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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 22-378, Hearing Aid Assistance Program Act of 2018
- Department of Consumer and Regulatory Affairs increases the exemption threshold for charitable solicitations
- Department of Employment Services announces increase in the minimum wage in the District from $12.50 to $13.25 per hour for all workers
- Department of Energy and Environment announces funding availability for the DC High Water Mark Project
- Department of For-Hire Vehicles announces funding availability for the Veterans Transportation Pilot Program-VETRIDES
- Department of Health Care Finance announces budget reductions for the *Services My Way* Program
- Department of Housing and Community Development releases the HPAP Homebuyer Assistance Table
- Department of Human Services announces funding availability for the Fiscal Year 2019 CSBG Prevention of Homelessness Among Low Income Individuals and Families Grant

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

All documents published in the *District of Columbia Register (Register)* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act.* The Administrator of the Office of Documents and Administrative Issuances hereby certifies that this issue of the *Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
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VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-378

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 1, 2018

To establish a Hearing Aid Assistance Program, to be administered by the Department of Health, to provide individuals that are District residents and have an annual household gross income of less than $100,000 with a reimbursement to offset the cost of purchasing a hearing aid; and to amend section 47-1803.02 of the District of Columbia Official Code to provide that the amount received by a taxpayer from the Hearing Aid Assistance Program shall be excluded in the computation of District gross income..

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Hearing Aid Assistance Program Act of 2018".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "DDS" means the Department of Disability Services.

(2) "Department" means the Department of Health.

(3) "Disability" shall have the same meaning as provided in section 2(4) of the Disability Rights Protection Act of 2006, effective March 8, 2007 (D.C. Law 16-239; D.C. Official Code § 2–1431.01(4)).

(4) "Health care provider" shall have the same meaning as provided in section 2(5) of the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501(5)).

(5) "Hearing aid" shall have the same meaning as provided in D.C. Official Code § 28-4001(3).

(6) "Household gross income" shall have the same meaning as provided in D.C. Official Code § 47-1806.06(b)(1)(A).

(7) "Program" means the Hearing Aid Assistance Program established by section 3.

Sec. 3. Hearing Aid Assistance Program.

(a) There is established the Hearing Aid Assistance Program, to be administered by the Department of Health in consultation with the Department of Disability Services, to provide a

reimbursement of up to $500 to offset the purchase of a hearing aid by individuals who are District residents and have an annual household gross income of less than $100,000.

(b) To be eligible for the reimbursement provided pursuant to subsection (c) of this section, an individual shall:

(1) Complete a Program application, on a form developed by the Department, certifying that the individual is:

(A) A resident of the District of Columbia; and

(B) Has an annual household gross income of less than $100,000;

(2) Provide a receipt certifying the purchase of a hearing aid;

(3) Provide a written statement from the individual's health care provider attesting to the medical necessity for obtaining a hearing aid; and

(4) Meet all additional requirements and criteria provided for in Program rules promulgated pursuant to subsection (f) of this section.

(c)(1) Upon approval of an application submitted pursuant to subsection (b) of this section, the Program shall provide a reimbursement of up to $500; provided, that:

(A) The amount of the reimbursement shall be commensurate with the purchase price of the hearing aid; and

(B) Reimbursements shall be contingent upon the availability of funds.

(2) Any reimbursement issued pursuant to this subsection shall not be considered income for the purposes of District of Columbia income tax.

(d) The Program shall be funded from the following sources:

(1) In Fiscal Year 2019, $500,000 in recurring local funds;

(2) Federal grants; and

(3) Private donations.

(e) By January 1, 2020, and on an annual basis thereafter, the Department, in consultation with DDS, shall transmit a report to the Mayor and the Council regarding the performance of the Program in the prior fiscal year, and:

(1) If demand for the Program exceeds available funding, the report may include recommendations to the Council to adjust Program eligibility criteria to include children under 14 years of age, residents over 65 years of age, and residents with a disability; or

(2) If available funding exceeds demand for the Program, the report may include recommendations to the Council regarding the establishment of a refurbishment initiative to collect and repurpose previously used hearing aids.

(f) The Department, 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 implementing the provisions of this act.

Sec. 4. Section 47-1803.02(a)(2) of the District of Columbia Official Code is amended by adding a new subparagraph (EE) to read as follows:

"(EE) The amount received by a taxpayer from the Hearing Aid

ENROLLED ORIGINAL

Assistance Program pursuant to section 3 of the Hearing Aid Assistance Program Act of 2018, passed on 2nd reading on May 1, 2018 (Enrolled version of Bill 22- 354).".

Sec. 5. Applicability.

(a) 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 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. 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.

The 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
June 1, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-379

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 1, 2018

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Historic Anacostia Vacant Properties Surplus Declaration and Disposition Authorization Act of 2018".

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

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

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

(b)(1) Title to any of the Properties for which a certificate of occupancy has not been issued within 5 years after the date of transfer from the District to The L'Enfant Trust shall revert to the District.

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

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

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

ENROLLED ORIGINAL

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

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

(4) Within 180 days after the effective date of this act, partner with or establish a Ward 8 homebuyers club.

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

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), 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
June 1, 2018

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

B22-814	The Risk Management and Own Risk and Solvency Assessment Act of 2018 Intro. 5-24-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
B22-818	Leave Harmonization Amendment Act of 2018 Intro. 5-30-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development
B22-821	Square 2892, Lot 0105 Disposition Act of 2018 Intro. 5-30-18 by Chairman Mendelson at the request of the Mayor and referred sequentially to the Committee on Transportation and the Environment and the Committee on Business and Economic Development
B22-829	All-Terrain Vehicle Clarification Amendment Act of 2018 Intro. 5-31-18 by Chairman Mendelson at the request of the Mayor and Retained by the Council with comments from the Committee on Judiciary and Public Safety

B22-838	Elder-Abuse Response Team Act of 2018 Intro. 6-5-18 by Councilmembers Bonds, Cheh, Gray, Todd, and McDuffie and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Housing and Neighborhood Revitalization
B22-839	Amplified Noise Amendment Act of 2018 Intro. 6-5-18 by Councilmembers Bonds, Evans, and Cheh and referred to the Committee of the Whole
B22-840	LGBTQ Health Data Collection Amendment Act of 2018 Intro. 6-5-18 by Councilmembers Grosso, R. White, Gray, Nadeau, Cheh, T. White, Evans, Bonds, McDuffie, Allen, Silverman, Todd, and Chairman Mendelson and referred sequentially to the Committee on Education and the Committee on Health
B22-841	Temporary Parking Limitation Regulation Amendment Act of 2018 Intro. 6-5-18 by Councilmember Allen and referred to the Committee on Transportation and the Environment
B22-842	Commission on Archives and Record Management Act of 2018 Intro. 6-5-18 by Councilmember Todd and referred to the Committee on Government Operations
B22-843	Center for Firearm Violence Prevention Research Establishment Act of 2018 Intro. 6-5-18 by Councilmembers McDuffie, Bonds, Cheh, Gray, Allen, Todd, and Grosso and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Health
B22-844	Neighborhood Safety and Engagement Fund Violence Prevention and Intervention Initiatives Enhancement Amendment Act of 2018 Intro. 6-5-18 by Councilmembers McDuffie, Bonds, Cheh, Grosso, Todd, and T. White and referred to the Committee on Judiciary and Public Safety

B22-845 Local Communities Having Opportunities to Promote Equity Grant Fund Establishment Act of 2018

Intro. 6-5-18 by Councilmember McDuffie and referred to the Committee on Business and Economic Development

PROPOSED RESOLUTIONS

PR22-860 Building Hope Fourteenth Street, Inc. Revenue Bonds Project Approval Resolution of 2018

Intro. 5-18-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR22-862 The Catholic University of America Revenue Bonds Project Approval Resolution of 2018

Intro. 5-21-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR22-863 Charter School Incubator Initiative Revenue Bonds Project Approval Resolution of 2018

Intro. 5-22-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR22-864 Local Rent Supplement Program Contract No. 2015-LRSP-06A Approval Resolution of 2018

Intro. 5-22-18 by Chairman Mendelson at the request of the District of Columbia Housing Authority and Retained by the Council with comments from the Committee on Housing and Neighborhood Revitalization

PR22-865 Local Rent Supplement Program Contract No. 2016-LRSP-07A Approval Resolution of 2018

Intro. 5-22-18 by Chairman Mendelson at the request of the District of Columbia Housing Authority and Retained by the Council with comments from the Committee on Housing and Neighborhood Revitalization

PR22-877	Fiscal Year 2019 Income Tax Secured Revenue Bond, General Obligation Bond and General Obligation and Income Tax Secured Bond Anticipation Note Issuance Authorization Resolution of 2018 Intro. 6-4-18 by Chairman Mendelson at the request of the Office of the Chief Financial Officer and referred to the Committee on Finance and Revenue
PR22-878	Not-For-Profit Hospital Corporation Board of Directors Malika Fair Reappointment Resolution of 2018 Intro. 6-4-18 by Chairman Mendelson and referred to the Committee of the Whole
PR22-879	Compensation and Working Conditions Collective Bargaining Agreement between the District of Columbia Government Fire and Emergency Services Department and the International Association of Firefighters Local 36 (IAFF Local 36) Resolution of 2018 Intro. 6-4-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

Council of the District of Columbia
COMMITTEE ON HUMAN SERVICES
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER BRIANNE K. NADEAU, CHAIRPERSON
COMMITTEE ON HUMAN SERVICES

ANNOUNCES A PUBLIC HEARING ON

B22-097, THE "FOSTER PARENT PRE-SERVICE TRAINING REGULATION AMENDMENT ACT OF 2017"

Thursday, June 28, 2018, 12:30 p.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Thursday, June 28, 2018, Councilmember Brianne K. Nadeau, Chairperson of the Committee on Human Services, will hold a public hearing on B22-097, the "Foster Parent Pre-Service Training Regulation Amendment Act of 2017". The hearing will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, at 12:30 p.m.

The stated purpose of B22-412, the "Foster Parent Pre-Service Training Regulation Amendment Act of 2017", is to require the training of foster parents to include information on the needs of special needs foster children, older foster children, foster children of different ethnicities, those with siblings, as well as the needs of those who are lesbian, gay, bisexual, transgender, and queer.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at humanservices@dccouncil.us or at (202) 724-8170, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Tuesday, June 26, 2018**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee at humanservices@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on July 12, 2018.**

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

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

ANNOUNCES A PUBLIC HEARING ON

B22-0561 – THE "CRUMMELL SCHOOL SITE SURPLUS AND DISPOSITION APPROVAL ACT OF 2017";

B22-0598 – THE "PARCEL 42 DECLARATION AND DISPOSITION APPROVAL ACT OF 2017"

B22-0653 – THE "EXTENSION OF TIME TO DISPOSE OF 8TH & O STREETS, N.W., ACT OF 2018"

B22-0821 – THE "SQUARE 2892, LOT 0105 DISPOSITION ACT OF 2018"

Wednesday, June 27, 2018, 10:00 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Wednesday, June 27, 2018 Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-0561, the "Crummell School Site Surplus and Disposition Approval Act of 2017"; Bill 22-0598, the "Parcel 42 Declaration and Disposition Approval Act of 2017"; Bill 22-0653, the "Extension of Time to Dispose of 8th & O Streets, N.W., Act of 2018"; and Bill 22-0821, the "Square 2892, Lot 0105 Disposition Act of 2018".

The stated purpose of Bill 22-561 is to approve the surplus and disposition of District-owned real property known as the Crummell School Site, located at 1900 Gallaudet Street, N.E., and known for assessment purposes at Lot 0022 in Parcel 0142. The stated purpose of Bill 22-598 is to approve the surplus declaration and disposition of District-owned real property, known as Parcel 42, located at the intersection of 7th Street, N.W., R Street, N.W., and Rhode Island Avenue,

N.W., and known for tax and assessment purposes as Lots 0106 and 0803 in Square 442. The stated purpose of Bill 22-653 is to extend the time for the District to dispose of real property located at 1336 8th Street, N.W., for the development of affordable housing. The stated purpose of Bill 22-821 is to approve the disposition of District-owned real property located at the rear of 3212 Georgia Avenue, N.W. in Washington, D.C., known for tax and assessment purposes as Lot 0105 in Square 2892.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Business and Economic Development via email at cautrey@dccouncil.us or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, June 25th**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **ten single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to cautrey@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at cautrey@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Wednesday, July 11th.**

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 22-697, Mazie Washington Way Designation Act of 2018
Bill 22-746, Outlaw Way Designation Act of 2018
Bill 22-747, Bruce Robey Way Designation Act of 2018
Bill 22-787, Rev. W.W. Flood Way Designation Act of 2018
Bill 22-788, Hannah Hawkins Place Designation Act of 2018
and
Bill 22-793, Ben's Chili Bowl Way Designation Act of 2017

on

Monday, July 9, 2018
1:30 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 22-697, the "Mazie Washington Way Designation Act of 2018"; Bill 22-746, the "Outlaw Way Designation Act of 2018"; Bill 22-747, the "Bruce Robey Way Designation Act of 2018", Bill 22-787, the "Rev. W.W. Flood Way Designation Act of 2018", Bill 22-788, the "Hannah Hawkins Place Designation Act of 2018", and Bill 22-793, the "Ben's Chili Bowl Way Designation Act of 2017". The hearing will be held at **1:30 p.m.** on **Monday, July 9, 2018** in **Hearing Room 412** of the John A. Wilson Building.

The stated purpose of **Bill 22-697** is to symbolically designate the 4900 block of Nannie Helens Burroughs Avenue N.E., in Ward 7, as Mazie Washington Way. The stated purpose of **Bill 22-746** is to symbolically designate the 200 S.E. block through the 100 N.E. block of 10th Street, between C Street, S.E. and Constitution Avenue, N.E., in Ward 6, as Outlaw Way. The stated purpose of **Bill 22-787** is to symbolically designate the unit block of Brandywine Street, S.E., between 1st Street, S.E. and South Capitol Street, S.E., in Ward 8, as Rev. W.W. Flood Way. The stated purpose of **Bill 22-793** is to symbolically designate the 1200 block of U Street N.W., in Ward 1, as Ben's Chili Bowl Way, in honor of the establishment's 60-year anniversary.

The stated purpose **of Bill 22-747** is to officially designate a portion of the public alley system within Square 983, bounded by 11th Street, N.E., G Street, N.E., 12th Street, N.E., and F Street, N.E., in Ward 6 as Bruce Robey Way. The stated purpose of **Bill 22-788** is to officially designate the 2200 and 2300 blocks of Mount View Place, S.E., in Ward 8 as Hannah Hawkins Place. An official designation typically involves the designation of postal addresses and the primary entrance for residences or offices. A symbolic designation is for ceremonial purposes and shall be in addition to and subordinate to any name that is an official name.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Sydney Hawthorne at (202) 724-7130, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business **Thursday, July 5, 2018.** Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 28, 2018 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. Hearing materials, including a draft witness list, can be accessed 24 hours in advance of the hearing at http://www.chairmanmendelson.com/circulation.

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 5:00 p.m. on July 23, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC ROUNDTABLE ON

DC Circulator Operations and Maintenance Services Contract

June 18, 2018 at 1:00 PM
in Room 412 of the John A. Wilson Building at
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Monday, June 18, 2018, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public roundtable on the DC Circulator Operations and Maintenance Services Contract (DCKA-2017-R-0052). The public roundtable will begin at 1:00 PM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The DC Circulator Operations and Maintenance Services Contract provides the framework for the day-to-day operations of the six DC Circulator routes and the maintenance of the 72-bus fleet. On May 30, 2018, the Mayor proposed to award this contract to RATP Dev, the company that currently operates the DC Streetcar. This proposed agreement marks the first time that District Department of Transportation has exercised direct oversight of the DC Circulator since the service launched in 2005.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on July 2, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE
on
PR 22-834, Historic Preservation Review Board Marnique Heath Confirmation Resolution of 2018
PR 22-835, Historic Preservation Review Board Brian Crane Confirmation Resolution of 2018
PR 22-836, Historic Preservation Review Board Andrew Aurbach Confirmation Resolution of 2018
&
PR 22-837, Historic Preservation Review Board Gretchen Pfaehler Confirmation Resolution of 2018

on

Thursday, June 21, 2018
11:00 a.m. (or immediately following the preceding hearing)
Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on **PR 22-834**, the "Historic Preservation Review Board Marnique Confirmation Resolution of 2018"; **PR 22-835**, the "Historic Preservation Review Board Brian Crane Confirmation Resolution of 2018"; **PR 22-836**, the "Historic Preservation Review Board Thomas G. Brokaw Confirmation Resolution of 2018"; and **PR 22-837**, the "Historic Preservation Review Board Gretchen Pfaehler Confirmation Resolution of 2018". The roundtable will be held at 10:30 a.m. (or immediately following the preceding hearing) on **Thursday, June 21, 2018** in **Hearing Room 412** of the John A. Wilson Building.

The stated purpose of **PR 22-834** is to confirm the reappointment of Marnique Heath as a public member to the Historic Preservation Review Board. The stated purpose of **PR 22-835** is to confirm the reappointment of Brian Crane as an archeologist member to the Historic Preservation Review Board. The stated purpose of **PR 22-836** is to confirm the reappointment of Andrew Aurbach as a historian member to the Historic Preservation Review Board. The stated purpose of **PR 22-837** is to confirm the reappointment of Gretchen Pfaehler as an architectural historian member of the Historic Preservation Review Board.

The Historic Preservation Review Board ("HPRB") is the official body of advisors appointed by the Mayor to guide the government and public on preservation matters in the District of Columbia. The HPRB also assists with the implementation of federal preservation programs and the review of federal projects in the District. The purpose of this roundtable is to receive testimony from government and public witnesses as to the fitness of the four nominees for reappointment to the HPRB.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Sydney Hawthorne at (202) 724-7130, and to provide your name, address,

telephone number, organizational affiliation and title (if any) by close of business **Tuesday, June 19, 2018.** Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 19, 2018 the testimony will be distributed to Councilmembers before the roundtable. 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. Roundtable materials, including a draft witness list, can be accessed 24 hours in advance of the roundtable at http://www.chairmanmendelson.com/circulation.

If you are unable to testify at the roundtable, 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 5:00 p.m. on July 5, 2018.

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

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR 22-859, the "St. Paul on Fourth Street, Inc. Revenue Bonds Project Approval Resolution of 2018"
PR 22-860, the "Building Hope Fourteenth Street, Inc. Revenue Bonds Project Approval Resolution of 2018"
PR 22-862, the "Catholic University of America Revenue Bonds Project Approval Resolution of 2018"
PR 22-863, the "Charter School Incubator Initiative Revenue Bonds Project Approval Resolution of 2018"

Wednesday, June 13, 2018
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, June 13, 2018 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-859, the "St. Paul on Fourth Street, Inc. Revenue Bonds Project Approval Resolution of 2018" would authorize and provide for the issuance, sale, and delivery in an aggregate amount not to exceed $32 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 St. Paul on Fourth Street, Inc. in the financing, refinancing or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 3015 4th Street, NE, in Ward 5.

PR 22-860, the "Building Hope Fourteenth Street, Inc. Revenue Bonds Project Approval Resolution of 2018" would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $34 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 Building Hope Fourteenth Street, Inc., in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 5000 14th Street, NW in Ward 4.

PR 22-862, the "Catholic University of America Revenue Bonds Project Approval Resolution of 2018" would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $100 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist The Catholic University of America, 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. The project is located at 620 Michigan Avenue, NE in Ward 5.

PR 22-863, the "Charter School Incubator Initiative Revenue Bonds Project Approval Resolution of 2018" would 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 Charter School Incubator Initiative, 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. The projects are located at 3301 Wheeler Road, SE and 2501 Martin Luther King, Jr. Avenue, SE in Ward 8.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, June 12, 2018. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B22-826, Community Violence Interruption Fund Temporary Act of 2018**, B22-828,** All-Terrain Vehicle Clarification Temporary Amendment Act of 2018, **B22-834,** School Promotion and Graduation Fairness Temporary Act of 2018, and **B22-836**, Attorney General Limited Grant-Making Authority Temporary Amendment Act of 2018 was adopted on first reading on June 5, 2018. A final reading on this measure will occur on June 26, 2018.

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. 22-130 Request to reprogram $1,000,000 of Fiscal Year 2018 Local funds budget authority from the Office of the Attorney General for the District of Columbia (OAG) to the Pay-As-You-Go (Paygo) Capital Funds was filed in the Office of the Secretary on May 31, 2018. This reprogramming ensures that OAG will be able to implement a modernization strategy for the replacement of the District's Child Support Enforcement System.

RECEIVED: 14 day review begins June 1, 2018

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 8, 2018
Protest Petition Deadline:	July 23, 2018
Roll Call Hearing Date:	August 6, 2018
Protest Hearing Date:	October 3, 2018
License No.:	ABRA-109916
Licensee:	Abaye, Inc.
Trade Name:	7 Days Market
License Class:	Class "B" Beer & Wine Retailer
Address:	2310 Rhode Island Avenue, N.E.
Contact:	Aster Abeje: (301) 356-8176

WARD 5 ANC 5C SMD 5C07

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **October 3, 2018 at 4:30 p.m.**

NATURE OF OPERATION
A new Class B Beer and Wine retail store.

HOURS OF OPERATION
Sunday 12pm – 12am, Monday through Saturday 6am – 12am

HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday 12pm – 12am, Monday through Saturday 9am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 8, 2018
Protest Petition Deadline:	July 23, 2018
Roll Call Hearing Date:	August 6, 2018
Protest Hearing Date:	October 3, 2018

License No.:	ABRA-110062
Licensee:	Wyoming Cube & Bale, LLC
Trade Name:	Cube & Bale
License Class:	Retailer's Class "C" Restaurant
Address:	3251 Prospect Street, N.W.
Contact:	Robert Elliott: (202) 338-5835

WARD 2 ANC 2E SMD 2E03

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. **The Protest Hearing date** is scheduled on **October 3, 2018 at 1:30 p.m.**

NATURE OF OPERATION
New Class "C" Restaurant that will offer casual dining, serving appetizers, sandwiches, and salads. The restaurant will have several pool tables, and is requesting an Entertainment Endorsement to provide occasional live entertainment. The Total Occupancy Load will be 200, including 121 seats inside and a 40-seat Summer Garden.

HOURS OF OPERATION (INSIDE PREMISES)
Sunday through Saturday 12am – 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES)
Sunday – Thursday 8am – 2am, Friday – Saturday 8am – 3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SUMMER GARDEN)
Sunday – Saturday 8am – 10pm

HOURS OF LIVE ENTERTAINMENT (INDOORS ONLY)
Sunday – Saturday 12pm – 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 8, 2018
Protest Petition Deadline:	July 23, 2018
Roll Call Hearing Date:	August 6, 2018
Protest Hearing Date:	October 3, 2018

License No.:	ABRA-110044
Licensee:	Georgetown Center, LLC
Trade Name:	Georgetown Social
License Class:	Retailer's Class "C" Restaurant
Address:	2920 M Street, N.W.
Contact:	Hazem Alghabra: (202) 556-0036

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. **The Protest Hearing date** is scheduled on **October 3, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant offering sandwiches, appetizers, and salads. Providing Live Entertainment inside and outside premises. Summer Garden with a capacity of 80 seats. The restaurant will have 100 seats inside and a Total Occupancy Load of 180.

PROPOSED HOURS OF OPERATION FOR INSIDE PREMISES AND SUMMER GARDEN

Sunday – Thursday, 8am – 11pm
Friday – Saturday, 8am – 2am

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

Sunday – Thursday, 11am – 11pm
Friday – Saturday, 11am – 2am

PROPOSED HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND OUTDOOR SUMMER GARDEN

Sunday – Thursday, 6pm – 11pm
Friday – Saturday, 6pm – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 8, 2018
Protest Petition Deadline:	July 23, 2018
Roll Call Hearing Date:	August 6, 2018
License No.:	ABRA-093592
Licensee:	2446 RU LLC
Trade Name:	Roofers Union – Jug and Table
License Class:	Retailer's Class "C" Tavern
Address:	2442-2446 18th Street, N.W.
Contact:	Stephen J. O'Brien: (202) 625-7700

WARD 1 ANC 1C SMD 1C03

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 August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request to add a Sidewalk Café with 4 seats.

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

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFE
Sunday 11am – 12:30am
Monday – Thursday 5pm – 12:30am
Friday 5pm – 1:30am
Saturday 11am – 1:30am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 8, 2018
Protest Petition Deadline:	July 23, 2018
Roll Call Hearing Date:	August 6, 2018
License No.:	ABRA-109064
Licensee:	FD, LLC
Trade Name:	Unity
License Class:	Retailer's Class "C" Tavern
Address:	1936 9th Street, N.W.
Contact:	Abebe Bekele: (202) 683-0950

WARD 1 ANC 1B SMD 1B02

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 August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to expand to the second floor of the licensed premises, adding 49 additional seats and increasing Total Occupancy Load from 16 to 65.

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

Sunday through Thursday, 11am – 2am
Friday and Saturday, 11am – 3am

HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday, 6pm – 2am
Friday and Saturday, 10pm – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Placard Posting Date:	**June 8, 2018
Protest Petition Deadline:	**July 23, 2018
Roll Call Hearing Date:	**August 6, 2018

License No.:	ABRA-096141
Licensee:	Zion Kitchen and Trading, Inc.
Trade Name:	ZK Lounge & West Africa Grill
License Class:	Retailer's Class "C" Restaurant
Address:	1805 Montana Ave, N.E.
Contact:	Oyindamola Akinkugbe: (240) 882-2718

WARD 5 ANC 5C SMD 5C05

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 **August 6, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Licensee is requesting to increase seating from 34 seats to 79 seats, with a new Total Occupancy Load of 85.

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

Sunday – Thursday 10am – 2am
Friday – Saturday 10am – 3am

CURRENT HOURS OF ENTERTAINMENT

Sunday – Thursday 6pm – 2am
Friday – Saturday 6pm – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	**May 25, 2018
Protest Petition Deadline:	**July 9, 2018
Roll Call Hearing Date:	**July 23, 2018
License No.:	ABRA-096141
Licensee:	Zion Kitchen and Trading, Inc.
Trade Name:	ZK Lounge & West Africa Grill
License Class:	Retailer's Class "C" Restaurant
Address:	1805 Montana Ave, N.E.
Contact:	Oyindamola Akinkugbe: (240) 882-2718

WARD 5 ANC 5C SMD 5C05

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 **July 23, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Licensee is requesting to increase seating from 34 seats to 79 seats, with a new Total Occupancy Load of 85.

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

Sunday – Thursday 10am – 2am
Friday – Saturday 10am – 3am

CURRENT HOURS OF ENTERTAINMENT

Sunday – Thursday 6pm – 2am
Friday – Saturday 6pm – 3am

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTICE OF PUBLIC HEARING ON FACILITY AND VOTE ON FULL CHARTER APPROVAL
Statesmen College Preparatory Academy for Boys PCS
ACTION: Open for Public Comment
PUBLIC COMMENT ACCEPTED UNTIL: **June 18, 2018**

SUMMARY: The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a request by Statesmen College Preparatory Academy for Boys Public Charter School (Statesmen PCS), formerly North Star College Preparatory Academy for Boys PCS[1], to co-locate its facility with IDEA PCS at 1027 45th St. NE, Washington, DC 20019. Statesmen PCS received conditional approval to operate a new public charter school on May 22, 2017. The vote for full charter approval, including the school's location, is scheduled to occur on June 18, 2018.

Its mission is to "create a boy-friendly, pedagogy-informed academic environment within which young men are equipped with the academic skills, social competencies, and personal development necessary to navigate life challenges, attend and complete the college of their choice, and return to become the premier agents of social change within and for the communities they serve." Pending full charter approval, the school will open in school year 2018-19 and serve grades 4-8.

DATES:
- Comments must be submitted on or before Monday, June 18 at 12 pm.
- The public hearing on facility and vote for full charter approval are scheduled for Monday, June 18, 2018 at 6:30 pm. For location, please check dcpcsb.org.

ADDRESSES: You may submit comments, identified by "Statesmen PCS – Public Hearing on Facility," by any of the following methods:
- Submit a written comment via:
  - E-mail* – public.comment@dcpcsb.org
  - Postal mail* – Attn: Public Comment, DC Public Charter School Board, 3333 14th ST. NW., Suite 210, Washington, DC 20010
  - Hand Delivery/Courier* – Same as postal address above
- Sign up to testify in-person at the public hearing by emailing a request to public.comment@dcpcsb.org no later than 4 pm on Thursday, June 14.

*Please select only one of the actions listed above.

FOR FURTHER INFORMATION CONTACT: Hannah Cousino, Specialist, Equity and Fidelity Team at (202) 328-2673 or hcousino@dcpcsb.org.

DC PCSB reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission that it may deem to be inappropriate for publication, such as obscene language.

[1] The school applied as North Star College Preparatory for Boys but is amending its name to Statesmen College Preparatory for Boys PCS. If the Board votes to approve the school's charter, it will be under this new name.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JULY 25, 2018
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

TIME: 9:30 A.M.

WARD TWO

19521A
ANC 2E

Application of David Hunter Smith, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to the relief approved by BZA Order No. 19521 to include a variance from the accessory building requirements of Subtitle D § 1209.4, to construct a second story accessory apartment above an existing garage in the R-20 Zone at premises 3520 S Street N.W. (Square 1303, Lot 29).

WARD SIX

19169C
ANC 6E

Application of Birchington LLC, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to the relief approved by BZA Order No. 19169 to include special exceptions from the loading requirements of Subtitle C § 901.1, and from the access requirements of Subtitle C § 904.2, to construct a hotel in the D-4-R Zone at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

WARD SIX

19786
ANC 6A

Application of Steve and Nancy Perry, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a third-story rear addition to an existing principal dwelling unit in the RF-1 Zone at premises 1016 Massachusetts Avenue N.E. (Square 965, Lot 41).

WARD ONE

19801
ANC 1B

Application of MM Jahanbin LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements of Subtitle C § 1500.3(c), to expand an existing penthouse bar and restaurant use in the ARTS-2 Zone at premises 911-913 U Street N.W. (Square 360, Lots 38 and 39).

WARD FIVE

19803
ANC 5D

Application of 1151 Oates St NE LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the residential conversion provisions of Subtitle U § 320.2, and under Subtitle E § 5201 from the side yard requirements of Subtitle E § 307.4, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a third story and a three-story rear addition to the existing flat and convert it to a three-unit apartment house in the RF-1 Zone at premises 1151 Oates Street N.E. (Square 4064, Lot 804).

WARD ONE

19766
ANC 1A

Appeal of ANC 1A, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on February 15, 2018 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1712178, to permit the conversion of an existing principal dwelling unit to a four-unit apartment house in the RA-2 Zone at premises 1477 Girard Street N.W. (Square 2669, Lot 824).

WARD THREE

19788
ANC 3C

Application of Royal Norwegian Embassy, pursuant to 11 DCMR Subtitle X, Chapter 2, to renovate and expand a chancery by renovating the exterior, and constructing an addition to the existing Norwegian chancery building in the R-12 Zone at premises 2720 34th Street N.W. and 3401 Massachusetts Avenue N.W. (Square 1939, Lot 39).

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
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Chinese
您需要有人帮助参加活动吗？
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French
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Korean
참여하시는데 도움이 필요하세요?
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Spanish
¿Necesita ayuda para participar?
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Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, July 26, 2018, @ 6:30 P.M.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 08-07C (Four Points, LLC – Second-Stage PUD @ Square 5784)

THIS CASE IS OF INTEREST TO ANC 8A

On March 9, 2018, the Office of Zoning received an application from Four Points, LLC ("Applicant") for approval of a second-stage planned unit development ("PUD") for property located at Square 5784, Lots 899, 900, and 1101 ("Property"). The Office of Planning submitted a report to the Zoning Commission dated May 4, 2018. At its May 14, 2018, public meeting, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on May 16, 2018.

The Property has approximately 64,783 square feet of land area and was rezoned from the C-2-A to the C-3-A Zone District pursuant to the first-stage PUD in Z.C. Order No. 08-07. Through Z.C. Order No. 08-06A, the underlying C-2-A Zone District was re-designated as MU-4 and the C-3-A Zone District was re-designated as MU-7. However, Z.C. Order No. 08-06A did not modify the PUD-related map amendment for this Property and other properties with valid PUDs. *(See* Z.C. Order No. 08-06A, page 30, point 1.) Therefore, the PUD-related zoning for the Property remains C-3-A.

Because no map amendment is being sought, this application may be decided through a single vote.

The Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 8A.

The Applicant proposes to develop the Property with a new building containing approximately 287,866 square feet of total gross floor area devoted to office and retail uses ("Building 4"). Building 4 will have a maximum density of 4.44 FAR, a maximum building height of 90 feet, and will contain 324 zoning-compliant parking spaces, and up to 136 tandem parking spaces.

Pursuant to Subtitle A §§ 102.1 and 102.3(a) of the 2016 Zoning Regulations, the second-stage PUD has vested development rights under the 1958 Zoning Regulations. However, the application will follow the procedural requirements of Subtitle X, Chapter 3 and Subtitle Z of the 2016 Zoning Regulations, and the public hearing will be conducted in accordance with the

contested case provisions of the Zoning Commission's Rules of Practice and Procedure, 11 DCMR Subtitle Z, Chapter 4.

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

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

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

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

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

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

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

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.
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Quí vị có cần trợ giúp gì để tham gia không? Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to Section 4(d) of An Act to provide full and fair disclosure of the character of charitable, benevolent, patriotic, or other solicitations in the District of Columbia; and for other purposes, effective July 10, 1957 (D.C. Law 85-87; D.C. Official Code § 44-1703(d) (2012 Repl.)), and District of Columbia Municipal Regulation 16 DCMR § 1310, hereby gives notice of the adoption of the following amendments to Chapter 13 (Charitable Solicitation) of Title 16 (Consumers, Commercial Practices, and Civil Infractions), of the District of Columbia Municipal Regulations (DCMR).

The rulemaking extends the increased exemption threshold for charitable solicitations. The threshold is raised from $1,500 in received solicitations to $25,000 in received solicitations, as allowed by Section 4(d) of the Charitable Solicitation Act (D.C. Official Code § 44-1703(d)). The amendment also clarifies how the total yearly solicitations would be calculated.

A Notice of Emergency and Proposed Rulemaking was adopted on October 1, 2017, became effective on that date, and was published on December 15, 2017 at 64 DCR 12737. A Notice of Second Emergency Rulemaking was adopted on January 29, 2018 and published in the *D.C. Register* at 65 DCR 1478 (February 9, 2018). No comments were received in response to the proposed rulemaking.

These rules were adopted as final on April 30, 2018 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 13, CHARITABLE SOLICITATION, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

Section 1301, EXEMPTION OF SMALL SOLICITATIONS, is amended as follows:

Strike Subsection 1301.1 and insert a new Subsection 1301.1 in its place to read as follows:

1301.1 Under the authority of § 4(d) of the Act [D.C. Official Code § 44-1703(d)], any person or individual who, in connection with a solicitation, did not actually receive contributions in excess of twenty-five thousand dollars ($ 25,000) during the previous calendar year and who does not expect to receive contributions in excess of twenty five thousand dollars ($25,000) during the current calendar year and who complies with the provisions of this section, shall be exempt from the provisions of §§ 4(a), 6, and 7 of the Act [D.C. Official Code §§ 44-1703(a), 44-1705, and 44-1706].

DEPARTMENT OF HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Department of Health ("Department"), pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to Chapter 47 (Acupuncture) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The amendments to Chapter 47 will replace paragraphs, subsections, and sections of the chapter, including, *inter alia*, removing physicians who collaborate with acupuncturists from the dominion of the chapter; amending reference, educational, and credential requirements for licensure; citing to an additional section for education requirements; incorporating the existing separate section for applicants educated in foreign countries into the existing educational requirements section; removing the section entitled "Acupuncture Practice" and replacing it with a section entitled "Scope of Practice;" adding sections for Chinese herbology, mandatory use of disposable needles, and disposal of needles; and removing the requirement that the acupuncture advisory committee be the entity responsible for reviewing applications.

The First Notice of Proposed Rulemaking was published on November 27, 2015, in the *D.C. Register* at 62 DCR 015342. Numerous comments were received by the Department of Health following the publication, and an advisory workgroup met on June 2, 2017, to discuss the comments. The Board of Medicine considered the workgroup's recommendations and made certain amendments to the First Notice. Comments were received from Corinne Axelrod, MPH, L.Ac., Dipl.Ac.; the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM); Lisa Marie Price, L.Ac., Dipl.Ac.; Tracy Soltesz, L.Ac., M.Ac., C.ZB; Xioban Li; and numerous unidentified commenters. Many commenters objected to the new requirement that licensed acupuncturists be required to have a Bachelor's degree. The Board of Medicine agrees that the other educational and testing requirements are sufficient to ensure competency and will eliminate the proposed requirement of a Bachelor's degree. The Board also agreed with several commenters who objected to the requirement that individuals who passed the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) prior to June 1, 2004, have to provide additional evidence of passing the biomedicine module which was part of the exam. However, the Board elected to keep the requirement for a character reference, in accord with all other medical professional applicants; declined to specify how a registry of applicants shall be made public, as the Department has a public website and specifying the mechanism in the regulation is unnecessary; declined to add additional requirements regarding foreign-educated applicants, as all schools need to be accredited by their respective accrediting authorities; determined to keep the list of practices outlined in Subsections 4706.1, 4706.2 and 4706.3 and add dry needling as an optional treatment; and decided to continue the prohibition against the use of staples based on the advice of the workgroup, which was accepted by the Board.

Many comments were received regarding including Herbology or Chinese Herbology in the regulations. The Board agreed that Chinese Herbology was the appropriate term and felt that its specialty should be recognized in the practice of acupuncture. The Board also agreed that the requirements for current practitioners of Chinese Herbology should be revised in order to ensure those individuals who may not qualify under the new educational requirements could continue to practice based on their experience.

Regarding the disposal of disposable needles, the Board agreed that the section needed to be clarified. Suggested clarifications to the record-keeping requirements were accepted, but the requirement for allowing patient access to copies of the records was not amended as it is in accordance with federal and District laws and regulations. Notice to patients was amended to comply with other medical professional requirements.

Finally, the continuing education requirements were amended to include the two (2) hours of LGBTQ education in accordance with the Health Occupations and Revision Act amendments and the re-entry policy was made applicable to practitioners who have not practiced for more than two (2) years in accordance with the Board policy.

Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by removing the existing Chapter 47, and adding a new Chapter 47 by the same name, ACUPUNCTURE, to read as follows:

CHAPTER 47 ACUPUNCTURE

Secs.

