and Geranium Street for integration into the DDOT traffic management program; and

[5] The Non-IZ Units will be the units designed to include features such as grab bars, lower sinks, walk-in showers, higher toilets, and will be advertised in traditional rental guides, as well as publications such as AARP Magazine, Senior Living Magazine, and other similar publications.

c. Demonstrate to the Zoning Administrator that it has implemented or has expended the funds necessary to implement the signal and physical improvements at the Alaska Avenue/Kalmia Road/Georgia Avenue intersection, subject to DDOT approval.

4. **Prior to issuance of a Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has offered each of the five existing homeowners on the north side of the 1100 block of Kalmia Road (owners of Lots 8-12 in Square 2960) a free parking space within the proposed building, or other mutually agreeable form of mitigation not to exceed $25,000. Use of the five parking spaces shall be for the existing residents of Lots 8-12 only, and shall expire upon sale of each property.

5. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall dedicate a community room within the building, as shown on Sheet A09 of the Plans, for use by ANC 4A and other community organizations located within the boundaries of ANC 4A.

6. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has expended, or is otherwise in the process of expending, up to $25,000.00 to Shepherd Elementary School ("SES") to be used for improvements to the school's cafeteria and/or gymnasium, as determined by SES.

7. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project**, the Applicant shall maintain the grass and landscaped area located within the curb line of the triangular median within the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue.

8. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall submit to DDOT, ANC 4A, and ANC 4B, a concept site plan showing a design for the triangular median at the intersection of Georgia Avenue, Kalmia Road, and Alaska Avenue. Such plan shall include landscaping details, a new "Welcome to Washington" sign, and shall relate to the design of the front of the building.

9. If requested by DDOT, ANC 4A, and the majority of the homeowners on the north side of Kalmia Road (i.e., 1121, 1123, 1125, 1129, and 1133 Kalmia Road) and 12th Street (i.e., 7801, 7811, 7815, 7819, 7823, 7829, 7831, and 7833 12th Street)(with each address getting a single vote), then **prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has submitted a letter to DDOT indicating that it does not object to designating the public alley located between Eastern Avenue and Kalmia Road as a one-way alley.

10. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has assisted SES with applying for an Adult School Crossing Guard at an intersection adjacent to the PUD Site to be determined by DDOT, SES, and the SES PTA. **Prior to the issuance of a Certificate of Occupancy for the building**, if payment is required for the Adult School Crossing Guard, the Applicant shall pay up to $25,000, divided over up to three years, to be used solely to support paying for the DDOT-approved crossing guard.

C. Transportation Incentives

1. **For the life of the project**, the Applicant shall provide the following TDM strategies:

   a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan and provide TDM marketing materials to new residents;

   b. Unbundle parking costs from the price of the lease and set the price at no less than the charges of the lowest fee garage located within a quarter-mile of the site;

   c. Install one transportation information screen in the residential lobby and one transportation information screen in the grocery store, which will display real-time transportation alternative information;

   d. Supply 88 long-term (secure, indoor) and 22 short-term (exterior) bicycle parking spaces;

   e. Dedicate two parking spaces in the parking garage for car sharing services. The carshare spaces shall be made available to residents of the building only. In the event that no carshare providers are willing to operate in those spaces, the dedicated spaces shall be returned to the general residential parking supply;

   f. Provide two showers and changing facilities for grocery store employees; and

   g. Include in its residential leases a provision that prohibits tenants from obtaining an RPP from the DMV under penalty of lease termination.

2. **For the first three years of operation of the project**, the Applicant shall offer each unit's incoming residents an annual carsharing membership or an annual Capital Bikeshare membership.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-29. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.

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 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.

4. 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.

On July 25, 2016, upon a motion by Commissioner Miller, as seconded by Commissioner Vice Chairperson Cohen, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

On September 12, 2016, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Third Mayoral Position vacant, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on February 17, 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:	
Metropolitan Police Department,	
Petitioner,	PERB Case No. 16-A-18
	Opinion No. 1603
v.	
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Clinton Turner),	
Respondent.	

DECISION AND ORDER

I. Introduction

On August 16, 2016, the District of Columbia Metropolitan Police Department ("MPD") filed an Arbitration Review Request ("Request") in this matter, seeking review of the arbitration award ("Award") that sustained the grievance filed by the Fraternal Order of Police/ Metropolitan Police Department Labor Committee ("FOP"). The arbitrator determined that MPD failed to commence an adverse action against Officer Clinton Turner ("Officer Turner") within 90 days of when it knew or should have known of alleged misconduct, a violation of D.C. Official Code § 5-1031(a) (also referred to as the "90-day rule"). The issue before the Board is whether the Award on its face is contrary to law and public policy.[1]

For the reasons stated herein, Petitioner's Request is denied.