4700 GENERAL PROVISIONS

4700.1 This chapter shall apply to applicants for and holders of a license to practice acupuncture.

4700.2 Chapters 40 (Health Occupations: General Rules), 41 (Health Occupations: Administrative Procedures), and 46 (Medicine) of this title shall supplement this chapter.

4700.3 An applicant for a license under this chapter shall submit with a completed application one letter of reference from a physician or acupuncturist licensed in the United States, who has personal knowledge of the applicant's abilities and qualifications to practice acupuncture.

4700.4 The Board shall maintain a registry of licensed acupuncturists and shall make the registry available to the public for inspection.

4701 TERM OF LICENSE

4701.1 Subject to § 4701.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31st of each even-numbered year.

4701.2 If the Director changes the renewal system pursuant to § 4006.3 of Chapter 40 of this title, a license issued pursuant to this chapter shall expire in accordance with the system adopted by the Director.

4702 EDUCATIONAL REQUIREMENTS

4702.1 An applicant under this section shall meet the education and training requirements for licensure by furnishing proof satisfactory to the Board that the applicant has met the requirements of §§ 4702 and 4703 in their entirety, unless the applicant is a licensed physician or chiropractor.

4702.2 In order to qualify for licensure, an applicant shall meet one of the following education requirements:

(a) Graduate from an acupuncture program, which meets the requirements of § 4702.5; or

(b) Complete either:

(1) An acupuncture program in another country that is the equivalent of an acupuncture program pursuant to § 4702.5; or

(2) An apprenticeship program approved by NCCAOM; and

(c) Successfully complete the Clean Needle Technique (CNT) course administered by the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM).

4702.3 An individual who obtains his or her education in another country shall arrange for a transcript evaluating company recognized by NCCAOM to submit a credential evaluation directly to the Board.

4702.4 The credential evaluation required by § 4702.3 shall demonstrate that the applicant obtained a degree that is equivalent to an acupuncture program from a college or university in another country that is accredited in that country.

4702.5 An acupuncture program sufficient for licensure shall be accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or another accrediting body recognized by the United States Department of Education. An applicant shall arrange for the acupuncture program to submit a certified transcript directly to the Board confirming that a diploma was awarded to the applicant.

4702.6 Any credentials required to be submitted pursuant to §§ 4702.2, 4702.3, or 4702.4, which are written in a language other than English shall be accompanied by a certified English translation prepared at the applicant's expense.

4702.7 A physician licensed in good standing in the District of Columbia may receive a license for acupuncture if he or she completes two hundred and fifty (250) hours of instruction in the practice of acupuncture in one of the following:

(a) A program of training and instruction accredited by an entity listed in § 4702.5, or

(b) A continuing education program designated as an American Medical Association Physician's Recognition Award category I program.

4702.8 A chiropractor licensed in good standing in the District of Columbia may receive an ancillary procedures certification for acupuncture pursuant to the requirements of § 4803 of Chapter 48, Chiropractic, of this title.

4703 CREDENTIALS REQUIRED FOR LICENSURE

4703.1 At the time of application, an applicant shall submit to the Board:

(a) A completed application form prescribed by the Board; and

(b) For applicants who are not licensed physicians in the District of Columbia, proof that the applicant has passed the English version of the NCCAOM examination prior to June 1, 2004, or if taken after June 1, 2004, proof that

the applicant has passed each of the following modules of the NCCAOM examination:

(1) Foundations of Oriental Medicine;

(2) Acupuncture with point location; and

(3) Biomedicine.

(c) If an applicant's entire education (high school, college, or university and acupuncture program) was conducted in a language other than in English, proof that the applicant has achieved a passing score on the Test of English as a Foreign Language (TOEFL) examination; and

(d) Proof that the applicant has completed the educational requirements of § 4702.

4703.2 Any credentials required to be submitted pursuant to § 4703.1, which are written in a language other than in English shall be accompanied by a certified English translation prepared at the applicant's expense.

4704 PROHIBITED TITLES

4704.1 An acupuncturist who is not a licensed physician shall not represent that he or she has a doctoral degree in the field of acupuncture and/or Oriental medicine, or use the title "doctor" or "Dr.," unless the educational program that awarded the person's doctoral degree is:

(a) Approved by the ACAOM or is a college or university that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(b) Approved by the ministry of education of a foreign country to grant doctoral degrees.

4704.2 A person who uses the title "doctor" or "Dr." pursuant to § 4704.1 shall indicate that the doctoral degree is in acupuncture and/or Oriental medicine.

4704.3 An acupuncturist shall not represent that he or she has a master's degree in the field of acupuncture and/or Oriental medicine unless the education program that awarded his or her master's degree is:

(a) Approved by the ACAOM or is a college or university that is accredited by a regional agency recognized by the United States Department of Education; or

(b) Approved by the ministry of education of a foreign country to grant master's degrees.

4704.4 An acupuncturist who has a doctoral or master's degree in a field other than acupuncture and/or oriental medicine may, in advertising or other materials visible to the public pertaining to the acupuncturist's practice, include this degree provided that the field in which the degree was awarded is specified without using an abbreviation and the doctoral or master's degree was obtained from an educational program, which meets the requirements of §§ 4704.1 or 4704.3.

4704.5 An acupuncturist who is not a licensed physician and has a doctorate in a field other than acupuncture or oriental medicine shall not use the title "doctor" in advertising or other materials visible to the public pertaining to the acupuncturist's acupuncture practice.

4704.6 An acupuncturist who does not have an Acupuncture Level II license shall not identify him or herself as practicing Chinese Herbology unless they are a person who qualifies for Level II under the requirements of § 4707.2 and they are within the two-year period following the implementation of these rules.

4705 INFORMED CONSENT

4705.1 The acupuncturist shall fully disclose to the patient such information as will enable the patient to make an evaluation of the nature of the treatment and of any attendant risks. The acupuncturist shall obtain, and maintain as part of his or her patient records, informed written consent from the patient before beginning acupuncture treatment.

4705.2 A licensed acupuncturist shall advise every patient that any care, treatment and services provided within the scope of the acupuncturist's practice is not a substitute for care, treatment and services provided by a licensed physician regarding the patient's condition.

4705.3 A licensed acupuncturist shall maintain as part of his or her patient records a form, with the date and the signatures of the patient and the licensed acupuncturist, indicating that the licensed acupuncturist has advised the patient as required under § 4705.2 and shall provide a copy of this form to the patient.

4706 SCOPE OF PRACTICE

4706.1 The use of any of the following to effect therapeutic change is within the scope of practice of licensed acupuncturists and shall be performed only by acupuncturists licensed by the Board, or individuals otherwise permitted to practice acupuncture pursuant to D.C. Official Code §§ 3-1201 *et seq.*:

(a) Needles;

(b) Moxibustion;

(c) Teishin (pressure needles); and

(d) Electroacupuncture (utilizing electrodes on the surface of the skin or current applied to inserted needles).

4706.2 Licensed acupuncturists may, in addition to the methods listed in § 4706.1, use any of the following as part of his or her professional practice:

(a) Acupatches;

(b) Acuform;

(c) Manual acutotement (stimulation by an instrument that does not pierce the skin);

(d) Acupressure;

(e) Cupping;

(f) Gua sha scraping techniques;

(g) Cold laser used for needle-less acupuncture;

(h) Tuina;

(i) Massage, bodywork and somatic therapy;

(j) Ultrasonic;

(k) Thermal methods;

(l) Magnetic stimulation;

(m) Breathing techniques;

(n) Therapeutic exercise and techniques;

(o) Oriental dietary therapy;

(p) Lifestyle and behavioral education;

(q) Percutaneous and transcutaneous electrical nerve stimulation;

(r) Qigong;

(s) Biofeedback and other devices that utilize color, light, sound, and electromagnetic energy for therapeutic purposes;

(t) Diagnostic, assessment and treatment techniques that are taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses and which assist in acupuncture and Oriental medicine diagnosis, corroboration, and monitoring of a treatment plan or in making a determination to refer a patient to another healthcare provider;

(u) Taiji;

(v) Energetic therapy; and

(w) Ashi acupuncture/dry needling.

4706.3 Licensed acupuncturists may recommend to patients the use of:

(a) Meditation; and

(b) Legal products intended to facilitate health, such as:

(1) Homeopathic medicine that is recognized in the official Homeopathic Pharmacopoeia of the United States;

(2) Vitamins;

(3) Minerals;

(4) Enzymes;

(5) Glandulars;

(6) Amino acids;

(7) Nonprescription substances; and

(8) Nutritional or dietary supplements that meet Food and Drug Administration labeling requirements, 21 CFR part 101.36, unless otherwise prohibited by State or Federal law.

4706.4 Licensed acupuncturists may use the following when providing acupuncture:

(a) Solid filiform needles;

(b) Dermal needles;

(c) Plum blossom needles;

(d) Intradermal/press needles;

(e) Prismatic needles;

(f) Lancets; and

(g) Non-insertive pressure needles.

4706.5 Licensed acupuncturists shall not use the following when providing acupuncture:

(a) Staples;

(b) Hypodermic needles; and

(c) Subcutaneous permanently implanted needles or sutures.

4706.6 The only licensed acupuncturists who may practice Chinese Herbology are those qualified to do so under § 4707.

4706.7 Licensed acupuncturists may offer and provide to a patient, at fair market value, goods and devices related to the practice of acupuncture.

4707 CHINESE HERBOLOGY (ACUPUNCTURE LEVEL II)

4707.1 Except as set forth in § 4707.2, a licensed acupuncturist shall practice Chinese Herbology only if he is licensed by the Board in Acupuncture Level II (Chinese Herbology).

4707.2 Except for those who qualify as set forth in § 4707.3, licensure as Acupuncture Level II requires the following:

(a) Current certification in Chinese Herbology or Oriental Medicine from the NCCAOM; or

(b) Successful completion of an acupuncture program and an herbology program accredited by the ACAOM, or can provide proof satisfactory to the Board that he or she has completed four hundred fifty (450) hours of education and/or training in Herbology, one hundred twenty (120) hours of which must have been in supervised clinical practice; and

(c) Successfully passed the NCCAOM Chinese Herbology examination, and

(d) Successfully passed the NCCAOM Herbology module.

4707.3 A licensed acupuncturist who obtained his or her license on or before the effective date of these regulations may obtain an Acupuncture Level II license to practice Chinese Herbology if he or she:

(a) Was educated outside the United States and can provide transcripts from a foreign institution that documents training in Chinese Herbology; or

(b) Has practiced Chinese Herbology for a minimum of five (5) years prior to the effective date of these regulations and has completed at least ten (10) hours of continuing education in Chinese Herbology or related courses in the two (2) year period prior to receiving the Acupuncture Level II license; and

(c) Applies for and receives his or her Acupuncture Level II license within two (2) years of the effective date of these regulations.

4707.4 A licensed acupuncturist who is permitted to practice Chinese Herbology pursuant to § 4707.1 shall complete at least ten (10) hours of continuing education related to the practice of Chinese Herbology as part of the thirty (30) hours of continuing education he or she is required to complete pursuant to § 4710.

4708 MANDATORY USE OF DISPOSABLE NEEDLES

4708.1 A licensed acupuncturist shall use only sterile, disposable needles in performing any care, treatment or service on a patient.

4708.2 Used disposable acupuncture needles shall be placed in a rigid, puncture-proof, sealable container. The container shall be sealed and labeled as a disposal container and shall be labeled as bio-hazardous material. The disposal container shall be wiped with a disinfectant if blood or other bodily fluids are spilled on the outside of the container. The acupuncturist shall dispose of the container pursuant to the requirements of the District of Columbia and federal laws governing the disposal of medical waste and biohazard materials.

4709 PREPARATION OF PATIENT RECORDS; ELECTRONIC RECORDS; ACCESS TO OR RELEASE OF INFORMATION; CONFIDENTIALITY, TRANSFER OR DISPOSAL OF RECORDS

4709.1 The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(a) "Authorized representative" means a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary

benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) shall be deemed to be an authorized representative.

(b) "Patient" means any person who is the recipient of acupuncture.

4709.2 Acupuncturists shall prepare contemporaneous, permanent professional treatment records. Acupuncturists shall also maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills, and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of three years from the date of the most recent entry.

(a) To the extent applicable, professional treatment records shall reflect:

(1) The dates of all treatments;

(2) The patient complaint;

(3) The history;

(4) Progress notes;

(5) Any orders for tests or consultations and the results thereof;

(6) Documentation indicating that informed consent was given by the patient;

(7) Findings from examinations;

(8) If a physician or other licensed health care practitioner has referred a patient for acupuncture, an indication that a referral or diagnosis was made, including the name of the referring professional; and

(9) Documentation of any recommendations made to a patient for the use of practices or products that facilitate health.

(b) Corrections or additions may be made to an existing record, provided that each change is clearly identified as such, dated and initialed by the licensee;

(c) A patient record that is prepared and maintained electronically shall be prepared and maintained as follows:

(1) The patient record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;

(2) The entry made by the acupuncturist shall be made contemporaneously with the treatment and shall contain the date of service, date of entry, and full printed name of the treatment provider. The acupuncturist shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include date of the "signing";

(3) The acupuncturist may dictate a dated entry for later transcription. The transcription shall be dated and identified as "preliminary" until reviewed, finalized and dated by the acupuncturist as provided in § 4709.2(c)(2);

(4) The electronic record system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file;

(5) The electronic record system shall be designed in such manner that after "signing" by means of the CPC, the existing entry cannot be changed in any manner. Notwithstanding the permanent status of a prior entry, a new entry may be made at any time and may indicate correction to a prior entry;

(6) Where more than one acupuncturist is authorized to make entries into the electronic record of a patient, the acupuncturist responsible for the acupuncture practice shall assure that each such person obtains a CPC and uses the file program in the same manner; and

(7) A copy of each day's entry, identified as preliminary or final as applicable, shall be made available to a physician responsible for the patient's care or to a representative of the Board, no later than ten (10) days after a request for the record, or to a patient within thirty (30) days of the request or promptly in the event of emergency.

4709.3 Acupuncturists shall provide access to professional treatment records to a patient or the patient’s authorized representative in accordance with the following:

(a) No later than thirty (30) days from receipt of a request from a patient or an authorized representative, the acupuncturist shall provide a copy of the professional treatment record, and/or billing records as may be requested. The record shall include all pertinent objective data including test results as applicable, as well as any subjective information.

(b) Unless otherwise required by law, an acupuncturist may, if a patient requests, provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. An acupuncturist may charge a reasonable fee for the preparation of a summary, which has been provided in lieu of the actual record, which shall not exceed the cost allowed by § 4709.3(c) for that specific record.

(c) Acupuncturists may require that a record request be in writing and may charge a reasonable fee for the reproduction of records.

(d) If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the acupuncturist shall provide a transcription at no cost to the patient.

(e) The acupuncturist shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4709.4 Acupuncturists shall maintain the confidentiality of professional treatment records, except that:

(a) The acupuncturist shall release patient records as directed by a subpoena issued by the Board. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the acupuncturist, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the acupuncturist shall also provide a certified translation.

(b) The acupuncturist shall release information as required by law or regulation.

(c) The acupuncturist, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or has been asked to provide treatment to the patient, or whose expertise may assist the acupuncturist in his or her rendition of professional services.

4709.5 Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the acupuncturist shall:

(a) Secure and maintain a current written authorization, bearing the signature of the patient or an authorized representative;

(b) Assure that the scope of the release is consistent with the request; and

(c) Forward the records to the attention of the specific individual identified or mark the material "Confidential."

4709.6 If an acupuncturist ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the acupuncturist or designee shall:

(a) Establish a procedure by which patients can obtain a copy of the treatment records or acquiesce in the transfer of those records to another licensee who is assuming responsibilities of the practice. However, an acupuncturist shall not charge a patient, pursuant to § 4709.3(c), for a copy of the records, when the records will be used for purposes of continuing treatment or care.

(b) Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records.

4710 CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

4710.1 In order to renew a license, an acupuncturist shall confirm on the renewal application that he or she has completed at least thirty (30) hours of continuing education through any of the following continuing education methods:

(a) Successfully completing a continuing education course that has been approved by NCCAOM or by boards or committees regulating acupuncture in other states;

(b) Successfully completing up to fifteen (15) hours of a distance learning course approved by NCCAOM; or

(c) Successfully completing continuing education courses or programs that are pre-approved by the Board.

4710.2 Beginning with the renewal period ending December 31, 2018, two (2) of the thirty (30) hours of approved continuing education shall relate to cultural competence or appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender nonconforming, queer, or questioning their sexual orientation or gender identity and expression (LGBTQ) and shall meet the requirement of § 4710.1. Continuing education hours that are completed in cultural competence and appropriate clinical treatment specifically for

individuals who are LGBTQ shall, at a minimum, provide information and skills to enable a licensed acupuncturist to care effectively and respectfully for patients who identify as LGBTQ, which may include:

(a) Specialized clinical training relevant to patients who identify as LGBTQ, including training on how to use cultural information and terminology to establish clinical relationships;

(b) Training that improves the understanding and application, in a clinical setting, of relevant data concerning health disparities and risk factors for patients who identify as LGBTQ;

(c) Training that outlines the legal obligations associated with treating patients who identify as LGBTQ;

(d) Best practices for collecting, storing, using, and keeping confidential, information regarding sexual orientation and gender identity;

(e) Best practices for training support staff regarding the treatment of patients who identify as LGBTQ and their families;

(f) Training that improves the understanding of the intersections between systems of oppression and discrimination and improves the recognition that those who identify as LGBTQ may experience these systems in varying degrees of intensity; and

(g) Training that addresses underlying cultural biases aimed at improving the provision of nondiscriminatory care for patients who identify as LGBTQ.

4710.3 The Board may approve upon consultation with, and advice from, the Advisory Committee on Acupuncture continuing education credits obtained through methods other than described in § 4710.1.

(a) A licensed acupuncturist may accrue no more than a combined total of six hours of continuing education credits under § 4710.3(b) as part of the overall requirement of thirty (30) hours of continuing education required in § 4710.1;

(b) The methods through which a licensed acupuncturist may obtain continuing education credits other than as described in § 4710.1 are as follows:

(1) *Pro bono* activities consisting of work for the provision of acupuncture services provided through an organization offering humanitarian services to:

(i) Victims of an emergency situation or catastrophic disaster area;

(ii) Low income or underserved areas or populations in the District;

(iii) Special needs populations in the District; or

(iv) Active duty military personnel in the United States Armed Services.

(2) A licensed acupuncturist may accrue a maximum of three (3) hours of continuing education credit for *pro bono* activities, only upon the following conditions:

(i) Upon completion of the *pro bono* activity, the licensed acupuncturist shall obtain from the facility written documentation of completion of pro bono hours including:

(A) The name of the facility;

(B) The address where the *pro bono* work was provided;

(C) The type of work that was done;

(D) The number of hours of actual work provided for which the licensee desires credit hours; and

(E) A statement guaranteeing that the work provided no financial benefit to licensee.

(3) Publishing a research-based article in a nationally recognized, peer-reviewed journal for which a licensed acupuncturist may accrue no more than three hours of continuing education credit.

4711 RE-ENTRY TO PRACTICE

4711.1 In the event a licensed acupuncturist is absent from the clinical practice of acupuncture for more than two consecutive years, the acupuncturist shall comply with a re-entry plan as determined by the Board according to the Board's policy (as amended from time to time) on re-entry to active practice.

4712 [RESERVED]

4713 [RESERVED]

4714 [RESERVED]

4715 [RESERVED]

4716 DUTIES OF ADVISORY COMMITTEE ON ACUPUNCTURE

4716.1 The Committee shall advise the Board on all matters pertaining to this chapter.

4716.2 The Committee shall provide the Board with substantive assistance in the Board's review of complaints and further assist the Board in responding to questions about acupuncturists and acupuncture practice referred to the Committee by the Board and make recommendations to the Board regarding the appropriate action to be taken.

4716.3 At the request of the Board, the Committee shall make its members available to testify at hearings and participate in settlement conferences involving an acupuncturist.

4716.4 The Committee shall submit to the Board an annual report of its activities.

4799 DEFINITIONS

4799.1 As used in this chapter, the following terms shall have the meanings ascribed:

ACAOM - Accreditation Commission for Acupuncture and Oriental Medicine.

Act - the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.).

Acupuncture program - a course of study in acupuncture that is at least three (3) years long and which is in addition to and separate from a baccalaureate degree program.

Acupuncturist - an individual licensed by the Board to perform acupuncture services.

Adjunctive therapies - those practices taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses that are complementary to the performance of acupuncture.

Applicant - a person applying for a license to practice acupuncture under this chapter.

Board - the Board of Medicine, established by § 203(a) of the Act (D.C. Official Code § 3-1202.03(a)).

Chinese Herbology - the administration or recommendation of botanical, mineral, or animal substances, including prepared and raw forms of single herbs or formulas tailored to the individual patient, which often uses all parts of a plant. Chinese Herbology does not include the injection of herbs.

Committee - the Advisory Committee on Acupuncture, established by § 203(a)(2) of the Act (D.C. Official Code § 3-1202.03(a)(2)).

Electroacupuncture - the therapeutic use of weak electric currents at acupuncture loci to diagnose or to treat diseases or conditions.

Glandulars - non-prescriptive supplements that are derived from glands.

Gua sha - scraping applied to the surface of the skin with a round edged tool for therapeutic purposes.

Mechanical stimulation - stimulation on or near the surface of the body according to principles of Oriental medicine by means of apparatus or instrument.

Moxibustion - the therapeutic use of thermal stimulus on or near the surface of the body according to principles of Oriental medicine by burning artemisia alone or artemisia formulations.

NCCAOM - National Certification Commission for Acupuncture and Oriental Medicine.

Oriental dietary therapy - dietary and nutritional counseling and the recommendation of foods for therapeutic purposes.

Oriental medicine - a whole medical system originating in East Asia that aims to treat disease and support the body's ability to heal itself with a diverse range of traditional and modern therapeutic interventions.

Qigong - breathing techniques and exercises that promote health.

Sterilize or **sterilization** - the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Surface stimulation - the application of purposeful stimuli to the surface of the body.

Tuina - a form of massage therapy based on traditional Oriental medical theories using or incorporating traction, manipulation of acupressure points, acupoint stimulation, and joint mobilization for therapeutic purposes.

4799.2 The definitions in § 4099 of Chapter 40 of this title are incorporated by reference into and are applicable to this chapter.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FOURTH PROPOSED RULEMAKING

RULEMAKING 3-2014-01 - UTILITY CONSUMER BILL OF RIGHTS

FORMAL CASE NO. 1140, IN THE MATTER OF THE INVESTIGATION INTO THE ESTABLISHMENT OF A PURCHASE OF RECEIVABLES PROGRAM FOR NATURAL GAS SUPPLIERS AND THEIR CUSTOMERS 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 §§ 2-505 (2016 Repl.) and 34-802 (2016 Repl.), hereby gives notice of its intent to amend Chapter 3 (Consumer Rights and Responsibilities), of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the Consumer Bill of Rights and Responsibilities (CBOR).

2. Subsection 327.37 of Section 327 (Consumer Protection Standards Applicable to Energy Suppliers), sets forth the process for how the Natural Gas Utility handles customer enrollments with a competitive energy supplier.

3. The Commission gives notice of its intent to take final rulemaking action in not less than thirty (30) days after publication of this Notice of Proposed Rulemaking (NOPR) in the *D.C. Register*.

4. The Commission published three previous Notices of Proposed Rulemakings on June 30, 2017, December 22, 2017, and March 23, 2018, amending certain rules in the CBOR, including Subsection 327.37.[1] In response to comments, the Commission proposes revisions to Subsection 327.37. This fourth proposed rulemaking supersedes the previous versions as they relate to Subsection 327.37.

Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Subsection 327.37, of Section 327, CONSUMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS, is amended as follows:

327.37 The Natural Gas Utility shall drop a customer from its current supplier when another supplier enrolls the customer and shall process an electronic transaction for enrollment regardless of whether the customer is currently supplied by another supplier or by the utility. Enrollments shall be processed on a first-in basis during any given month.

[1] 64 DCR 006128 (June 30, 2017); 64 DCR 013113 (December 22, 2017); 65 DCR 002979 (March 23, 2018).

5. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit comments, in writing, not later than thirty (30) days after publication of this rulemaking in the *D.C. Register*, with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. Copies of these proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address or at psc-commissionsecretary@dc.gov. Any persons with questions regarding this rulemaking should call (202) 626-5150.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF THIRD EMERGENCY RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl. & 2017 Supp.)) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the adoption of the following emergency rulemaking amending Chapters 1 (Administration and Enforcement), 14 (Exterior Walls), 26 (Plastic), and 35 (Referenced Standards) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes Supplement of 2013) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessitated by the immediate need to update and revise provisions in the D.C. Building Code, as defined in 12-A DCMR § 101.2, relating to exterior wall materials and related sections. It will also eliminate a recently added requirement to list, prior to the first inspection, the subcontractors that will work on a job requiring a permit. Permanent adoption of this action requires the approval of the Council of the District of Columbia. A third Notice of Emergency Rulemaking is required in order for the publication process of the Notice of Final Rulemaking to be completed. Identical language was adopted on August 10, 2017 in a Notice of Emergency and Proposed Rulemaking, published at 64 DCR 9640 (September 29, 2017). A Notice of Second Emergency Rulemaking was adopted on December 1, 2017 and published in the *D.C. Register* at 65 DCR 1727. No comments were received.

This emergency rulemaking was adopted on April 5, 2018, and became effective on that date. Pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl. & 2016 Supp.)), this emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of adoption and will expire on August 4, 2018.

To clearly show the changes being made to the Construction Codes Supplement, additions are shown in underlined text and deletions are shown in ~~strikethrough~~ text.

Title 12-A, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:

Chapter 1, ADMINISTRATION AND ENFORCEMENT, Section 105, PERMITS, is amended as follows:

105.3 Permit Applications

Amend Section 105.3, Subsection 11, of the Building Code to read as follows:

11. Provide name and contact information, including a valid electronic mailing address, for the general contractor or construction manager ~~and each subcontractor~~, if known, when the

application is filed. If the information is not known at the time of filing, the information shall be provided to the *code official* as soon as the general contractor or construction manager ~~or any subcontractor~~is selected, but no later than the scheduling of the first inspection.

Chapter 14, EXTERIOR WALLS, Section 1403, PERFORMANCE REQUIREMENTS, is amended as follows:

Strike Section 1403.5, Vertical and lateral flame propagation, of the International Building Code in its entirety, and insert a new Section 1403.5 in the Building Code in its place to read as follows:

1403.5 Vertical and lateral flame propagation. Exterior walls on buildings of Type I, II, III or IV construction that are greater than 40 feet (12 192 mm) in height above grade plane and contain a combustible *water-resistive barrier* shall be tested in accordance with and comply with the acceptance criteria of NFPA 285. For the purposes of this section, fenestration products and flashing of fenestration products shall not be considered part of the *water-resistive barrier*.

Exceptions:

1. Walls in which the *water-resistive barrier* is the only combustible component and the *exterior wall* has a wall covering of brick, concrete, stone, terra cotta, stucco or steel with minimum thicknesses in accordance with Table 1405.2.

2. Walls in which the *water-resistive barrier* is the only combustible component and the *water-resistive barrier* has a peak heat release rate of less than 150 kW/m^2, a total heat release of less than 20 MJ/m^2 and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and has a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m^2.

Section 1405, INSTALLATION OF WALL COVERINGS, is amended as follows:

Amend Table 1405.2, MINIMUM THICKNESS OF WEATHER COVERINGS, of the International Building Code to strike the entry for "Precast stone facing" in its entirety, and amend the entry for "Minimum Thickness" of "Porcelain Tile" to read as follows:

TABLE 1405.2
MINIMUM THICKNESS OF WEATHER COVERINGS

Covering Type	Minimum Thickness (inches)
~~Precast stone facing[e]~~	~~0.625~~
Porcelain tile	~~0.025~~ 0.25

~~e. Includes scratch coat, setting bed, and precast stone.~~

Chapter 26, PLASTIC, Section 2603, FOAM PLASTIC INSULATION, is amended as follows:

Strike Section 2603.5.5, Vertical and lateral fire propagation, in the International Building Code in its entirety and insert a new Section 2603.5.5 in the Building Code in its place to read as follows:

~~**2603.5.5 Vertical and lateral fire propagation.** Exterior wall assemblies containing foam plastic insulation shall provide protection against vertical and lateral flame propagation in accordance with Sections 2603.5.5.1, 2603.5.5.2, or 2603.5.5.3.~~

~~**Exceptions:**~~

~~1. One-story buildings.~~

~~2. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.~~

~~**2603.5.5.1 Testing to NFPA 285.** Exterior wall assemblies shall be tested in accordance with NFPA 285 and comply with the acceptance criteria of NFPA 285.~~

~~**2603.5.5.2 Non Combustible Covering.** Walls assemblies where the foam plastic insulation is covered on each face by a minimum of 1 inch (25mm) thickness of masonry or concrete and meeting one of the following:~~

~~1. There is no air space between the insulation and the concrete or masonry.~~

~~2. The insulation has a flame spread index of not more than 25 as determined in accordance with ASTM E 84 or UL 723 and the maximum air space between the insulation and the concrete or masonry is not more than 1-inch (25mm).~~

~~**2603.5.5.3 Fireblocking.** Concealed spaces within exterior wall assemblies shall be fireblocked in such a manner so as to cut off the concealed openings (both vertical and horizontal), and form an effective barrier between floors.~~

~~**2603.5.5.3.1 Location of fireblocking.** Fireblocking shall be installed within concealed spaces of exterior wall assemblies at every floor level or at maximum vertical intervals not exceeding 20 feet. Fireblocking shall be installed at horizontal intervals not~~

~~exceeding 10 feet in exterior walls of combustible construction and 65 feet in exterior walls of noncombustible construction. Fireblocking required in this section shall extend through any concealed air space and through any foam plastic material in noncombustible construction.~~

~~**2603.5.5.3.2 Materials**. Materials used for fireblocking in exterior wall assemblies shall comply with one or more of the following:~~

~~1. Materials demonstrated to remain in place and that prevent the passage of flame and hot gases sufficient to ignite cotton waste where subjected to ASTM E 119 or UL 263 time-temperature conditions under a minimum positive pressure differential of 0.01 inch (2.49 Pa) of water at the location of the penetration for a time period of 15 minutes.~~

~~2. Gypsum board having a minimum thickness of 1/2 inch (12.7 mm) provided all joints have continuous support.~~

~~3. Sheet steel not less than 26 ga (0.38 mm) thickness provided all joints have continuous support.~~

~~4. Cement-based millboard having a minimum thickness of ¼ -inch (6.4 mm).~~

~~5. Batts or blankets of mineral wool, mineral fiber or other approved materials installed in such a manner to securely remain in place.~~

~~6. Cellulose insulation installed as tested for the specific application.~~

~~7. In buildings of noncombustible construction, fire-retardant wood in accordance with Section 603.1.~~

~~8. In buildings of combustible construction, materials listed in Section 718.2.1.~~

2603.5.5 Vertical and lateral fire propagation. The exterior wall assembly shall be tested in accordance with and comply with the acceptance criteria of NFPA 285.

Exceptions:

1. One-story buildings complying with Section 2603.4.1.4.

2. Wall assemblies where the foam plastic insulation is covered on each face by not less than 1-inch (25 mm) thickness of masonry or concrete and meeting one of the following:

2.1. There is no airspace between the insulation and the concrete or masonry.

2.2. The insulation has a flame spread index of not more than 25 as determined in accordance with ASTM E84 or UL 723 and the maximum airspace between the insulation and the concrete or masonry is not more than 1 inch (25 mm).

Chapter 35, REFERENCED STANDARDS, is amended as follows:

Amend Chapter 35, REFERENCED STANDARDS, of the Building Code to read as follows:

Strike the Standard Reference Number ASTM/E 84-09 and insert the new Standard Reference Number ASTM/E 84-2013A in its place, and add code references 1403.5 and 2603.5.5 to this entry; and further, strike the Standard Reference Number ASTM/E 1354-09 and insert the new Standard Reference Number ASTM/E 1354-2013 in its place, and add code reference 1403.5 to this entry, to read as follows:

ASTM	ASTM International 100 Barr Harbor Drive West Conshohocken, PA 19428-2959	
Standard Reference Number	Title	Referenced in code section number
~~E 84 – 09~~ E84-2013A	Test Methods for Surface Burning Characteristics of Building Materials.	202, 402.6.4.4, 406.7.2, 703.5.2, 720.1, 720.4, 803.1.1, 803.1.4, 803.9, 803.13, 806.5, 1404.12.1, 1407.9, 1407.10.1, 1409.9, 1409.10.1, 1509.6.2, 1509.6.3, 2303.2, 2603.3, 2603.4.1.13, 2603.7, 2604.2.4, 2606.3.5.4, 2606.4, 2613.3, 3105.3, 1403.5, 2603.5.5
~~E 1354 – 09~~ E1354-2013	Standard Test Method for Heat and Visible Smoke Release Rates for	424.2, 1403.5

	Materials and Products Using an Oxygen Consumption Calorimeter	

Amend the entry for Standard Reference Number UL/723-2008 to add code references 1403.5 and 2603.5.5 to this entry, to read as follows:

UL	Underwriters Laboratories, Inc. 333 Pfingsten Road Northbrook, IL 60062-2096	
Standard Reference Number	Title	Referenced in code section number
723—2008	Standard for Test for Surface Burning Characteristics of Building Materials	202, 402.6.4.4, 406.7.2, 703.5.2, 720.1, 720.4, 803.1.1, 803.1.4, 803.9, 803.13, 806.5, 1404.12.1, 1407.9, 1407.10.1, 1409.9, 1409.10.1, 1509.6.2, 1509.6.3, 2303.2, 2603.3, 2603.4.1.13, 2606.3.5.4, 2603.7, 2604.2.4, 2606.4, 2613.3, 3105.3, 1403.5, 2603.5.5

Strike the entry for Standard Reference Number NFPA 285-06 in its entirety and insert an entry for new Standard Reference Number NFPA 285-12 in its place, to read as follows;

NFPA	National Fire Protection Association 1 Batterymarch Park Quincy, MA 02169-7471	
Standard Reference Number	Title	Referenced in code section number
~~285—06~~ 285-12	Standard Fire Test Method for the Evaluation of Fire Propagation Characteristics of Exterior Nonload-bearing Wall Assemblies Containing Combustible Components ~~Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Nonload-bearing Wall Assemblies Containing Combustible Components~~	718.2.6, 1407.10.4, 1409.10.4,1509.6.2, 1403.5 2603.5.5

All persons desiring to comment on these proposed regulations should submit comments in writing to Jill Stern, Chairperson, Construction Codes Coordinating Board, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., Room 5100, Washington, D.C. 20024, or via e-mail at jill.stern@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8944. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rulemaking requested.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl.)) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the adoption of the following emergency rulemaking amending Chapter 1 (Administration and Enforcement) of Title 12 (D.C. Construction Codes Supplement of 2013), Subtitle A (Building Code Supplement of 2013) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessitated by the immediate need to revise provisions in the 2013 District of Columbia Building Code to clarify the requirements for registered design professionals for new construction, repair, expansion, addition or alteration projects submitted for permit.

This emergency rulemaking was adopted on January 5, 2018, to become effective immediately. Pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), this emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness, and will expire on May 5, 2018.

To clearly show the changes being made to the Construction Codes Supplement, additions are shown in underlined text and deletions are shown in ~~strikethrough~~ text.

The process for submitting comments on the proposed rulemaking is detailed on the final page of this Notice.

The Chairperson also hereby gives notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to Section 10(a) of the Act (D.C. Official Code § 6-1409(a)), the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

Chapter 1, ADMINISTRATION AND ENFORCEMENT, of Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:

Section 105, PERMITS, is amended as follows:

Strike Section 105.3.10 in the 2013 District of Columbia Building Code in its entirety and insert a new Section 105.3.10 in the 2013 District of Columbia Building Code in its place to read as follows:

105.3.10 Design Professional in Responsible Charge. All design for new construction work, alteration, repair, expansion, addition or modification work involving the practice of professional architecture shall be prepared only by an architect licensed by the District and work involving the practice of professional engineering shall be prepared only by an engineer licensed by the District. All drawings, computations, and specifications required for a building permit application for such work shall be prepared by or under the direct supervision of a licensed architect or licensed engineer and shall bear the signature and seal of the architect or the engineer.

105.3.10.1 Exemptions. The professional services of a registered architect, professional engineer or an interior designer are not required for the following:

1. Work done under any of the exemptions from registration provided for in the laws of the District of Columbia governing the professional registration of architects, engineers and interior designers.

2. Nonstructural alteration of any *building* of R-3 occupancies or of any *building* under the jurisdiction of the *Residential Code*.

3. Preparation of drawings or details for cabinetry, architectural millwork, furniture, or similar interior furnishings, for any work to provide for their installation or for any work exempt from building permit by Section 105.2.

4. Preparation of drawings or details for the installation of water and sewer *building* connections to a single family residential *structure*. The *code official* is authorized to accept drawings and details prepared by a licensed plumber.

105.3.10.2 Substitute Design Professional. If the circumstances require, the *owner* shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge.

105.3.10.3 Attestation. An application for a building permit requiring a stamp from a design professional shall include an attestation by the design professional in responsible charge stating as follows:

(a) For architects: "I am responsible for determining that the architectural designs included in this application are in compliance with all laws and regulations of the District of Columbia. I have personally prepared, or directly supervised the development of, the architectural designs included in this application."

~~(b) For engineers: "I am responsible for determining that the engineering designs included in this application are in compliance with all laws and regulations of the District of Columbia. I have personally prepared, or directly supervised the development of, the engineering designs included in this application."~~

105.3.10 Registered Design Professional. The design of work for new construction, repair, expansion, addition or alteration projects submitted for permit shall comply with Sections 105.3.10.1 through 105.3.10.6 as applicable.

105.3.10.1 Architectural Services. Where the project involves the practice of architecture, as defined by D.C Official Code § 47-2853.61 (2012 Repl.), the corresponding permit documents shall be prepared by an architect licensed to practice architecture in the District of Columbia. All plans, computations, and specifications required to be submitted in connection with a permit application for such architectural work shall be prepared by or under the direct supervision of an architect with a valid and unexpired District of Columbia architecture license and shall bear the architect's signature and seal in accordance with the laws of the District of Columbia.

105.3.10.2 Engineering Services. Where the project involves the practice of engineering, as defined by D.C Official Code § 47-2853.131 (2012 Repl.), the corresponding permit documents shall be prepared by a professional engineer licensed to practice engineering in the District of Columbia. All plans, computations, and specifications required to be submitted in connection with a permit application for such engineering work shall be prepared by or under the direct supervision of a professional engineer with a valid and unexpired District of Columbia engineer license and shall bear the engineer's signature and seal in accordance with the laws of the District of Columbia.