II. Statement of the Case

On January 20, 2011, Officer Turner and fellow MPD officer, Lewond Fogle, conducted a check on a business in Northeast Washington, D.C. During this visit, a physical altercation occurred between Officer Turner and Daniel Fox, a store employee, which resulted in the arrest of Mr. Fox.[2] The incident was recorded on the store security camera, however the video contains no audio. Sergeant Robert McGee was called to the scene where Officers Turner and Fogle provided him with a description of the events leading up to Fox's arrest. Sergeant McGee

[1] *See* D.C. Official Code § 1-605.02(6).
[2] Award at 2.

determined that Fox would be charged with Disorderly Conduct- Loud and Boisterous, and Assault on a Police Officer.[3] Sergeant McGee then called the watch commander, Lt. Mark Hodge, to the location. When Lt. Hodge arrived he interviewed Sgt. McGee as well as store employees who were present during the altercation. The employees told Lt. Hodge that they were not in fear of Mr. Fox, nor did they request police intervention. Moreover, none of the employees stated that Mr. Fox was causing a disturbance. Based on this information and after a review of the video footage, Lt. Hodge concluded that the officers did not have probable cause to arrest Mr. Fox.[4]

That same day, January 20, 2011, Lt. Hodge prepared a "Preliminary Report Form – Misconduct, Duty Status or Unusual Incidents" ("the Report") declaring "Serious Misconduct – False Arrest."[5] Lt. Hodge recited his understanding of the facts surrounding the arrest and his assessment that there was no probable cause to arrest Mr. Fox.[6] At Hodge's direction, Mr. Fox was released with no charges being filed. That same day, Lt. Hodge also advised Officer Turner that there were possible criminal implications and suggested he contact a union representative.[7]

The Report also stated that Sgt. McGee had notified the Internal Affairs Division (IAD) and an IAD agent, Det. John Hendrick about the incident.[8] Det. Hendrick notified the United States Attorney's Office (USAO) of the incident by email on January 21, 2011. On February 3, 2011, Det. Hendrick submitted a preliminary investigative package to the USAO.[9] The USAO presented the matter to a grand jury on July 27, 2011. The grand jury returned an indictment and a bench trial was held before Judge Robert Morin of the D.C. Superior Court.[10] Officer Turner was found guilty of simple assault on October 15, 2013.[11]

Det. Hendricks then completed his investigative report in early January of 2014 and submitted his "Final Investigative Report Regarding Allegation of Excessive Force" to the Use of Force Review Board.[12] On February 4, 2014, the Use of Force Review Board issued Findings and Recommendations concluding that the use of force by Officer Turner should be classified as "not Justified, Not within Departmental Policy."[13]

A Notice of Proposed Adverse Action was issued to Officer Turner on February 24, 2014 setting forth two charges:

Charge No. 1: Violation of General Order 120.21, Attachment A, Part A-7, which provides, "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense,

[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 3.

or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of *nolo contendere*, or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction. Members who are accused of criminal or quasi-criminal offenses shall promptly report, or have reported their involvement to their commanding officers.

Specification No. 1: In that, on January 20, 2011, while on duty, you did assault Mr. Daniel Fox. You were subsequently placed under arrest for Simple Assault.

Specification No. 2: In that on October 15, 2013, you were found guilty of Simple Assault in Criminal Case 2013 CMD 008679 by District of Columbia Superior Court Judge Robert Morin. You were later sentenced by the Judge Morin to 180 days incarceration, execution of the sentence suspended, and two years supervised probation. You were also ordered to pay restitution in the amount of $1,200.00 and $50.00 to the Victims Crime Fund.

Charge No. 2: Violation of General Order 120.21, Part VIII, Attachment A-16, which states, "Failure to obey orders or directives issued by the Chief of Police." This misconduct is further specified in General Order RAR-901-07 (Use of Force), Part V, B. Part 1, (a, b, c, d) Part 3 and Part 4, which states in part. "In determining what level of force to use, it is important to consider the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, and the suspect's mental capacity. Only the minimum level of force needed to obtain control that the objectively reasonable officer would use in light of the circumstances shall be used. All members who encounter a situation where the possibility of violence or resistance to lawful arrest is present should, if possible, defuse the situation through advice, warning and verbal persuasion. In the event that a situation escalates beyond the effective use of verbal diffusion techniques, members are authorized to employ Department approved compliance techniques and Department-issued defensive weapons.

Specification No. 1: In that, on January 20, 2011, while on duty and conducting a business check at the Downtown Locker Room, located at 3960 Minnesota Avenue, Northeast, Washington, D.C., you utilized force arresting Mr. Daniel Fox. Subsequently, the use of Force Review Board found that your use of force during the incident was not justified and not within Departmental policy.

On July 4, 2014 an Adverse Action Panel issued a decision, finding that D.C. Official Code § 5-1031(a) required an adverse action to be commenced within 90 days of the date MPD knew of the act constituting cause and MPD failed to meet this requirement.[14] The panel included the nine days between January 20, 2011 and February 3, 2011 and then the 88 days between the October 15, 2013 guilty finding and the February 24, 2014 issuance of the proposed adverse action as part of the 90-day period.[15] According to this panel, MPD was in violation of the 90-day rule. The panel further found Officer Turner not guilty of Charge 1, specification 1 but guilty of specification 2 based on a preponderance of the evidence.[16] The panel further specified that guilty was not the appropriate term but that the court had made such a finding and therefore the specification was "true."[17] The panel found Officer Turner not guilty of Charge 2 and overall recommended that Officer Turner receive no punishment and be returned to duty.[18]

Inspector Eldridge, the acting Director of the Human Resource Management Division at MPD, remanded the case to an alternate panel finding the original panel decision to have significant deficiencies, including a mistaken application of the 90-day rule.[19]

On August 27, 2014, an Amended Notice of Proposed Adverse Action was served on Officer Turner. The amended notice set forth a third charge in addition to those stated in the February 24, 2014 notice:

Charge No. 3:	Violation of General Order 120.21, Attachment A, Part A-25, which provides, "Any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to discipline and performance of the force."
Specification No. 1:	In that, on October 15, 2013, during your trial in the matter of case 2013-CMD-8679, the Honorable Robert Morin, Associate Judge, Superior Court of the District of Columbia, announced in his findings that the testimony you provided was not credible and it was not supported by any objective evidence. As a result, the United States Attorney's Office reported that it will no longer sponsor your testimony based on the adverse credibility findings made by Judge Morin.[20]

[14] *Id*. at 4.
[15] *Id*.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*. at 4-5.
[20] *Id*. at 6.