Exception: An architect licensed in the District of Columbia is authorized to perform engineering work that is incidental to the practice of architecture, as permitted by D.C Official Code § 47-2853.61 (2012 Repl.).

105.3.10.3 Interior Design Services. Plans for non-structural alterations and repairs of a building, including the layout of interior spaces, which do not adversely affect any structural member, any part of the structure having a required fire resistance rating, or the public safety, health or welfare, and which do not involve the practice of architecture and engineering as defined by D.C Official Code §§ 47-2853.61 and 47-2853.131 (2012 Repl.), shall be deemed to comply with this section when such plans are prepared, signed and sealed by an interior designer licensed and registered in the District of Columbia in accordance with D.C Official Code § 47-2853.101 (2012 Repl.).

105.3.10.4 Exemptions. The professional services of a licensed architect, professional engineer or interior designer are not required for the following:

1. Work done under any of the exemptions from registration provided for in the laws of the District of Columbia governing the licensure of architects, professional engineers and interior designers.

2. Nonstructural alteration of any building of R-3 occupancies or of any building under the jurisdiction of the *Residential Code*.

3. Preparation of drawings or details for cabinetry, architectural millwork, furniture, or similar interior furnishings, for any work to provide for their installation or for any work exempt from permit by Section 105.2.

4. Drawings or details for the installation of water and sewer building connections to a single family residential structure prepared by a master plumber licensed pursuant to D.C Official Code §§ 47-2853.121 *et seq.* (2012 Repl.).

105.3.10.5. Registered Design Professional in Responsible Charge. The *code official* is authorized to require the *owner* to engage and designate on the permit application a *registered design professional* who shall act as the *registered design professional in responsible charge*. If the circumstances require, the *owner* shall designate a substitute *registered design professional in responsible charge* who shall perform the duties required of the *original registered design professional in responsible charge*. Where a *registered design professional in responsible charge* is required, the *code official* shall be notified in writing by the *owner* if the *registered design professional in responsible charge* is changed or is unable to continue to perform the duties. The *registered design professional in responsible charge* shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the *building*.

105.3.10.6 Attestations Required.

105.3.10.6.1 Registered Design Professional. The signature and seal of the *registered design professional*, where required by and in accordance with Section 105.3.10, shall serve as attestation of the following:

1. For architects: "I am responsible for determining that the architectural designs included in this application are in compliance with all relevant laws and regulations of the District of Columbia. I have personally prepared, or directly supervised the preparation of, the architectural designs included in this application."

2. For engineers: "I am responsible for determining that the engineering designs included in this application are in compliance with all relevant laws and regulations of the District of Columbia. I have personally prepared, or directly supervised the preparation of, the engineering designs included in this application."

105.3.10.6.2 Registered Design Professional in Responsible Charge. Where the *code official* determines that a *registered design professional in responsible charge* is required for any project, an attestation sealed and signed by the *registered design professional in responsible charge* engaged by the *owner* shall be submitted prior to the issuance of any and all *certificate(s) of occupancy* for the project. The attestation shall identify the *registered design professional in charge* by name and registration number, shall identify the project or portion thereof being attested to, and shall state, to the *code official*'s satisfaction, that the project or portion thereof has been completed in a manner that is substantially compatible with the design of the building that was the basis of the corresponding permit. Furthermore, the attestation shall state that changes from such permit documents, including but not limited to submittal documents prepared by others during the course of construction, and phased and deferred submittal items, have been reviewed and coordinated by the attesting *registered design professional in responsible charge.*

All persons desiring to comment on these proposed regulations should submit comments in writing to Jill Stern, Chairperson, Construction Codes Coordinating Board, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., Room 5100, Washington, D.C. 20024, or via e-mail at jill.stern@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the website of the District of Columbia Office of Documents and Administrative Issuances at:
http://www.dcregs.dc.gov/Gateway/IssueList.aspx.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-046
June 1, 2018

SUBJECT: Designation of Special Event Areas for NHL Stanley Cup Finals

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 792, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. This Order applies to certain special event activities associated with post-season hockey games that will be held at the Capital One Arena during the 2018 National Hockey League Finals. The above referenced special event activities are between May 29, 2018 and June 11, 2018.

2. For purposes of this Order, the term "post-season hockey game" means a National League Hockey game held at the Capital One Arena after the conclusion of the regular National Hockey League season in order to determine the winner of the Lord Stanley Cup.

3. Between Tuesday, May 29, 2018, 11:00 p.m. and Monday, June 11, 2018, 3:00 p.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

    a. F Street, NW, between 5th and 7th Streets, NW;

    b. 6th Street, NW, between E and H Streets, NW; and

    c. G Street, NW, between 5th and 6th Streets, NW.

4. On Saturday, June 2, 2018, the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

    a. Between the hours of 6:00 a.m. and 11:59 p.m.:

i. G Street, NW, between 7th and 9th Streets, NW;
ii. 8th Street, NW, between G and H Streets, NW;

b. Between the hours of 3:30 p.m. and 11:59 p.m.:

i. F Street, NW, between 7th and 9th Streets, NW;
ii. 8th Street, NW, between E and F Streets, NW; and
iii. 7th Street, NW, between E and H Streets, NW.

5. On Monday, June 4, 2018, and Sunday, June 10, 2018, between the hours of 3:00 p.m. and 12:00 a.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

a. G Street, NW, between 7th and 9th Streets, NW;
b. 8th Street, NW, between G and H Streets, NW;
c. F Street, NW, between 7th and 9th Streets, NW;
d. 8th Street, NW, between E and F Streets, NW; and
e. 7th Street, NW, between E and H Streets, NW.

6. The Government of The District of Columbia - Executive Office of the Mayor is authorized to operate said special event area to conduct necessary and appropriate activities in aid of the festival grounds and staging areas for the 2018 National Hockey League Finals.

7. This Order is an authorization for the closure of the designated streets only, and the operating entities shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated streets. All building, health, life safety, and use of public space requirements shall remain applicable to the Special Event Areas designated by this Order.

8. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 29, 2018.

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 2018-047
June 6, 2018

SUBJECT: Designation of Special Event Areas for NHL Stanley Cup Finals

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 792, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. This Order applies to certain special event activities associated with post-season hockey games that will be held at the Capital One Arena during the 2018 National Hockey League Finals. The above referenced special event activities are between May 29, 2018 and June 11, 2018.

2. For purposes of this Order, the term "post-season hockey game" means a National League Hockey game held at the Capital One Arena after the conclusion of the regular National Hockey League season in order to determine the winner of the Lord Stanley Cup.

3. Between Tuesday, May 29, 2018, 11:00 p.m. and Monday, June 11, 2018, 3:00 p.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

    a. F Street, NW, between 5th and 7th Streets, NW;

    b. 6th Street, NW, between E and H Streets, NW; and

    c. G Street, NW, between 5th and 6th Streets, NW.

4. On Saturday, June 2, 2018, the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

    a. Between the hours of 6:00 a.m. and 11:59 p.m.:

        i. G Street, NW, between 7th and 9th Streets, NW;
        ii. 8th Street, NW, between G and H Streets, NW;

    b. Between the hours of 3:30 p.m. and 11:59 p.m.:

        i. F Street, NW, between 7th and 9th Streets, NW;
        ii. 8th Street, NW, between E and F Streets, NW; and
        iii. 7th Street, NW, between E and H Streets, NW.

5. On Monday, June 4, 2018, between the hours of 3:00 p.m. and 11:59 p.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

    a. G Street, NW, between 7th and 9th Streets, NW;

b. 8th Street, NW, between G and H Streets, NW;
c. F Street, NW, between 7th and 9th Streets, NW;
d. 8th Street, NW, between E and F Streets, NW; and
e. 7th Street, NW, between E and H Streets, NW.

6. On Thursday, June 7, 2018, 3:00 p.m., through Friday, June 8, 2018, 2:00 a.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

a. G Street, NW, between 7th and 9th Streets, NW;
b. 8th Street, NW, between G and H Streets, NW;
c. F Street, NW, between 7th and 9th Streets, NW;
d. 8th Street, NW, between E and F Streets, NW; and
e. 7th Street, NW, between E and H Streets, NW.

7. On Sunday, June 10, 2018, 12:00 p.m., through Monday, June 11, 2018, 2:00 a.m., the following areas are hereby designated as a special event area to be used as festival grounds and staging areas:

f. G Street, NW, between 7th and 9th Streets, NW;
g. 8th Street, NW, between G and H Streets, NW;
h. F Street, NW, between 7th and 9th Streets, NW;
i. 8th Street, NW, between E and F Streets, NW; and
j. 7th Street, NW, between E and H Streets, NW.

8. The Government of The District of Columbia - Executive Office of the Mayor is authorized to operate said special event area to conduct necessary and appropriate activities in aid of the festival grounds and staging areas for the 2018 National Hockey League Finals.

9. This Order is an authorization for the closure of the designated streets only, and the operating entities shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated streets. All building, health, life safety, and use of public space requirements shall remain applicable to the Special Event Areas designated by this Order.

10. This Order hereby encourages all Washingtonians to Rock the Red on Thursday, June 7th, as our Capitals take a shot at bringing home their first Stanley Cup.

11. This Order supersedes Mayor's Order 2018-046.

12. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 29, 2018.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JUNE 13, 2018
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Donald Isaac, Sr., Bobby Cato, Rema Wahabzadah,

Protest Hearing (Status) **9:30 AM**
Case # 18-PRO-00023; Supra, LLC t/a Supra, 1013 M Street NW, License #106618, Retailer CR, ANC 2F
Substantial Change (Sidewalk Café with 48 Seats)

Show Cause Hearing (Status) **9:30 AM**
Case # 18-CIT-00009; Pitango Sei, LLC t/a Pitango Gelato and Café, 1841 Columbia Road NW, License #105197, Retailer CR, ANC 1C
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CMP-00732; Red & Black, LLC t/a 12 Twelve DC/Kyss Kyss 1210-1212 H Street NE, License #72734, Retailer CT, ANC 6A
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 18-CIT-00077; Pica Taco, Inc., t/a Pica Taco, 1406 Florida Ave NW License #85707, Retailer DR, ANC 1B
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 18-CIT-00091; La Villa Restaurant, Inc., t/a La Villa Café, 6115 Georgia Ave NW, License #94826, Retailer CR, ANC 4B
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 17-251-00252; St. Ex Group, LLC t/a Café Saint-Ex, 1847 14th Street NW, License #60456, Retailer CT, ANC 1B
Failed to Preserve a Crime Scene

Board's Calendar
June 13, 2018

Show Cause Hearing **10:00 AM**
Case # 17-251-00250; Romyo, LLC t/a Ambassador Restaurant, 1907 9th Street NW, License #90422, Retailer CR, ANC 1B
Operating after Hours, Failed to Follow Security Plan

Show Cause Hearing **11:00 AM**
Case # 17-CMP-00665; Addis Ethiopian Restaurant, LLC, t/a Addis Ethiopian Restaurant, 707 H Street NE, License #97534, Retailer CR, ANC 6C
No ABC Manager on Duty, Failed to Provide Invoices for Purchased Alcoholic Beverages, Purchased Alcohol from an off-premises retailer, Failed to Obtain Importation Permits, Violation of Settlement Agreement

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Show Cause Hearing **1:30 PM**
Case # 17-CC-00117; Li, LLC t/a Mason Inn, 2408 Wisconsin Ave NW, License #104588, Retailer CT, ANC 3B,
Sale to Minor Violation
This hearing has been continued to a date to be determined.

Show Cause Hearing **2:30 PM**
Case # 17-CMP-00137; CLPF-CC Pavilion Operating Co., LLC t/a Embassy Suites, 5335 Wisconsin Ave NW, License #74223, Retailer CH, ANC 3E
Sale to Minor Violation
This hearing has been continued to a date to be determined.

Protest Hearing* **4:30 PM**
Case # 18-PRO-00016; Yegna Restaurant and Lounge, t/a Asefu's Palace, 1920 9th Street NW, License #105977, Retailer CR, ANC 1B
Substantial Change (Increase Seating from 38 Seats to 106 Seats, and Increase Occupancy Load from 38 to 166 on the First and Second Floors of the Establishment)

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to DC Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CEASE AND DESIST AGENDA

WEDNESDAY, JUNE 13, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be issuing an Order to Cease and Desist to the following Licensee for the reason outlined below:

ABRA-100288 – **Lincoln Park Kitchen/Wine Bar** – Retail – C – Restaurant – 106 13th Street SE
[The Licensee did not pay third year payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JUNE 13, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On Wednesday, June 13, 2018 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case# 18-251-00011, Centeno's Restaurant, 827 Kennedy Street N.W., Retailer CR, License # ABRA-090806

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2. Case# 18-251-00032, Aqua Restaurant, 1818 New York Avenue N.E., Retailer CN, License # ABRA-060477

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3. Case# 18-CMP-00119, Kiss Tavern, 637 T Street N.W., Retailer CT, License # ABRA-104710

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4. Case# 18- CMP-00107, Kabin, 1337 Connecticut Avenue N.W., Retailer CT, License # ABRA-091276

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5. Case# 18-251-00115, Don Juan Restaurant & Carryout, 1660 Lamont Street N.W., Retailer CR, License # ABRA-015934

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6. Case# 18-CMP-00117, Victor Liquors, 6220 Georgia Avenue N.W., Retailer A, License # ABRA-088173

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7. Case# 18-CMP-00105, District Taco, 656 Pennsylvania Avenue S.E., Retailer DR, License # ABRA-080832

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8. Case# 18-251-00118, Bar Louie, 707 7th Street N.W., Retailer CR, License # ABRA-084428

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9. Case# 18-CMP-00108, Gold Coast Café & Mart, 5501 Colorado Avenue N.W., Retailer B, License # ABRA-098589

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10. Case# 18-251-00103, El Rincon, 1826 Columbia Road N.W., Retailer CR, License # ABRA-060030

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11. Case# 18-251-00068, RedRocks, 1348 H Street N.E., Retailer CR, License # ABRA-090997

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12. Case# 18-CC-00047, Yes Organic Market, 410 8th Street S.E., Retailer B, License # ABRA-089539

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13. Case# 18-CMP-00116, Maggiano's, 5333 Wisconsin Avenue N.W., Retailer CR, License # ABRA-072256

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14. Case# 18-CMP-00137, Buffalo Wild Wings, 1220 Half Street S.E., Retailer CR, License # ABRA-099597

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15. Case# 18-251-00122, The Green Island Café/Heaven & Hell, 2327 18th Street N.W., Retailer CT, License # ABRA-074503

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16. Case# 18-CC-00056, Lyman's, 3720 14th Street N.W., Retailer CT, License # ABRA-090509

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17. Case# 18-CMP-00135, Hen Quarter, 750 E Street N.W., Retailer CR, License # ABRA-076102

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18. Case# 18-CMP-00139, The Ugly Mug Dining Saloon, 723 8th Street S.E., Retailer CR, License # ABRA-071793

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19. Case# 18-CMP-00127, Georgetown Inn-Daily Grill, 1310 Wisconsin Avenue N.W., Retailer CH, License # ABRA-088198

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20. Case # 18-CC-00055, Capitol Hill Wine & Spirits, 323 Pennsylvania Avenue S.E., Retailer A, License # ABRA-100211

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21. Case# 18-CMP-00136, Marvin, 2007 14th Street N.W., Retailer CT, License # ABRA-076166

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JUNE 13, 2018 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review application for Safekeeping of License – Original Request. ANC 1C. SMD 1C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Las Canteras***, 2307 18th Street NW, Retailer CR, License No. 072685.

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2. Review Request to update premises address from 529 14th Street NW to 1332 F Street NW, as designated by DCRA. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Spin***, 529 14th Street NW, Retailer CX, License No. 107858.

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3. Review application for Tasting Permit. ANC 6E. SMD 6E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Angels Share Wines and Liquors***, 1748 7th Street NW, Retailer A Liquor Store, License No. 106207.

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Final Notice of Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of final action taken at its May 24, 2018 emergency board meeting in relocating Precinct #68, Ward 5 Polling Place.

The public is advised that the voting area for Precinct #68 will be changed from**:**

St. Francis Hall
1340 Quincy Street, N.E.
"Reception Hall"

and moved to:

Turkey Thicket Recreation Center
1100 Michigan Avenue, N.E.
"Gymnasium"

Please note that the relocation will be effective beginning with the upcoming June 19, 2018, Mayoral Primary Election. The Board will individually notify all registered voters in the precinct of this change.

For further information, members of the public may contact the Board of Elections at 727-2525.

DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF WAGE AND HOUR

PUBLIC NOTICE

District of Columbia Minimum Wage Increase

Link: DC Minimum Wage Increase Public Notice

Beginning **July 1, 2018**, the minimum wage in the District of Columbia will increase from **$12.50** per hour to **$13.25** per hour for all workers, regardless of size of employer. **Mayor Muriel Bowser signed the "Fair Shot Minimum Wage Amendment Act of 2016 into law on June 27, 2016** after unanimous passage by the D.C. Council. The law also includes provisions to further increase the minimum wage in subsequent years.

Under the new law, the minimum wage will progressively increase to $15.00 per hour on July 1, 2020, then increasing each successive year starting in 2021 in proportion to the annual average increase in the Consumer Price Index.

As of July 1, 2018 the base minimum wage for tipped employees will **increase from $3.33 per hour to $3.89**. However, if an employee's hourly tip earnings (averaged weekly) added to the base minimum wage does not equal the District's full minimum wage, the employer must pay the difference. **For employees who receive gratuities, the minimum wage will progressively increase to $5.00 by 2020, then increasing each successive year starting in 2021 in proportion to the annual average increase in the Consumer Price Index.**

The Department of Employment Services will produce and send new D.C. Minimum Wage workplace posters to all District employers. Every employer subject to the provisions of the Act must post the D.C. Minimum Wage Poster in or about the premises at which any covered employee is employed.

NOTE:

Posters are also available by accessing does.dc.gov/services/office-wage-hour-compliance

Please direct all inquiries to:

Office of Wage Hour
202-671-1880
4058 Minnesota Avenue NE, Suite 3600
Washington, DC 20019

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A
VOLUNTARY CLEANUP ACTION PLAN

VCP2017—052 - 2009 8th Street NW
Case No. VCP2017-052

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received a Voluntary Cleanup Action Plan (VCAP) to conduct remedial activities at real property located at 2009 8th Street NW, Washington, DC 20001. The participant in the Voluntary Cleanup Program is 2009 8th Street Apartments LLC, 1420 Spring Hill Road, Suite 420, McLean, Virginia 22102. The VCAP identifies the presence of petroleum compounds on the property. The participant intends to redevelop the subject property into a mixed use building.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1B) for the area in which the property is located. The VCAP is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-2289. An electronic copy of the application may be viewed at http://doee.dc.gov/service/vcp-cleanup-sites.

Written comments on the proposed approval of the application must be received by the Voluntary Cleanup Program at the address listed above within twenty-one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2017-052 in any correspondence related to this application.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF AN APPLICATION TO PERFORM VOLUNTARY CLEANUP

132-136 U Street NE
Case No. VCP2018-056

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real property located at 132-136 U Street NE, Washington, DC 20002, is 134 U St NE, LLC, 12150 Annapolis Road, Suite 111, Glenn Dale, Maryland 20769. The application identifies low levels of chlorinated solvents in the soil and groundwater. The applicant intends to redevelop the subject property into a four unit condominium building.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-5E) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-2289. An electronic copy of the application may be viewed at http://doee.dc.gov/service/vcp-cleanup-sites.

Written comments on the proposed approval of the application must be received by the VCP office at the address listed above within twenty-one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2018-056 in any correspondence related to this application.

DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

DC High Water Mark Project

The Department of Energy and Environment (the Department) seeks eligible entities to provide high quality, cost-effective services to identify locations of historic flooding and coordinate with stakeholders on the design, production, and installation of high water mark signs along the Potomac and Anacostia rivers. The amount available for the project is approximately $48,000.00.

Beginning 6/8/2018, 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* and download this RFA and related information from the *Attachments* section.

Email a request to 2018DCHWMRFA.grants@dc.gov with "Request copy of RFA 2018-1820-RRD" 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 Phetmano Phannavong at (202) 439-5715 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Phetmano Phannavong RE:2018-1820-RRD" on the outside of the envelope.

The deadline for application submissions is 7/9/2018, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2018DCHWMRFA.grants@dc.gov.

Eligibility: All of 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: 2018DCHWMRFA.grants@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

Innovative Low Impact Development (LID)

The Department of Energy and Environment (the Department) seeks eligible entities to encourage innovative approaches to stormwater control and treatment in the District's watersheds using low impact development, green infrastructure, or other such ecologically-focused methods to improve water quality. The amount available for the announced projects is $1,515,380.

Beginning 6/8/2018, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to RFA2018LID.2018@dc.gov with "Request copy of RFA 2018-1808-WPD" 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 Stephen Reiling at (202) 617-4733 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Stephen Reiling RE:2018-1808-WPD" on the outside of the envelope.

The deadline for application submissions is 7/16/2018, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to RFA2018LID.2018@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: RFA2018LID.2018@dc.gov.

DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

Solar For All Documentary

The Department of Energy and Environment (the Department) seeks eligible entities to develop a documentary that expresses the Solar for All Program (Program) in a visual format. This creative expression will focus on the grantees, the program participants, challenges, and accomplishments. It will present grantees' experience and solutions developed to overcome the barriers of solar deployment in the District. The amount available for the project is $70,000.

Beginning 06/08/2018 the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to SFAD1818@dc.gov with "Request copy of RFA 2018-1818-EA" 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 Sharon Wise at (202) 430-0156 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Sharon Wise RE:2018-1818-EA" on the outside of the envelope.

The deadline for application submissions is 7/9/2018, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to SFAD1818@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: SFAD1818@dc.gov.

DEPARTMENT OF FOR-HIRE VEHICLES (DFHV)

NOTICE OF FUNDING AVAILABILITY ("NOFA")
Veterans Transportation Pilot Program- VETRIDES

Please note that all applications must be submitted electronically. Incomplete applications or those submitted after the deadline will not be accepted.

The Government of the District of Columbia, Department of For-Hire Vehicles ("DFHV") is soliciting applications from DFHV-licensed taxicab companies to provide taxicab transportation service to eligible veterans. Applicants must be capable of providing wheelchair accessible and non-wheelchair accessible transportation service through digital, online or telephone dispatch. Any digital and or online dispatch must be approved by DFHV in advance of any trips. Taxicab companies selected for a grant award will provide transportation for eligible veteran clients to and from locations within the District of Columbia.

Eligibility: Only DFHV-licensed taxicab companies may apply.

How to Apply: Visit DFHV grant portal here

Application Deadline: Applicants interested in applying for the Veterans Transportation Pilot Program must complete an online application on or before **June 15, 2018 at 4:00 p.m.**

Period of Award: The performance period is May 2018 up to September 30, 2018.

Funding: Funding will be a minimum of sixty thousand dollars ($60,000) for one or more awards. For additional information regarding this announcement, please contact Gladys.Kamau@dc.gov, or (202)671-0567.

Selection Process: DFHV will select grant recipients through a competitive application process. All applications will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed in the RFA in the requirements contained in this announcement.

Reservations: DFHV reserves the right to issue addenda and/or amendments subsequent to the issuance of the innovation grant announcement or any NOFA or RFA, or to rescind any innovation grant announcements, NOFA or RFA. All grant awards are subject to funding availability.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

Services My Way Program Budget Reduction

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)(2012 Repl. & 2013 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.01 *et seq.* (2012 Repl.)), hereby gives notice, in accordance with Section 10107.2(c) of Title 29 of the District of Columbia Municipal Regulations (DCMR), of the pre-determined percentage that budgets will be reduced during the budget formulation process. Effective July 8, 2018, DHCF will reduce the *Services My Way* program participant's budgets by five percent (5%). DHCF will reduce the participant's budget by five percent (5%) to more accurately reflect the lower overhead and administrative costs associated with the *Services My Way* Program.

Section 10107.2 of Title 29 of the DCMR describes the *Services My Way* program budget methodology. Effective July 8, 2018, a *Services My Way* program budget shall be developed based on the following methodology:

(a) The participant's total assessed hours per week for personal care aide services is determined through the assessment process as set forth in 29 DCMR § 5003.3 and converted to hours per month;
(b) The total number of personal care aide services hours per month is multiplied by the hourly rate paid by DHCF for personal care aide services; and
(c) The total amount computed in (b) above is reduced by five percent (5%).

Effective July 8, 2018, if a budget is submitted by your Support Broker and is not reduced by five percent (5%), DHCF will return the budget to the *Services My Way* participant so that the budget can be amended to comply with 29 DCMR § 10107.2.

DHCF Long Term Care Administration (LTCA) will re-evaluate the pre-determined percentage on an annual basis. DHCF will notify the public via public notice in the *D.C. Register* pursuant to 29 DCMR § 10107.2(c) when there is a change in the pre-determined percentage.

If you have any questions about this public notice, please contact the DHCF LTCA S*ervices My Way* program at (202) 442-9533, or via email at ServicesMyWay@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Audiology and Speech-Language Pathology ("Board") hereby gives notice of a cancellation of its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b))(2016 Repl.)).

The Board's upcoming meeting, scheduled for Monday, June 18, 2018, is cancelled due to scheduling conflict. The Board will resume its regular meeting on Monday, September 17, 2018 from 9:00 AM to 12:00 PM. The meeting will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b)), the meeting will be closed from 9:30 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The final quarterly meeting for the calendar year will be held at the same time on Monday, December 17, 2018.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Health Professional Licensing Administration website at http://doh.dc.gov/events and to view additional information and agenda.

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. 17-22: Harewood Lodge
3600 Harewood Road NE (Square 3663, part of Lot 6 and adjacent public space)
Designated May 24, 2018
Applicant: D.C. Preservation League
Affected Advisory Neighborhood Commission: 5A

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.

D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF CLOSED MEETING

Homeland Security Commission

June 13, 2018

11 a.m.-12:15 p.m.

2720 Martin Luther King Junior Ave., South East

Washington D.C. 20032

Executive Conference Room

On June 13, 2018 at 11 a.m., the Homeland Security Commission (HSC) will hold a closed fact-finding meeting pursuant to D.C. Code § 2-575(b), D.C. Code § 7-2271.04, and D.C. Code § 7-2271.05, for the purpose of gathering information for the annual report.

The meeting will be held at 2720 Martin Luther King Junior Avenue, SE, Washington, D.C. 20032 in the second floor Executive Conference Room.

For additional information, please contact Sarah Case-Herron, Bureau Chief, Policy and Legislative Affairs, by phone at 202-481-3107, or by email at sarah.case-herron@dc.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOME PURCHASE ASSISTANCE PROGRAM (HPAP)
Effective for HPAP Loans Closed after July 1, 2018

Below is the HPAP Homebuyer Assistance Table. Please note that closing cost assistance for all eligible households will be up to $4,000.

The per client gap financing assistance will cap at $80,000.
The closing cost assistance is distinct from, and in addition to, gap financing assistance which is shown below.

Household Size	1	2	3	4	5	6	7	8
	Per household income less than or equal to (dollars):							
Assistance (dollars)	**Very Low-Income Households**							
80,000	41,000	46,900	52,750	58,600	63,300	68,000	72,650	77,350
	Low Income Households							
64,000	52,600	60,100	67,600	75,150	79,800	84,500	89,200	93,900
56,000	56,350	64,400	72,450	80,500	85,550	90,550	95,600	100,600
40,000	65,650	75,000	84,400	93,750	99,600	105,500	111,350	117,200
	Moderate Income Households							
32,000	80,400	91,850	103,350	114,850	122,000	122,000	122,000	122,000
16,000	90,250	103,150	116,050	128,900	137,000	137,000	137,000	137,000

The amount of financial assistance provided to a very low-, low- or moderate-income household shall be the combined total of gap financing assistance and closing cost assistance.

The income limits established shall be reviewed and revised as needed by the Department of Housing and Community Development to stay current with the incomes of households in the Washington, DC area. The review and revisions will be done periodically, provided that the current median income established by the Secretary of the U.S. Department of Housing and Urban Development for the Washington, DC Metropolitan Statistical Area is available.

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF HOME PURCHASE ASSISTANCE PROGRAM ASSISTANCE TABLE

The D.C. Department of Housing and Community Development, pursuant to Title 14 of the District of Columbia Municipal Regulations (DCMR), Chapter 25, Home Purchase Assistance Program ("HPAP"), Subsection 2503.1 and Section 2510, hereby gives notice of the HPAP financial assistance limits and the income limits for participation of very low income, low income and moderate income households in the HPAP.

The household income limits have been determined based on the area median family income of $117,200 established by the Secretary of the U.S. Department of Housing and Urban Development for Fiscal Year 2018, for the Washington, DC Fair Market Rent Area. The amounts have been calculated based on methods described in Section 2510 of the HPAP rules. The Homebuyer Assistance Table (Assistance Table) reflects the maximum amount of assistance for home purchases through gap financing for first time homebuyers in an amount up to $80,000 plus $4,000 for closing cost assistance. The gap assistance provided is based on household income and size.

The Assistance Table shall be effective for HPAP loans closed after July 1, 2018. All new HPAP applications and applicants that currently hold an active Notice of Eligibility, also known as NOE, are eligible for the new assistance for loans that close after the effective date. To share concerns and questions, contact a Community Based Organization. Contact information can be found on www.dhcd.dc.gov

THE DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
FAMILY SERVICES ADMINISTRATION
COMMUNITY SERVICES BLOCK GRANT

NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2019 CSBG PREVENTION OF HOMELESSNESS AMONG LOW-INCOME INDIVIDUALS AND FAMILIES

The District of Columbia (District) Department of Human Services (DHS) Family Services Administration (FSA) **Community Services Block Grant (CSBG)** hereinafter referred to as "DHS/FSA/CSBG" is soliciting detailed proposals from established private not-for-profit and or faith-based organizations within the District for a funding award to broaden the resource base of programs and organizations dedicated to the elimination of homelessness among low-income individuals and families in the District.

Organizations shall provide services and resources related to the housing needs of low-income individuals and families. These services should have a measurable and potentially major impact on the causes of homelessness in the District and may help individuals and families to achieve self-sufficiency. This solicitation is pursuant to the Community Services Block Grant Act (CSBG Act) of 1998, as amended (42 U.S.C. §9901(2)(E)).

Target Population

Low-income individuals and families that reside in the District and whose annual income generally does not exceed one hundred twenty-five percent (125%) of the official poverty line as defined by the United States Department of Health and Human Services (DHHS). Low-income individuals and families who are homeless or at-risk of becoming homeless are especially targeted under this announcement. The District has seen rising homelessness in recent years. In 2018, there were 6,904 persons experiencing homelessness on any given night in the District – 3,134 persons in families (924 households) and 3,770 individuals. This is a 7.6 percent decrease from 2017 but still represents one person for every 100 residents in the District. (Source: The 2018 *Point-in-Time* count coordinated by the Community Partnership for the Prevention of Homelessness.

An organization may not require or maintain records with respect to incomes of members of groups that are generally recognized as including substantially low-income individuals and families.

Eligibility

Private not-for-profit and or faith-based organizations that meet the following eligibility requirements at the time of application may apply:

- organization with a 501(c)(3) tax-exempt status; or evidence of a fiscal agent relationship with a 501(c)(3) organization;
- The organization's principal place of business is located in the District

- The organization is currently registered in good standing with the District Department of Consumer & Regulatory Affairs, the District Office of Tax and Revenue, and the United States Department of Treasury's Internal Revenue Services (IRS).

Program Scope:	Specific details on the grogram scope will be listed in the RFA;
Release Date of RFA:	Friday, June 22, 2018
Total Estimated Available Funding	Up to $250,000.00
Total Estimated Number of Awards:	Up to two (2) awards
Pre-Application Conference	Monday, July 9, 2018 2:00 pm. Department of Human Services 64 New York Avenue, NE, 6th Floor NoMa Conference Room 659 Washington, DC 20002
Deadline for Submission:	Friday, July 20, 2018

Applications may be obtained from the District Grants Clearinghouse website at the following link: www.opgs.dc.gov. Applications may also be obtained from Ms. Priscilla Burnett, Program Monitor for the DHS FSA Community Service Block Grant Program at 64 New York Avenue, NE, Washington, DC 6th floor. Please call: (202) 671-4398.

INSPIRED TEACHING PUBLIC CHARTER SCHOOL

INVITATION FOR BID

Food Service Management Services

Inspired Teaching PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2018-2019 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 8. 2018** from **Imani Taylor at 202.248.6825 or Imani.taylor@inspiredteachingschool.org.**

Proposals will be accepted at 200 Douglas St. NE Washington, DC 20002 on **July 9, 2018** not later than **2:00pm.**

All bids not addressing all areas as outlined in the IFB will not be considered.

INTERAGENCY COUNCIL ON HOMELESSNESS

2018 MEETING SCHEDULE & NOTICE OF PUBLIC MEETINGS FOR STANDING COMMITTEES

This notice outlines the 2018 meeting schedule for the standing committees of DC Interagency Council on Homelessness (ICH). The meetings are open to the public.

The standard agenda for the standing committees are also included below. Details for each meeting (location) will be posted on the ICH's website at http://ich.dc.gov/events.

Meeting Schedule

Standing Committee	Recurrence	Dates	Time
Housing Solutions	Monthly, 1st Wednesdays	5/02, 6/06, 07/04, 08/01, 09/05, 10/03, 11/07 and 12/05	1:30 – 3 pm
Executive	Monthly, 2nd Tuesdays, except for months the Full Council is in session	5/08, 07/10, 08/14 10/09, 11/13	1:30 – 3:30 pm
Strategic Planning	Monthly, 4th Tuesdays	5/22, 06/26,07/24, 08/28, 07/25, 10/23, 11/27, 12/25	2:30 – 4 pm
Emergency Response and Shelter Operations (ERSO)	Monthly, 4th Wednesdays	5/23, 06/27, 07/25, 08/22, 09/26, 10/24, 11/28, 12/26	1 – 2:30 pm
Youth	Monthly, 4th Thursdays	5/24, 06/28, 07/26, 08/23, 09/27, 10/25, 11/22, 12/27	10 – 12 noon

Please note that this schedule may change. Updates (including location details) will be posted on the ICH's website at http://ich.dc.gov/events and we encourage public attendees to look at the website for the most up to date information.

Please note that your participation and attendance at this public meeting may be captured in photographs, recording, or other media.

INTERAGENCY COUNCIL ON HOMELESSNESS

Notice of Public Meeting for ICH Standing Committees

The DC Interagency Council on Homelessness (ICH) will be holding Standing Committee meetings monthly per the established 2018 Meeting Schedule above.

With the exception of the Housing Solutions Committee, meetings are scheduled to be held at One Judiciary Square (441 4th St NW, Washington, DC 20001). The Housing Solutions Committee meetings are scheduled to be held at 1800 Martin Luther King Jr Ave SE, 20020.

Agenda format is provided below. For additional information, please visit the ICH calendar online at http://ich.dc.gov/events or contact the ICH info line at (202) 724-1338 or ich.info@dc.gov.

Meeting Details

Date and Time: See 2018 Meeting Schedule for ICH Standing Committees

Location:

- Meetings are generally held at One Judiciary Square (441 4th St NW, Washington, DC 20001) with the exception of the Housing Solutions Committee meetings.

- Housing Solutions Committee meetings will generally be at the Housing Resource Center (1800 Martin Luther King Jr Ave SE, Washington DC, 20020).

Updates will be available online http://ich.dc.gov/events and we encourage public attendees to look at the website for the most up to date information.

Agenda Format

I. Welcome and Opening Remarks

II. Old Business

III. New Business

IV. Updates and announcements

V. Summary and Adjournment

INTERAGENCY COUNCIL ON HOMELESSNESS

NOTICE OF PUBLIC MEETING

Full Council

The DC Interagency Council on Homelessness (ICH) will be holding a meeting on Tuesday, June 12, 2018 at 2:00 pm. The meeting will be held in Room G-9 in the Wilson Building (1350 Pennsylvania Ave NW, Washington, DC 20004).

Below is the draft agenda for this meeting. For additional information, including updates on location, please visit the ICH calendar online at http://ich.dc.gov/events. You can also contact the ICH info line at (202) 724-1338 or ich.info@dc.gov.

Meeting Details

Date: Tuesday, June 12, 2018

Time:	12:30 – 1:30 pm	Pre-Meeting for advocates, agencies, consumers and providers Topic: Fiscal Year 2018 Winter Plan Debrief
	2 – 3:30 pm	Full Council

Location: Wilson Building, Room: G-9
1350 Pennsylvania Ave NW, Washington, DC 20004

Updates will be available online http://ich.dc.gov/events

Draft Agenda

I. Welcome and Opening Remarks

II. Public Comments

III. Point in Time (PIT) Count

IV. Understanding Inflow and Implications

V. Other Updates

VI. Public Comments (*Time Permitting*)

VII. Adjournment

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

MPD Off Duty Officer Staffing & Consulting

KIPP DC is soliciting proposals from qualified vendors for MPD Off Duty Officer Staffing & Consulting. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on June 22, 2018. Questions can be addressed to kevin.mehm@kippdc.org.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-21

November 6, 2017

VIA ELECTRONIC MAIL

Gianluca Pivato

RE: FOIA Appeal 2018-21

Dear Mr. Pivato:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your August 21, 2017 request for records, particularly correspondence, pertaining to two addresses.

This Office contacted DCRA on October 23, 2017, and notified the agency of your appeal. On November 3, 2017, DCRA provided a response to your request and informed us that it considered your appeal moot.[1]

Since your appeal was based on DCRA's failure to respond to your request, and DCRA has now responded, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response that DCRA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Genet Amare, FOIA Officer, DCRA (via email)

[1] DCRA initially indicated its response was related to FOIA Appeal 2018-022; however, the response was for the request at issue in FOIA Appeal 2018-021.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-22

November 6, 2017

VIA ELECTRONIC MAIL

Gianluca Pivato

RE: FOIA Appeal 2018-22

Dear Mr. Pivato:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your August 28, 2017 request for records, particularly evaluations and analysis, pertaining to an address.

This Office contacted DCRA on October 23, 2017, and notified the agency of your appeal. On November 6, 2017, DCRA asserted that it retrieved 246 records responsive to your request. DCRA mailed you a CD today containing 189 of the records, portions of which were redacted. DCRA withheld the remaining records for the reasons set forth in the agency's *Vaughn* Index, which was provided to you via email. DCRA further stated that additional responsive records may be disclosed by November 9, 2017, following the conclusion of an ongoing search pertaining to any structural evaluation of the retaining wall at the identified address.

Since your appeal was based on DCRA's failure to respond to your request, and DCRA has now responded by providing documents and representing that it will continue to disclose additional documents as they become available, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response that DCRA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-23

November 9, 2017

VIA ELECTRONIC MAIL

Natasha Rodriguez

RE: FOIA Appeal 2018-23

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Energy and Environment ("DOEE") improperly withheld records you requested under the DC FOIA.

Background

On July 28, 2017, you submitted a request to DOEE for emails responsive to a set of search terms.[1] DOEE responded to your request on or around October 13, 2017.[2] DOEE's response indicated that its search retrieved 102 emails responsive to your request. DOEE asserted that it completely redacted the content of 100 of the 102 emails pursuant to the deliberative process privilege of D.C. Official Code § 2-534(a)(4) ("Exemption 4"). Most of the content of the remaining two emails was disclosed.

On October 26, 2017, you appealed DOEE's application of Exemption 4. On appeal, you assert that several of the emails redacted by DOEE were fully disclosed by the Department of Health ("DOH") in response to another FOIA request; therefore, DOEE should not be able to redact them. Further, you claim that the protection of Exemption 4 is not applicable because the content is not sufficiently deliberative.[3]

This Office notified DOEE of your appeal on the same day it was received. After we repeatedly reminded the agency to provide a response, on November 8, 2017, DOEE requested an extension

[1] This request was the subject of your previous FOIA Appeal 2017-162, based on DOEE's failure to respond to your request. FOIA Appeal 2017-162 was remanded to DOEE instructing the agency to respond to your request. The current appeal is based on withholdings and redactions in DOEE's substantive response to your request.
[2] This Office only received DOEE's response to your request as it was included in your appeal.
[3] In your appeal, you also make arguments applicable to the attorney-client privilege, which is also encompassed by Exemption 4; however, it does not appear that DOEE has invoked the attorney-client privilege, and a result this decision will not address those arguments.

until November 13, 2017, to respond to your appeal. In accordance with 1 DCMR § 412.7, DOEE's request for an extension was denied because it was beyond the deadline for a decision, and it is possible for us to reach a determination on the existing record.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). As a result, Exemption 4 encompasses the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

DOEE has invoked the deliberative process privilege of Exemption 4 to redact a vast majority of the emails responsive to your request. The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the
>
> document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

Here, it appears that the redacted emails meet the threshold requirement of being inter-agency or intra-agency documents as internal correspondence between DOEE and DOH. It is unclear if the redacted information is predecisional because DOEE's response to your request does not adequately describe the deliberative process involved and the role of the emails in the course of that process. *See Coastal States Gas Corp.*, 617 F.2d at 686; *see also Access Reports v. DOJ*, 926 F.2d 1192, 1196 (D.C. Cir. 1991). It is also unclear that DOEE's limited explanation, describing that the emails involve DOEE and DOH discussing production of records,[4] describes the type of decision process where premature disclosure would risk inaccurately reflecting the views of the agency. As a result, DOEE has not sufficiently established that the redacted information should be protected under Exemption 4.[5]

Additionally, if DOH has fully disclosed the same emails redacted by DOEE, such disclosure suggests that the emails may not be subject to the protection of Exemption 4. Unless DOH's disclosure was inadvertent and accidental, disclosure of the emails to a third party would also mean that they were no longer inter-agency or intra-agency documents, removing the threshold requirement for protection under Exemption 4.

Conclusion

Based on the foregoing, we remand DOEE's decision. Within 10 business days from the date of this decision, DOEE shall review the redacted emails and disclose to you nonexempt portions of those records or issue to you a new letter clarifying its justification for its redactions. This constitutes the final decision of this Office. You may assert any challenge, by separate appeal, to the substantive response that the DOEE sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Norah Hazelton, Program Support Assistant, DOEE (via email)

[4] We note that under D.C. Official Code § 2-502(18), it is not relevant which agency it primarily responsible for a contract; an agency is required to disclose materials that it retains.
[5] We are unable to determine whether or not the redacted information is deliberative, because it was not provided for an *in camera* review.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-24

November 2, 2017

VIA ELECTRONIC MAIL

William Matzelevich

RE: FOIA Appeal 2018-24

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the District of Columbia Public Schools ("DCPS") failed to respond to your request for certain memoranda of understanding and agreements.

This Office contacted DCPS on October 26, 2017, and notified the agency of your appeal. DCPS advised us on November 1, 2017, that it provided you with responsive documents on October 31, 2017.[1]

Since your appeal was based on DCPS' failure to respond to your request, and DCPS has now responded, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to DCPS' substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Eboni J. Govan, Attorney Advisor/FOIA Officer, DCPS (via email)

[1] DCPS' response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-25

November 13, 2017

VIA ELECTRONIC MAIL

Mr. David Bralow

RE: FOIA Appeal 2018-25

Dear Mr. Bralow:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA.

Background

On September 6, 2017, you submitted a request to the MPD for records pertaining to the investigation of a homicide that occurred on "July 20, 2016" (though from the substance of your request, it appears you meant July 10, 2016). Specifically, you sought "records, including any expert analysis, concerning communications between [the decedent] and Wikileaks or any other third-party relating to the dissemination of DNC emails." Your request states that the existence of such communications could help negate "the widely reported story that such emails were disseminated by hostile state actors."

MPD responded on October 18, 2017, denying your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)"), because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On appeal, you challenge the denial of your FOIA request, asserting that MPD's denial amounts to a "blanket exemption" and that MPD has not adequately explained how release of the decedent's computer records could interfere with an ongoing homicide investigation into the decedent's death. Further, you assert that MPD should have redacted records instead of withholding them in their entirety.

The MPD responded to your appeal and reasserted its position that the records are protected from disclosure by Exemption 3(A)(i). MPD's response states "The investigation is still ongoing. The release of any report generated as part of the investigation would adversely affect any future law enforcement proceeding by informing witnesses or suspects of information not otherwise known."

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Your request is similar in subject matter to previous requests that have been denied and appealed to the Mayor. *See* FOIA Appeal 2016-94 (affirming MPD's denial of request for investigatory records into July 10, 2016 homicide); FOIA Appeal 2017-104 (affirming Office of the Chief Medical Officer's denial of Sinclair Broadcast Group's request for autopsy report relating to July 10, 2016 homicide); FOIA Appeal 2017-105 (affirming MPD's denial of Sinclair Broadcast Group's request for body worn camera footage relating to July 10, 2016 homicide); FOIA Appeal 2017-112 (affirming MPD's denial of Sinclair Broadcast Group's request of shot spotter data relating to July 10, 2016 homicide); FOIA Appeal 2017-115 (affirming OCME's denial of The Light Reports' request for autopsy report relating to July 10, 2016 homicide).

Exemption 3(A)(i) exempts from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to any ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

Here, as was the case in previous requests for related records, the records sought were compiled for the law enforcement purpose of investigating a homicide, and MPD has stated that "[t]he investigation is still ongoing." As a result, the threshold requirements to apply Exemption 3(A)(i) are clearly met, and the analysis turns on whether disclosure would interfere with enforcement proceedings. MPD asserts "The release of any report generated as part of the investigation would adversely affect any future law enforcement proceeding by informing witnesses or suspects of information not otherwise known." In past appeals, we have noted that releasing investigation records could reveal the direction of the investigation and allow suspects to avoid detection,

arrest, and prosecution. Further, disclosure could allow a suspect or witness to take actions or tailor statements in order to hamper or defeat enforcement efforts.

Your appeal challenges MPD's response as a "blanket exemption," and argues that MPD "falls short of [the] mark" in explaining how the release of the records you requested would interfere with an enforcement proceeding. We accept MPD's representation that the release of records relating to "a computer owned or used by" a decedent before his death could interfere with an ongoing homicide investigation into that death. Your belief that the release of the decedent's electronic records, and MPD's analysis thereof, could "contribute significantly to public understanding of government operations" does not invalidate the purpose of Exemption 3(A)(i), which is to prevent interference of enforcement proceedings. As discussed, any investigatory details revealed would potentially interfere with enforcement efforts; therefore, the investigatory records have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

Reasonable Redaction

On appeal, you assert that MPD should have provided to you redacted records instead of withholding them in their entirety. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, courts have held that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See e.g., Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009). Here, we find that reasonable redaction is not possible, because the end product after redaction would be of no informational value.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-26

November 2, 2017

VIA ELECTRONIC MAIL

William Matzelevich

RE: FOIA Appeal 2018-26

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the District of Columbia Department of Transportation ("DDOT") failed to respond to a request you submitted under DC FOIA.

This Office contacted DDOT on October 27, 2017, and notified the agency of your appeal. DDOT advised us on November 2, 2017, that it provided you with responsive documents for parts of your request.[1] DDOT further advised that documents for the remaining portions of your request would be reviewed and provided to you "within the next 48 hours," and that DDOT would apprise you of the fees that the review would incur, which are likely to exceed the $25 you have stipulated to pay. We accept DDOT's representations.

Since your appeal was based on DDOT's failure to respond to your request, and DDOT has now responded, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to DDOT's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Karen Calmeise, FOIA Officer, DDOT (via email)

[1] DDOT's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-27

November 13, 2017

VIA ELECTRONIC MAIL

William Matzelevich

RE: FOIA Appeal 2018-27

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of General Services ("DGS") failed to respond to your October 12, 2017 request for records related to an improvement project at Hearst Park.

This Office contacted DGS on October 27, 2017, and notified the agency of your appeal. DGS responded on November 6, 2017, advising us that it requested that the Office of the Chief Technology Officer conduct an email search to retrieve records responsive to your request, and DGS is still waiting for the results of the search.[1] DGS asserted further that once it receives responsive records, it will review and disclose them in accordance with DC FOIA.

Since your appeal was based on DGS's failure to respond to your request, and the agency has explained that its response will be forthcoming once it receives responsive records, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DGS sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Johnson, Program Support Specialist, DGS (via email)

[1] A copy of DGS's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-28

November 14, 2017

VIA ELECTRONIC MAIL

Catherine Tedrow

RE: FOIA Appeal 2018-28

Dear Ms. Tedrow:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") did not adequately search for records responsive to your request for application and hiring materials.[1]

This Office contacted MPD on October 30, 2017, and notified the agency of your appeal. MPD responded on November 6, 2017.[2] In its response, MPD summarized its initial response to your request. MPD stated further that is directed its Human Resources department to conduct an additional search for responsive records based on the information provided in your appeal. MPD claimed that additional records would be disclosed to you by November 8, 2017; therefore, MPD asserted that it has satisfied your claim that its initial search was inadequate.

MPD has represented to this Office that the results of an additional search should have been disclosed. As a result, we consider your appeal to be moot with respect to the adequacy of MPD's search.[3] We note that certain aspects of your FOIA request appear to seek answers to questions rather than request existing records. Under DC FOIA, an agency is not required to created records in response to a FOIA request, only to disclose public records in its possession. *See* D.C. Official Code § 2-502(18).

Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You may challenge MPD's substantive response by separate appeal to this Office.

[1] Your appeal also alleges that MPD engaged in unethical hiring practices; however, this Office's jurisdiction, under D.C. Official Code § 2-537, is limited to whether public records are improperly withheld. As a result, your allegation concerning MPD's hiring practice will not be addressed.
[2] A copy of MPD's response is attached.
[3] MPD stated that portions of its initial response were redacted to protect personal privacy pursuant to D.C. Official Code § 2-534(a)(2); your appeal did not appear to challenge those redactions.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-29

November 21, 2017

VIA REGULAR MAIL

Mr. Matthew Reeder

RE: FOIA Appeal 2018-29

Dear Mr. Reeder:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly responded to your request under the DC FOIA.

Background

On November 2, 2018, you submitted a request to MPD for:

> the details of the contractual relationship between public.cite-web.com and the city. Specifically, I request documents outlining the fee structure for the private web service (is it an annual flat-rate contract, or is the fee assessed as a percentage of revenue generated, etc.), and information about the beneficial owners of the entity providing the web-based ticket payment service.

The next day, MPD closed your request and notified you that the records you seek were not in the possession of MPD and should instead be requested from the Department of Motor Vehicles ("DMV").

On November 6, 2017, you filed this appeal. The entirety of your appeal states:

> Closing request 2018-FOIA-00658 was inappropriate. Because the government of Washington DC is a single agency for purposes of 5 USC 552 as defined by 5 USC 562(1) (incorporating the definition contained in 5 USC 551(1)(D)), the original request should be referred to the DMV by the Metro Police.

That same day, we notified MPD of your appeal and asked for a response. MPD did not respond; however, there is sufficient information in the record for this Office to make a decision.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is your belief that MPD should have transferred your request – your appeal does not challenge MPD's assertion that MPD does not possess the records you seek. In support of this belief, you cite to and misinterpret an inapplicable federal law.

First, the District of Columbia government is subject to the DC FOIA and not the federal FOIA. *See* D.C. Official Code § 2-531, *et seq*. Your appeal's citation to the United States Code is not applicable.

Second, your appeal misinterprets the law that you cite. Your appeal states that the "government of Washington DC is a single agency for purposes of 5 USC 552 as defined by 5 USC 562(1) . .." In fact, the law says the exact opposite. 5 U.S.C. § 562(1) states "'agency' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include— . . . (D) the government of the District of Columbia." The Supreme Court agrees with this plain reading of 5 U.S.C. § 562. *See Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 16 (1974) ("But 'agency' is broadly defined to mean 'each authority of the Government of the United States,' except . . . the government of the District of Columbia. . . .").

Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18). Under DC FOIA, each agency constitutes a separate "public body." *See* D.C. Official Code § 2-502(18A). The obligation to respond to a request is held by each individual agency and is not shared between agencies. *See* 1 DCMR § 401.

Here, MPD told you that it does not retain the records you seek, but suggested to you that DMV might possess such records. DC FOIA does not obligate MPD, as you posit on appeal, to transfer your request to another public body. MPD's duty was to disclose to you any responsive records in its possession. Because MPD did not possess responsive records, it was appropriate for MPD to close your request.

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-30

November 21, 2017

VIA ELECTRONIC MAIL

Mr. Andrew Medici

RE: FOIA Appeal 2018-30

Dear Mr. Medici:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of the Mayor for Planning and Economic Development ("DMPED") improperly redacted records you requested under the DC FOIA.

Background

On September 22, 2017, you submitted a FOIA request to DMPED for records related to the grant agreement between the District and 1776, a startup incubator. On October 19, 2017, DMPED disclosed responsive records with redactions having been made to certain commercial and financial information pursuant to D.C. Official Code §§2-534 (a)(1) ("Exemption 1").[1]

On appeal, you accept the scope of DMPED's disclosure but challenge the redactions. You assert that disclosure of the commercial and financial information would not cause harm because the company later changed its structure and ownership. Additionally, you assert that the grant agreement 1776 signed states that documentation it submits to the District will be subject to FOIA.[2] Finally, you argue that the records should be disclosed because the District granted funds to 1776 and has maintained an ongoing relationship with the company.

This Office contacted DMPED on November 6, 2017, and notified the agency of your appeal.[3] On November 21, 2017, DMPED provided this Office with a response to your appeal, including copies of the disputed records and a Vaughn index.[4] After reviewing its application of Exemption 1, DMPED decided to fully disclose some of the previously redacted records.

[1] Exemption 1 exempts from disclosure "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained."
[2] You did not include a copy of the grant agreement with your appeal. We note that documents subject to FOIA may still be protected in whole or in part by FOIA exemptions.
[3] DMPED requested and was granted an extension to respond to the appeal.
[4] A copy of DMPED's response and Vaughn index are attached.

DMPED reaffirmed its use of Exemption 1 for portions of three annual reports and a vendor payment enrollment form. DMPED asserted that: (1) the redactions involve commercial and financial information; (2) there is actual competition in field of startup incubation and shared office space; and (3) release of the redacted information would likely result in competitive harm. DMPED asserted that releasing the redacted information in the annual reports could allow competitors to undercut the companies pricing and replicate its business model. Finally, DMPED stated that the redacted information payment enrollment form contains banking and routing information that if disclosed could expose 1776 to fraud.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

To withhold information under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); s*ee also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The

exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would 'likely' do so. [citations omitted]").

Commercial pricing information has been protected under FOIA. *See People for Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. CIV. 03 C 195-SBC, 2005 U.S. Dist. Lexis 10586, at *7 (D.D.C. May 24, 2005) ("insights into the company's operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations."); *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). (finding that insights into the operational strengths and weaknesses of a business allow others to engage in "[s]elective pricing, market concentration, expansion plans, . . . take-over bids[,] . . . bargain[ing] for higher prices … unregulated competitors would not be similarly exposed.").

Here, you allege that the information should not be redacted because it does not involve trade secrets; however, commercial and financial information is also protected under Exemption 1. After reviewing the records *in camera*, we find that the redactions clearly involve commercial and financial information. Based on DMPED's representation, we find that actual competition exists for startup incubation and shared office space. Finally, we accept DMPED's representation that disclosure of the commercial and financial information could cause substantial harm by allowing competitors unfair insights regarding the business's pricing and operations. Specifically, disclosure of confidential membership discounts and effective pricing would likely allow competitors to undercut the company's service charges and replicate its business model. Therefore, we find that DMPED properly redacted commercial and financial information pursuant to Exemption 1.

Conclusion

Based on the foregoing, we affirm DMPED's decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Molly Hofsommer, FOIA Officer, DMPED (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-31

November 17, 2017

VIA ELECTRONIC MAIL

Rose Santos

RE: FOIA Appeal 2018-31

Dear Ms. Santos:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Human Services ("DHS") failed to respond to your May 25, 2017 request for records related to a contract.

This Office notified DHS of the appeal. On November 13, 2017, DHS contacted you explaining that it had difficultly accessing your request via the FOIAXpress portal; however, once DHS reviewed your request it appeared that the request should be directed to the Department of Health rather than DHS.[1] On November 14, 2017, you responded affirmatively to DHS.

Since your appeal was based on DHS's lack of response and DHS has since responded, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the Department of Health's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert Warren, Assistant General Counsel, DHS (via email)

[1] DHS provided you with contact information for the Department of Health.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-32

November 17, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-32

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). This appeal involves a request you submitted to the District of Columbia Water and Sewer Authority ("DC Water") regarding lead testing of water.

Background

On Saturday, November 11, 2017, you submitted a FOIA request via FOIAXpress to this Office asking for the date that a property was order to perform a lead test of its water. On the same day, you sent a series of emails to this Office and DC Water's FOIA officer, among others, seeking the same information. One of the emails referenced a prior FOIA request you submitted to DC Water. On Monday, November 13, 2017, when we received your submissions, this Office contacted you for clarification as to whether you were attempting to appeal a FOIA decision issued by DC Water or submit a new FOIA request to DC Water. You responded that you were creating a new appeal.

Based on your representation, this Office notified DC Water of your appeal on November 13, 2017. DC Water called this Office on the same day asserting that your submission was actually a new request rather than an appeal. After reviewing your submissions, we find that current submission requests the date that lead water testing was ordered, whereas the prior request asked for information regarding lead pipe replacement. These two requests ask for distinct information. As a result, we agree with DC Water's assertion that your submission is a new request with no basis yet for appeal.

In light of the foregoing, this Office dismisses your appeal as moot. This dismissal shall be without prejudice to you to file a separate appeal if DC Water improperly responds or fails to respond to your request after the statutory deadline.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Fleming, FOIA Officer, DC Water (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-33

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-33

Dear Mr. Brown:

This letter responds to the sixth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the District of Columbia Housing Authority ("DCHA") to your request.

Background

On November 13, 2017, a request you submitted to DCRA was forwarded to DCHA, which states:

> I'm seeking to know which department under DCHA governs the lease purchase agreement under chapter 14- 9217.2. DCHA IS UNSURE IF THE LEASE PURCHASE AGREEMENT IS APPLICABLE TO THE FOLLOWING PROGRAM HCV, HOAP OR THE FSS PROGRAM. PLEASE SHARE WITH US THE PROGRAM THAT GOVERNS 14- 9212.2.

On November 13, 2017, DCHA responded to you by informing you that:

> The DC FOIA requires that requests describe the records sought with sufficient detail to allow the agency to locate the records with a reasonable amount of effort. Your request does not adequately describe the records sought, therefore, we are unable to process it at this time. Furthermore, your request is for an answer to a question and DC FOIA does not require agencies to answer questions when responding to requests.

On November 15, 2017, you appealed DCHA's response. In your single-sentence appeal, you state, "I'm seeking to appeal this decision for not applying the answer to the question under D.C. Code § 2-534 and 1 DCMR 412, the following question is not a ln [sic] exemptions under the foia law."

This Office did not ask DCHA to respond to your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

Your request amounts to a question (i.e., "which department under DCHA governs the lease purchase agreement under chapter 14- 9217.2"). As this Office has explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See* FOIA Appeal 2018-9; FOIA Appeal 2018-10; FOIA Appeal 2018-12.

Your request does not reasonably describe a record as required by 1 DCMR § 402, and DCHA is not obligated to answer your questions. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

We find DCHA's response to your request to be consistent with 1 DCMR § 402.5's requirement that in the event of an ambiguous request, agencies should contact requesters to "supplement the request with the necessary information."

Conclusion

Based on the foregoing, we affirm DCHA's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Mario Cuahutle, Associate General Counsel, DHCA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-34

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-34

Dear Mr. Brown:

This letter responds to the seventh administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Consumer and Regulatory Affairs ("DCRA") to your request.

Background

On November 2, 2017, you submitted a request to DCRA, which states:

> I'm seeking to know which department under DCHA governs the lease purchase agreement under chapter 14- 9217.2. DCHA IS UNSURE IF THE LEASE PURCHASE AGREEMENT IS APPLICABLE TO THE FOLLOWING PROGRAM HCV, HOAP OR THE FSS PROGRAM. PLEASE SHARE WITH US THE PROGRAM THAT GOVERNS 14- 9212.2.

On November 11, 2017, you filed two duplicative appeals for this request. This Office did not docket an appeal, because it appeared that you had misfiled the original request by sending to DCRA a request for District of Columbia Housing Authority ("DCHA") records. On November 13, 2017, DCRA sent you the contact information for the FOIA Officers at DCHA and the Department of Energy and Environment – where DCRA believed responsive records might be held. DCRA asked if you intend to continue with your appeal. On November 15, 2017, by email you indicated you wished to proceed with the appeal (though you did not include DCRA in the 4 carbon copies you sent). Additionally, you filed another appeal via FOIAXpress.

In your single-sentence appeal, you state, "The information fails to provide the program that provides services regarding lease purchase."

This Office did not notify DCRA of your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

Your request amounts to an interrogatory (i.e., "which department under DCHA governs the lease purchase agreement under chapter 14- 9217.2"). As this Office has explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See* FOIA Appeal 2018-9; FOIA Appeal 2018-10; FOIA Appeal 2018-12; FOIA Appeal 2018-33.

Your request does not reasonably describe a record as required by 1 DCMR § 402, and DCRA is not obligated to answer your questions. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Because we find that your request does not reasonably describe a record, we need not reach the question of the adequacy of the search.

Conclusion

Based on the foregoing, we affirm DCRA's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-35

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-35

Dear Mr. Brown:

This letter responds to the eighth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Executive Office of the Mayor ("EOM") to your request.

Background

On November 14, 2017, you submitted a request to EOM, which states:

> I'm seeking the number of deaths cause by lead poisoning [sic] (bullets & guns) in District of Columbia

On November 14, 2017, EOM denied your request, along with two other requests. In its denial EOM stated:

> As the FOIA Officer for EOM, I only have the ability to conduct searches of, and respond to requests for, EOM records. EOM is not in possession of any documents responsive to your request. It is possible that the Department of Consumer and Regulatory Affairs ("DCRA") has responsive documents.

In your single-sentence appeal, you state in pertinent part: "I'm seeking to appeal this decision for the following reasons: . . . the number of death cause by lead bullet was not provided . . . ."

This Office did not notify EOM of your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

Your request amounts to an interrogatory (i.e., asking for "the number of deaths cause by lead poisoning [sic] (bullets & guns) in the District of Columbia"). As this Office has explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See* FOIA Appeal 2018-9; FOIA Appeal 2018-10; FOIA Appeal 2018-12; FOIA Appeal 2018-33; FOIA Appeal 2018-34.

Your request does not reasonably describe a record as required by 1 DCMR § 402, and EOM is not obligated to answer your questions. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Because we find that your request does not reasonably describe a record, we need not reach the question of the adequacy of the search.

Conclusion

Based on the foregoing, we affirm EOM's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erika Satterlee, Associate Director, EOM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-36

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-36

Dear Mr. Brown:

This letter responds to the ninth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Executive Office of the Mayor ("EOM") to your request.

Background

On November 13, 2017, you submitted a request to EOM, which states:

> All documents regarding District of Columbia Housing Authority and Keller Williams Capitol Properties registered agent corporate file number and date of filing in connection with Superior Court of the District of Columbia case number 2017 sc36014 set for hearing on dec 5 2017.

On November 14, 2017, EOM denied your request, along with two other requests. In its denial EOM stated:

> As the FOIA Officer for EOM, I only have the ability to conduct searches of, and respond to requests for, EOM records. EOM is not in possession of any documents responsive to your request.

In your single-sentence appeal, you state in pertinent part: "I'm seeking to appeal this decision for the following reasons: . . . the registed [sic] agent for the corporation was not provide [sic] by the Mayor." This Office notified you that we did not consider your statement to be a sufficient "Statement of the circumstances, reasons or arguments advanced in support of disclosure," in accordance with 1 DCMR § 412.4. You indicated by telephone that you would not supplement your appeal.

This Office did not request that EOM respond to your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

The primary issue raised by your appeal is whether EOM conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, you have not provided any argument to explain your belief that EOM would be in possession of DCHA's records or would be in any way responsible for maintaining records pertaining to "registered agent corporate file number and date of filing . . ." As a result, we accept EOM's statement in its denial letter that "EOM is not in possession of any documents responsive to your request." Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18). We do not believe that you have been denied access to any records possessed by EOM, by virtue of EOM not normally possessing the type of records you requested here.

Conclusion

Based on the foregoing, we affirm EOM's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erika Satterlee, Associate Director, EOM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-37

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-37

Dear Mr. Brown:

This letter responds to the tenth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Office of the Chief Medical Examiner ("OCME") to your request.

Background

On October 10, 2017, you submitted a request to OCME, which states:

> Im seeking any health information regarding curing lead poisoning [sic] and the effect on children and adult

On November 13, 2017, OCME requested that you clarify what you meant by your request, pursuant to 1 DCMR § 402.5. You responded that same day by saying "I'm seeking the number of death cost by lead posioning [sic] (bullets & guns) in District of Columbia." OCME asked you to clarify a date range for documents and to clarify what you meant by "death cost." You responded by stating you meant "Cost/cause by death" and that you were seeking records from "1871 unit [sic] 2017."

On November 15, 2017, you filed an appeal. The appeal description stated only "Request Created." Attached to your appeal was a denial letter from an unrelated FOIA request submitted to a different District agency. As a result, your appeal was not properly filed as it did not include a "Statement of the circumstances, reasons or arguments advanced in support of disclosure" or a "Copy of any written denial," as required by 1 DCMR § 412.4. Nonetheless, there is sufficient information before us to render a decision on this matter.

Your request amounts to a question (i.e., asking for "the number of death cost by lead poisoning [sic] (bullets & guns) in District of Columbia"). As this Office has explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See* FOIA Appeal 2018-9; FOIA Appeal 2018-10; FOIA Appeal 2018-12; FOIA Appeal 2018-33; FOIA Appeal 2018-34; FOIA Appeal 2018-35.

Your request does not reasonably describe a record as required by 1 DCMR § 402, and OCME is not obligated to answer your questions. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Because we find that your request does not reasonably describe a record, we need not reach the question of the adequacy of the search. We also note that by requesting records from 1871 to 2017, your request is likely not one which can be completed with "reasonable efforts." *See* D.C. Official Code § 2-532(f)(1) (" 'Reasonable efforts' means that a public body shall not be required to expend more than 8 hours of personnel time to reprogram or reformat records.")

Conclusion

Based on the foregoing, we affirm OCME's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Mikelle L. DeVillier, General Counsel, OCME (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-38

November 30, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-38

Dear Mr. Brown:

This letter responds to the eleventh administrative appeal you have submitted this year to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). This appeal involves a request you submitted to the D.C. Office of Human Rights ("OHR") regarding the status of a "Inquiry # 9112," "Inquiry # 9253," and "Inquiry # 9286."

Background

On October 10, 2017, you submitted a FOIA request via FOIAXpress to OHR. On October 31, 2017, OHR responded by sending you 4 pages of documents related to the inquiry specified by your request.

On November 15, 2017, you filed this appeal. Your appeal restates the nature of the documents you were requesting. Your appeal does not articulate a reason you believed records are being withheld improperly, as required by 1 DCMR § 412. In a phone call with this Office you refused to clarify the basis of your appeal.

Regardless, this Office notified OHR of your appeal. On November 22, 2017, OHR responded to the appeal, and several other similar FOIA requests made by you. In OHR's response to your appeal, OHR explained that it had provided to you responsive documents. OHR also indicated that it would provide additional documents to your other requests that are not at issue in this appeal. OHR's production made some redactions pursuant to D.C. Official Code § 2-534(a)(2), but your appeal does not articulate a challenge to these redactions.

In light of the foregoing, this Office affirms OHR's response to your request and dismisses your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Thomas Deal, Attorney Advisor, OHR (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-39

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-39

Dear Mr. Brown:

This letter responds to the twelfth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Consumer and Regulatory Affairs ("DCRA") to your request.

Background

On November 13, 2017, you submitted a request to DCRA, which seeks:

> All documents regarding District of Columbia Housing Authority and Keller Williams Capitol Properties registered agent corporate file number and date of filing in connection with Superior Court of the District of Columbia case number 2017 sc36014 set for hearing on dec 5 2017.

On November 15, 2017, you filed an appeal that states "Request Created." Your appeal was not properly filed as it did not include a "Statement of the circumstances, reasons or arguments advanced in support of disclosure" or a "Copy of any written denial," as required by 1 DCMR § 412.4. Because your appeal was filed two days after you made the request, you have not been constructively denied pursuant to D.C. Official Code § 2-532(e).

This Office did not notify DCRA of your appeal, because there is sufficient information in your filing for us to render a decision on the matter.

Pursuant to D.C. Official Code § 2-532(c)(1), a public body must respond to a DC FOIA request within 15 business days of the receipt of the request. In certain circumstances, a public body may extend its response time by an additional 10 business days. D.C. Official Code § 2-532(d). The initial 15-business day time period had not expired when you filed the instant appeal, therefore rendering the appeal premature.

In light of the foregoing, this Office dismisses your appeal on the grounds that it was prematurely filed. This dismissal shall be without prejudice to you to file a separate appeal if DCRA improperly responds or fails to respond to your request after the statutory deadline.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-40

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-40

Dear Mr. Brown:

This letter responds to the thirteenth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Consumer and Regulatory Affairs ("DCRA") to your request for "payment standards information" regarding an "MLS advertisement."

This Office contacted DCRA on November 15, 2017, and notified the agency of your appeal. On November 15, 2017, DCRA provided a response to your request and informed us that it considered your appeal moot.

Since your appeal was based on DCRA's failure to respond to your request, and DCRA has now responded, we agree with DCRA that your appeal is moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response that DCRA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-41

November 15, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-41

Dear Mr. Brown:

This letter responds to the fourteenth administrative appeal you have submitted to the Mayor this year under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Housing & Community Development ("DHCD") to your request.

Background

On October 16, 2017, you submitted to DHCD a request, which states:

> I'm seeking the payment standards information and all required information regarding the MLS advisement under chapter 36b(Chapter 36B. Lease-Purchase Agreements § 42-3671.10 Advertising) I'm also seeking to know if the information in the MLS is in compliance with Chapter 36B. Lease-Purchase Agreements § 42-3671.10. Advertising

On October 27, 2017, DHCD responded to you by requesting that you clarify your request. This request was made pursuant to 1 DCMR § 402.5.

On November 15, 2017, you appealed DHCD's response. The appeal description stated only "Request Created." Attached to your appeal was a denial letter from an unrelated FOIA request that you submitted to a different District agency. As a result, your appeal was not properly filed as it did not include a "Statement of the circumstances, reasons or arguments advanced in support of disclosure" or a "Copy of any written denial," as required by 1 DCMR § 412.4. Nonetheless, there is sufficient information before us to render a decision on this matter.

We find DHCD's response to your request to be consistent with 1 DCMR § 402.5's requirement that in the event of an ambiguous request, agencies should contact requesters to "supplement the request with the necessary information." You did not respond to DHCD to clarify your request, therefore your request was never received by DHCD. 1 DCMR § 405.6 ("When the Freedom of Information Officer, pursuant to § 402.5, contacts the requester for additional information, then the request is deemed received when the Freedom of Information Officer receives the additional

information.") You have not properly filed a request, and therefore DHCD has not denied you access to records.

Conclusion

Based on the foregoing, we affirm DHCD's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Tonya Condell, FOIA Officer, DHCD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-42

November 30, 2017

VIA ELECTRONIC MAIL

Ms. Jeni Decker-Lopez

RE: FOIA Appeal 2018-042

Dear Ms. Decker-Lopez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested from MPD under DC FOIA.

Background

On September 11, 2017, you submitted a request to MPD for records related to an unsolved 1981 homicide. On November 13, 2017, MPD granted your request in part, releasing a press release, and denied your request in part, withholding its investigative documents on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings. MPD's denial indicated that the unsolved homicide case is considered an open investigation. Additionally, MPD stated that disclosure of its investigative records would impede enforcement efforts by enabling witnesses or suspects to conform future testimony based on the facts in the investigative records.

On appeal, you challenge MPD's denial of your FOIA request, declaring that 36 years have passed since the crime occurred, and it does not appear that MPD has publically demonstrated activity in the case in over ten years. Further, you argue that disclosure of investigative records can help to uncover leads and solve cold cases, citing podcasts and articles. Finally, you request that MPD conduct a document-by-document review to determine whether certain documents can be disclosed.

On November 29, 2017, MPD responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i).[1] In support of this position, MPD proffered that its investigation into the murder is ongoing and that release of the requested records could adversely affect MPD's enforcement efforts by informing any suspects or witnesses on the direction of the investigation and enabling them to conform

[1] MPD's response is attached for your reference.

testimony to escape culpability. MPD's response also described the categories of withheld documents, claiming that disclosure of any of the records could impede its enforcement efforts.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

On appeal, you argue that due to the age of the case, responsive records should be disclosed to bring attention and new leads to the case. The records you seek here were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

Your belief that the case is cold does not overcome the purpose of Exemption 3(A)(i), which is to protect releasing investigatory details that could interfere with law enforcement efforts. *See Dickerson v. DOJ*, 992 F.2d 1426, 1432 (6th Cir. 1993) (finding that an investigation into 1975 disappearance remained ongoing and therefore was still "prospective" law enforcement proceeding.) MPD maintains that disclosing the records you requested could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In

light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.[2]

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[2] Although MPD's application of Exemption 3(A)(i) is appropriate, we note that this exemption, like others, is discretionary. Due to the age of the case, MPD may determine that the benefits of disclosure outweigh the potential harm to the ongoing law enforcement proceeding. MPD, as the agency responsible for the ongoing investigation, is in the best position to assess the potential impact of disclosure. Therefore, MPD may elect to disclose or continue to withhold its investigative records related to the unsolved homicide.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-43

December 5, 2017

VIA ELECTRONIC MAIL

Mr. Michael W

RE: FOIA Appeal 2018-43

Dear Mr. Michael W:

This letter responds to administrative appeal you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Here, you are challenging the response provided by the Department of Corrections ("DOC") to your request.

Background

On August 3, 2017, you submitted a series of questions to DOC through FOIAXpress, which were:

> Was the Freedom of Information Act (FOIA) not enacted on July 4, 1966? Do you believe people should have access to information? Why are there so many barriers to obtaining one's own record? Is the Department of Correction a Federal Agency? What records does the Department of Records hold with regards to I, Michael [W]? Will you reveal all records within your possession? If no, will you state the reason for you having not done so?

On August 24, 2017, DOC responded to you by informing you that:

> Questions are not [a] proper FOIA request. You must identify and describe records sought and a due diligence search will be conducted. If the records identified and described have been created and maintained, they will be disclosed, subject to FOIA exemptions. You are advised to submit a proper FOIA request.

On November 10, 2017, you appealed DOC's response. In your appeal, you ask:

> Do you believe people should have access to information? Why are there so many barriers to obtaining one's own records? What records if any does the Office of the Mayor hold with regards to I, Michael [W]? Will you reveal all records within your possession? If no, will you state the reason for you having not done so? Why block request for discovery in a civil case where immigrant civil right was grossly

> infringed? Who is Oluwasegun Obebe? Which undergraduate and graduate school has he previously attended? What are his respective roles and responsibilities?

When this Office inquired about the basis of your appeal, pursuant to 1 DCMR 412, you responded by asking:

> Thank you for your e-mail. Apologies for the late reply. Is the Office of the Mayor of the opinion that I have not made a FOIA request to the Department of Corrections about records related to me? Why are there so many barriers to obtaining one's own records? Why not proactively disclose information? Is a transparent government not also an efficient one? Why is discrimination wrong?

This Office asked DOC to respond to your appeal, but DOC did not respond. However, there is sufficient information in your filing for us to render a decision on the matter.

Your original filing with DOC amounts to a series of questions and not a request for records. As DOC explained to you before, DC FOIA does not compel agencies to answer your questions; DC FOIA gives you the right to inspect records. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Further, to the extent that your original filing can be construed as a request for records, it does not reasonably describe a record as required by 1 DCMR § 402. *See Dale v. IRS*, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (concluding that request seeking "'any and all documents . . . that refer or relate in any way'" to the requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [the agency]").

As a result, DOC's August 24, 2017, letter asking that you resubmit a request that reasonably describes a record was consistent with 1 DCMR § 402.5's requirement that in the event of an ambiguous request, agencies should contact requesters to "supplement the request with the necessary information." You have failed to submit a proper FOIA request; therefore, DOC's response was appropriate.

Conclusion

Based on the foregoing, we affirm DOC's decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-44

December 5, 2017

VIA ELECTRONIC MAIL

Mr. Sean Dunagan

RE: FOIA Appeal 2018-044

Dear Mr. Dunagan:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested from MPD under DC FOIA.

Background

On May 16, 2017, you submitted a request to MPD for records related to an unsolved homicide that occurred on July 10, 2016. On June 2, 2017, MPD denied your request withholding all responsive documents on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On appeal, you challenge MPD's blanket denial of your FOIA request, asserting that reasonably segregable portions of the records should be disclosed pursuant to D.C. Official Code § 2-534(b). Further, you argue that some of the responsive records have already been made public and should not be withheld as exempt from disclosure. Finally, you request that MPD conduct a more thorough review of the responsive records to determine whether certain documents can be disclosed.