On October 29, 2014, an alternate Adverse Action Panel was convened to review evidence related to all three charges. The panel found Officer Turner guilty of all charges and recommended that he be terminated from the MPD.[21]

On December 2, 2014, Director of the Human Resources Management Division issued Officer Turner a Final Notice of Adverse Action with a termination date of February 6, 2015.[22] Officer Turner appealed the decision to the Chief of Police asserting a violation of the 90-day rule. The Chief of Police denied the appeal.[23] The Union demanded arbitration on January 30, 2015.[24]

III. Arbitrator's Award

The Arbitrator addressed four issues; however MPD requests review of the Award only with respect to the issue of the 90-day rule.[25]

In order to determine whether MPD violated the 90-day rule, the Arbitrator looked to several separate timelines related to when the 90-day rule began and when the time limit was tolled under D.C. Official Code § 5-1031(b). Regarding Charges 1 and 2, the Arbitrator stated that the 90-day rule period began on January 20, 2011, and ended on February 23, 2014, the date the charges were issued.[26] A great deal of the intervening time was the subject of a criminal investigation. There are 88 days between October 15, 2013, when the court found Officer Turner guilty of simple assault, and February 24, 2014, the issuance of the Notice of Proposed Adverse Action.[27] The nine days between January 20, 2011, the date of the arrest, and February 3, 2011, the date of the referral to the USAO, are the dates in dispute. MPD claims these nine days should be considered part of the criminal investigation and therefore not part of the 90-day period.[28] If those nine days are included in the 90-day period, there would be a total of 97 days making MPD's charges untimely.

The Arbitrator concluded that if MPD sought to exclude the nine days immediately following the incident because Officer Turner was the "subject of a criminal investigation" it had the burden of establishing that fact on the record. According to the Arbitrator, MPD did not meet this burden.[29] During the nine days in dispute, Officer Turner was advised that criminal charges may be filed against him; the MPD Internal Affairs Division was also notified of the

[21] *Id*.
[22] *Id*.
[23] *Id* at 7.
[24] *Id*.
[25] The four issues reviewed by the Arbitrator were (1) Whether the Department violated the 90-day Rule as set forth under D.C. Code § 5-1031, (2) whether the Acting Director of the MPD Human Resources Management Division, Inspector Michael Eldridge, had the authority to (a) remand DRB No. 105-14 to a new Adverse Action Panel and (b) remand DRB No. 105-14 without instruction, when Inspector Eldridge was also the proposing official for the discipline that was issued in this case, (3) whether the evidence presented by the Department was sufficient to support the charge and (4) whether termination is an appropriate penalty.
[26] Award at 19-20.
[27] *Id.* at 20.
[28] *Id*.
[29] *Id*. at 22.

incident, who then notified the USAO.[30] The Arbitrator concluded that there was no explanation of MPD procedures to support the link between those actions and the beginning of a criminal investigation and absent such a finding, the record does not rationally lead to a conclusion that the nine days were excluded from the 90-day limit pursuant to D.C. Official Code § 5-1031(b).[31] The Arbitrator concluded that Charges 1 and 2 were not timely.[32]

MPD has filed this Arbitration Review Request seeking to have the Arbitrator's Award reversed on the grounds that it is contrary to law and public policy.[33]

IV. Discussion

Under D.C. Official Code § 1-605.02(6), the Board is authorized to modify or set aside an arbitration in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[34]

MPD states that the Arbitrator's decision was contrary to law and public policy because in accordance with D.C. Official Code § 5-1031(a), MPD commenced the adverse action against Officer Turner within 90 days after it knew or should have known of the matters constituting the alleged misconduct.[35] According to D.C. Official Code § 5-1031(b) a criminal investigation into an act or occurrence constituting cause results in the 90-day period being tolled until the conclusion of the investigation.[36] The time period at issue is the nine-day period between January 20, 2011, the date of the arrest, and February 3, 2011, the date the report of the incident was presented to the USAO.[37] According to MPD, the record of evidence clearly shows that the nine-day period was related to the criminal investigation because it was during this period that Lt. Hodge advised Officer Turner that his actions could have criminal consequences. It was also during this time period when Det. Hendrick of the Internal Affairs Division was notified of the incident, assigned the case for an investigation. Det. Hendrick also notified the USAO by email during this nine day period.[38] MPD also states that all doubt about the nine day period is resolved by an August 2, 2011 letter from the USAO to Officer Turner stating that MPD and the USAO have been conducting an investigation relating to violations of the criminal code by Officer Turner.[39] MPD claims this letter unquestionably includes the nine-day period at issue as part of the criminal investigation.[40] The letter, dated August 2, 2011, states, in part:

> The Metropolitan Police Department, in conjunction with the United States Attorney's Office for the District of Columbia, have

[30] *Id*. at 2.
[31] *Id*. at 22.
[32] *Id*.
[33] Request at 10.
[34] *University of the District of Columbia v. PERB*, 2012 CA 8393 P(MPA) (2014).
[35] Request at 10.
[36] *Id.*
[37] *Id.* at 11.
[38] *Id.* at 12.
[39] *Id.*
[40] *Id*. at 13.