On November 20, 2017, MPD sent you a response to your appeal. MPD reconsidered its initial denial and provided you with non-exempt responsive records. MPD reasserted its position that its investigative records are protected from disclosure by Exemption 3(A)(i).[1] In support of this position, MPD proffered that its investigation into the matter is ongoing and that release of the requested records could adversely affect MPD's enforcement efforts by informing any suspects or witnesses on the direction of the investigation and enabling them to conform testimony to escape culpability.

[1] MPD sent of copy of its response to this Office.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

On appeal you assert that certain information should be reasonably segregable from records protected by Exemption 3(A)(i). In response to your appeal, MPD made available its incident report, press release, and reward flyer. MPD asserts that the remaining responsive records you seek were compiled for the law enforcement purpose of investigating a homicide, and MPD has asserted that the criminal investigation pertaining to the homicide is ongoing. As a result, MPD has met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings.

Your appeal does not appear to challenge the application of Exemption 3(A)(i) to certain responsive records. The Exemption's purpose is to protect against releasing investigatory details that could interfere with law enforcement efforts. MPD maintains that disclosing any portion of its remaining investigatory records could reveal the direction of its ongoing investigation and allow suspects to avoid detection, arrest, and prosecution. In light of the statutory purpose of Exemption 3(A)(i), we find that MPD properly withheld from disclosure the investigatory records you requested.

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-45

December 6, 2017

VIA ELECTRONIC MAIL

Mr. Eric J. Feder

RE: FOIA Appeal 2018-045

Dear Mr. Feder:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") did not adequately respond to your client's request for officer-involved shooting data.

This Office notified MPD of your appeal on November 21, 2017. MPD responded on November 29 2017,[1] indicating that it is still gathering the requested documents and that it expects to complete its search and review by this week.

When an agency improperly withholds public records, the Mayor may order the agency to disclose the record. D.C. Official Code § 2-537. Here, MPD has represented to this Office that a search is underway for records that are responsive to your request, and that it expects to respond to you this week. As a result, we consider your appeal to be moot; provided, that MPD responds to your request by December 11, 2017.

If you do not receive a response from MPD by December 11, 2017, you may request that we compel MPD to respond. If you receive a response from MPD by December 11, 2017, and you wish to challenge any aspect of this response, you may do so by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-46

December 11, 2017

VIA ELECTRONIC MAIL

Mr. Jason Lewis

RE: FOIA Appeal 2018-46

Dear Mr. Lewis:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the District of Columbia Public Library ("DCPL") did not adequately provide records responsive to your request for records relating to an investigation.[1]

On October 22, 2017, you made your request for records. On November 14, 2017, DCPL granted your request in part and denied it in part. DCPL provided you with two responsive records, and withheld one record in its entirety, citing to the deliberative process privilege, D.C. Official Code § 2-534(e). On November 27, 2017, you filed your appeal, requesting "any additional information that may be available under the FOIA." Specifically, you sought "the finding from an EEOC investigation . . ."

This Office contacted DCPL on November 27, 2017, and notified the agency of your appeal. DCPL responded on December 1, 2017.[2] In its response, DCPL summarized its initial response to your request. DCPL stated further that it had reviewed the responsive document that it had withheld in its entirety – the closest document resembling the "finding" referred to in your appeal – and has since amended its response by releasing to you a partially redacted version of that document. These redactions appear to be made pursuant to D.C. Official Code § 2-534(a)(2) (protecting personal privacy), D.C. Official Code § 2-534(a)(3) (protecting records compiled for an investigation), and D.C. Official Code § 2-534(e) (protecting documents subject to the deliberative process privilege). As a result of this additional partial disclosure, DCPL asserted that it has satisfied your claim that its initial production was inadequate.

[1] Your appeal also states that "[t]his is an appeal under the Privacy Act of the denial of my request for records;" however, this Office's jurisdiction, under D.C. Official Code § 2-537, is limited to whether public records are improperly withheld under DC FOIA. As a result, your statements relating to your rights under the Privacy Act and the "current EEOC rules" will not be addressed further in this decision.
[2] A copy of DCPL's response is attached.

We agree that DCPL's amended production appears to satisfy the issues raised in your appeal. As a result, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You may challenge DCPL's amended production by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Grace Perry-Gaiter, General Counsel, DCPL (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-47

November 28, 2017

VIA ELECTRONIC MAIL

Mr. James Sager

RE: FOIA Appeal 2018-47

Dear Mr. James Sager:

This letter responds to the administrative appeal you submitted to the Mayor asserting that the Office of the Attorney General for the District of Columbia ("OAG") improperly withheld records you requested under the District of Columbia Freedom of Information Act ("DC FOIA").

D.C. Official Code §2-537 establishes the Mayor's jurisdiction to review denials of DC FOIA requests issued by public bodies. Under D.C. Official Code §2-537(a-2),[1] the Mayor does not have jurisdiction over DC FOIA denials issued by OAG; instead, individuals may institute proceedings in the Superior Court of the District of Columbia. As a result, the Mayor has no authority to adjudicate your appeal. In order to appeal OAG's response to your FOIA request, you must pursue the appellate process established under D.C. Official Code §2-537(a-2).

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Anna Kent, Assistant Attorney General, OAG (via email)

[1] This section was added to the D.C. Official Code by D.C. Law 21-36, Fiscal Year 2016 Budget Support Act of 2015.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-48

December 13, 2017

VIA ELECTRONIC MAIL

Mr. Alex Billy

RE: FOIA Appeal 2018-48

Dear Mr. Billy:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") did not adequately respond to your request for data related to seizures from 1995 to the present.

This Office contacted MPD on November 29, 2017, and notified the agency of your appeal. MPD responded on December 12, 2017. In its response, MPD indicated that it contacted you to clarify your request, and as a result MPD began conducting an additional search for responsive records based on the information you provided. MPD advised us that its second search would be completed by December 19, 2017.

As a result, we remand this matter to MPD to complete its search, and to disclose to you any non-exempt records. You may challenge MPD's subsequent response by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-49

December 13, 2017

VIA ELECTRONIC MAIL

Mr. Zachary Hill

RE: FOIA Appeal 2018-49

Dear Mr. Hill:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested from MPD under DC FOIA.

Background

On August 30, 2017, you submitted a request to MPD on behalf of your client for records related to forgery and felony murder charges against your client in 1994. These charges were dismissed, and you indicated that you were seeking the records to seal your client's criminal record. Your request also included a signed authorization from your client informing MPD that it could release the records to you. On November 20, 2017, you received MPD's response to your request, which granted your request in part and disclosed four pages of prosecution reports, and denied your request in part and withheld responsive documents on three grounds: (1) D.C. Official Code § 2-534(a)(3)(A)(i), which exempts from disclosure certain investigatory records compiled for law enforcement purposes that would interfere with enforcement proceedings; (2) D.C. Official Code § 2-534(a)(4), which exempts from disclosure certain records pursuant to the deliberative process privilege; and (3) D.C. Official Code § 2-534(a)(2) and (a)(C)(3), which exempt from disclosure records (or portions thereof) that would constitute an unwarranted invasion of person privacy.

On appeal, you challenge MPD's withholding of responsive records on the basis that the information is protected by the deliberative process and that disclosure would interfere with enforcement proceedings. You argue that the exculpatory facts contained the records are neither predecisional nor deliberative. Additionally, you assert that disclosure of information regarding your client's innocence would not interfere with any ongoing investigatory or enforcement efforts. Finally, you note that your client has no objection to the redaction of personally identifiable information of third parties or information that is not exculpatory.

On December 7, 2017, MPD sent this Office a response to your appeal.[1] MPD asserted that it reconsidered its initial denial and would provide you with additional responsive records by December 11, 2017. MPD stated its belief that its additional disclosure would satisfy your request; however, MPD did not identify which, if any, responsive records it continues to withhold or what exemptions apply to these records.

Since your appeal was based on MPD's withholding of exculpatory records and MPD asserted that it would disclose additional records to satisfy your request, we consider your appeal to be moot. You are free to assert any challenge, by separate appeal to this Office, to MPD's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

[1] A copy of MPD's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-50

December 18, 2017

VIA ELECTRONIC MAIL

Guillermo Rueda

RE: FOIA Appeal 2018-50

Dear Mr. Rueda:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your November 9, 2017 request for records related to construction activity at an identified address.

This Office contacted DCRA on December 4, 2017, and notified the agency of your appeal. On December 15, 2017, DCRA provided its response to your appeal. In its response, DCRA asserted that it disclosed all of the responsive records it had found via email and a CD that it mailed to you. DCRA further stated that additional responsive records may be disclosed following the conclusion of an email search being performed by Office of the Chief Technology Officer.

Since your appeal was based on DCRA's failure to respond to your request, and DCRA has now responded by providing documents and representing that it will continue to disclose additional documents as they become available, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response that DCRA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2018-51

December 18, 2017

VIA ELECTRONIC MAIL

Guillermo Rueda

RE: FOIA Appeal 2018-51

Dear Mr. Rueda:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to timely respond to your request for records related to permits at an identified address.

This Office contacted DCRA on December 8, 2017, and notified the agency of your appeal. On December 8, 2017, DCRA provided its response to your appeal. In its response, DCRA asserted that it fully disclosed 221 of 226 responsive records via a CD that it mailed to you. The remaining 5 responsive records were also contained on the CD, but were partially redacted pursuant to D.C. Official Code § 2-532(a)(2) to protect against an unwarranted invasion of personal privacy.

Since your appeal was based on the timeliness of DCRA's response and DCRA has now responded by providing documents, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response that DCRA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

MAYA ANGELOU PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACT

Achieve3000 – Digital Literacy Program

Maya Angelou Public Charter School intends to sole source a digital literacy program with Achieve3000 in the amount of $27,000. Currently Achieve3000 serves as differentiated literacy program that has been proven effective with our students. Please email Heather Hesslink at hhesslink@seeforever.org for questions.

EXECUTIVE OFFICE OF THE MAYOR

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY 2019 Immigrant Justice Legal Services Grant (IJLS)

Background information:

The Executive Office of the Mayor is soliciting grant applications from qualified Community-Based Organizations (CBOs), private organizations and partnerships serving the District of Columbia's population for its *FY 2019 Immigrant Justice Legal Services Grant Program* (IJLS). The grant program will make a total of $900,000 available to fund programs that provide targeted services and resources to the DC immigrant population and their family members. The *FY 2019 Immigrant Justice Legal Services Grant Program* will award grants of up to $150,000 to organizations with a current and valid 501(c)(3) status, as well as private organizations, associations and law firms that plan to mobilize pro bono legal services in order to provide immigration legal services.

Funding priority areas identified for IJLS FY19 are aligned with Mayor Muriel Bowser's administration priorities:

- Public Safety, and
- Civic Engagement

More information regarding eligibility criteria, acceptable grant purposes, pre-bidder's conferences and the deadline for submission will be included in the Request for Applications (RFA).

Release Date of RFA: June 19, 2018

Availability of RFA: The RFA will be posted on the websites for the:
Mayor's Office on Asian and Pacific Islander Affairs (http://apia.dc.gov/);
Mayor's Office on Latino Affairs (www.ola.dc.gov);
Mayor's Office on African Affairs (http://oaa.dc.gov/);
Mayor's Office on Community Affairs (www.moca.dc.gov); and the District's Grant Clearinghouse.

Executive Office of the Mayor Contact: Julio Guity-Guevara
(202) 671-2825
Email:julio.guity-guevara@dc.gov

MERIDIAN PUBLIC CHARTER SCHOOL

INVITATION FOR BID

Food Service Management Services

Meridian Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2018-2019 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 8, 2018** from **Michael L. Russell, Business Manager, mrussell@meridian-dc.org**

Proposals will be accepted at 2120 13th Street, NW Washington, DC 20009 on July 9, 2018 not later than **12 noon.**

All bids not addressing all areas as outlined in the IFB will not be considered.

SHINING STARS MONTESSORI ACADEMY PUBLIC CHARTER SCHOOL (SSMA)

INVITATION FOR BID

Food Service Management Services

SSMA is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2018-2019 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 1, 2018** from
Cherita Moore-Gause at 202 723 1467 or cmooregause@shiningstarspcs.org

Proposals will be accepted at 1240 Randolph Street NE, Washington, DC 20017 on **June 26, 2018** not later than **12 noon.**

All bids not addressing all areas as outlined in the IFB will not be considered.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

CLEAN TEAM GRANTS

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** ("the Program") in two service areas (listed below). **The submission deadline is Friday, July13, 2018, 10:00 AM.**

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters, which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC's commercial districts.

Eligible applicants are nonprofit organizations which are incorporated in the District of Columbia and Certified Business Enterprises. All applicants must be current on all taxes. Applicants should have a demonstrated capacity with the following areas of expertise.

- Providing clean team services or related services to commercial districts or public spaces.
- Providing job-training services to its employees.
- Providing social support services to its Clean Team employees.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of two grants). The size of grant is noted for each district.

- Bladensburg Road, NE - $100,000.00
- South Dakota Avenue NE - $100,000.00

The **grant performance period** to deliver clean team services is October 1, 2018 through September 30, 2019. Grants may be renewed for a second performance period of October 1, 2019 through September 30, 2020.

The **Request for Application** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD will post the RFA on or before **Monday, June 11, 2018** at www.dslbd.dc.gov. Click on the *Our Programs* tab, then *Neighborhood Revitalization,* and then *Solicitations and Opportunities* on the left navigation column.

DSLBD will hold a **pre-application meeting on Friday, June 22 at 2:00 PM** at 441 4th Street, NW, Washington, DC 20001, Room 805 South.

Application Process: Interested applicants must complete an online application on or before **Friday, July 13, 2018 at 10:00 AM.** DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

The online application will be available on or before **Monday, June 11, 2018**. To open an application, applicants must complete and submit an **Expression of Interest** via the website address included in the Request for Applications. DSLBD will activate their online access within two business days and notify them via email.

Selection Criteria for applications will include the following criteria.

- Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by noting the number of service areas for which the applicant would like to be considered. DSLBD will determine grant award selection and notify all applicants of their status via email on or before Monday, July 30, 2018.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD 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.

All applicants must attest to executing a DSLBD grant agreement as issued (sample document will be provided in online application) and to starting services on October 1, 2018.

For more information, contact Saba Fassil at the Department of Small and Local Business Development at saba.fassil2@dc.gov.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

DC MAIN STREETS
(South Dakota Avenue/Riggs Road, Bladensburg Road, 14th Street, and Woodley Park)

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to operate a DC Main Streets program in four service areas (listed below). **The submission deadline is Friday, August 3, 2018 at 12:00 p.m.**

The purpose of this grant is to designate and fund four (4) DC Main Streets programs, which will assist business districts with the retention, expansion and attraction of neighborhood-serving retail stores and unify and strengthen the commercial corridor.

DSLBD will award **one grant of $175,000 for each** of the following service areas (i.e., a total of four grants).

- South Dakota Avenue/Riggs Rd (Ward 5)
- Bladensburg Road (Ward 5)
- 14th Street (Wards 1 & 2)
- Woodley Park (Ward 3)

Eligible Applicants: Eligible applicants are DC-based nonprofit organizations which are current on all taxes.

The DC Main Streets grant award is a recurring grant, which can be renewed annually as long as the grantee continues to meet the standards for accreditation by the National Main Street Center. The FY 2019 grant performance period is October 1, 2018 through September 30, 2019.

Application Process: Interested applicants must complete an online application on or before **Friday, August 3 at 12:00 p.m**. Instructions for the application can be found in the Request for Applications (RFA), which will be posted by June 18, 2018 at https://dslbd.dc.gov/service/current-solicitations-opportunities. DSLBD will not accept applications submitted via hand delivery, mail or courier service. Late submissions and incomplete applications will not be forwarded to the review panel.

Selection Process: DSLBD will select grant recipients through a competitive application process. All applications from eligible applicants that are received before the deadline will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria. The Director of DSLBD will make the final determination of grant awards. Grantees will be selected by August 24, 2018.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD 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.

All applicants must attest to executing DSLBD grant agreement as issued (sample document will be provided with the online application) and to starting services on October 1, 2018.

For More Information: Attend the Application Information Session. Please refer to the Request for Applications to see the date, time and location of this meeting.

Questions may be sent to Jennifer Prats, DC Main Streets Grants Manager, at the Department of Small and Local Business Development at Jennifer.prats@dc.gov.

WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)

NOTICE OF RESCHEDULED PUBLIC MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that a previously announced meeting scheduled for June 14, 2018, beginning at 10 a.m., will instead take place at 9:30 a.m. on the same day.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room at the Walter E. Washington Convention Center, 801 Mt. Vernon Place, NW. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, June 21, 2018 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	AWTP Status Updates 1. BPAWTP Performance	Assistant General Manager, Plant Operations
3.	Status Updates	Chief Engineer
4.	Project Status Updates	Director, Engineering & Technical Services
5.	Action Items - Joint Use - Non-Joint Use	Chief Engineer
6.	Water Quality Monitoring	Assistant General Manager, Consumer Services
7.	Action Items	Chief Engineer Assistant General Manager, Consumer Services
8.	Emerging Items/Other Business	
9.	Executive Session	
10.	Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19249-A of Jennifer Wisdom, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 19249 approving variances from the limit on number of story requirements under § 400.1, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the off-street parking requirements under § 2101.1, to construct a new one-family dwelling on an unimproved lot in the R-4 (now RF-1) District at premises 1850 5th Street N.W. (Square 3093, Lot 46).[1]

Hearing Dates (19249): May 24, 2016
Decision Date (19249): May 24, 2016
Final Date of Order (19249): May 31, 2016
Time Extension Decision: May 23, 2018

SUMMARY ORDER ON MOTION TO EXTEND THE VALIDITY OF BZA ORDER NO. 19249

The Underlying BZA Order

On May 24, 2016, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for variances from the limit on number of story requirements under § 400.1, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the off-street parking requirements under § 2101.1 under the 1958 Regulations, to construct a new one-family dwelling on an unimproved lot in the R-4 (now RF-1) District[2] at premises 1850 5th Street N.W. (Square 3093, Lot 46) (the "Subject Property"). The Application was granted on May 24, 2016, and the Board issued its written order, No. 19249 (the "Order") on May 31, 2016. Pursuant to 11 DCMR § 3125.9 in the 1958 Zoning Regulations (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on May 31, 2016 and took effect ten days later. Under the Order and pursuant to § 3130.1 of the 1958 Regulations (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until May 31, 2018.

[1] This and all other references to the relief granted in Order No. 19249 are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Zoning Regulations and their replacement with the 2016 Regulations has no effect on the vesting and validity of the original application.

[2] The zone districts were renamed in the 2016 Zoning Regulations. Thus, the R-4 District is now the RF-1 District under the 2016 Regulations. This is reflected on the Zoning Map. This change in nomenclature has no effect on the vesting or validity of the original application.

Motion to Extend

On April 19, 2018, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 19249. This request for extension is pursuant to Subtitle Y § 705 of the 2016 Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

In its request for a two-year extension, the Applicant stated that the time extension is needed to accommodate a delay in obtaining necessary financing for the improvements on the Subject Property due to a change in her employer as well as the ability to submit the required documents to DCRA for securing a building permit. The Applicant also noted that the Historic Preservation Office ("HPO") provided a Staff Report and Recommendation for the Historic Preservation Review Board ("HPRB") that stated "the HPO recommends that the Review Board renew, for a two-year term, the concept for a new 4-story brick rowhouse at 1850 5th Street NW and to delegate final approval to staff."

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.1(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) an inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. Pursuant to Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the original application, including ANC 1B, as well as the Office of Planning. (Exhibit 4.) The parties were allowed at least 30 days to respond. ANC 1B did not submit a report or resolution regarding the time extension request, although the record reflects that the ANC was in support of the original application (Exhibit 3) and that the ANC had notice of the request for a time extension. (Exhibit 6.) The Office of Planning ("OP") submitted a report, dated May 16, 2018, recommending approval of the request for the time extension. (Exhibit 8.)

As required by Subtitle Y § 705.1(b), the Applicant demonstrated that there has been no substantial change in any of the material facts upon which the Board based its original approval

in Order No. 19249. There have also been no substantive changes[3] to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the application.

To meet the burden of proof for good cause required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding factors causing a delay in obtaining a building permit. The good cause basis for the request was the Applicant's inability to move forward with the project due to economic and market conditions beyond its control, pursuant to Subtitle Y § 705(c)(1). The Applicant states that since the issuance of the Order, the Applicant has been diligently working to obtain financing and to move forward to finalize her plans for improvements to the Subject Property. The Applicant is requesting this time extension because a change in the Property Owner's employment status has resulted in a delay in obtaining necessary financing for the improvements on the Subject Property. Also, that change in employment for the Property Owner and its impact on the ability to obtain financing has resulted in delays in applying for building permits. The Applicant also submitted an application with HPRB for a two-year term extension and noted that the HPO Staff Report recommended HPRB grant that renewal. A two-year extension will allow the Applicant the time necessary to obtain necessary financing and building permits. (Exhibit 4.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(1). The Board finds that the delay in the Applicant being able to secure financing as well as to obtain building permits because of the Property Owner's change in employment status constitutes good cause and is beyond the Applicant's reasonable control and that the Applicant demonstrated that she has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

Having given the written report of OP great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

[3] Although the zone districts were renamed in the 2016 Zoning Regulations, this change in nomenclature does not constitute a substantive change as contemplated by Subtitle Y § 705.1(b), and has no effect on the vesting or validity of the original application.

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of a two-year time extension of Order No. 19249, which Order shall be valid until **May 31, 2020**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 24, 2018

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19336-A of Edward Gonzalez, pursuant to 11 DCMR Subtitle Y § 703, for a minor modification to the plans approved by BZA Order No. 19336 to convert office space to residential apartments on the first floor of an existing building in the R-17 Zone at premises 2405 I Street, #1-A, N.W. (Square 28, Lots 157, 2001).

HEARING DATE (Case No. 19336): October 4, 2016
DECISION DATE (Case No. 19336): October 4, 2016
ORDER ISSUANCE DATE (Case No. 19336): October 11, 2016
MODIFICATION DECISION DATE: May 23, 2018

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

BACKGROUND

On October 4, 2016, in Application No. 19336, the Board of Zoning Adjustment ("Board" or "BZA"), approved the self-certified request of Edward Gonzalez (the "Applicant") for special exceptions under the nonconforming use requirements of Subtitle C § 204, and the parking requirements of Subtitle C § 705, to convert office space to residential apartments on the first floor of an existing building in the R-17 Zone at premises 2405 I Street, #1-A, N.W. (Square 28, Lots 157, 2001).

The Board issued Order No. 19336 on October 11, 2016. (Exhibit 3.) The approval in Order No. 19336 was subject to the approved plans at Exhibit 6 in the record of Case No. 19336.

REQUEST FOR MINOR MODIFICATION

On April 3, 2018, the Applicant submitted a request for a minor modification of the plans approved by the Board in Order No. 19336 (the "Order") pursuant to 11 DCMR Subtitle Y § 703. (Exhibits 1-7.) The Applicant requested a minor modification to the plans in order to modify the layout of the three residential apartments on the first floor, shown on the plans marked at Exhibit 6 as Units A, B, and C. (Exhibits 4 and 6.) Specifically, the Applicant proposes to modify Unit A from a two-bedroom unit into a one-bedroom unit and proposes to relocate the main entry of Unit C from the front hall to the rear hall. (Exhibits 4 and 6.)

The Board finds that the Applicant's request complies with 11 DCMR Subtitle Y § 703.3, which defines a minor modification as "modifications that do not change the material facts upon which the Board based its original approval of the application." The proposed modifications to the approved plans deal with the interior layout of the residential units and do not impact the material facts that the Board relied upon in granting special exception relief under the

nonconforming use requirements of Subtitle C § 204 and the parking requirements of Subtitle C § 705.

Pursuant to Subtitle Y §§ 703.6-703.9, a request for a minor modification shall be served on all other parties to the original application and those parties are allowed to submit comments within ten days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for minor modification to Advisory Neighborhood Commission ("ANC") 2A, the only other party to Application No. 19336, on April 9, 2018. (Exhibit 8.) The ANC was allowed at least ten days to respond, but did not file a written report to the record regarding the request for minor modification.

The Applicant also served its request on the Office of Planning ("OP") on April 3, 2018. (Exhibit 8.) OP submitted a report dated May 11, 2018, recommending approval of the request for a minor modification to the approved plans. (Exhibit 11.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a minor modification. Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a minor modification to the plans approved in Case No. 19336, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for a minor modification to Order No. 19336 is hereby **GRANTED, SUBJECT TO THE MODIFIED PLANS AT EXHIBIT 6.**

In all other respects, Order No. 19336 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON OCTOBER 4, 2016: 4-0-1
(Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; one Board seat vacant.)

VOTE ON MINOR MODIFICATION ON MAY 23, 2018:[1] 5-0-0
(Frederick L. Hill, Robert E. Miller, Carlton E. Hart, Lesylleé M. White, and Lorna L. John to

[1] As Board Members Hill and Miller were the only two members participating on the original application, Members Hart, White, and John reviewed the record of Application No. 19336 in order to participate in deciding the request for minor modification.

APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 31, 2018

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19726 of Amaro, LLC, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use permissions of Subtitle U § 802.1(c), and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (d), and pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the loading berth requirements of Subtitle C § 902.3, to construct an emergency shelter in the PDR-2 Zone at premises 101 Q Street N.E. (Square 3518, Lot 25).

HEARING DATES: April 11, 2018 and May 9, 2018
DECISION DATE: May 30, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 20, 22, & 42 (original), 51 (1st revised), 60 (2nd revised), 65 (3rd revised), & 82 (final revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on April 17, 2018, at which a quorum was present, the ANC voted 8-1-0 in support of the application. (Exhibit 76.) At a hearing on May 9, 2018, the Chair of ANC 5E testified on behalf of the ANC in support of the application.

The Office of Planning ("OP") submitted two reports, both recommending approval of the application. In its original report, OP recommended approval of the application (Exhibit 58) and noted that loading relief may also be required. (Exhibit 58.) OP testified on April 11, 2018 that it supports the additional variance for loading berth, which was not analyzed in its original report

[1] The Applicant originally requested special exception relief for emergency shelter use and penthouse setback. (Ex. 22.) The Applicant amended the application to request variances for driveway width (Subtitle C § 711.6) and loading berth (Subtitle C § 902.3). (Ex. 51.) The Applicant amended the application again to withdraw the variance request for driveway width after meeting with the Zoning Administrator, who determined it was not needed. (Ex. 60.) The caption has been revised to reflect the amended relief requested.

as a variance. In its supplemental report, OP recommended approval of the application, as amended. (Exhibit 64.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 48.)

Letters of support for the application and the Applicant's programs, including those from the Chief of Police; the Chair of the Committee on the Judiciary and Public Safety, Council of the District of Columbia; the Attorney General for the District of Columbia; the Executive Director of the DC Courts; the Savoy Court Condominium Association; the Local Initiatives Support Corporation; the Office of Victim Services and Justice Grants, Executive Office of the Mayor; the Network for Victim Recovery of DC; District of Columbia Forensic Nurse Examiners; and the Eckington Civic Association, were submitted to the record. (Exhibits 1 and 75.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the loading berth requirements of Subtitle C § 902.3, to construct an emergency shelter in the PDR-2 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking an area variance from 11 DCMR Subtitle C § 902.3, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the use permissions of Subtitle U § 802.1(c), and under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (d), to construct an emergency shelter in the PDR-2 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle U § 802.1(c), and Subtitle C §§ 1504 and 1502.1(b) & (d), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 80.**

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull (by absentee vote) to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 31, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR

STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19744 of Compass Coffee, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(n) from the use requirements of Subtitle U § 512.1(d)(3), to permit a coffee and prepared food shop with more than 18 seats in the MU-4 Zone at premises 4850 Massachusetts Avenue N.W. (Square 1500, Lots 4 and 3).

HEARING DATE: May 23, 2018
DECISION DATE: May 23, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to Advisory Neighborhood Commissions ("ANC") 3D and 3E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report recommending approval of the application with five conditions. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on May 2, 2018, at which a quorum was present, the ANC voted 6-2-0 to support the application with the five conditions. (Exhibits 33 and 35.) Commissioners Troy Kravitz and Holmes Whalen submitted written testimony to the Board further detailing the ANC's position and requesting the five conditions. (Exhibits 36 and 37.) During its deliberations, the Board determined that Conditions 3-5 as proposed by the ANC did not clearly address a potential adverse impact of the project and concluded that it would be more appropriate for the parties to enter into a separate agreement regarding those conditions. ANC 3E, the adjacent ANC, did not file a written report or participate in the case.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 29.)

The Board granted the request for party status in support by the Spring Valley Neighborhood Association ("SVNA" or "Party Proponent"). (Exhibit 30.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(n) from the use requirements of Subtitle U § 512.1(d)(3), to permit a coffee and prepared food shop with more than 18 seats in the MU-4 Zone. Since the Party Proponent appeared in support of the application, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U §§ 513.1(n) and 512.1(d)(3), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 AND WITH THE FOLLOWING CONDITIONS:**

1. There shall be no more than 74 seats in the establishment.

2. Trash shall be temporarily stored in closed containers within the establishment and periodically removed to an enclosed trash container provided on the lot.

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 30, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19750 of Adam Chamy and Bradley Gallagher, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 306.1, to construct a one-story, rear addition to an existing flat in the RF-1 Zone at premises 3658 Warder Street N.W. (Square 3031, Lot 148).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: May 30, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board's expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commissions ("ANC")1A and 4C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on April 11, 2018, at which a quorum was in attendance, ANC 1A voted 7-0-0 to support the application. (Exhibit 28.) The adjacent ANC, ANC 4C, did not file a written report.

The Office of Planning ("OP") submitted a timely report, dated May 18, 2018, in support of the application. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a timely report, dated May 18, 2018, expressing no objection to the approval of the application. (Exhibit 29.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 306.1, to construct a one-story, rear addition to an existing flat in the RF-1 Zone. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X §§ 901.2, and Subtitle E §§ 5201 and 306.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR, Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 12.**

VOTE: **5-0-0** (Frederick L. Hill**,** Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 31, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19754 of Capital One, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(n) from the use requirements of Subtitle U § 512.1(d)(3), to permit a prepared food shop with 106 seats in the MU-4 Zone at premises 3146-3150 M Street N.W. (Square 1199, Lot 64).

HEARING DATE: May 23, 2018
DECISION DATE: May 23, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on April 30, 2018, at which a quorum was present, the ANC voted 8-0-0 in support of the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report, recommending approval of the application. (Exhibit 35.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application with one condition. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(n) from the use requirements of Subtitle U § 512.1(d)(3), to permit a prepared food shop with 106 seats in the MU-4 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U §§ 513.1(n) and 512.1(d)(3), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9 AND THE FOLLOWING CONDITION:**

1. The Applicant shall provide at least two inverted U-racks on Wisconsin Avenue within public space adjacent to the site, subject to the approval of the Public Space Committee and the Old Georgetown Board.

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 24, 2018

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.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
BZA Application No. 19788

The Board of Zoning Adjustment for the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of filing of the following case:

Application of Royal Norwegian Embassy, pursuant to 11 DCMR Subtitle X, Chapter 2, to renovate and expand a chancery by renovating the exterior, and constructing an addition to the existing Norwegian chancery building in the R-12 Zone at premises 2720 34th Street N.W. and 3401 Massachusetts Avenue N.W. (Square 1939, Lot 39).

Notice of the public hearing date will be mailed to property owners within 200 feet of the subject property and the affected **Advisory Neighborhood Commission (ANC) 3C**. Additionally, it will be published in the *DC Register*, the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm, and on public hearing notices available at the OZ office. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

In order to review exhibits in the case, follow these steps:

- Visit the OZ website at www.dcoz.dc.gov
- Click on “Case Records” under “Services”.
- Enter the BZA application number indicated above and click “Go”.
- The search results should produce the case. Click “View Details”.
- On the right-hand side, click “View Full Log”.
- This list comprises the full record in the case. Simply click “View” on any document you wish to see, and it will open a PDF document in a separate window.

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record or participating as a witness. Visit the Interactive Zoning Information System (IZIS) on our website at http://app.dcoz.dc.gov and click on “Participating in an Existing (ZC or BZA) Case” for an explanation of these options. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
BZA Application No. 19788

The Board of Zoning Adjustment for the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of its intention to not disapprove, or in the alternative, disapprove the following:

Application of Royal Norwegian Embassy, pursuant to 11 DCMR Subtitle X, Chapter 2, to renovate and expand a chancery by renovating the exterior, and constructing an addition to the existing Norwegian chancery building in the R-12 Zone at premises 2720 34th Street N.W. and 3401 Massachusetts Avenue N.W. (Square 1939, Lot 39).

Notice of the public hearing date will be mailed to property owners within 200 feet of the subject property and the affected **Advisory Neighborhood Commission (ANC) 3C**. Additionally, it will be published in the *DC Register*, the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm, and on public hearing notices available at the OZ office. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

In order to review exhibits in the case, follow these steps:

- Visit the OZ website at www.dcoz.dc.gov
- Click on "Case Records" under "Services".
- Enter the BZA application number indicated above and click "Go".
- The search results should produce the case. Click "View Details".
- On the right-hand side, click "View Full Log".
- This list comprises the full record in the case. Simply click "View" on any document you wish to see, and it will open a PDF document in a separate window.

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record or participating as a witness. Visit the Interactive Zoning Information System (IZIS) on our website at https://app.dcoz.dc.gov/Login.aspx to make a submission. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 02-38J
(WFS2, LLC – Second-Stage PUD @ Square 542, Lot 822 – 1000 4th Street, S.W.)
May 23, 2018

THIS CASE IS OF INTEREST TO ANC 6D

On May 15, 2018, the Office of Zoning received an application from WFS2, LLC (the "Applicant") for approval of a second-stage planned unit development ("PUD") for the above-referenced property.

The property that is the subject of this application consists of Lot 822 in Square 542 in southwest Washington, D.C. (Ward 6), on property located at 1000 4th Street, S.W. The property is the northeast parcel of the Waterfront Stations PUD. The property is zoned, for the purposes of this project, C-3-C through a previously-approved PUD-related Zoning Map amendment (the underlying zone is MU-8).

The Applicant proposes to construct an 11-story, mixed-use building to include approximately 456 residential units, 29,182 square feet of community-serving ground-floor uses, and 214 below-grade parking spaces. Thirty percent of the residential units will be reserved for households at the 30%-50% median family income level, and the project will be constructed to LEED-Gold certification under the LEED 2009 standard.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14(6)
Z.C. Case No. 13-14
Vision McMillan Partners, LLC and
Office of the Deputy Mayor for Planning and Economic Development
(First-Stage PUD, Consolidated PUD, and Related Map Amendment
@ Square 3128, Lot 800 - McMillan Reservoir Slow Sand Filtration Site)
Order on Remand - September 14, 2017

This Zoning Commission for the District of Columbia ("Commission"), through the issuance of this Order, responds to the remand instructions of the District of Columbia Court of Appeals ("Court," "Court of Appeals," or "DCCA") as set forth in *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027 D.C. 2016) (the "Opinion"). The Opinion vacated[1] Z.C. Order No. 13-14 ("Order 13-14"), as corrected ("Remanded Order").[2]

The Remanded Order granted the application of Vision McMillan Partners, LLC and the Office of the Deputy Mayor for Planning and Economic Development ("Applicant") for first-stage and consolidated review of a planned unit development for Lot 800 in Square 3128 ("Application," "PUD," or "Project"), which is the site of the McMillan Reservoir Slow Sand Filtration Site ("PUD Site"). The Application was heard and decided pursuant to Zoning Regulations that were repealed as of September 6, 2016 and replaced with new text divided by subtitles. Existing Zoning Map designations were also renamed as of that date. Nevertheless, because this Application was filed prior to the repeal date, it remains subject to the substantive requirements applicable to it as of September 5, 2016. The remand proceeding was conducted pursuant to the Commission's current rules of procedure set forth in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations ("DCMR"). Except for citations to Subtitle Z, all references to DCMR Title 11 refer to the text of that title in effect as of September 5, 2016.

The Applicant identified seven development parcels within the PUD Site. The Commission granted first-stage PUD approval for the Master Plan and Parcels 2 and 3, consolidated PUD approval for the remaining five parcels, and a related map amendment to zone the PUD Site to the CR Zone District, except for Parcel 1, which was mapped in the C-3-C Zone District. Parcel 1 is located in the northern portion of the PUD Site and the C-3-C Zone District was requested to accommodate the 130-foot height requested for the proposed building at that location. That building was eventually approved for a maximum height of 115-feet, and will hereinafter be referred to as the "Parcel 1 Building."

[1] The Opinion also vacated two orders of the Mayor's Agent for Historic Preservation that cleared applications for subdivision and demolition for historic preservation purposes.

[2] Z.C. Order No. 13-14 was published in the April 17, 2015 edition of the *D.C. Register*. On April 24, 2015, a corrected version of that Order was published in the *D.C. Register* to (1) revise Finding of Fact ("FF") ¶ 94(a) to reflect changes to the proffers made by the Applicant through its filing dated August 25, 2014 (Exhibit 849-849-849G); (2) revise references in FF ¶ 94(c) and (d) from the "project association" to the "Partnership, as defined by Finding of Fact 75"; (3) indicate that the Partnership, as defined by FF ¶ 75, is the recipient of the Funds in FF ¶ 94(e); and (3) amend FF ¶ 94(f) to reflect changes to the proffers made by the Applicant in response to a comment from the Office of the Attorney General.

The parties to the original proceeding, and therefore to this remand, were the Applicant, Advisory Neighborhood Commission ("ANC") 5E, the ANC in which the PUD Site is located, and Friends of McMillan Park ("FOMP"). FOMP is a nonprofit organization dedicated to preserving, restoring, and adaptively reusing the PUD Site. In addition, as a result in a change to the Commission's rules of procedure, ANCs 1B and 5A were also entitled to automatic party status. (11-Z DCMR § 403.5 (B).)

Throughout this remand proceeding, the Commission remained cognizant of the DCCA's admonition that its remand was "not solely for the purpose of redrafting findings and conclusions to facilitate our review and reinforce the [Commission's] decision. The [Commission] may conduct further hearings or even reach a different result." (149 A.3d 1027, 1035, *quoting*, *Ait-Ghezala v. D.C. Bd. of Zoning Adjustment*, 148 A.3d 1211, 1218 (D.C. 2016) (internal quotation marks omitted).)

Therefore, the Commission held four nights of public hearings, first hearing from members of the public, and then from the parties. In addition, the Commission received over 50 submissions from the public, the parties, and District agencies, many of which were voluminous. Finally, the Commission engaged in extensive deliberations on June 29, 2017 and on September 14, 2017. Between those two dates, the Applicant provided a submission in response to the Commission's request that it revisit the Parcel 1 Building's height. The Applicant stated that the height could be lowered an additional two feet and also suggested that the Commission consider rezoning Parcel 1 to CR. FOMP's response to the Applicant's submission will be discussed in the Conclusions of Law.

On September 14, 2017, the Commission concluded its deliberations of the remanded issues by voting to once again grant the Application with the maximum height of the Parcel 1Building being 113-feet and the entire site zoned CR.

I. Preliminary Matters.

A. The Commission's Initial Actions following its Receipt of the Opinion.

The Commission heard and decided this remand in accordance with Chapter 9, Remand Procedures, of its Rules of Practice and Procedure, set forth in Title 11-Z DCMR. In accordance with Subtitle Z § 901.1, the Office of the Attorney General ("OAG") provided the Commission with a memorandum, after which the Commission met "to determine whether it should request the parties to submit briefs, provide additional oral or documentary evidence, present oral argument, or to augment the record by other means." (11-Z DCMR § 901.2.) At its public meeting held January 30, 2017, the Commission voted to hold a limited scope public hearing on the issues remanded and issued a procedural order in the form of a Notice of Limited Scope Public Hearing. Although not required to, the Commission agreed to hear witnesses not called by the parties. (*See* 11-Z DCMR § 901.6 ("Testimony at any further hearing shall be limited to witnesses called by the parties, unless the procedural order states otherwise.).)

The Notice of Limited Scope Public Hearing advised the public that a hearing would be held on March 23, 2017, identified five remand issues, and requested all witnesses to identify which issue or issues their testimony would address. A discussion of the Opinion and the Commission's formulation of the remand issues follows.

B. The Court of Appeals Opinion and the Remand Issues as Identified by the Commission.

The first portion of the Opinion addressed FOMP's assertion that the Commission erred in finding that the PUD and related map amendment were consistent with the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"). The Comprehensive Plan includes a Future Land Use Map ("FLUM") that is separately prepared but carries the same weight as the plan document itself. (10-A DCMR § 225.1.)[3] The FLUM designation of the PUD site encourages medium-density residential, moderate-density commercial, and Parks, Recreation, and Open Space categories.

As an initial matter, the Opinion noted that the Parcel 1 Building was being zoned to C-3-C, which corresponds to the Framework Elements definition of high-density commercial and that its height and density exceeds what is permitted for the zones identified as corresponding to the Framework Elements' definitions of moderate- and medium-density commercial. Further, even with PUD flexibility, the building's density would exceed that permitted by the zones that correspond to moderate-commercial density and two of the three zones identified as corresponding to medium-commercial density. As a result, the Opinion found that "… the PUD contemplates some 'high-density' development on the site." (*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1033 (D.C. 2016).) Notwithstanding this determination, the Opinion concluded that a high-density commercial development on Parcel 1 would not make the PUD inconsistent with the FLUM designation for the site as moderate density commercial," because:

> The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible: (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density. (10–A DCMR § 226.1 (c) (2016).) Here the Commission concluded that, when the entire site is taken into account, the PUD's overall density is consistent with that permitted in moderate-density commercial zones. We do not understand FOMP to dispute that

[3] The Comprehensive Plan is unofficially codified on the web site of the Office of Documents and Administrative Issuances as Title 10-A of the District of Columbia Municipal Regulations. The official version of the Comprehensive Plan exists in hard copy form, the PDF of which is available on the Office of Planning's website.

> conclusion. The Commission thus reasonably determined that the PUD as a whole was not inconsistent with the FLUM.

(*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016).)

The Opinion then turned its attention to Mid-City Element Policy ("MC") 2.6.5, which states:

> Recognize that development on portions of the McMillan Sand Filtration site may be necessary to stabilize the site and provide the desired open space and amenities. *Where development takes place, it should consist of moderate- to medium-density housing, retail, and other compatible uses.* Any development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development.

(10-A DCMR § 2016.9 (Emphasis added).)

The Opinion concluded that the "high-density use approved in the PUD" was not consistent with the italicized sentence because "unlike the FLUM designation discussed above, the Mid–City Area Element does not appear to contemplate any high-density uses on the site." (*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016).) The Opinion noted however that this "conflict" does not compel a finding of inconsistency with the Comprehensive Plan as a whole, but rather "the Commission may balance competing priorities" when making that determination. (*Id*.) The Opinion further found that policy was not mandatory, but noted that even non-mandatory policies carried "substantial force." (149 A.3d at 1035.) Therefore, "if the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations." (*Id.* (Internal quotations marks and bracket omitted).)

Thus, the Opinion concluded, the Commission failed to do. For although the Commission's FF No. 168 concluded that "the proposed cluster development approach to the PUD Site is a critical and essential part of fulfilling the parks, recreation, and open space designation of the [FLUM], while at the same time achieving other elements of the Comprehensive Plan…", the Commission did not explain why these policies could not be advanced if development on the site were limited to medium- and moderate-density and if not, failed to state "reasons for giving greater weight to some policies than to others." (149 A.3d. at 1027.) For this reason, the DCCA vacated Order 13-14 and remanded the case for the Commission to address these issues.

In its Notice of Limited Scope Public Hearing, the Commission designated these issues as Remand Issue 1, which as stated in the Notice read:

Issue 1: A. Could the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?

B. If not, which of the competing policies should be given greater weight and why?

As a related matter, the Opinion found that the Remanded Order failed to adequately address those Comprehensive Plan policies that FOMP claimed weighed against approval of the PUD.

The Notice of Limited Scope Public Hearing therefore identified the second remand issue as:

Issue 2: Do these or other Comprehensive Plan policies cited by FOMP in the record of this case weigh against approval of the PUD?

The Opinion addressed several other issues that might affect the proceedings on remand.

First, the Opinion discussed MC-2.6.1, which provides that PUD reuse plans for the McMillan Reservoir Sand Filtration site should dedicate a substantial contiguous portion of the site for recreation and open space. (10-A DCMR § 2016.5.) The Court of Appeals indicated it disagreed with FOMP's argument that the need to preserve open space could never be used to justify the inclusion of high-density development on the site, instead indicating the Commission could justify some high-density development on the site, if it "were the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes." (*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1036 (D.C. 2016).) The Notice of Limited Scope Public Hearing therefore identified the third remand issue as follows:

Issue 3: Is the high-density development proposed for on the site the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes?

Finally, the Opinion found the Commission "failed to adequately address a variety of asserted adverse impacts of the PUD, including environmental problems, destabilization of land values and displacement of neighboring residents, and increased demand for essential public services." (149 A.3d at 1036.)

The Commission concluded that the DCCA's concerns could be addressed through its resolution of the following final issues:

Issue 4: A. Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case?

B. If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects?

Issue 5: A. Will the PUD have a favorable impact on the operation of city services and facilities?

B. If not, is the impact capable of being mitigated, or acceptable given the quality of public benefits in the project?

The Notice of Limited Scope Public Hearing then provided:

> If any party believes that the issues stated above do not accurately or fully reflect the issues remanded, that party must, no later than 3:00 p.m. on March 13, 2016, file with the Office of Zoning and serve upon the other parties a written statement identifying the asserted deficiency and offering revised language for the existing or any proposed additional issue identified. If no such submission is timely made by a party, that party is deemed to have agreed that the scope of this hearing fully encompasses the issues on remand.
>
> In addition, any party by that same date and time may file a written statement responding to the remand issues stated above. No response to another party's filing will be accepted.
>
> Other than a written statement asserting deficiencies these two submissions, and the Office of Planning and other agency reports discussed above, no submissions may be entered into the record by any party or person. During the hearing, the Commission will accept written statements offered by witnesses and exhibits offered by the parties.

No party submitted a written statement by March 13, 2017 indicating that the remand issues as stated did not accurately or fully reflect the issues remanded.

C. Pre-Hearing Filings by the Parties.

The only party to submit a written statement responding to the remand issues was the Applicant, which on March 13, 2017 filed a 22-page written submission with 16 attachments. (Exhibit ["Ex."] 895, 896A-896P.) The response also indicated no objection to the framing of the remand issues.

FOMP, through a letter dated March 15, 2017, moved the Commission to postpone the hearing for 30 days, to allow FOMP time to review the Applicant's submission and prepare for the hearing. In the alternative, FOMP moved to strike the Applicant's filing. (Ex. 900.) Among its arguments, FOMP contended only a party who objected to the remanded issues could respond to them, since neither the Applicant nor FOMP filed a written objection, neither could put in a response.

The Applicant filed an opposition to the motion on March 16, 2017, disputing this interpretation. (Ex. 901.)

At a special public meeting held March 20, 2017, the Commission voted to deny FOMP's motion. A full explanation for the basis of that decision appears in the Conclusions of Law. However, the Commission decided to postpone the presentation of the Applicant's case and FOMP's response until April 6, 2017. The March 23, 2017 hearing would begin with public testimony, followed by agency reports if time permitted. The Commission waived 11-Z DCMR § 408.9 of its Rules of Practice and Procedure to accomplish this.

On its own motion, the Commission allowed FOMP to file a late response to the remand issues by 3:00 p.m. on April 3, 2017.

D. Pre-Hearing Filings by District Agencies.

The Commission received a corrected written report from the Office of Planning ("OP"), which attached the written reports of the Office of Aging ("DCOA"), the Department of Housing and Community Development ("DHCD"), the Metropolitan Police Department ("MPD"), the District of Columbia Fire and Emergency Medical Services ("FEMS"), and the Department of Parks and Recreation ("DPR"). (Ex. 897A.) In addition, the Commission received a report from the District Department of Transportation ("DDOT"), supplementing its earlier reports in the record, and a report from the Department of Energy and Environment ("DOEE"). (Ex. 898, 894.)

As noted, the Applicant, through its response to the remand issues, provided the Commission with a letter from the Department of Consumer and Regulatory Affairs ("DCRA") advising the Applicant that it had determined that the Project was not likely to have substantial negative impacts of the environment and submission of an Environmental Impact Statement would not be required. (Ex. 896F.) Attached to the letter were the recommendations made to DCRA by DOEE, DDOT, OP, the Solid Waste Management Administration of the Department of Public Works ("DPW"), and the District of Columbia Water and Sewer Authority ("WASA").

Discussions of these reports occur in the portions of this Order that pertain to the relevant remand issue or issues.

E. Advisory Neighborhood Commissions.

ANC 5E is an affected ANC because the proposed PUD is located within its jurisdiction. Also, the Remanded Order treated ANCs 1B and 5A as affected ANC's because the PUD Site borders their areas.[4] The Remanded Order's great weight discussion was made in its ninth conclusion of law.

Neither ANC 1B nor 5A filed written reports in this remand. ANC 5E submitted a resolution, which will be separately discussed.

F. Hearings.

At the March 23, 2017 hearing, the Commission heard testimony from 25 public witnesses. Five were in support, and 19 were in opposition. Those in favor identified the positive benefits that would be brought to the area and stated their frustration at still having to look at a fence. Those against discussed the way the Project would adversely impact traffic, the environment, the historic attributes of the site, and the stability of the adjacent neighborhood. In addition, witnesses in opposition indicated that the affordable component of the Project was inadequate and explained how, in their view, the Project in general and the Parcel 1 Building in particular; were inconsistent with the Comprehensive Plan. Some stated their belief that the Court of Appeals' Opinion required that the developer re-think the Project and others urged that the development of the site go through a new solicitation through a design competition. The need for a new healthcare facility was questioned and the Commission was chastised for not permitting non-witnesses to submit written testimony. Several of those in opposition responded to points made in the Applicant's March 13, 2017 submission and expressed dismay that the District was paying the Developer's legal expenses. All public witnesses were subject to cross-examination.

The issues raised will be discussed as part of the Conclusions of Law to the extent relevant. The Commission first heard from witnesses who had previously indicated an intent to testify. It then heard from witnesses who were present in the hearing room and who added their names to the electronic witness queue. When all persons whose names were on the witness queue, and who were present, had testified, the Chair asked whether there was anyone else who wished to speak.[5] One person indicated that they wished to pose a question, and they were permitted to do so. The Chair again asked if there was anyone else who wished to speak. When no persons responded, the Chair indicated that the public testimony had concluded and that the agency testimony would begin.

[4] The Remanded Order cited *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793 (D.C. 1994), but the principle has since been codified in the Zoning Regulations of 2016 through its definition of the term "Affected Advisory Neighborhood Commission" at 11-B DCMR § 100.2.

[5] The queue also included the names of persons who were not present. These were added by an individual in the mistaken belief that doing so would permit those absent to testify on April 6, 2017. This same individual also unsuccessfully attempted to submit approximately 230 pages of testimony from persons who were not present.

The Commission then heard from Maxine Brown-Roberts from OP. Ms. Brown-Roberts was joined by Jennifer Steingasser, OP's Deputy Director for Development Review and Historic Preservation. Additionally, the Commission heard from Anna Chamberlin of DDOT and called forward a panel consisting of representatives from FEMS, DPR, DHCD, and DOEE. At 10:06 p.m., the Chair adjourned the hearing until April 6, 2017 at 6:30 p.m., when FOMP would resume cross-examination of agency representatives.

By letter dated April 3, 2017, FOMP submitted its response[6] to the remand issues. (Ex. 925 – 925E.) As a preliminary matter, FOMP expressed its objection to the Commission reordering of the presentation of testimony and its refusal to accept written statements from persons who did not testify at the hearing.

This preliminary portion of the response ended by FOMP asserting that these "irregularities should be rectified at the April 6, 2017 hearing by, among other things, affording individuals and organizations an opportunity to testify following the parties' presentation of their respective cases and opening the record for the submission of written comments from the public."

The Commission interpreted this last statement as a motion and took up the request at the start of the April 6, 2017 hearing. Counsel for the Applicant was afforded an opportunity to respond and indicated no objection to written testimony from all members of the public being accepted after the conclusion of its case, but objected to permitting further public testimony at that time because only parties can cross-examine witness. Counsel for FOMP responded by noting that the motion was not requesting that public witnesses be permitted to perform cross-examination, but to be able to respond to the Applicant's case. FOMP's counsel stated that by depriving the public of the ability to respond in this fashion, the Commission had unlawfully shifted the burden of proof. For the reasons explained in the Conclusions of Law, the Commission voted to deny FOMP's motion.

Although it had been the Commission's intent that the parties complete their presentation on April 6, 2017, the cross-examination of agency representatives did not conclude until approximately 9:00 p.m. that night. Since it became clear that there was insufficient time for the parties to complete their cases, the Chair adjourned the hearing until April 19, 2017 at 5:00 p.m. In addition, counsel for the Applicant and FOMP agreed they could be available for a continuation of the hearing on May 1, 2017, if needed. (Transcript ["Tr."] of the April 6, 2017 Hearing at 140-141.)

[6] FOMP placed the word "response" in quotation marks, apparently to emphasize its contention that a party could not respond to the remand issues unless it objected to how they were worded.

The following chart identifies the witnesses presented by the Applicant and FOMP on April 19, 2017, and for each witness, the remand issue(s) addressed, and, as to those accepted as experts, the area of expertise in which each were qualified.

Applicant

Name	Current Position	Area of Expertise Qualified	Issue Number(s)
Brian Kenner	Deputy Mayor for Planning and Economic Development	NA	1 & 4
Matt Bell	Principal, Perkins Eastman Architects	Architecture	3
Adam Weers	Principal, Trammel Crow Company	NA	1 & 3
Leonard Bogorad	Managing Director, Robert Charles Lesser & Co. ("RCLCO")	Fiscal and economic impact analysis and real estate market and financial analysis	1 & 3
Shane Dettman	Director of Planning Services, Holland and Knight, LLP	Zoning and land use planning	All

In addition, Mr. Aakash Thakkar, Senior Vice President and Partner with the firm EYA, and Anthony Startt, an investment manager at Jair Lynch Real Estate, were requested by the Applicant to respond to certain cross-examination questions posed by FOMP. Both EYA and Jair Lynch Real Estate are members of Vision McMillan Partners. The substance of the Applicant's case did not substantially depart from the points made in its March 13, 2017 filing.

Friends of McMillan Park

Name	Title	Area of Expertise Qualified	Issue Number(s)
Laura Richards	None provided	Land Use and Zoning Matters[7]	1B
Dr. Sacoby Wilson	Assistant Professor, School of Public Health, University of Maryland	Environmental Health Science	4
Dr. Brett Williams	None provided[8]	Gentrification and displacement	4
Kirby Vining	Treasurer and a Board Member of the Friends of McMillan Park	Not offered as expert	All

In addition to these witnesses, FOMP apparently had intended to call Claudia Barragan as a witness to address remand issues 2 and 4, but she was not present. Instead, as Dr. Wilson was beginning his testimony, FOMP's counsel indicated that she had "some

[7] FOMP proffered Ms. Richards as an expert in the D.C. Comprehensive Plan and its application to zoning decisions. (Tr. April 19, 2017 Hearing at 187.)

[8] From 1976 until last year, Dr. Williams was an Assistant, Associate, and Full Professor, American Studies and Anthropology at American University.

testimony to distribute as well." (Tr. April 19, 2017 Hearing at 222.) In addition to the written testimony of Dr. Wilson, the Commission was given a written statement by Claudia Barragan. When asked who Ms. Barragan was, FOMP's counsel responded:

> Claudia Barigan [SIC] is a witness who could not be here today, so we've provided a written testimony. Dr. Wilson and Ms. Richards have both reviewed and concur with it. So, we're providing it for the record.

(Tr. April 19, 2017 at 225-226.)

However, neither Ms. Richards nor Dr. Wilson had yet mentioned Ms. Barragan's name or referenced her proposed testimony. Later, after the conclusion of Mr. Vining's testimony, Ms. Richards and Dr. Vining were asked by FOMP's counsel whether they had reviewed and agreed with the portion of Ms. Barragan's written testimony that related to their respective subject matter expertise and whether they agreed with Ms. Barragan's conclusions. Although both stated they did, neither adopted the testimony. Ms. Barragan's written testimony was not entered into the record. (Tr. April 19, 2017 Hearing at 246-247.)

At the commencement of his cross-examination of FOMP's witnesses, the Applicant's counsel asked the Chair whether he could submit written rebuttal with the understanding that FOMP could respond in writing. The request was prompted by the absence of any representative from DOEE. FOMP objected to the suggestion, stating that this would deprive it of its right to cross-examination and that it was the obligation of the Applicant to make certain that its witnesses were available for rebuttal. The Applicant responded by noting that it was 10:00 p.m., that the hearing had started at 5:00 p.m., and that it is a hardship to request that District employees be present on the chance that their rebuttal testimony would be needed.

After the completion of cross-examination, the Applicant's counsel requested permission to provide a written closing, and if that were permitted he would forgo rebuttal. The Commission expressed concern that the written closing might contain elements of rebuttal and asked why the Applicant could not immediately proceed with a closing argument. The Applicant's counsel responded that he needed time to ensure "coordination between the private sector applicants and the public-sector part."

The Chairman then ruled that the hearing would resume on May 1, 2017 with the testimony of Ms. Barragan, if she were available, followed by rebuttal, sur-rebuttal, and a closing statement by the Applicant. FOMP objected, stating that the Applicant should be required to present its rebuttal on the same day as its direct, so as to not gain an unfair advantage by having the additional time to prepare. Further, FOMP's counsel argued that the only permitted rebuttal witnesses should be from DOEE, since those were the only witnesses the Applicant confirmed it would present. The hearing was then adjourned.

On April 20, 2017, counsel for FOMP requested the Applicant's counsel to provide it with the names of all rebuttal witnesses the Applicant intended to call. (Ex. 942A.) That request was refused on April 25, 2017. (*Id.*) On the day of the May 1, 2017 hearing, FOMP filed a "*motion in limine"* requesting that the Commission bar the Applicant from presenting "any new expert witnesses or rebuttal testimony." In the alternative, the motion requested that the hearing be postponed, and that the Applicant be required to submit a list of rebuttal witnesses. FOMP also submitted three additional exhibits into the record "for purposes of completeness." Among these was a portion of the Land Distribution Agreements for the Project. The Applicant filed its written opposition to the motion that same day, but indicated that it did not object to the introduction of the three documents, but that it "reserves the right" to submit any final or complete versions of the documents, if identified. (Ex. 943.)

The Commission denied the motion because neither its rules or general evidentiary principles required an Applicant to identify its rebuttal witness. This ruling will be further explained in the Conclusions of Law. The Chair permitted the introduction of the three documents and allowed the Applicant to supplement the record as requested. The Applicant provided full versions of the three Land Disposition Agreements in its May 16, 2017 post-hearing Submission. (Ex. 951D-951F.)

The May 1, 2017 hearing began with the testimony of Claudia Barragan, who was accepted by the Commission as an expert in environmental policy and urban development. In her resume, Ms. Barragan identified her current position as being an environmental policy and urban development consultant. Ms. Barragan's testimony completed FOMP's presentation.

The Applicant's rebuttal consisted of testimony from Mr. Bogorad, Mr. Dettman, and Mr. Thakkar. The Applicant also presented the testimony of Mr. Jay Wilson, Mr. Abraham Bullo, and Mr. Steven Ours of DOEE. Following the conclusion of rebuttal, the Applicant's counsel made a closing argument, and, after some final housekeeping measures, the hearings on this remand concluded.

As noted, the Commission deliberated on the remand issues over two evenings and received a supplemental filing from the Applicant and a response from FOMP. The Findings of Facts and Conclusions of Law that support the Commission's decision to once again approve the Application follow. Those findings and conclusion are supplementary to those made in the Remanded Order, which are incorporated by reference into this Order. In the event of any conflict between the Findings of Facts and Conclusions of Law that follow and those set forth in the Remanded Order, the findings and conclusions contained herein apply.

II. The Commission's Response to the Remand.

FINDINGS OF FACT

A. The Project.

1. The existing PUD Site has approximately 1,075,356 square feet (24.69 acres) of land area and is presently unzoned. The Applicant has divided the PUD Site into seven development Parcels. Five of the Parcels are included within the consolidated portion of this Application. Parcel 1 is located at the north portion of the PUD Site, and will be improved with the Parcel 1 Building, which is to serve as a healthcare facility with ground-floor retail and a park above a preserved water filtration cell ("Cell 14"). Parcel 4, fronting on North Capitol Street at the center of the PUD Site is to be developed with a mixed-use, multi-family residential building with a ground-floor grocery store. Approximately 146 individual row dwellings are proposed for Parcel 5. The south one-third of the PUD Site, known as Parcel 6, is to be developed as an eight-acre park ("Park") including a 6.2-acre green space, a community center building, and the South Service Court comprised of historic structures to be retained and restored. Lastly, the North Service Court, also known as Parcel 7 and located immediately south of Parcel 1, is to be comprised of retained and restored historic resources. First-stage approval is sought for a mixed-use, multi-unit residential building on Parcel 2 with ground-floor retail, and a mixed-use commercial building on Parcel 3 with healthcare uses and ground-floor retail. Both buildings are proposed to have a maximum height of 110-feet. On June 27, 2014, Jair Lynch Development Partners ("Jair Lynch"), which is one of the components of McMillan, filed a second-stage application to construct the Parcel 2 development. The application was approved by Z.C. Order No. 13-14A ("Order 13-14A"), effective April 22, 2016 and appealed. When Order 13-14 was vacated, the petitioners who challenged Order 13-14A filed a motion for summary reversal. In response, Jair Lynch, which was granted intervenor status, suggested that the Court of Appeals, remand Order 13-14A to the Commission, since the fate of the first-stage application would be the fate of the second-stage. The Commission took no position. Through an order dated April 7, 2017, the Court of Appeals denied the motion for summary reversal and remanded Order 13-14A "for further proceedings, if necessary, in light of" the first-stage remand.

2. The PUD Site is part of the larger McMillan Reservoir and Filtration complex, a 92-acre facility comprised of a reservoir, the slow sand filtration facility, and a pumping station, all of which were constructed at the turn of the twentieth century by the U.S. Army Corps of Engineers. The entire complex is listed as an individual landmark in the D.C. Inventory of Historic Sites and as a Historic District in the National Register of Historic Places.

3. Historically, the PUD Site was used as a slow sand water filtration plant. It consists of 20 underground cells of sand filter beds on a level platform or

"plinth," which is inserted into the rising slope of North Capitol Street. The south end of the PUD Site is situated approximately 16 feet above the north end of the PUD Site; however, as North Capitol Street rises, the plinth remains level so that it sits approximately 10 feet below Michigan Avenue at its northern end.

4. The surface of the PUD Site is generally flat, rectangular, and is made up of a shallow dirt-bed covered with grass and weeds. This plane is punctuated by 2,100 manholes to the filter bed chambers below. Two recessed service corridors containing 20 chimney-like structures, known as the sand storage bins, traverse the PUD Site laterally with pathways that lead to the underground cells. These lateral corridors, referred to as the "North Service Court" and the "South Service Court," are lined with other elements of the water filtration process, including regulator houses, stationary sand washers, and portals and ramps to the underground chambers of sand filter beds. Overall, the PUD Site is approximately three city blocks long along North Capitol Street and First Street, and one block wide along Channing Street and Michigan Avenue.

5. The PUD Site is situated adjacent to the residential neighborhoods of Bloomingdale to the south and Stronghold to the east, which are characterized by a variety of large Victorian rowhouses and more modest rowhouses, many with front porches. The Glenwood Cemetery and Trinity College are also located to the east across North Capitol Street, adjacent to the residential communities. The Veterans Affairs Medical Center, Washington Hospital Center, and Children's National Medical Center are located across Michigan Avenue to the north and have building heights ranging from 90 to 127.5 feet. To the west across First Street is the functioning reservoir of the McMillan Reservoir and Filtration Complex operated by the U.S. Army Corps of Engineers. Further to the west is Howard University

6. The Applicant originally sought and was granted a PUD-related map amendment to rezone the PUD Site to the C-3-C and CR Zone Districts, with the C-3-C Zone District located along the northern portion of the PUD Site, which would encompass the Parcel 1 Building. The approved rezoning to the CR Zone District encompassed the remainder of the PUD Site.

7. The validity of the CR zoning was not disturbed by the Opinion.

B. <u>The Map Amendment</u>.

8. In response to the suggestion of the Applicant, the Commission decided to change its previously approved map amendment for Parcel 1 from C-3-C to CR, so the entire PUD site would be zoned CR.

9. The purpose of the Mixed-Use Commercial Residential (CR) District is to "encourage a diversity of compatible land uses that may include a mixture of

residential, office, retail, recreational, light industrial, and other miscellaneous uses." (11 DCMR § 600.1.)

10. Through the use of public review and planning, the CR provisions are intended to:

(a) Create major new residential and mixed-use areas in planned locations at appropriate densities, heights, and mixtures of uses;

(b) Encourage the preservation and rehabilitation of structures of historic or architectural merit;

(c) Encourage areas devoted primarily to pedestrians;

(d) Encourage flexibility in architectural design and building bulk; provided, that the designs and building bulk shall be compatible and harmonious with adjoining development over the CR Zone District as a whole;

(e) Make recreation areas more accessible to the CR Zone District's residents and visitors; and

(f) Create environments conducive to a higher quality of life and environment for residents, businesses, employees, and institutions in the District of Columbia as specified in District plans and policies.

(11 DCMR § 600.3.)

11. The zoning of Parcel 1 to the CR Zone District separately and together with the remainder of the PUD Site is consistent with the purposes and intent of the CR Zone District.

12. The CR Zone District is applied to selected geographic areas where a mixture of uses and building densities is intended to carry out elements of District of Columbia development plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality. (11 DCMR § 600.4.)

13. Based upon the totality of the record, the Commission finds that the PUD Site is such an area.

14. At the September 14, 2017 public meeting, OP was asked to express its view as the appropriateness of the CR zoning for Parcel 1. In response, OP's Deputy Director, Ms. Steingasser, stated that the CR designation would be a "solution that fits the site" and noted that CR was a flexible zone that provided another means to meet the needs of the Parcel 1 Building. (Tr. September 14, 2017 Meeting at 6-7.)

15. The Parcel 1 Building will be 113 feet in height and stepping down to a maximum height of 110 feet with an overall density of 4.08 floor area ratio ("FAR"). A PUD in a CR Zone District may have a maximum height of 110 feet and a maximum FAR of 8.0, of which no more than 4.0 may be commercial. (11 DCMR § 2405.2.) The Commission is authorized to grant up to a five percent increase to this maximum height if "the increase is essential to the successful functioning of the Project and consistent with the purpose and evaluation standards of this chapter." (11 DCMR § 2405.3.) As will be explained in the Conclusions of Law, the fact that the Parcel 1 Building exceeds the permitted non-residential FAR is irrelevant because the aggregate FAR for the entire PUD Site is 1.92 (2.36 FAR excluding the private rights -of -way).

16. As will be discussed in the Findings of Facts related to Remand Issue 1A, the three additional feet of height is necessary for the viability of the Parcel 1 Building as a Healthcare Facility use, which in turn is essential to the successful overall viability of the Project.

C. The Remand Issues.

Issue 1A: Could the parks, recreation, and open space designation of the FLUM be fulfilled and the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?[9]

(1) The site already is limited to medium- and moderate-density uses

17. Now that the Commission has substituted CR zoning for the C-3-C initially approved, it believes it must determine whether that change renders the Parcel 1 Building a medium-density development. For the reasons stated below, the Commission concludes that it does.

18. Whether the Parcel 1 Building was a medium- or high-density commercial development was irrelevant to the DCCA's FLUM analysis, because neither description matched the site's moderate-density commercial striping. The Opinion found the Parcel 1 Building, although a high-density development[10], was still generally consistent with FLUM because the PUD's aggregate FAR fell within the moderate-density range. This would also be true had the Parcel 1 Building been determined to be medium-density.

[9] The Commission has revised this remand issue to add a reference to the parks, recreation, and open space designation of the FLUM to be consistent with the DCCA quotation of FF ¶ 168 at 149. (A.3d at 1035.)

[10] The Opinion twice states that the Commission "acknowledged" that the PUD included high-density "development", 149 A.3d at 1033 (both in the text and at footnote 4). In fact, the Commission only acknowledged that there would be "high-density zoning" (FF ¶¶ 171, 171), which is not necessarily the same. In any event, the approved CR zoning is medium-density.

19. The distinction between medium- and high-density was relevant to the Opinion finding that the Parcel 1 Building, as a high-density development, was inconsistent with the second sentence of MC-2.6.5. The Opinion found that "unlike the FLUM designation discussed above, [MC-2.6.5] does not appear to contemplate any high-density uses on the site." (*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016).) The flipside of that that finding is that MC-2.6.5 does contemplate medium-density uses.

20. The Framework Element's definitions of medium-density commercial and high-density commercial, as unofficially codified at 10-A DCMR §§ 225.9 and 225.10, are as follows:

> **Medium Density Commercial**: This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation generally draw from a citywide market area. Buildings are generally larger and/or taller than those in moderate density commercial areas generally do not exceed eight stories in height. The corresponding Zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply; and
>
> **High Density Commercial:** This designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed. The corresponding Zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply.

21. In finding the Parcel 1 Building to be a high-density development, the Opinion principally focused on the approved C-3-C zoning, which is first made explicitly applicable to the high-density category and also is the first mentioned zone to allow the 115-foot height approved by the PUD.

22. The Opinion dispensed with the Applicant's claim that the C-3-C Zone District could apply to the moderate- or medium-density designation, noting that the Commission never made that assertion and that "it did not view the references to the possibility that other districts might apply as supporting a conclusion that buildings permissible only in a C-3-C district reasonably be viewed as medium- or moderate-density uses." *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1033 n4 (D.C. 2016).

23. However, the Parcel 1 Building is not "permissible only in a C-3-C district," but is allowed in the CR Zone District as well.

24. The PUD Regulations permit CR Zone District PUDs to achieve a maximum of 110 feet plus an additional five percent under the circumstances found to exist here. (11 DCMR §§ 2405.1 and 2405.3(a).) The maximum non-residential FAR for a PUD in a CR Zone District is 4.0 and is computed based upon all the land and buildings that comprise the entire PUD site. (11 DCMR § 2405.2.) The aggregate FAR for this PUD is 1.92 (2.36 FAR excluding the private rights-of-way). Even if the Parcel 1 Building's FAR was separately computed, its 4.08 nonresidential FAR could be accommodated through the additional five percent allowed by 11 DCMR § 2405.3(a). Therefore, the Parcel 1 Building could be viewed as moderate-density commercial development if the CR Zone District were applicable to that density category.

25. The Commission finds that the CR Zone District applies to the medium-density commercial designation for this site because the FLUM identifies the site as mixed-use.

26. None of the Framework Element's definitions identify the CR Zone District as applicable. This cannot mean that the CR Zone District is inconsistent with the entire FLUM. Rather, the CR Zone District is intended to apply to a site, like McMillian, for which the FLUM signifies through striping that the mixing of two or more land uses is encouraged. (10-A DCMR § 225.18.)

27. As the Framework Element indicates:

> A variety of zoning designations are used in Mixed Use areas, depending on the combination of uses, densities, and intensities. The city has developed a number of designations specifically for mixed use areas (such as SP-1, SP-2, CR, and the Waterfront districts).

(10-A DCMR § 225.21.)

28. As noted by OP's Deputy Director at the September 19, 2017 public hearing, the CR Zone District is intended to be flexible and could apply to multiple land use categories, including medium-density commercial. For that reason, OP considered the rezoning of the site to CR to not be inconsistent with the Comprehensive Plan. (Tr. September 14, 2017 at 6-7.)

29. The Commission has previously approved PUD-Related map amendments to the CR Zone District for properties designated as medium-density residential or mixed-use, and with heights comparable to that of the Parcel 1 Building as follows:

Z.C. Case No.	Land Use Category	Maximum Height (Feet)
15-15	Mixed-use Medium-Density Residential/Production, Distribution, and Repair Land Use categories	102
14-08	Medium-Density Residential	105
11-13	Medium-Density Residential	110

30. In its final report in Z.C. Case No. 11-13, OP stated:

> The proposed CR zoning, which is intended to accommodate a medium density residential Project and church use, is generally consistent with the medium density residential use designation

31. And the Commission agreed.

> Based on the evidence and testimony from the Applicant and OP, the Commission finds that the proposed PUD-related Zoning Map amendment to the CR Zone District is not inconsistent with the Property's designation on the Future Land Use Map. The CR Zone District in this case is congruent with the Medium-Density Residential Land Use category in the Comprehensive Plan.

(Z.C. Order No. 11-13, p 19.)

32. In the initial proceeding, and through the issuances of the Remanded Order, the Commission gave first-stage approval for 110-foot buildings on Parcels 2[11] and 3.

33. In the initial proceeding, FOMP specifically challenged the consistency of CR zoning with the Comprehensive Plan. FOMPs then expert, George Oberlander, noted the 110-foot height permitted for a CR PUD and concluded that requested CR zoning was "inconsistent with the medium density land use designation in the comprehensive plan." (Ex. 691.) In its proposed order, FOMP claimed that:

> [b]oth the proposed CR and C-3-C zones districts are consistent only with a high-density commercial and residential land use designation. These zone districts are inconsistent with the Comprehensive Plan's Future Land Use Map and text (MC-2.6.5),

[11] Z.C. Order 13-14A approved a second-stage PUD application for a building on Parcel 2 with a maximum height of 82'-6", not including penthouses. Order 13-14A was appealed and was remanded, but not vacated "for further proceedings, if necessary, in light of *Friends of McMillan Park*, 149 A.3D 1027/" *DC for Reasonable Dev. v. District of Columbia Zoning Comm'n*, No. 16-AA-515 (D.C. 2017).

> both of which clearly designate the site as 'mixed use: medium density residential, moderate density commercial and parks, recreation and open space.'

(Ex. 834, p. 16.)

34. The Commission does not know whether FOMP made this argument to the Court of Appeals. But whether FOMP made the argument and lost, or failed to make it at all, the Commission's finding in the initial proceeding that the CR zoning for all but Parcel 1, and the 100-foot heights approved for Parcels 2 and 3, are consistent with the Comprehensive Plan is the law of the case.

    The Parcel 1 Building's additional three feet of height does not shift it from medium- to high-density commercial because neither definition includes a height limit other than stories and the physical and location characteristic of the Parcel 1 Building are in all respects consistent with the definition of medium-density commercial and inconsistent with the same elements of high-density commercial. The medium-density commercial category applies District-wide and includes buildings, such as that proposed for Parce1 1, that do not exceed eight stories.

35. In contrast, the high-density commercial category only applies to buildings that exceed eight stories and which are "located in the central employment district of the city and other major office employment centers on the downtown perimeter." The Parcel 1 Building meets neither element.

36. The Court of Appeals has noted that the Framework Element's density definitions "focus on buildings' actual physical characteristics, such as the number of stories or units in a building." (*Durant v. D.C. Zoning Comm'n*, 139 A.3d 880, 884 (D.C. 2016).)

37. Consistent with that focus and its past precedent, the Commission concludes that the Parcel 1 Building is a medium-density development. Since no portion of the PUD site will include high-density development, the PUD is consistent with the guidance of MC-2.6.5.

38. As a result, the Comprehensive Plan issues identified in Remand Issues 1, 2, and 3 have been rendered moot.

39. Because a petition to review this Order may be filed with the Court of Appeals, and the DCCA may find that the change in the zoning for Parcel 1 from C-3-C to CR is invalid or irrelevant, the Commission will address the three issues.

(2) The PUD Fulfills the FLUM's Parks, Recreation, and Open Space Designation and Advances Comprehensive Plan Policies to a Degree that Would Be Unachievable if the Height of the Parcel 1 Building was Further Reduced.

(A) <u>The other policies cited in the Order</u>.

40. In its corrected report dated March 13, 2017, OP identified the other policies cited in the Order as:

(a) Land Use ("LU"): LU-1.2.1: Reuse of Large Publicly-Owned Sites and LU-1.2.7: Protecting Existing Assets on Large Sites;

(b) Housing ("H"): H-1.2.4: Housing Affordability on Publicly Owned Sites;

(c) Parks, Recreation, and Open Space ("PROS"): PROS-1.3.6: Compatibility with Adjacent Development and PROS-3.3.1: North Central Open Space Network;

(d) Urban Design ("UD"): UD-2.2.8: Large Site Development and UD-2.3.5: Incorporating Existing Assets in Large Site Design;

(e) Historic Preservation ("HP"): HP-2.4.3: Compatible Development; and

(f) Mid-City Area Element ("MC"): MC-2.6.1: Open Space on McMillan Reservoir Sand Filtration Site; MC-2.6.2: Historic Preservation at McMillan Reservoir; and MC-2.6.5: Scale and Mix of New Uses.