> been conducting an investigation which shows that you may have committed violations of the criminal code, to include Assault, in violation of D.C. Code § 22-401, et seq., and/or Deprivation of Rights Under Color of Law, in violation of Title 18, United States Code § 242. These violations stem from your contact with a complainant Daniel Fox at the Downtown Locker Room located at 3960 Minnesota Avenue, NE, while on duty on January 20, 2011.[41]

Based on these issues, MPD claims the record supports including the nine days as part of a criminal investigation. FOP states that the nine day period was not part of the criminal investigation and therefore MPD violated the 90-day rule because the adverse action did not commence until ninety seven days after the MPD knew or should have known of the January 20, 2011 incident. FOP claims that MPD has failed to provide any legal reasoning in support of its position and has simply rehashed the points in dispute from the record which were ultimately determined by the Arbitrator.[42]

The Board has long held that it will not overturn an Arbitrator's findings on the basis of a mere disagreement with the Arbitrator's determination.[43] By submitting a matter to arbitration, parties are bound by the arbitrator's interpretation of the CBA, related rules and regulations, and evidentiary and factual findings. In order for the Board to find that the Arbitrator's Award was, on its face, contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.[44] In this case, the Arbitrator has determined that the nine day period was not part of the criminal investigation and MPD has failed to point to any specific law or public policy violated by the Award. MPD merely disagrees with the Arbitrator's determination of when the criminal investigation started. Accordingly, the Board finds that MPD's request is merely a disagreement with the Arbitrator's evidentiary findings and conclusions.

Finally, MPD argues that the issue regarding the 90-Day Rule is a question of law and as such the Arbitrator would not have been bound by any prior determination of the issue but instead would have reviewed the issue *de novo*.[45] MPD states that since there was no evidentiary hearing, the Arbitrator failed to make an independent determination regarding the 90-day rule and this is an error and contrary to law and public policy.[46] The Arbitrator's decision was based on a record including an MPD investigative report, the determination of the Use of Force Board, two trial board hearing transcripts and decision, the remand orders and intervening interlocutory appeals by the Union and decisions on these appeals by MPD.[47] MPD disagrees with the

[41] *Id*. at 12-13
[42] Response at 4.
[43] *Fraternal Order of Police/Metro. Police Dep't Labor Comms. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).
[44] See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p. 8.
[45] Request at 13.
[46] *Id*. at 14.
[47] Award at 19.

Arbitrator's evidentiary conclusions and the Board has held that a mere disagreement with the Arbitrator's interpretation is no basis for vacating an Award.[48]

V. Conclusion

The Board finds that MPD has not cited any specific law or public policy that was violated by the Arbitrator's Award. Thus, the Board rejects MPD's arguments and finds no cause to set aside or modify the Arbitrator's Award. 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 Chairperson Charles Murphy, and Members Ann Hoffman, and Douglas Warshof. Members Barbara Somson and Yvonne Dixon were not present.

November 22, 2016

Washington, D.C.

[48] *See D.C. Dep't of Health v. AFGE, Local 2725, AFL-CIO*, Slip Op. No. 1383, PERB Case No. 13-A-01 (2013); see also *D.C. Metro. Police Dep't v. Fraternal Order of Police/D.C. Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012).

CORRECTED CERTIFICATE OF SERVICE

This is to certify that the Decision and Order in PERB Case No. 16-A-18, Op. No. 1603 was sent by File and ServeXpress to the following parties on the the 29th day of December, 2016.

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PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
The National Association of Government Employees, Local R3-05 Complainant,	)	PERB Case No. 11-U-54
	)	Opinion No. 1605
v.	)	
District of Columbia Metropolitan Police Department, Respondent.	)	

DECISION AND ORDER

I. Introduction

The National Association of Government Employees, Local R3-05 ("Complainant" or "NAGE") filed this unfair labor practice Complaint alleging that the District of Columbia Metropolitan Police Department ("Respondent" or "MPD"), violated D.C. Official Code § 1-617.04(a)(1)-(5) by failing to engage in impact and effects ("I&E") bargaining prior to a reduction in force ("RIF"), in accordance with the parties' collective bargaining agreement ("CBA").[1]

MPD filed an Answer to the unfair labor practice Complaint ("Answer") denying the allegations set forth in the Complaint and requesting the Complaint be dismissed.[2] The Board declined to dismiss the allegations based on the pleadings and referred the case to a Hearing Examiner.[3] A hearing was held on May 4, 2015 and the Hearing Examiner issued a Hearing Examiner's Report and Recommendations on August 19, 2015. NAGE filed Exceptions to the Report alleging that the Hearing Examiner's findings and conclusions were unsupported by the facts on the record, unreasonable, contrary to law and inconsistent with PERB precedent.[4]

For the reasons stated herein, the complaint is dismissed.

[1] Complaint at 2.
[2] Answer at 1-2.
[3] *National Association of Government Employees, Local R3-05 v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 6920, Op No. 1217, PERB Case No. 11-U-54 (2012).
[4] NAGE Exceptions at 1.

II. Statement of the Case

On September 1, 2011, Diana Haines Walton, MPD Director of Human Resources, notified Michael Patterson, NAGE Local R3-05 President, of MPD's plans to implement a RIF in the Office of the Chief Information Officer (OCIO). The email stated that the RIF would include the abolishment of fourteen current positions and the creation of eight new positions.[5] Mr. Patterson responded by letter on September 2, 2011, invoking NAGE's right to I&E bargaining.[6]

On September 7, 2011, Mr. Patterson submitted a Freedom of Information Act (FOIA) request regarding the RIF. He requested the names, positions and salaries of all the Information Technology ("IT") MPD contractors.[7] On September 13, 2011, Ms. Walton notified Mr. Patterson through a phone call that notices were going out to employees affected by the RIF on the following day. She also informed him that she would have a meeting with all affected people followed by an individual meeting with every person in her office at which point they would receive their RIF notices.[8] Ms. Walton testified that Mr. Patterson requested to attend the group meeting as well as the individual meetings to which she had no objections. In the meetings that took place on September 14, 2011, MPD provided written notice to employees that the RIF was being conducted, effective October 14, 2011.[9] Ms. Walton further testified that between these meetings, she and Mr. Patterson spoke about I&E bargaining and said they would be in touch. Ms. Walton sent two separate emails, one on September 28, 2011 asking to discuss the RIF and another on September 30, 2011 asking when they could meet to discuss I&E bargaining.[10]

On September 13, 2011, Mr. Patterson sent a letter to Mark Viehmeyer, MPD Acting Director of Labor and Employee Relations Unit, requesting a briefing prior to an I&E bargaining session. On September 14, 2011, Patterson also sent a letter to Cathy Lanier, MPD Chief of Police, objecting to the RIF notices prior to the union having the opportunity to engage in I&E bargaining. The next day, Patterson revised his FOIA request to include a listing of all IT positions, grades, classifications, required certifications for those positions and last evaluations.[11]

On September 23, 2011, NAGE filed the present unfair labor practice complaint against MPD claiming that MPD violated the CMPA, D.C. Official Code § 1-617.04(a)(1), (2), (3), (4) and (5) when it failed to engage in I&E bargaining.[12]

On October 12, 2011, Mr. Patterson sent an email to Ms. Walton and Mr. Viehmeyer. Mr. Patterson stated that the Union was awaiting information from a FOIA request that would allow them to more effectively engage in I&E bargaining.[13] Mr. Viehmeyer responded to the email asking Mr. Patterson to provide the information he has not yet received. On October 18, 2011,

[5] Report at 3
[6] *Id*.
[7] *Id.*
[8] *Id.* at 4.
[9] *Id*.
[10] *Id.* at 5.
[11] *Id*.
[12] *Id.* at 6.
[13] *Id*.

Mr. Patterson responded to the email with a listing of all information he requested and later that day he was sent an email attachment from MPD's FOIA Officer with the response to his FOIA request.[14]

III. Hearing Examiner's Report and Recommendation

NAGE argued that MPD committed an unfair labor practice when it failed to engage in I&E bargaining after it was requested by NAGE, prior to the 2011 OCIO RIF. NAGE contended that MPD was obligated to engage in I&E bargaining prior to conducting the RIF under the CMPA.[15] NAGE further stated that an agency is required to provide notice of a proposed change to the union prior to implementation even for changes involving the exercise of management rights.[16] According to NAGE, MPD's offer to schedule bargaining did not satisfy its obligation because MPD was aware that NAGE was awaiting necessary I&E information. MPD was obligated to provide the requested relevant information prior to the RIF and it is a ULP for MPD to fail to produce the requested information. NAGE concluded that the appropriate remedy is a return to the status quo ante.[17]

MPD countered that it attempted to engage in I&E bargaining and did not violate the CMPA because PERB has held that RIFs are a management right under D.C. Official Code § 1-617.08.[18] MPD cited the emails and phone calls made to NAGE attempting to schedule a bargaining session as establishing its willingness to bargain. MPD states that NAGE's FOIA request does not excuse its failure to follow through on the request to bargain.

The Hearing Examiner found that MPD did not violate D.C. Official Code § 1-617.04(a)(1), (2), (3), (4) and (5). According to the Hearing Examiner, the facts did not establish that MPD failed or refused to engage in I&E bargaining with NAGE but that MPD made multiple responses to NAGE's single demand to bargain and NAGE did not respond. The Hearing Examiner specifically stated that NAGE's arguments overlooked the Abolishment Act, D.C. Code § 1-624.08, which governs RIFs. The Hearing Examiner concluded that the Abolishment Act establishes a mandatory procedural timeline for the implementation of a RIF which is nonnegotiable and cannot be delayed based on the rights described in the CMPA.[19] The Hearing Examiner also found that MPD had a duty to engage in I&E bargaining with NAGE pursuant to the CMPA, but the RIF procedures are nonnegotiable and cannot be delayed based on I&E bargaining or NAGE's FOIA request or the CMPA impasse procedure.[20] Furthermore, the Hearing Examiner concluded that the facts and circumstances of NAGE's FOIA request did not constitute material evidence supporting its ULP charge against MPD.[21]

The Hearing Examiner found: (1) MPD did not fail or refuse to engage in I&E bargaining regarding the OCIC RIF; (2) MPD's implementation of the OCIC RIF was consistent with the

[14] *Id*. at 6-7.
[15] *Id*. at 6.
[16] *Id* at 7.
[17] *Id.*
[18] *Id* at 9.
[19] *Id*. at 12.
[20] *Id*.
[21] *Id*. at 13.