41. The Commission agrees. In addition, the Commission recognizes that Policy LU-1.2.5: Public Benefit Uses on Large Sites and LU-1.2.6: New Neighborhoods and the Urban Fabric are particularly relevant to the McMillan site.

42. LU-1.2 identifies the McMillian Site as being one of the 10 large sites for which it provides "policies that focus on broader issues" and indicates that "the Area Elements should be consulted for a profile of each site and specific policies for its future use." (10-A DCMR § 305.2.) The Applicable Area Element for the McMillan Site is the MC-2.6.

43. As demonstrated by the Applicant in Exhibit 896A, there are a myriad of other Comprehensive Plan policies advanced by the PUD. However, consistent with the remand instructions, the Commission will focus its analysis on the parks, recreation, and open space designation of the FLUM and the specific policies identified in FF ¶¶ 40 and 41, hereinafter referred to as the "Identified Policies." The Commission includes MC-2.6.5 within the Identified Policies because the PUD advances the portion of that policy that calls for viewsheds and vistas to be maintained and for development to be situated in a way that minimizes impacts on historic resources and adjacent development.

(B) <u>The PUD Fulfils the FLUM Designation and Advances the Identified Policies</u>.

(i) Parks, Open, Space, and Recreation.

44. The PUD fully implements the Parks, Recreation, and Open Space FLUM designation; and significantly advances policies LU-1.2.1: (create significant new parks); LU-1.2.5: (include new parks and open spaces in the development of District-owned properties); LU-1.2.6 (incorporation of new public open spaces); PROS-1.3.6 (design parks to be compatible with nearby uses); PROS-3.3.1 (protect and enhance the historic open space network extending from McMillan Reservoir to Fort Totten) and MC-2.6.1 (reuse plans for the McMillan Reservoir Sand Filtration site should dedicate a substantial contiguous portion of the site for recreation and open space).

45. The Project will provide approximately 7.95 acres of parks and open space (9.38 acres including the Olmsted Walk). Adding in the area of the North and South Service Courts, the total area of open space increases to approximately 12 acres. This amounts to approximately 49% of the PUD Site devoted to open space that will be accessible to persons with disabilities and will include benches along the Olmsted Walk. The parks and open space provided as part of the Project, along with Olmsted Walk, will enhance the historic open space network extending from McMillan Reservoir to Fort Totten.

46. The Park comprises the entire southern portion of the PUD Site (Parcel 6), encompassing the 6.2-acre green space, the 17,500 square foot community center, and the South Service Court. The Park's program includes pedestrian, bicycle, and vehicular access, large informal play areas, the Olmsted Walk, terraced seating, an outdoor "sprayground" and playgrounds, natural amphitheater, a stormwater pond that will reference the PUD Site's subterranean natural hydrology, and a "walking museum" that will tell the history of the PUD Site.

47. The community center will be further described in the public benefits discussion of this Order.

48. There will be covered seating areas with at least four durable high-quality picnic tables or similar tables and chairs. The Park will also accommodate informal sports and events for District residents. The western portion of the Park will include the reconstructed elevated plinth, which will be preserved with views to the reservoir and city landmarks beyond.

49. A portion of Filtration Cell 28, an underground filter bed, will also be preserved for future use. Hawthorn trees will line both sides of the Olmsted Walk, and a tree grove in a quincunx pattern will be in the center of the Park, referencing the historic pattern of manholes in the plinth. The Applicant will provide all related streetscape improvements and street furniture, including lighting, benches, trash receptacles, and bicycle racks.

50. In its report concerning this case, the DPR noted that the PUD will further its mission to promote health and wellness, conserve the natural environment, and provide universal access to parks and recreation. Also, the PUD furthers the

overarching priority of the city's most recent park planning works, the Comprehensive Plan Capital Space (2010), Sustainable DC (2013), and Parks and Recreation Master Plan (2014), by providing safe and equitable access to high-quality park spaces for all people throughout the city. (Ex. 897.)

(ii) Housing and Affordable Housing.

51. The PUD significantly advances LU-2.1 (create local housing opportunities), LU-1.2.5 (include affordable housing on District-owned sites when reused) and H-1.2.4 (a substantial percentage of the housing units built on publicly-owned sites should be reserved for "low and moderate income households.")

52. As previously noted in the Remanded Order at FF ¶ 79, the PUD will provide approximately 924,583 square feet of gross floor area ("GFA") devoted to residential uses, or approximately 677 units of new housing in principal and multiple-family dwellings with both rental and ownership opportunities.

53. As to affordable housing, on page 5-12 of the official hard-copy version of the Comprehensive Plan, between Policies H-1.2.5 and H-1.2.6, there is a yellow text box that begins with the question "What is Affordable Housing." (10-A DCMR § 504.10.) The text begins by noting that "[o]ne of the most common requests made during Comprehensive Plan public meetings was to provide a clear definition of "affordable" housing."

54. The provision then defined affordable housing as:

> [H]ousing in which occupancy is limited to households meeting special income guidelines. The price of this housing is maintained at a level below what the free market would demand using restrictive deeds, covenants, mortgage subsidies, vouchers, or other means tied to public financing or tax credits.[12]

…

> The benchmarked incomes for the Washington Metropolitan Area in 2005 [expressed in terms of Area Median Income ("AMI")] are shown in the table below. … The terms "extremely low", "very low", "low", and "moderate" income correspond to up to 30%, 50%, 80%, and 120% of that amount, respectively.

55. Although the table referenced by the definition is not accessible through the Office of Documents unofficial codification as the result of a bad web link, the table, as shown on page 5-12, is as follows:

[12] The definition does not include Inclusionary Zoning among these tools because the program had not yet been adopted.

Target Income	HUD Income Group
30% AMI	Extremely Low
50% AMI	Very Low
60% AMI	
65% AMI	
80% AMI	Low
95% AMI	
120% AMI	Moderate

56. Twenty percent of the total square feet of GFA devoted to housing on the PUD Site will be affordable housing within the meaning of the Comprehensive Plan, as follows:

(a) On Parcel 4, a minimum of 67,018 square feet of GFA of the total new housing provided, or approximately 85 residential units, will be set aside as senior housing (55 years of age or older) for households earning between 50% and 60% of the "AMI." These units will all be in the southern wing of the building;

(b) On Parcel 5, 22 of the single-family row dwellings will be set aside as affordable housing. Nine of the affordable units will be set aside for households earning no more than 50% of AMI, with the remaining 13 affordable units set aside for households earning no more than 80% of the AMI; and

(c) On Parcel 2, approximately 25 units (approximately 21,341 square feet of total GFA) will be set aside for households earning up to 80% of the AMI.

57. Using the H.2.4 table income categories, 20% of the PUD site will be devoted to housing reserved for Very Low and Low-Income households as follows:

Household Income Level	Affordable Housing
Very Low	**Parcel 4**. 67,018 square feet of GFA, approximately 85 residential units on Parcel 4. **Parcel 5**. Nine row dwellings.
Low	**Parcel 2**. 21,341 square feet, approximately 25 units, **Parcel 5**. 13 row dwellings.

58. Using the definitions of low- and moderate-income household set forth in the Inclusionary Zoning ("IZ") regulations in place when the Application was granted, 11 DCMR § 2601.1, the same percentage of the Project will be set-aside for low- and moderate-income households.

59. The current IZ Regulations uses median family income ("MFI") percentages (80% and 60%) rather than the medium- and low-income nomenclature to identify the affordability levels of Inclusionary Units, which apply depending upon whether a unit is for purchase or for rent. (11-C DCMR § 1003.3.) Only Inclusionary Units resulting from habitable penthouse space must be reserved for households earning equal to or less than 50% of the MFI.

60. Based on the foregoing, the Commission concludes that a substantial percentage of the housing units built on the PUD Site will be reserved for low- and moderate-income households within the meaning of LU-1.2.1

(iii) Historic Preservation.

61. The PUD significantly advances Policy LU-1.2.7 by identifying and protecting site plan element and Policy MC-2.6.2 by restoring key above-ground elements of the site in a manner that is compatible with the original plan and by recognizing the cultural significance of this site, and its importance to the history of the District of Columbia as it is reused. The PUD will also advance HP-2.4.3 by retaining and restoring the character-defining features of the historic landmark McMillan Park site and by restoring others.

62. As previously found, Olmsted Walk will be re-established and lined with two rows of thornless Hawthorn trees, which are consistent with Olmsted's original design intent. The Hawthorn species is historically accurate, native to America, adapted to urban environments, and has pleasant aesthetic qualities year-around. The path itself will be made of recycled and reclaimed concrete paving to the greatest extent possible, with a steel edge and a sand or decomposed granite setting. Ramps compliant with the American's with Disabilities Act standards will access the pathway. The concrete stairs at the PUD Site's two southern corners and northeast corner that provided access to the walk will be reconstructed. The Applicant will seek permission from the U.S. Army Corps of Engineers or other responsible government agency to obtain the historic McMillan Fountain, formerly located on a portion of the McMillan Reservoir west of First Street, to install it on the PUD Site.

63. As part of the historic preservation component, the Project will retain and incorporate the North and South Service Courts and their sand filtration process structures, including all 20 sand storage bins, all four regulator houses, at least one sand washer, plus many of the filter bed portals and much of the service court walls. Retention and rehabilitation of these iconic features will retain the historic identity of the PUD Site and will create unique, place-making settings for the new community. The establishment of a 6.2-acre open space at the

southern third of the PUD Site will retain the PUD Site's visual expanse from North Capitol Street, westerly to and beyond the Reservoir, as well as offer the opportunity for residents and visitors to observe the PUD Site close in, rather than only from the perimeter as originally designed and as it presently sits. The western portion of the Park will include the reconstructed elevated plinth, which will be preserved with views to the reservoir and city landmarks beyond.

64. Cell 14, located at the northeast corner of the PUD Site, will become, on its surface, a new park permitting views to the cylindrical sand bins from the north, while its underground structure will be reserved for future adaptive reuse to compliment the public and retail activities in that area of the PUD Site. In the interim, Cell 14 will be used by WASA as a stormwater storage tank. Part of Cell 28, located off of the South Service Court, will be preserved and will be incorporated into the Park as part of the interpretive program. In total, approximately 1.5 acres of underground cells will be preserved and slated for future use. The result will be a "walking museum" that tells the history of the PUD Site and its significance to the city via a self-guided walking tour of the PUD Site's preserved and restored historic assets.

65. FOMP's assertion that the development is inconsistent with these policies will be discussed in the Commission's findings made with respect to Remand Issue 2.

(iv) Urban Design.

66. Policy UD-2.2.8 indicates that new developments on parcels that are larger than the prevailing neighborhood lot size should be are carefully integrated with adjacent sites and that structures on such parcels should be broken into smaller, more varied forms, particularly where the prevailing street frontage is characterized by small, older buildings with varying façades. (10-A DCMR § 910.16.) The clustering of the commercial density on Parcel 1 significantly advances this policy. As will be made evident in the portion of these findings that discuss the iterations of the Master Plan between 2008 and 2014, the Project evolved substantially from its initial form which spread development out over a much larger portion of the PUD Site, to its current form which distributes height and density in a manner that responds to the surrounding context in a manner that relates to the scale of the existing buildings and avoids abrupt contrasts in scale.

67. The relevant portion of UD-2.3.5 encourages the incorporation of existing assets such as historic buildings, significant natural landscapes, and panoramic vistas in the design of redeveloped large sites. (10-A DCMR § 911.8.) The extent to which the PUD advances this goal has already been described in the findings concerning the Identified Policies pertaining to parks, recreation and open space and historic preservation. The incorporation of vistas will be discussed below.

(v) Maintenance and Incorporation of Vistas.

68. In addition to the general policy of UD-2.3.5, the third sentence of MC-2.6.5 states as an objective of the McMillan Site that "development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development." (10-A DCMR § 2016.9.) As shown in Exhibit 32A1A8, Sheet 25, the Project will maintain views across the southern portion of the PUD Site through the introduction of proposed park space that will preserve the visual relationship between the southern portion of the site and the South Service Court, and between the PUD Site and the McMillan Reservoir to the west. In addition, because the elevated plinth at the southern portion of the site will be preserved, views toward the south and southwest will also be maintained. Finally, the Project will also maintain the visual relationship between Olmstead Walk and the surroundings, and between the North and South Service Courts.

(vi) Public Benefits including Healthcare and Civic Facilities.

69. The PUD significantly advances the portion of LU-1.2.5 that states:

> Given the significant leverage the District has in redeveloping properties which it owns, include appropriate public benefit uses on such sites if and when they are reused. Examples of such uses are affordable housing, new parks and open spaces, health care and civic facilities, public educational facilities, and other public facilities.

70. The affordable housing, new parks, and open spaces provided by the PUD have been described above.

71. The Healthcare Facility is located at the north end of the PUD Site, with frontage on Michigan Avenue, North Capitol Street, and First Street, N.W. The Healthcare Facility will be comprised of approximately 860,000 square feet devoted to healthcare uses, and approximately 15,000 square feet devoted to ground-floor retail. The Healthcare Facility will rise in two halves and be separated above grade by Half Street. The two halves will be connected at the main floor of the building fronting on the North Service Court.

72. The building will have a maximum height of 113 feet that will step down to an approximate height of 110 feet at the far east and northeast extensions. The building is set back from North Capitol Street by approximately 150 feet, with the preserved Cell 14 acting as a buffer between the building and the adjacent residential community. As a result, the townhouses facing North Capitol will be separated by 260 feet, roughly the size of a football field. (Ex. 927A1, p. 18.) The building will occupy approximately 55% of Parcel 1, with an overall density of 4.08 FAR. It is anticipated that the Healthcare Facility will serve the office needs of physicians and medical service providers affiliated with many of the

leading healthcare systems in the area including Children's National Medical Center and the Washington Hospital Center.

73. The Healthcare Facility's main floor will be on its south side, opening onto the historic North Service Court, and will be activated by pedestrian-oriented retail and the primary parking garage entrance for retail patrons. To the north of the building along Michigan Avenue, a terraced medicinal/Healing Garden will create a welcoming space for patients, visitors, and employees. The Olmsted Walk will connect the Healthcare Facility and its Healing Gardens with the rest of the PUD Site's public amenities to the south.

74. A future second stage will include a second healthcare facility of approximately 173,000 square feet with retail on the ground floor on Parcel 3.

75. The Healthcare Facility will be developed by Trammel Crow Company, one of the largest commercial real estate developers in the nation. In 2014, the company was ranked as the number one healthcare developer in the country by Modern Healthcare magazine. As of 2014, Nationwide Trammel Crow had $4.3 billion of healthcare development completed or in process. (Tr. of May 8, 2014 Hearing at 29.)

76. Adam Weers is a principal with Trammel Crow with substantial knowledge and experience in the development of healthcare facilities. Although not offered as an expert, his opinion testimony was accepted by the Commission, pursuant to the more relaxed evidentiary standards for administrative agencies, which permit opinions by lay witnesses. (*See Comm. for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1184 and 193 (D.C. 1982).)

77. Mr. Weers testified, and the Commission found, that the healthcare use proposed for the Parcel 1 Building is a needed addition to the District's aging healthcare infrastructure. The District's healthcare facilities are on average the second oldest of any metropolitan area in the nation (Ex, 927A1, p.5.), much of which is owed to the infrequency with which new healthcare facilities are built in the District. The District's last new hospital (George Washington) was constructed in 2002. Meanwhile, the District's population is rising rapidly, with some 100,000 people moving in over this 15-year period. This places an even greater demand on the existing healthcare facilities throughout the city. These two factors – lack of new supply and a rapidly growing population – have led the District to be ranked last in terms of healthcare facilities per capita among all major metropolitan areas in the nation.

78. Further, according to information published by the DC Department of Health's Primary Care Bureau ("DCPCB"), the agency responsible for assessing and ensuring designation of areas within the District that have a shortage of health care providers, the McMillan site is located in one of nine designated Health Professional Shortage Areas ("HPSA") in the District. According to DCPCB's website, HPSAs are used by the federal government to recognize shortages of

healthcare providers for geographic areas, populations or facilities, and to prioritize the allocation of federal and local resources to address these shortages. HPSAs are designated by the Health Resources and Services Administration ("HRSA"), an agency of the U.S. Department of Health and Human Services, and once designated are rated on a scale of 0-25, with higher scores indicating greater need. According to the HPSA maps available on DCPCB, the PUD Site is located within the Low Income (LI) Columbia Heights/Ft. Totten/Takoma [primary care] HPSA which has a score of 18. (Ex. 896A *citing* Ex. 896P.)

79. Locating the Parcel 1 Building directly adjacent to the Washington Hospital Center campus will help address these systemic issues, as well as directly meet the core industries and institutional growth elements of the Comprehensive Plan.

80. A discussion of FOMP's assertion that the Healthcare Facility is inconsistent with a Comprehensive Plan policy discussing the need to distribute public healthcare facilities across the District will be discussed in the findings concerning Remand Issue 2.

81. As noted, a community center will be located in the Park and will house circulation and gallery spaces with exhibits on the history of the PUD Site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering spaces, fitness studio, and locker and shower facilities. The building will have a glass façade made of high-performance glazing that will welcome ample daylight into the pool and other public spaces. The building will incorporate a lightweight metal exterior trellis shading system to condition the exterior spaces and shade the building. Reinforced concrete groin vaults will recreate the experience of the historic below-grade filter beds, while wood boards, likely reclaimed wood from the PUD Site, will envelop the building's entrance vestibule.

82. The PUD will provide the following additional public benefits, as found in the Remanded Order.

Certified Business Enterprises ("CBE") Participation

83. Prior to the issuance of a building permit, the Applicant will execute a CBE Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the Project to be created because of the PUD. Business opportunities will be posted on the DSLBD website, and the Applicant will give opportunities to CBE businesses for smaller contracts, such as catering, trash collection, and delivery service. The Applicant will continue to work cooperatively with DSLBD and its contractors and with the Business Development Councils and other local community organizations to maximize

opportunities for CBE firms throughout the process. The PUD will also include 20% sponsor equity participation by a CBE developer.

Training and Employment Opportunities

84. During construction of the Project, the Applicant will abide by the terms of the executed First Source Employment Agreement with the District Department of Employment Services ("DOES") to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD. To the extent permitted by law, first preference for employment opportunities will be given to Wards 1 and 5 residents. The Applicant and its contractor, once selected, will coordinate training, job fairs, and apprenticeship opportunities with construction trade organizations or with healthcare facilities and other organizations to maximize participation by District residents in the training and apprenticeship opportunities in the PUD.

Environmental Benefits

85. The Master Plan for the overall development for the PUD Site will be evaluated for LEED-Neighborhood Development and will be certified at least LEED-Gold or its equivalent. Individual buildings within the PUD Site will be certified at least LEED- Silver or its equivalent.

86. In addition, the Project will include numerous limited impact development ("LID") strategies that will result in substantial environmental benefits to areas such as stormwater management and urban tree canopy. For example, the overall design of the Master Plan and each individual building will minimize impacts on the environment through the utilization of LID and green building methods.

87. The Project will also satisfy the District's Green Area Ratio ("GAR") requirements under the Zoning Regulations. Currently the site is devoid of any meaningful tree canopy and landscaping, and what exists is in an unhealthy state and provides poor stormwater retention capacity. The Project will contain, among other notable elements, approximately 288,645 square feet ("sf") of landscaped areas, approximately 12,822 sf of bioretention facilities, approximately 690-750 new trees, approximately 11,000 sf of green roof, and approximately 58,724 sf of permeable paving.

88. Further discussion of the environmental impact of the PUD may be found in the portion of this Order addressing Remand Issue 4A.

Community Benefits

89. The Applicant will create a project association or business improvement district, referred to as the McMillan Public Space Partnership ("Partnership"). The Partnership will provide an operating framework to maintain and program the public space within the McMillan redevelopment, including the private

roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the PUD boundaries. The Partnership will be a not-for-profit corporation governed by a board of directors responsible for strategic and financial planning, management, and reporting to the public. As its primary function, the Partnership will maintain and program most, if not all, of the public assets on the PUD Site via an agreement with the District. The assets include the Park and open space, historic resources, public art, and internal streets and their components (e.g., paving, light fixtures, benches). (Ex. 832M.)

90. To ensure the success of the Partnership the Applicant will contribute:

(a) $225,000 to facilitate business start-ups in the Project;

(b) $500,000 over a 10-year period to the Partnership, operating budget to hire high-school-age residents and senior residents to provide guided tours of the McMillan site highlighting the preserved historic resources; and

(c) $750,000 over a 10-year period to the Partnership operating budget to create a community market, outdoor cafe, and space for art installations between the South Service Court and South Park, and to activate the South Service Court and existing elements, such as regulator houses for small business incubators, silos as hanging gardens, water features and observation points.

91. The Applicant will also contribute:

(a) $1,000,000 as a workforce development fund to be coordinated by the Community Foundation of National Capital Region ("CFNCR"), of which $300,000 for scholarships will be for community residents to pursue higher education, training or job-related certification, encouraging “legacy” career paths such as civil engineering, landscape architecture, or on-site jobs in the medical field, with a preference for Wards 1 and 5 residents, to the extent permitted by law. The remaining $700,000 will be directed to organizations whose missions include workforce development, to create true "career paths" for District residents through readiness, training, and placement in on-site or other employment opportunities, and which have a demonstrated track record for successful job placement and retention of District residents;

(b) $125,000 to the D.C. Education Fund to be used to improve science, technology, engineering, and math teacher professional development and instruction, as well as student learning and achievement, particularly at Dunbar High School, McKinley Technical High School, and Langley Educational Campus;

(d) $500,000 for fabricating, installing, repairing and restoring tree box fence enclosures; planting trees and ground cover plants; and installing certain neighborhood signage in coordination with the Bates, Bloomingdale, Eckington, Edgewood, Hanover Area, and Stronghold Civic Associations;

(e) $150,000 to the North Capitol Main Street, Inc. for the storefront improvement program to provide grants for major corridors in ANC 5E boundaries affected by the PUD. The funds shall only be used for storefronts located on North Capitol Street, N.E., and N.W., between Channing Street and New York Avenue; and

(f) The Applicant will provide a total of approximately 97,770 square feet of GFA devoted to retail and service uses on the PUD Site. The retail space will include a Harris-Teeter grocery.

(vi) The Master Plan Evolved to Maximize the Comprehensive Plan Policies Advanced.

92. The Master Plan was formulated between 2006 and 2014 to maximize the quantity and quality of Comprehensive Plan goals achieved. As described by Matthew Bell in his direct testimony, and as illustrated in Exhibit 951C, the Master Plan progressed through several iterations, beginning with the 2006 Master Plan, and evolving through iterations in 2008, 2009, 2011, 2012, and the current plan. Throughout the process, the Applicant sought and received the input of the affected ANCs, civil associations, citizen groups, and various District of Columbia agencies. As is the case with a project of this magnitude, there was no unanimity reached, but the Applicant clearly recognized the need for preserving historic elements of the site while at the same time providing significant contiguous and usable open space, substantial affordable housing, and vibrant neighborhood-serving retail, without causing adverse traffic, visual, or environmental impacts. The Applicant came to realize it could not accomplish these things in any meaningful sense without an economic driver, which became the Parcel 1 Building.

93. The overall challenge was to satisfy the Historic Preservation Review Board ("HPRB") that the design articulated the essential characteristics of the landmark, which were a tripartite organization with two long east/west courts with above-ground features, the plinth, views across the site from First Street to North Capitol Street, and the perimeter of the Olmstead Walk.

94. The tripartite organization is the basis of the current plan. The above-grade North and South Service Courts are maintained and incorporated. The plinth that establishes the exterior character landmark to the community is maintained. The Olmstead Walk is reestablished. Views from across the landmark are maintained in the park and the service courts. Underground cells are incorporated into the public experience of the site fully at Cell 14, and partially at Cell 28.

95. The six illustrations discussed below are from Exhibit 951C and they illustrate how the Master Plan evolved into its current form.

The Original 2006 Master Pan

96. In this first plan, development covers almost the entire site, there are no healthcare facilities, and little historic preservation. There is no plinth, Olmstead Wall, or South Service Court. There is only a partial North Service Court and minimal open space.

The 2008 Master Plan

97. The 2008 Master Plan included both the North and South Service Courts, but there is still no clear tripartite organization, no plinth or Olmstead Walk, no healthcare or community facilities, and minimal underground cell preservation.

The 2009 Master Plan

98. The 2009 iteration of the Master Plan showed somewhat more tripartite organization.

The 2011 Master Plan

99. Healthcare uses are introduced by the 2011 plan, which includes a much larger park stretching across the site from North Capitol to 1st Street, with views established. Cell 14 is included and preserved and Cell 28 is included into the park along with the. Community Facility. The Olmstead Walk and the plinth are

not continuously evident but exist as partial fragments. A tripartite organization was yet to be achieved.

The 2012 Master Plan

100. With the 2012 plan, the Olmstead Walk emerges more on one side but the plan still lacked a tripartite organization, north/south view connections, or a complete plinth.

The Current Master Plan

101. The tripartite organization becomes evident under the 2014 Master Plan. There is now a complete Olmstead Walk, all of the plinth, North and South service courts, and a bigger park. The north and south views are supported by the street system. There would be approximately square feet of retail 100,000.

102. In sum, between 2008 to 2014, open space went from six to 12 acres, historic preservation went from 18 to 24 of the above-grade structures, including the plinth. Land use also changed, originally starting with office, hotel, and residential and evolving to healthcare, residential, retail, and a community center.

(C) The Relationship of the Healthcare Facility to the Advancement of the Identified Policies.

103. The Commission credits the testimony of Mr. Weers that the 860,000 square feet of healthcare uses on Parcel 1 is the economic driver of the Project and is critical to its viability. As is the case with most large-scale mixed-use development projects, the key to maintaining viability is to establish a critical mass of high-value uses that can support lower-return uses.

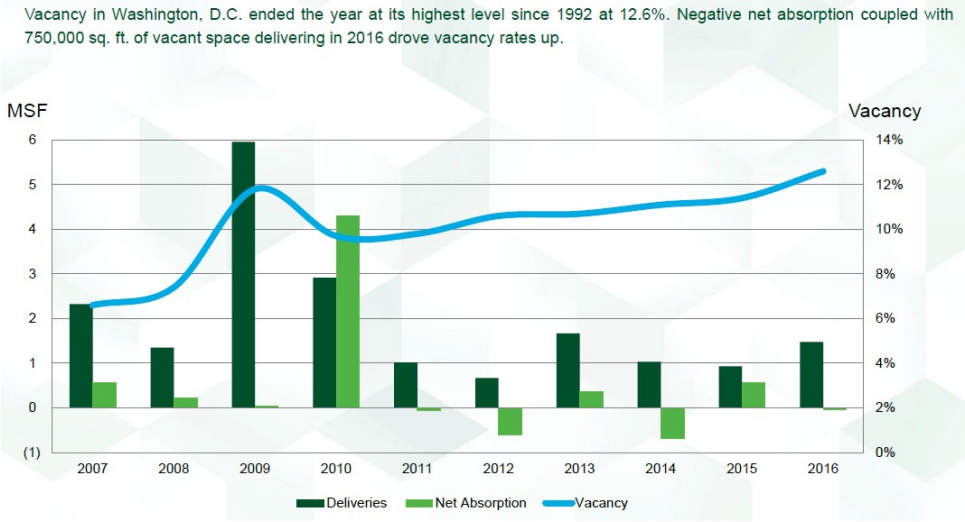
104. In addition, this Project presents a unique set of challenges. Due to the unstable condition of the below-grade infrastructure that exists on the site, significant investment is necessary to prepare the site for any kind of development, including parks and open space. Added to these development costs is the cost of subsidizing the substantial affordable housing to be provided, the historic preservation to be undertaken, and the $5,000,000 worth of community benefits offered, all in furtherance of the Comprehensive Plan policies specific to large sites in general and the McMillan site in particular. In order to overcome the substantial predevelopment costs and advance these Comprehensive Plan policies to the maximum extent possible, approximately 860,000 square feet of high-value commercial uses in needed for the Project

105. Originally, this density was spread across the site, resulting in minimal open space. In order to devote almost half of the PUD Site to parks and open space, including the large contiguous park at the south end of the site, development needed to be clustered at the north end of the site. The Applicant succeeded in clustering the critical density into less than four acres on Parcel 1.

106. In addition, devoting this amount of GFA to commercial rather than residential uses optimized the benefits generated by the Project in terms of jobs and income, while the daytime population for these uses provides the critical mass needed for the success of any significant retail component. Retail uses, particularly large grocery stores like the Harris Teeter that has committed to Project, require the daytime population drawn to the site by the healthcare uses as well as the site's residential population. (Tr. April 19, 2017 at 124-125.)

107. The Applicant also demonstrated that this development on Parcel 1 needed to be devoted to healthcare uses.

108. Outside of healthcare, there is no discernable large-scale commercial demand for the site. As illustrated in Exhibit 951B (shown below) the District's general office market is in a trough and appears poised to remain so for the foreseeable future.



109. But even in a strong office market, the McMillan site does not have the attributes a general office development site needs to be successful.

110. In contrast, healthcare real estate in the District places high value on adjacency to existing hospitals. There is approximately 3.5 million square feet of hospitals next to the McMillan site. This adjacency offers a unique opportunity for these systems to modernize significant portions of their operations by expanding across the street, and then repurposing the newly freed up space on their existing campus.

111. Further, as noted by Mr. Weers, the concentration of healthcare uses in the Parcel 1 Building is consistent with modern healthcare design, which incorporates smart growth principles like taller buildings, vertical integration, smaller footprints, underground parking, and mixed-use environments with rich amenity bases and open green public spaces.

112. Without the Parcel 1 Building, the critical mass of commercial density would disappear, the PUD would become unviable, and all the Comprehensive Plan policies it advances would be lost.

113. If the proposed eight-story buildings on Parcel 1 had typical commercial floor-to-ceiling heights, it could rise to 90 feet and still accommodate the square footage needed. (Ex. 996B.)

114. However, the vast majority of healthcare uses likely to occupy the Parcel 1 Building, including the potential and critical anchor tenants, will require minimum floor-to-floor heights that range between 13'-6" to 21'-0" to

accommodate their specialized mechanical, electrical, plumbing ("MEP"), and medical equipment requirement. (Ex. 951B, p. 3.)

115. The Framework Element's definition of the medium-density commercial category states that "[t]he corresponding Zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply." Of the three listed zones, the most height permitted with a PUD is 90 feet. Although the Commission has concluded that the 113 feet of height proposed for Parcel 1 with CR zoning is consistent with medium-density commercial, for the purposes of addressing Remand Issue 1A, the Commission will assume that 90 feet represents the outermost limit of medium-density commercial.

116. To reduce the Parcel 1 Building's height to 90 feet would require the elimination of two floors, which equates to a loss of 190,000 square feet of GFA equal to 27% of the developable space original proposed.

117. This would be in addition to previous changes made to the Parcel 1 Building's configuration and height that have already significantly constrained development. The building was moved back from North Capitol Street to create a 206-foot buffer and moved away from the North Service Court to more appropriately relate it to the historic assets preserved. The creation of the Healing Gardens to the building's north further shrunk the building footprint.

118. Further, in response to comments by the Commission and National Capital Planning Commission ("NCPC") staff, the building's height was reduced from 130 to 115 feet and the west façade was shifted by approximately 15 feet eastward to preserve the view from the Scott Statue at the Armed Forces Retirement Home These modifications resulted in a reduction of approximately 37,000 square feet of GFA.

119. Notwithstanding these changes, and the significant reductions of developable space that resulted, Trammel Crow has been able to continue its conversation with potential anchor tenants, whose early commitment is critical to the success of a project. However, the Commission credits the testimony of Mr. Weers that any further material reductions in GFA will likely put an end to these marketing efforts, thereby jeopardizing the continued existence of the healthcare component, and with it the entire Project.

120. As demonstrated by Mr. Bell in his testimony, and as depicted in Exhibit 927A at page 19, shifting 190,000 square feet of GFA to other portions of the PUD would result in adverse impacts and reduced public benefits. Moving GFA to Cell 14 would lessen the distance between the Parcel 1 Building and the existing residences to the east and would result in less preservation of Cell 14 and less open space. Adding the lost GFA to Parcels 2 and 5 would either result in less housing or the housing being moved into the Park. Adding the lost space to the Park is self-evidently unacceptable.

121. During deliberations on June 29, 2017, the Commission indicated that the height of the Parcel 1 Building deserved further examination as to whether the height could be reduced by one-story and the resulting loss of approximately 95,000 square feet density could be regained through manipulation of the building footprint. The Commission also requested the Applicant to revisit the specific floor-to-ceiling heights proposed to determine whether any further height reductions can be made without compromising the ability to meet the program needs of the anticipated healthcare tenants.

122. The Applicant responded through a submission dated August 21, 2017, and FOMP submitted its reply on September 5, 2017. (Ex. 952–952D, 953.)

123. Based upon its review of both submissions the Commission makes the findings below.

124. The elimination of a single story would result in a loss of approximately 95,000 square feet of GFA. The Commission has found that given the reductions already made to the size and height of the Parcel 1 Building, the PUD cannot sustain such a material reduction of commercial gross square footage.

125. The Commission further finds that the approximately 95,000 square feet of lost GFA cannot be regained through manipulations in the building footprint within the constraints of Parcel 1. As shown in Exhibit 952A, there are numerous development considerations/constraints that relate to important community interests, historic preservation, public benefits and amenities, and building design and leasing that impact the massing and design of the Parcel 1 Building.

126. The Applicant identified three options for reducing the building height while retaining the critical mass of GFA through manipulation of the building's footprint: (1) expanding building density to the east; (2) expanding building density to the north; and (3) expanding the building primarily to the western and southern sides. The Commission concludes that the options would result in diminished historic preservation and adverse transportation and visual impacts.

127. Expanding building density to the east would eliminate the preservation of Cell 14 and its transformation into a park, as well as the full extension the Olmstead Walk around the entirety of the site. The expansion would also erode the historic viewshed into the site from North Capitol Street (looking south) and from Michigan Avenue (looking west), both of which were specifically identified as highly impactful and important historic components by OP's Historic Preservation Office and the HPRB. Lastly, an eastward extension would significantly reduce the 260-foot buffer between the eastern tower of the healthcare facility and the adjacent Stronghold neighborhood.

128. Expanding the building to the north would eliminate significant portions of the Healing Gardens and disrupt the circulation pattern from Michigan Avenue

because it would eliminate the loop road designed into the north side of the Parcel, which was a key component to the Parcel's overall circulation plan.

129. Expanding the building primarily to the western and southern sides would reverse a change to the design made by the Applicant in response to the NCPC staff's 2014 request that the height of the western tower be reduced by 15 feet to more substantially respect the historic viewshed between the Scott Statue at the Armed Forces Retirement Home and the Capitol dome.

130. As to any further reduction of the floor-to-ceiling heights, the Applicant has been able to reduce the overall height of the Parcel 1 Building to a maximum height of 113 feet, a reduction of two feet, through reductions in the floor-to-ceiling heights on the top two floors and the retail floor at the North Service Court level. As shown in Exhibit 952D, the floor-to-floor height of Levels 7 and 8 are now proposed to be 13'-6. This is only slightly higher than the lower levels of the building which, in addition to accommodating the MEP and equipment needs of healthcare tenants, is also necessary to accommodate roof/terrace insulation and drainage requirements.

131. The Applicant has also been able to reduce the floor-to-floor height of the retail level of the building that fronts along the North Service Court from 16'-0" to 15'-0", or by one foot. While not optimal, the 15'-0" floor-to-floor height at the retail level will still allow the Applicant to achieve a clear ceiling height of 14'-0", which is widely considered a minimum acceptable ceiling height for retail space and is a minimum requirement in certain areas under the Zoning Regulations.

132. The Commission finds that no further reduction in floor-to-ceiling heights is possible. Levels 3-6 are designed with floor-to-floor heights of approximately 13'-0", already slightly less than preferred by healthcare users. These levels cannot be further reduced without severely jeopardizing the economic feasibility of the building and/or the ability to meet the program needs of the anticipated healthcare tenants on these floors. Furthermore, the Commission finds that larger floor-to-floor heights on Levels 1 and 2 must be maintained as these levels are anticipated to be the most likely to contain the types of large medical equipment and operating rooms that require the highest floor-to-floor heights. (Ex. 951B.)

133. The Commission therefore concludes that none of the Identified Policies could be advanced to the same degree, and in fact would be entirely lost, if the height of the Parcel 1 Building was reduced below 113 feet or if the density equivalent to one or two stories were shifted to other areas of the PUD Site.

Issue 1A: Given this finding, which of the competing policies should be given greater weight and why?

134. Based upon the Opinion's finding that the second sentence of MC-2.6.5 discourages any building with a height greater than 90 feet within the PUD Site, the competing policies are as follow, with each set of competing policies shown in separate columns:

MC-2.6.5: Scale and Mix of New Uses, second sentence	Land Use: LU-1.2.1: Reuse of Large Publicly-Owned Sites; LU-1.2.5: Public Benefit Uses on Large Sites and LU-1.2.6: New Neighborhoods and the Urban Fabric; LU-1.2.7: Protecting Existing Assets on Large Sites Housing: H-1.2.4: Housing Affordability on Publicly Owned Sites Parks, Recreations and Open Space: PROS-1.3.6: Compatibility with Adjacent Development and PROS-3.3.1: North Central Open Space Network Urban Design: UD-2.2.8: Large Site Development and UD-2.3.5: Incorporating Existing Assets in Large Site Design Historic Preservation: HP-2.4.3: Compatible Development Mid-City Area Element: MC-2.6.1: Open Space on McMillan Reservoir Sand Filtration Site; MC-2.6.2: Historic Preservation at McMillan Reservoir; and MC-2.6.5, third sentence; Scale and Mix of New Uses Historic Preservation: HP-2.4.3: Compatible Development

135. The Comprehensive Plan twice states that "the Land Use Element integrates the policies of all other District elements, it should be given greater weight than the other elements." (*See* Overview of Land Use Element (page 3-1), 10-A DCMR § 300.3 and Implementation Policy IM-1.3.4: Interpretation of the District Elements, 10-A DCMR § 2504.6.)

136. However, LU-1.2, which identifies the McMillian Site as being one of the 10 large sites for which it provides "policies that focus on broader issues," states that that "[t]he Area Elements should be consulted for a profile of each site and specific policies for its future use." The Applicable Area Element for the McMillan Site is the Mid-City Element and the specific policies for its future use are stated in MC-2.6 and includes the density policy included in MC-2.6.5.