Abolishment Act; (3) MPD was not obligated to delay the OCIC RIF until the completion of I&E bargaining and (4) MPD's response to NAGE'S FOIA request does not form a basis for delay of I&E bargaining or the OCIC RIF. The Hearing Examiner recommended that NAGE'S ULP charge be dismissed with prejudice. [22]

IV. Discussion

PERB reviews a Hearing Examiner's Report and Recommendations even if no exceptions are filed, to determine whether the analysis and conclusions are reasonable, supported by the record and consistent with precedent. Issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.[23] Mere disagreements with the Hearing Examiner's findings and/or challenges to the Hearing Examiner's findings with competing evidence do not constitute proper exceptions so long as the record contains evidence supporting the Hearing Examiner's conclusions.[24] Exceptions cannot raise issues not presented to the Hearing Examiner.[25]

According to NAGE the Hearing Examiner's findings are contrary to law because the Abolishment Act does not apply to the RIF at issue in this case. NAGE states that the Abolishment Act only applies to a RIF which is conducted for fiscal reasons, not to any RIF which occurred after 2000.[26] NAGE further states that the Hearing Examiner's findings are based on facts not in evidence because there was no testimony, evidence or documentation submitted regarding the Abolishment Act and its applicability to the RIF.[27] NAGE also states that the Hearing Examiner's finding that the Agency was unaware of NAGE's FOIA request is based on facts not in evidence.

MPD argues that NAGE's exceptions to the case are merely a recitation of its Post-Hearing Brief and do not state any basis for reversal of the Hearing Examiner's decision.[28] MPD also disagrees with the Union's interpretation of the Abolishment Act.[29]

NAGE's disagreement with the Hearing Examiner's findings is not grounds for overturning the Hearing Examiner's decision. RIFs are a management right under D.C. Official Code § 1-617.08.[30] The exercise of a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management rights decisions. The Abolishment Act, D.C. Official Code § 1-624.08, narrowed

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[22] *Id*.
[23] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 62 D.C. Reg. 3544 Op. No. 1506, PERB Case No. 11-U-50(a) (2015).
[24] *Sinobia Brinkley v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, District 20, Local 2087*, 60 D.C. Reg. 17387, Op. No. 1446, PERB Case No. 10-U-12 (2013).
[25] *Earnest Durant, Jr. v. Government of the District of Columbia, Department of Corrections*, 59 D.C. Reg. 9821, Op. No. 1286, PERB Case No. 07-U-43(a), 08-U-57 (2012).
[26] Exception at 3.
[27] *Id.* at 5.
[28] Opposition at 2.
[29] *Id.* at 3.
[30] *Doctors' Council of D.C. v. D.C. Dep't of Youth & Rehab. Servs.*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at pg 8, PERB Case No. 11-U-22 (2013).

this duty as it related to a RIF.[31] The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment.[32] The D.C. Council amended the applicable date to cover the 2000 fiscal year and subsequent fiscal years.[33] The Court of Appeals stated in *Washington Teachers Union, Local 6 v. District of Columbia Public Schools*, that the Abolishment Act should govern the RIF implemented by D.C. Public Schools in 2004, rather than the regular RIF procedures found in D.C. Official Code § 1-624.02.[34] The Court stated that § 1-624.08 plainly limited the procedures to which an affected employee is entitled.[35] In keeping with *Washington Teachers Union* and PERB precedent, the Hearing Examiner found that the agency is required to engage in I&E bargaining. However, according to the Abolishment Act, the RIF should remain on schedule.

NAGE argues that the Hearing Examiner's finding that the Agency was not aware of NAGE's FOIA request is based on facts not in evidence. This is a disagreement with the Hearing Examiner's determination of the facts. As stated earlier, issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner.[36] There is no basis for overturning the Hearing Examiner's conclusions and recommendations as they are reasonable, supported by the record and consistent with Board precedent.

V. Conclusion

Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable, supported by the record and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's Report, and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. **The National Association of Government Employees, Local R3-05's Unfair Labor Practice Complaint is dismissed.**

2. **Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

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[31] *Id*.; *See also AFGE, Local 631, AFL-CIO v. District of Columbia, et al*, 62 D.C. Reg. 12582, Op. No. 1530, PERB Case No. 09-U-57(a) (2015);
[32] D.C. Official Code § 1-624.08(a)-(i), (k).
[33] *Washington Teachers' Union, Local No. 6 v. District of Columbia Public Schools*, 960 A.2d, 1123, 1126 (D.C. 2008).
[34] *Id*, at 1132.
[35] *Id*.
[36] *FOP v. MPD*, 62 D.C. Reg. 3544 Op. No. 1506, PERB Case No. 11-U-50(a) (2015).

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman, and Douglas Warshof. Members Barbara Somson and Yvonne Dixon were not present.

December 15, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-54, Op. No. 1605 was sent by File and ServeXpress to the following parties on this the 29th day of December, 2016.

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PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
District of Columbia Metropolitan Police Department, Petitioner,	)	PERB Case No. 16-A-19
	)	Opinion No. 1606
v.	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee, Respondent.	)	

DECISION AND ORDER

I. Introduction

On August 16, 2016, the District of Columbia Metropolitan Police Department ("MPD") filed an Arbitration Review Request ("Request") in this matter, seeking review of the arbitration award ("Award") that sustained a grievance filed by the Fraternal Order of Police/ Metropolitan Police Department Labor Committee ("FOP"). The Arbitrator determined that MPD violated D.C. Official Code § 5-1031(a), also referred to as the "90-day rule," by failing to commence an adverse action against the Grievant within ninety days after the date that MPD knew or should have known of the act allegedly constituting cause.[1] The issue before the Board is whether the Award on its face is contrary to law and public policy.[2]

II. Statement of the Case

Officer Daxzaneous Banks ("Officer Banks" or "Grievant") was called to testify in the matter of *United States v. Tyrone Knight*, 2007-CF2-7702, as the sole witness to a drug transaction. The case was originally set for trial at D.C. Superior Court on March 12, 2008, but then continued to March 20, 2008.[3] On March 13, 2008, Officer Banks checked himself into court and listed *United States v. Tyrone Knight* as the reason for his appearance.[4] On the following day, Sergeant Rene Davis ("Sgt. Davis") of the Court Liaison Division interviewed

[1] D.C. Official Code § 5-1031(a) (from 16-a-01, op. 1590)
[2] D.C. Official Code § 1-605.02(6)
[3] Request at 3.
[4] *Id*.

Officer Banks, his supervisors as well as various Assistant United States Attorneys (AUSAs) and confirmed that Officer Banks had checked himself into court on a day when he was not supposed to be there.[5] On April 22, 2008, AUSA Kent, who had spoken previously with Sgt. Davis, confirmed again that Officer Banks was not supposed to be checked in for court on March 13th.[6] AUSA Lisa Baskerville-Greene reported in her April 23, 2008 statement that, as a result of the United States Attorney's Office ("USAO") not being able to account for the PD 140 (court attendance record), calling Officer Banks as a witness would now require certain disclosures to the Defense Attorney and/or the Court as his veracity was in doubt. AUSA Greene reported that as a result of this problem, the charges in *United States v. Tyrone Knight* were dismissed.[7] A statement was made by Wendy Hardy, a Court Liaison Case Worker, on April 23, 2008 which referred to an IS number.[8] According to the Union, an IS number is an indication of MPD's belief that some type of misconduct may have taken place.[9] MPD does not dispute the fact that Ms. Hardy's statement recites on its face that the statement was being taken as part of an investigation.[10] On May 6, 2008, the USAO issued a decline-to-prosecute letter.[11] There is no evidence in the record that MPD ever made a criminal referral to the USAO in this matter.

Officer Banks was served with a Notice of Proposed Adverse Action ("Notice") on September 9, 2008 proposing his removal from MPD.[12] The Notice charged Officer Banks with the following four charges and specifications:

Charge No. 1:	Violation of General Order 120.21, Table of Offenses and Penalties Part A, #7, which reads, in part, "…or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction. Members who are accused of criminal or quasi-criminal offenses shall promptly report, or have reported their involvement to their commanding officers."
Specification No. 1:	In that, on March 13, 2008, you submitted a PD 140 to Court Liaison Division checking yourself into court for 8 hours and 34 minutes on a continued trial that had not been scheduled for that day. Upon checking out of court, you submitted the PD 140, for which you were compensated for 8 hours and 34 minutes. Moreover, the AUSA who handled the case confirms that he did not sign your PD 140.

[5] Award at 8.
[6] *Id*. at 9.
[7] *Id*.
[8] *Id*. at 10.
[9] *Id*.
[10] *Id*. at 11.
[11] *Id*. at 10.
[12] *Id*. at 7

Charge No. 2:	Violation of General Order 120.21, Attachment A, Part A-12, which reads: "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia."
Specification No. 1:	In that on March 13, 2008, you checked yourself into court for 8 hours and 34 minutes on a continued trial that was not scheduled for that day. You had prior knowledge that the matter was continued to March 20, 2008.
Charge No. 3:	Violation of General Order Series 120.21, Table of Offenses and Penalties Part A, #8, which states in part, "Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty, or the neglect of duty."
Specification No. 1:	AUSA Greene reported in her April 23, 2008 statement that, as a result of the USAO not being able to account for the PD 140 that you submitted on March 13, 2008, serious veracity issues on your part were raised. Calling you as a witness would now require certain disclosure to the Defense Attorney and/or the Court. AUSA Greene reported that as a result of these issues, the USA dismissed the charges in the United States v. Tyrone Knight.
Charge No. 4:	Violation of General Order Series [120.21], Table of Offenses and Penalties, Part A (17), which states, "Fraud in securing appointment, or falsification of official records or reports."
Specification No. 1:	In that on seven (7) occasions between July 2 – November 13, 2007; and three (3) occasions between January 15- March 13, 2007, you falsified signatures of several AUSAs on you PD 140s during the above mentioned time frames. Furthermore, all AUSAs denied signing your PD 140s for the dates listed. You affixed these signatures knowing them to be improper and fraudulent.[13]

An Adverse Action Panel ("the Panel") found Officer Banks guilty of Charge Nos. 1-3 and not guilty of Charge No. 4.[14] The Panel recommended Officer Banks be removed from his

[13] *Id*. 6-7
[14] *Id*. at 7

position at MPD. Officer Banks was served with a Final Notice of Adverse Action on May 7, 2009. Officer Banks and FOP brought a demand for arbitration to challenge his removal.[15]

III. Arbitrator's Award

During Arbitration, FOP asserted that the Notice of Proposed Adverse Action, served on September 9, 2008, was ninety-six days after April 23, 2008. The Union argued that MPD failed to adhere to the 90-day rule and therefore the Panel's decision to remove Officer Banks from his position should be set aside and the charges dismissed.

MPD claimed that the 90-day time limit began to run on May 6, 2008, the date when the USAO issued a decline-to-prosecute letter. This, according to MPD, would make the Notice of Proposed Adverse Action timely. MPD argued that on March 14, 2008 Sgt. Davis began calling the USAO and Officer Banks to try and resolve a discrepancy, but there was no determination of misconduct at this time.[16] MPD also disputed April 23, 2008 as the start date because the 90-day rule should be tolled as a result of the criminal investigation. According to MPD the criminal investigation was intertwined with the administrative investigation, therefore the 90-day rule was tolled until the issuance of the declination letter on May 6, 2008.[17]

The Arbitrator concluded that MPD should have known of the act or occurrence constituting cause no later than April 23, 2008. According to the Arbitrator, on this date the record shows that MPD had taken statements as part of an administrative investigation of the allegations against Officer Banks.[18] Furthermore, the Arbitrator determined that the act or occurrence allegedly constituting cause in the instant matter was not the subject of a criminal investigation. According to the Arbitrator, various AUSAs giving statements during an administrative investigation does not constitute a criminal investigation. Since there was no criminal investigation, the 90-day limit cannot be tolled.[19] The decision to remove Officer Banks from his position was reversed by the Arbitrator on the grounds that MPD violated D.C. Official Code § 5-1031(a).

IV. Discussion

Under D.C. Official Code § 1-605.02(6), the Board is authorized to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[20]

FOP argues that MPD's Arbitration Review Request is untimely. Citing to a former version of PERB Rule 538.1, FOP states that a request for a review of an arbitration decision

[15] *Id*.
[16] *Id* at 11.
[17] *Id.* at 12-13.
[18] *Id.* at 9.
[19] *Id.* at 19.
[20] *University of the District of Columbia v. PERB*, 2012 CA 8393 P(MPA) (2014).

must be filed with PERB no later than twenty (20) days after service of the award. [21] Effective October 1, 2015, PERB Rule 538.1 states that a request for an arbitration review is due twenty-one (21) days after service of the award. PERB Rule 501.5 further states that in computing any period of time under PERB rules, the time begins to run the day after the event occurs. The Arbitration Award was issued on September 6, 2016; therefore twenty-one (21) days after the following day, September 7 would be September 28, 2016. MPD's arbitration review request is timely under PERB rules.

FOP further states that MPD is now making a new argument in its request for review that was not presented to the Arbitrator. According to FOP, MPD's request should be denied because new arguments cannot be raised for the first time on appeal.[22] MPD argues that the Arbitrator's decision was contrary to law and public policy because the agency's five day violation of the 90 day rule would be *de minimis* at most.[23] MPD looks to *Metropolitan Police Department v. District of Columbia Public Employee Relations Board*[24] which states that D.C. Official Code § 5-1031(a) is directory not mandatory.[25] MPD argues that if the statute is directory, not mandatory, then an Arbitrator must use the balancing test set forth in *JBG Properties v. D.C. Office of Human Rights* to determine whether the violation is *de minimis*.[26]

The issue before the Board is whether the arbitrator acted contrary to law and public policy. Although the Superior Court determined that D.C. Official Code § 5-1031(a) is directory, not mandatory, the Board has previously held that an argument may not be raised for the first time in an arbitration review request.[27] The Board has exclusive jurisdiction over appeals from grievance-arbitration awards, but it does not have original jurisdiction over such matters.[28] During Arbitration, MPD argued that the 90-day rule was tolled because of a criminal investigation and the Arbitrator ruled on this issue. MPD did not argue during arbitration that a 95 day violation is *de minimis* and the Arbitrator made no findings regarding that matter. MPD brings the issue of a *de minimis* violation of the 90-day rule for the first time in this Arbitration Review Request. As a result, MPD has waived its argument that the Arbitrator's decision is contrary to law and public policy based on a *de minimis* violation of the 90-day rule.

V. Conclusion

The Board rejects MPD's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, MPD's request is denied and the matter is dismissed in its entirety.

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[21] Opposition at 4.
[22] *Id*. at 6.
[23] Request at 10.
[24] 2012 CA 007805 P(MPA) (D.C. Super. Ct. July 17, 2014).
[25] Request at 10.
[26] *Id*.
[27] *District of Columbia Housing Authority v. AFGE, Local 2725*, 62 DC Reg. 2893, Op. No. 1503, PERB Case 14-A-07 (2015).
[28] *Id*.

ORDER

IT IS HEREBY ORDERED THAT:

1. **The arbitration review request is hereby denied.**
2. **Pursuant to Board Rule 559. 1, this Decision and Order is final upon issuance.**

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Ann Hoffman, and Douglas Warshof. Members Barbara Somson and Yvonne Dixon were not present.

December 15, 2016

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-A-19, Op. No. 1606 was sent by File and ServeXpress to the following parties on this the 29th day of December, 2016.

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