137. Based upon their reading of these provisions, the Applicant's expert, Mr. Dettman, argued that the Land Use Elements should be given greater weight while FOMP's expert, Ms. Richards, argued that the MC-2.6. should control.[13]

[13] The Applicant sees the conflict as between the FLUM, with which the Opinion found the Parcel 1 Building is consistent, and MC-2.6.5, with which the Opinion concluded it is not. And since the FLUM is in the Land Use

138. The difficulty with both arguments is that the potential conflict identified in the Court's Opinion and found to exist in this proceeding, is not between the two elements, but between the one sentence in MC-2.6.5 and the Identified Policies. These Identified Policies are not just contained in the Land Use Element, but also within MC-2.6 itself, as well as in the Housing, Historic Preservation, PROS, and Urban Design Elements.

139. The question then is whether the Commission should give greater weight to those policies calling for the preservation of the site's essential historic elements and creation of affordable housing, healthcare, retaining significant open spaces, neighborhood-serving retail, significant employment opportunities, and other similar public benefits over a policy interpreted as limiting the Parcel 1 Building to a height of 90 feet.

140. First, as pointed out by Mr. Dettman, giving effect to MC-2.6.5 would thwart the broader policies' goals for large sites such a McMillan. These policies go to the heart of what the Comprehensive Plan intended for this site.

141. Second, the only impact of the Parcel 1 Building's height would be its visual impact. That impact has been mitigated to the north by the Healing Gardens and to the east by the Cell 14 park. It is not similarly possible to mitigate against the loss of housing, open space, retail, historic preservation, jobs, and the many community benefits that would result if the height of the Parcel 1 Building were reduced by any further amount.

142. Finally, as noted by Deputy Mayor Kenner, after the Commission took final action to approve the PUD, the Council for the District of Columbia adopted Mayorally-proposed Resolution 20-707, McMillan Commercial Parcel Disposition Approval Resolution of 2014. The Committee Report for that resolution appears in the record as Exhibit 896M ("Committee Report"). Identical committee reports were prepared for Resolution 20-705, the Residential Townhomes Parcel Disposition Approval Resolution of 2014, and Resolution 20-706, the McMillan Residential Multifamily Parcels Disposition Approval Resolution of 2014. All of the resolutions became effective on December 2, 2014.

143. The 19-page Committee Report in the record includes a history of the site, a "detailed" overview of the Project, and discussions of its benefits, including affordable housing and the community benefits package, the community

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Elements, its policies govern. As much as the Commission is sympathetic with the argument, it is implicit in the Opinion that the Court of Appeals found otherwise. Also, the Applicant's expert suggested that no conflict existed at all because MU-2.6.5 focused on the area "where development occurs" and therefore if the park areas are excluded, the aggregate FAR fell within the medium range. The Commission agrees with FOMP that the Court's interpretation of MC-2.6 is parcel specific. For her part, Ms. Richards seemed intent on overturning the Court's finding of FLUM consistency based upon the aggregate FAR of the PUD, which the Commission need not and will not do.

engagement undertaken, the parks and open space component, and what it referred to as "community topics." The Committee Report's description of the Project was the same as that approved by the Commission and included a specific reference to there being over a million square feet of healthcare uses.

144. The Committee Report concluded by recommending approval of the resolution because it represented "a thorough and balanced development that is the culmination of years of planning, community engagement, and execution by the District government, Vision McMillan Partners, and many affected ANCs, community groups and stakeholders." The Commission concurs with Deputy Mayor Kenner that this conclusion and the Council's subsequent adoption of the three related resolutions, and other needed legislation "demonstrates that the Council believes that the McMillan development is in the best interest of the District and that the competing policies should be weighed in favor of approving the plan with the existing height on Parcel 1."[14] (Ex. 930.)

Issue 2: Do the Comprehensive Plan policies cited in the Opinion or by FOMP in the record of this case weigh against approval of the Project?

145. The Opinion concluded that "the Commission failed to adequately address a number of provisions in the Comprehensive Plan that FOMP argues weigh against approval of the PUD." (*Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).) The Opinion specifically cited policies LU-1.2.6: New Neighborhoods and the Urban Fabric 10-A DCMR § 305.11; LU-2.1.5: Conservation of Single Family Neighborhoods, 10-A DCMR § 309.10; LU-2.1.10: Multi-Family Neighborhoods, 10-A DCMR § 309.15; and the introductory paragraph to Policy CSF-2 Health and Human Services Policy of the Community Service Element, 10–A DCMR § 1105.1 (2016). (*149 A.3d* at 1035.) In addition, FOMP, in its response to the remand issues, cites MC-2.6.2, MC-2.6.3, MC-2.6.4, and MC-2.6.5 as weighing against approval of the PUD. (Ex. 925, pp. 6-10.)

146. The Commission concludes that none of these policies weigh in favor of denial of the application, but instead support its approval.

LU-1.2.6: New Neighborhoods and the Urban Fabric, 10-A DCMR § 305.11.

147. In her written testimony, Ms. Richards asserted that this policy weighs against the grant of the Application because the massing of the Parcel 1 Building conflicts with the guidance to redevelop at "building intensities and massing that complement adjacent developed areas." Ms. Richards believed that the building's size, use, and orientation isolate it from the existing and new residential communities. Finally, Ms. Richards expresses concern that the

[14] The testimony was given prior to the two-foot reduction in building height that DMPED, as one of the two entities comprising the Applicant, obviously supported.

Healing Garden's orientation toward Michigan Avenue "may not be readily accessible or welcoming to the existing and planned residential communities." (Ex. 937, p. 13.)

148. The Commission agrees with OP that this policy weighs in favor of granting the Application. In its report, OP concludes that the development would integrate into the existing street grid through the introduction of two new east-west streets connecting North Capitol Street and First Street and a new north-south access from Michigan Avenue.

149. In addition, OP noted, and the Commission finds, that pedestrian and bicycle ways would provide connections internally and externally along the streets; public open space would be provided along the perimeter of the site by the restoration of the historic Olmsted Walk; and a new 6.2-acre public park and recreation center would be provided on the southern end of the site and would interface with the moderate-density rowhouse residential neighborhood across Channing Street. The Commission also agrees that the buildings, including the Parcel 1 Building, would be located to complement the adjacent community by use, height, and massing. In addition, the proposed buildings, and in particular the Parcel 1 Building, would be significantly setback from the adjacent uses.

150. As to the Healing Gardens, the Commission agrees with the Applicant that the placement of the Healing Gardens along Michigan Avenue plays a significant role in the Project's ability to re-create a significant northern section of the Olmstead Walk and fully embellish it as a feature by allowing an appropriate amount of space for it to meander along Michigan Avenue between the DDOT sidewalk and the Healing Gardens. (Ex. 952C.)

LU-2.1.5: Conservation of Single Family Neighborhoods, 10-A DCMR § 309.10.

151. This policy encourages the protection and conservation of "the District's stable, low density neighborhoods and ensure that their zoning reflects their established low-density character" and calls for the careful management of vacant land and the alteration of existing structures in and adjacent to single family neighborhoods in order to protect low density character, preserve open space, and maintain neighborhood scale."

152. As noted by OP, all the surrounding residential neighborhoods are identified as moderate-density residential on the FLUM and are developed with attached rowhouses or low-rise apartments. Also, none of these adjacent neighborhoods are being rezoned and no alterations of existing structures are proposed by this PUD, which instead reflects the careful management of vacant land. As noted above, the adjacent residences to the south will be separated from the proposed buildings by a 6.2-acre park and recreation area and the properties to the east would be separated by the 130-foot right-of-way of North Capitol Street in addition to the Olmsted Walk and Cell 14 on Parcel 1. As found by OP, the development on Parcels 4 and 5 would have heights of 78 feet and 77 feet,

respectively, and would be compatible with neighborhood scale given the separation achieved by the 130-foot right-of-way of North Capitol Street.

LU-2.1.10: Multi-Family Neighborhoods, 10-A DCMR § 305.15.

153. This policy calls for the multi-family residential character of the District's medium- and high-density residential areas to be maintained, the encroachment of large scale, incompatible commercial uses into these areas to be limited, and that these areas should be made more attractive, pedestrian-friendly, and transit accessible. It is inapplicable to this PUD because all the surrounding neighborhoods are designated on the FLUM as moderate-density residential.

The introductory paragraph to CSF-2 Health and Human Services, 10–A DCMR § 1105.1.

154. FOMP asserted that this paragraph stated a policy "encouraging geographic dispersion of health-care facilities." (149 A.3d at 1035.)

155. This introductory paragraph does not concern private healthcare facilities, such as being proposed for Parcel 1, but "community health centers as well as the provision and improvement of human service facilities such as child care and senior centers." (11 DCMR § 1105.1.)

156. The relevant portion of this paragraph states that healthcare facilities are "just as important to the quality of life as water, sewer, and transportation facilities, and have spatial needs that must be addressed over the coming years." The paragraph goes on to note that:

> Planning for social infrastructure is complicated by a number of factors, particularly the changing nature of the nation's health care delivery system *and the District's limited jurisdiction over private service providers*. Nonetheless, the Comprehensive Plan can at least state the city's commitment to provide for *an adequate distribution of public facilities across the city*, as well as measures to advance public health through the design of the city and protection of the environment.
>
> (*Id.* (emphasis added).)

157. Thus, although this encourages the District to disperse its public healthcare facilities throughout the city, it does not address private facilities, because of the limited ability of the District to compel private providers to be located in particular areas of the city.

158. That is undoubtedly why LU-1.2.5 states that the District should use its "significant leverage ... in redeveloping properties which it owns" to "include appropriate public benefit uses on such sites if and when they are reused."

Among the examples of such uses identified are "health care facilities." Although the healthcare facility proposed for Parcel 1 resulted more from economic necessity than the District's exercise of its leverage, its establishment furthers both the policies expressed in CSF-2 and LU-1.2.5 and therefore these policies weigh in favor of approval.

159. It is not relevant for the purposes of this analysis for the Commission to know what precise healthcare uses will occupy the Parcel 1 Building. Condition B.1 of Remanded Order required that "Parcel 1 shall be developed as a Healthcare Facility … devoted to medical offices, related healthcare uses, and retail." That condition is repeated here. The Commission is satisfied that this degree of specificity is sufficient to express its intent that the Parcel 1 Building be used for the type of healthcare uses that LU-1.2.5 encourages for large District-owned sites.

MC-2.6.2: Historic Preservation at McMillan Reservoir, 10-A DCMR § 2016.6.

160. As noted, MC-2.6 sets forth "several basic objectives [that] should be pursued in the re-use of the McMillan Sand Filtration site." (10-A DCMR § 2016.4.)

161. The objective stated in MC-2.6.2 is to:

> Restore key above-ground elements of the site in a manner that is compatible with the original plan, and explore the adaptive reuse of some of the underground "cells" as part of the historic record of the site. The cultural significance of this site and its importance to the history of the District of Columbia must be recognized as it is reused. Consideration should be given to monuments, memorials, and museums as part of the site design.

162. The Commission has already explained why the PUD significantly advances this policy.

163. During the original proceeding, FOMP claimed that the Applicant's proposal would destroy over 80% of the historic resources on the PUD Site, particularly the underground water filtration cells, that the new construction dwarfed the limited number of historic resources being retained in the North and South Service Courts, and that the significant open and green spaces of the landmark would be lost. FOMP also argued that alternative redevelopment options were possible that would save more of the historic site and allow adaptive reuse of the underground cells.

164. Both assertions were addressed in FF ¶¶ 135-140 of the Remanded Order. In sum, based upon the expert testimony given and reports submitted, the Commission concluded (and still does) that the cells are so structurally unstable that they cannot support development above. Even the less intensive development suggested by FOMP was unsupportable. Stabilization of the

underground cells would require such reinforcement and introduction of new structural members that the integrity of the cells would be lost. Moreover, the Secretary of Interior Standards for Rehabilitation only contemplate reconstruction of missing elements or missing structures, not demolition of an historic resource to reconstruct it.

MC-2.6.3: Mitigating Reuse Impacts, 10-A DCMR § 2016.7.

165. FOMP asserts that the PUD does not achieve the policy's objective that "any change in use on the site should increase connectivity between Northwest and Northeast neighborhoods as well as the hospital complex to the north," noting all the new streets are internal and private and that there is little integration into the existing street grid. The Commission disagrees. As stated in FF ¶ 65 of the Remanded Order, east-west connections are achieved by restoring the historic North and South Service Courts as part of the street system, as well as introducing Evarts Street, which will run laterally across the site from First Street to North Capitol Street. Further, the Project will also improve connectivity (pedestrian, bicycle, and vehicular) between the Northwest and Northeast neighborhoods and the hospital complex to the north by opening several new connections through the site.

166. The policy also states that "any development on the site is designed to reduce parking, traffic, and noise impacts on the community; be architecturally compatible with the surrounding community; and improve transportation options to the site and surrounding neighborhood."

167. As to traffic and parking, the Commission found in the Remanded Order that "the traffic and transit mitigation measures ... are sufficient to sufficiently mitigate the potential adverse effects of the project related to traffic." The Court of Appeals left this finding undisturbed and therefore FOMP's assertions to the contrary are beyond the scope of this remand. Those mitigation measures are again made conditions of the Commission's approval.

168. The Commission evaluated and concurs with OP that "development would have a mix of residential, commercial, open space and recreational uses at a scale that would be compatible to the adjacent residential and institutional uses." (Ex. 897A, p. 10.)

169. Lastly, the Commission finds that the Project is not expected to have an adverse impact on the surrounding residential use with respect to noise. Commercial development is concentrated at the north end of the site. The substantial setback of the healthcare facilities on Parcel 1 from the rowhouses along the east side of North Capitol Street will mitigate any potential for noise impacts on residential uses. In addition, the amount of new tree canopy onsite, particularly the street trees planted in the surrounding public space, and double row of canopy along the Olmsted Walk, will further reduced the external effect of noise generated by the Project.

MC-2.6.4: Community Involvement in Reuse Planning, 10-A DCMR § 2016.9.

170. This policy calls for the District and its agents to be "responsive to community needs and concerns in reuse planning for the site. Amenities which are accessible to the community and which respond to neighborhood needs should be included." FOMP asserts that the development disregarded the recommendations from community input assembled in 2002 by DHCD, which said that high-rise offices and medical facilities were undesirable for the site. In addition, FOMP contends that the comments of the McMillan Advisory Group ("MAG") were disregarded and not incorporated into the Community Benefits Agreement. (Ex. 925, p.10.)

171. The Committee Report indicates that Vision McMillan Partners held over 200 community meeting presentations, workshops, and design charrettes, in conjunction with the Deputy Mayor for Planning and Economic Development, and ANCs throughout all parts of the process. The testimony of Mr. Bell reflected how the Master Plan evolved and improved due to the community impact it received. This high level of community engagement and responsiveness is corroborated by the testimony of Mr. Thakkar. (Ex. 946.) The Commission also credits the testimony of Mr. Thakkar that the Park was made bigger to increase community support for the Project, rather than to accommodate WASA.

172. The Committee Report noted the ongoing debate within the community concerning this development and concluded that the Project represented the "culmination of years of planning, community engagement, and execution by the District government, Vision McMillan Partners, and many affected ANCs, community groups and stakeholders." And further "while no development will make every person involved happy, the proposed McMillan development provides economic development, cultural, commercial and recreational opportunity to an area that has seen this site vacant and fenced off for decades."

173. Like the Council Committee, the Commission finds a direct nexus between the excellence of this Project and DMPED and McMillan's responsiveness to community concerns and finds that the Applicant's adherence to MC-2.6.4 weighs in favor of granting the Application.

MC-2.6.5: Scale and Mix of New Uses, 10-A DCMR § 2016.8

174. This policy recognizes that "development on portions of the McMillan Sand Filtration site may be necessary" and that where "development takes place, it should consist of moderate- to medium-density housing, retail, and other compatible uses." Further any "development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development."

175. Because the Commission has now designated CR zoning for Parcel 1 and because the Parcel 1 Building meets all the narrative elements for the medium-density commercial category and none of the elements for high-density commercial, it is a medium-density building, and therefore nothing in this portion of MC-2.6.5 weighs against approval.

176. Further, even if the Parcel 1 Building was a high-density use, it is not barred by MC-2.6.5, but not for the reason suggested by the Applicant. As noted, the Commission was not persuaded by Mr. Dettman that the individual building height of Parcel 1 is irrelevant because the aggregate density "where development takes place" is consistent with moderate to medium density." FOMP is correct that the Court's interpretation is parcel specific."

177. However, as a matter of syntax, the word phrase "moderate to medium" does not qualify the phrase "other compatible uses." Excluding the word "retail" the policy is that "[w]here development takes place, it should consist of moderate- to medium-density housing, … and other compatible uses."

178. FOMP's expert witness, Ms. Richards, acknowledged that a high-density use would be consistent with the policy so long as it was compatible. (Ex. 937, pp. 10-11.) During her cross examination, she agreed that there is no *per se* restriction on high-density uses on the site:

> I am aware the court said there is no per se, [SIC] rule, [SIC] saying that you could not have a high-density building. And I did not reach that as a per se, conclusion. … [T]he Court said, that if a high-density building were to go up on that site, it might be you know, defensible or compliant if it was for a use contemplated by the plan. … For instance, the plan says medium density residential. Now, suppose that in applying the plan flexibly. Someone [SIC] said, well, let's go high-density residential, you know, and that would say, okay, sort of like it's in the ballpark. And then you see how is it [s]ited. And you have to look at all the other factors and what is it close to.

(Tr. April 19, 2017 Hearing at 256-257 (Emphasis added).)

179. Ms. Richards believes that the Parcel 1 Building would be an institutional use because it may be used by the Washington Hospital Center, and the Washington Hospital Center is designated as "Institutional" on the FLUM. Since the FLUM striped designations for the PUD site do not include "Institutional," Ms. Richards contends the Parcel 1 Building use is not "contemplated" by the Plan. Although Ms. Richards further states that an "institutional use may be another compatible use, but it's not automatically so." (Ex. 937, p. 10.)

180. The Commission has already found that the proposed healthcare use for the Parcel 1 Building is encouraged by the Comprehensive Plan Policy LU-1.2.5 for

large District-owned sites, including McMillan and is therefore presumptively compatible.

181. The last sentence of the policy, calling for the maintenance of view sheds, was fully addressed by the Commission in FF ¶¶ 143 - 145 of the Remanded Order, and was left undisturbed by the Court of Appeals. FOMP points to allegedly false statements made by NCPC staff to NCPC on November 6, 2014, when NCPC was considering the application. FOMP first made this assertion prior to the Commission taking final action on November 10, 2014, and the Commission found this information to be irrelevant to its proceedings. (Tr. November 10, 2014 Meeting at 24-26.)

182. FOMP now asks the Commission to revisit the issue because it claims that Mr. Dettman was the NCPC staffer who made the alleged false statements and that Mr. Dettman was later hired by the law firm that both then represents and now represents the Applicant. FOMP therefore suggests that Mr. Dettman was subject to a conflict in 2014, but does not identify when Mr. Dettman was first approached by the Applicant's counsel. Without that critical information, the Commission cannot determine whether the purported conflict existed during the relevant period. Further, NCPC did not submit a formal recommendation to the Commission as a result of its November 6, 2014 meeting. Therefore, whatever transpired on November 6, 2014 did not affect the Commission's determination of the viewshed issue. Rather, the last NCPC correspondence received was a letter from NCPC's Executive Director to the Project Director of Vision McMillan partners indicating that as a result of the reduction of height made to the Parcel 1 Building, NCPC staff "has no further objections to the proposed building heights." (Ex. 856B). The letter was signed for the Executive Director by Elizabeth Miller.

183. The Commission, therefore, saw no reason to re-initiate a referral to NCPC as urged by FOMP in its April 3, 2017 submission.

Issue 3: Is the 113-foot height of the Parcel 1 Building[15] the only feasible way to retain a substantial part of the PUD Site as open space and make the site usable for recreational purposes?

184. As noted, the PUD will provide approximately 12 acres of new parks and open space including the large park at the south end of the PUD Site, Cell 14, the Healing Gardens, and the Olmsted Walk. Including the area of the North and South Service Courts, this amounts to approximately 49% of the PUD Site devoted to open space. The Commission finds this is a substantial part of the PUD Site.

[15] The Commission has substituted the phrase "the 113-foot height of the Parcel 1 Building" for "the height-density development proposed for the site" to be consistent with its view that the CR zoning allows for the Parcel 1 Building to be viewed as medium-density. The change the does alter the substance of its analysis.

185. The first iteration of the Master Plan showed commercial density spread throughout the PUD Site resulting in minimal open space. By clustering the needed commercial gross area on the Parcel 1 Site, the Applicant could make 49% of the PUD Site available for Parks, Open Space, and Recreation. As previously found, the commercial density is needed, in part, to recover the significant predevelopments costs for this site, including the costs of making the site usable for recreational purposes.

186. The Commission therefore finds that there is a direct correlation between the height of the Parcel 1 Building and the retention and creation of 12 acres of new parks and open spaces on the PUD Site as open space and make the site usable for recreational purposes.

Issue 4: A. Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case?

B. If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects.

A. Environmental Problems.

187. Through a memorandum dated March 9, 2017, DOEE advised the Commission that the PUD is designed to meet or exceed the minimum environmental standards of the District's regulations, and is consistent with the Comprehensive Plan. (Exhibit 894) The report noted that the Applicant's commitment to LEED ND Gold certification for the overall development and minimum certification of LEED Silver for each of the buildings, along with significant improvements to the urban fabric and tree canopy, which will provide an opportunity to move the District closer to meeting some of the sustainability goals included in the Sustainable DC Plan.

188. In terms of stormwater management, DOEE indicated that the whole of the site and all individual building sites are designed in accordance with the District's 2013 Stormwater Regulations, which retain stormwater from the 90th percentile or 1.2″ rain event. Specific strategies include the use of native plant species, intensive and extensive green roofs, an increased tree canopy, and cisterns for rainwater harvesting and reuse.

189. In 2016, the Applicant submitted an environmental impact statement form ("EISF") and related materials to the DCRA as part of the building permit application process for the PUD. An EISF is required by the DOEE regulations implementing the District of Columbia Environmental Policy Act of 1989 ("DCEPA"). The DCEPA requires that a detailed environment impact statement

must be prepared by a District agency that proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented. (D.C. Official Code § 8-109.3 (2012 Repl.).) There is no dispute that this PUD would constitute a major action. For this PUD, pursuant to the implementing regulations, DCRA was the "lead agency" responsible for determining whether an environmental impact statement was needed and for coordinating the environmental assessment with other agencies. (20 DCMR §§ 7201, 7203.)

190. The EISF is a nine-page form that is completed by all applicants for a building permit for projects that are covered by DCEPA. The EISF review process evaluates the site across a multitude of different environmental issues that includes water, sewer and stormwater implications, natural environment (including impacts to wetlands and other sensitive habitat areas), air quality, and noise. (Ex. 894.)

191. DCRA provided the EISF form as completed by the Applicant to DOEE, DDOT, the Solid Waste Management Administration of DPW, WASA, and OP. Each agency submitted written recommendations, each of which will be discussed below.

192. Through a letter dated August 29, 2016, the DCRA Director informed Vision McMillan Partners that based upon the recommendations of the reviewing agencies, DCRA had concluded that the proposed project is not likely to have a substantial negative impact on the environment; and the submission of an environmental impact statement is not required. (Ex. 896F, p. 1.)

193. The recommendations of the reviewing agencies were as discussed below, all of which are part of Exhibit 896F.

194. Through a memorandum dated May 26, 2016, DOEE made findings with respect to water quality, sedimentation and stormwater management/watershed protection, vegetation and wildlife, air quality, underground storage tanks, toxic substances, hazardous substances, and environmental justice ("DOEE Report").

195. The EISF submitted for the Project was the same submitted for any development that is subject to the EISF requirement. DOEE considered the information submitted by the Applicant to contain all the data it needed and saw no need to deviate from DOEE's standard process for reviewing the environmental impact of the Project. (Tr. of May 1, 2017 Hearing at 42.)

196. DOEE examined the Project impacts on water quality with respect to both ground- and surface water.

197. As to groundwater, the Applicant indicated that 500 gallons per day of groundwater will be pumped from the site during and after construction. Based

on this pumping rate DOEE concluded that there is no expected impact on ground water flow. (DOEE Report, p. 7.)

198. Because of soil contamination, the Applicant will remove petroleum contaminated soil off-site as required by regulation. The Applicant indicated that in the event contaminated stormwater is encountered or rainwater comes into contact with any contaminated soil, it will containerize any known or potentially contaminated groundwater or rainwater in a holding tank, obtain accurate, reproducible, and representative water samples from the tank(s) and have them analyzed in a laboratory for all contaminants of concern using United States Environmental Protection Agency ("USEPA") approved methods; and will discharge of any contaminated water in accordance with both WASA and USEPA standards. (DOEE Report, pp. 7-9.)

199. In addition, the Applicant will implement a Stormwater Pollution Prevention Plan to mitigate contaminants or hazardous substances that will affect ground and stormwater quality during construction. (DOEE Report, p. 9.) The report noted that site is not in close proximity to a hydraulically down gradient natural surface water body; therefore, the project is expected to have minimal impact to surface water flow. *(Id.*)

200. With respect to sedimentation and stormwater management/watershed protection, the report noted that currently there is no stormwater management on the site, and to bring the property into compliance, the Applicant will install multiple green roof systems, bio-retention areas, infiltration trenches, pervious pavement, and rainwater harvesting for irrigation and mechanical demands. (DOEE Report, p. 10). As a result of these actions, the report concluded that the PUD will not cause significant flooding, erosion, or sedimentation.

201. The report found no apparent significant adverse impact to habitat for fish, wildlife, or plants as a result of the proposed project. There are no endangered species on the site, and because the site is in an urban location, there is limited habitat for fish, wildlife, or plants. (DOEE Report, p. 11)

202. As to air quality, the report found that the PUD will not violate any ambient air quality standard, contribute significantly to an existing projected air quality violation, or expose sensitive receptors to significant pollutant concentrations.

203. Due to the number of planned dwelling units, the number of planned parking spaces, the amount of shopping/commercial space, the amount of entertainment and/or recreation facility space, and the reduction in level-of-service of intersections, the EISF required the Applicant to submit an air quality analysis of emissions (in pounds or tons of pollutants per day) of Carbon Dioxide ("CO") resulting from the operation of mobile sources associated with the proposed project. Applicants submitting an air quality analysis are required to use the most current version of the USEPA's mobile emissions factor model in deriving the emissions estimates. (DOEE Report, p. 13.)

204. Applicants are also required to provide an analysis of the impact from mobile sources on CO concentrations (in parts per million ["ppm"]) in the vicinity of the proposed project. At a minimum, this analysis must be conducted in accordance with the procedures identified in DOEE's "Guidance for the Analysis of Air Quality Studies Performed as a result of the EISF Process" using an approved air quality dispersion model and must include a comparison of the resulting air quality with both the one-hour average and eight-hour average the National Ambient Air Quality Standards ("NAAQS") for carbon dioxide. (*Id*.)

205. The NAAQS standards are set by the United States Environmental Protection Agency to protect the public health, including sensitive populations with an adequate margin of safety. (Tr. May 1, 2017 Hearing at 43.) Therefore, compliance with the NAAQS would signify that the project is protective of public health. (*Id*.)

206. The Applicant was not required to provide an analysis of ground-level ozone, nitrogen dioxide, lead, or fine particulate matter for the reasons stated on page 14 of the DOEE Report.

207. The DOEE Report indicates that a Transportation Impact Study ("TIS") was prepared by Grove/Slade dated March 17, 2014. The TIS focused on 19 intersections near the PUD for weekday morning and afternoon peak hour analyses and 12 intersections for Saturday afternoon peak hours. The intersections used are listed on page 15 of the DOEE Report. The traffic counts were taken on April 24, 2013, April 25, 2013, April 27, 2013, and May 4, 2013 as base data for existing traffic conditions. Additional traffic counts made in 2012 and 2013 for WASA were also used for some intersections. The study used growth rates derived from the Metropolitan Washington Council of Governments and applied to the roadways in the study, but not for the Saturday peak hours.

208. An Air Quality Analysis was completed by Applied Environmental, Inc. dated December 22, 2015. It modeled CO concentration at 63 receptors in the area of the Project. Applied Environmental also modeled CO attributable to the parking garages and the surface parking areas to be developed. On May 19, 2016, ECS, Mid-Atlantic, LLC submitted slightly revised modeling from the original modeling to address concerns raised by the DOEE's Air Quality Division about whether the most conservative assumptions regarding garage stack modeling were used. The revised numbers were slightly higher, but DOEE did not consider the change to be significant.

209. The analysis chose the worse-case scenario of traffic contributions and parking contributions and summed them with the identified CO background contributions of 4.9 ppm and 3.1 ppm, respectively, to determine an overall worse case future status for the PUD.

210. The worse-case total one-hour contribution was determined to be 13.6 ppm, which is less than the one-hour NAAQS of 35 ppm. (DOEE Report, p. 13.)

211. The worse-case total eight-hour contribution was determined to be 6.5 ppm, which is less than the eight-hour NAAQS of 9 ppm. (*Id.*)

212. Because the PUD will be compliant with NAAQS, the Commission finds that the Project will not adversely impact public health as the result of air quality, including the health of vulnerable populations.

213. Nor will there be no significant adverse impact to the environment due to underground storage tanks. The report identified eight underground tanks that were installed on the site, which were all subsequently abandoned. There is an 8,000-gallon fiberglass heating oil tank in use, but no new underground tanks will be added as part of the development. No current or historic tank leakage was reported. The report indicated that any unknown tanks and contaminated soil should be reported to DOEE if discovered for inspection prior to removal and that groundwater contaminated during dewatering should be treated in accordance with DOEE standards.

214. The report found no known toxic substance in use on the site nor would any be used, disturbed, or created in concentrations that would constitute a significant adverse impact. There are no species of plants or animals identified as threatened or endangered on the site and there are no reported effects of pesticides to public health and safety originating from the site. Also, pesticides will not be applied.

215. Similarly, DOEE found there is no known hazardous waste at the site in concentrations that would result in significant adverse impacts on the environment. There is no indication that the PUD would violate published national or local standards relating to hazardous wastes, nor would the Project create a potential public health hazard or involve the use, production or disposal of materials that pose a hazard to people, animals, or plant populations in the area.

216. Lastly, with respect to environmental justice, the DOEE Report indicated that DOEE's Office of Enforcement has found that the PUD would not be environmentally burdensome nor would it otherwise pose a disparate and unjustified health risk to the community at which it will be sited. At 32%, the concentration of low-income persons in the proposed project area is the same as for the District of Columbia as a whole. As to vulnerable populations, five percent of the project area citizens are children and eight percent are 65 or older.

217. Through a memorandum dated August 19, 2016, DDOT indicated that it had no objection to the issuance of a building permit provided that the Applicant rebuild the public space adjacent to the site to current DDOT standards. DDOT noted that the Project had already been through the PUD review process and that "DDOT did not object to the action."

218. In its August 20, 2015 memorandum, DPW's Solid Waste Management Administration indicated that the PUD will not cause a negative environmental

impact as long as the Project adheres to District law and regulations governing solid waste management.

219. On November 6, 2015, WASA submitted a memo to DCRA to report that it anticipates no long-term environmental impacts beyond the period of the construction of the proposed project. (Ex. 896F, p. 32.)

220. In its memorandum dated August 10, 2015, OP's Development Review and Historic Preservation Division found that based on its review of the cumulative adverse impacts, the proposed project will not disrupt or divide the physical arrangement of an existing community that might adversely impact the environment; or induce significant growth or concentration of population that might adversely impact the environment.

B. Destabilization of Land Values, or Displacement of Neighboring Residents.

221. As an initial matter, the Commission agrees with OP that the Comprehensive Plan identifies that displacement and increasing land values are taking place across the City, but does not recommend that no development is the remedy, instead, it recommends that it is important to have "sound land use policies and development review procedures that mitigate the effects of competing and conflicting uses." (Framework Element, Land Use Changes, 10-A DCMR § 205.7.) (Ex. 897A, p. 11.)

222. OP provided its analysis of the issue and both the Applicant and FOMP presented expert testimony on this topic. For this issue and all issues, the Applicant possessed the burden of proof. The Applicant offered the testimony of Leonard Bogorad, who was accepted by the Commission as an expert in fiscal and economic impact analysis and real estate market and financial analysis. FOMP presented Dr. Brett Williams, who was accepted as an expert in gentrification and displacement.

223. Mr. Bogorad has a Master of City Planning and is presently managing director of Robert Charles Lesser & Company ("RCLCO"), which has extensive experience conducting fiscal and economic impact analyses for public and private sector clients. He has 30 years of real estate consulting experience and specializes in market and financial analysis and valuation of residential, retail, office, hotel, industrial, and mixed-use developments; metropolitan development trends; fiscal and economic impact analysis; and economic development strategies.

224. Dr. Williams has a Doctorate in Anthropology and between 1976-2016 served as Assistant, Associate, and Full Professor, in American Studies and Anthropology, at American University. During this period, she served as Director of the Women's Studies Program, Director of the American Studies Program, and Chair of the Department of Anthropology.

225. After considering the testimony of both Mr. Bogorad and Dr. Williams, the Commission finds that the PUD has not and will not destabilize of land values or displace residents in the adjacent neighborhoods

226. There is no doubt that the neighborhoods surrounding the Project are experiencing an increase in land values, home prices, and rent, but that alone does not answer the question posed. The question is, what is the cause?

227. Mr. Bogorad cited to a comprehensive 76-page review of the scholarly literature regarding gentrification and displacement, which discussed numerous causes of gentrification that were identified in many different studies, none of which attributed gentrification to large projects such as McMillan.[16] A study by Jeremy Jackson cited in the literature review observed no relationship between large-scale neighborhood investment projects and changes in nearby rents.[17] (Ex. 896G, p. 8.)

228. This conclusion is corroborated by the 2015 Catholic University study of gentrification in Bloomingdale, excerpts of which were attached to FOMP's April 3, 2017 submission. The study includes an extensive discussion of the causes of Bloomingdale gentrification, but says nothing about the plans for McMillan being one of the causes. (Tr. May 1, 2017 Hearing at 41-42.) Similarly, a study of changes in Bloomingdale by the urban planner and market analyst Julie Levine, also excerpted and attached to FOMP's submission, includes an extensive discussion of the causes of market and demographic changes in Bloomingdale, but does not identify the plans for McMillan as the cause of these changes. (Ex. 925C.)

229. Further, the Bloomingdale LeDroit Park rowhouses that are relatively closer to McMillan have experienced less rapid price increases than those located farther from McMillan. This would indicate that the plans for McMillan were not a significant cause of the price increases that have been occurring for many years in the neighborhood.

230. Dr. Williams points to what she characterizes as market distress on Channing Street as an example of the destabilizing effect of this Project, but the Commission credits Mr. Bogorad assertion, not contradicted during his cross–examination, that the Zillow website she referenced shows no indication of any foreclosures or pre-foreclosures on Channing Street, and the market appears to be steadily improving. (Tr. May 1, 2017 Hearing at 30.)

[16] Zuk, M., *et al*. (2015). Gentrification, Displacement and the Role of Public Investment: A Literature Review.

[17] Zuk, p. 54; and Jackson, Jeremy (2008). Agent-Based Simulation of Urban Residential Dynamics: A Case Study of Gentrifying Areas in Boston. Thesis submitted to McGill University.

231. Nor will the development of McMillan pressure landlords of large Edgewood apartment buildings to convert to more expensive housing as asserted by Dr. Williams. Edgewood Commons, formerly Edgewood Terrace, is the largest concentration of rental apartments in Edgewood. The Commission credits Mr. Bogorad's understanding that the Community Preservation and Development Corporation is in the midst of a five-year recapitalization of the development that will assure it stays affordable for many years, using project-based Section 8 and tax credits. Other affordable apartments are in Franklin Commons, a project-based Section 8 development with rents based on the resident's income. (*Id*.) The Commission therefore accepts Mr. Bogorad's expert opinion that there will be no significant destabilization of rents in large apartment buildings in Edgewood with or without this PUD.

232. Dr. Williams points to the testimony of one public witness on March 23, 2017, that he and others moved to the area because "we saw this potential development happening, and we felt like it would be great to be near a town center." The Commission does not doubt that the potential development of this PUD may have caused one or more persons to move to the area, but such anecdotal evidence does nothing more than corroborate the Applicant's assertion that the Project is superior to matter-of-right development.

233. Instead, the Commission agrees with Mr. Bogorad that "the longstanding destabilization of land values in surrounding neighborhoods is in large part a result of an excess of housing demand relative to supply" (Tr. May 1, 2017 Hearing at 34.) This is a District-wide phenomenon that is part of a fourth waive of displacement witnessed by the District since 1920. This waive, like the previous three before it, share a common cause; namely demand from a flood of young, well-educated professionals wanting to live in the city. In all four waves individual homeowners, renters, developers, and investors, participated in renovating and as relevant, occupying the housing. (Tr. May 1, 2017 Hearing at 32.) The dramatic price and rent increases that have occurred are not attributable to individual projects, but are the result of general economic and real estate market forces. *(Id*. at 34.)

234. Mr. Bogorad asserted that these forces can be mitigated by the creation of new housing, affordable housing, and job creation, such as will result from the PUD. Dr. Williams disagrees on all counts. The issue is beyond the scope of this remand issue. The Commission has found that general real estate factors are causing the rise in housing costs and whether the PUD will mitigate any displacement that results perhaps goes to its public benefits, but not to this remand issue. However, the Commission does observe that the substantial amount of market rate housing to be constructed on this site would logically take some pressure off the trend to construct similar housing in the adjacent neighborhoods.

C. Any other adverse impacts.

235. The Commission, through its discussion of the PUD's consistency with Comprehensive Plan, has responded to all FOMP's assertions of adverse impacts, other than those that may relate to the PUDs impact on city services which will addressed in the findings pertaining to the next remand issue.

D. Balancing.

236. The Commission will address this issue in the Conclusions of Law.

Issue 5: A. Will the PUD have a favorable impact on the operation of city services and facilities?

B. If not, is the impact capable of being mitigated, or acceptable given the quality of public benefits in the project?

237. DDOT previously submitted reports dated April 21, 2014 (Ex. 38), July 7, 2014 (Ex. 837), September 10, 2014 (Ex. 851), and October 27, 2014 (Ex. 866), through which it concluded that that the mitigations identified in the Transportation Performance Plan ("TPP") (Ex. 849B), and the Transit Implementation Plan ("TIP") (Ex. 862), will adequately mitigate the anticipated impacts of the development.

238. The Commission agreed. FF ¶ 122 of the Remanded Order concluded that the "traffic mitigation measures required by this Order will adequately ameliorate traffic on the streets surrounding the PUD Site." The Opinion did not disturb that finding.

239. Through a supplemental report dated March 13, 2017, DDOT reaffirms its earlier conclusion. DDOT indicated that the TPP identified a series of physical improvements, transit service expansion plans, management plans, and performance monitoring to appropriately mitigate site impacts. The TIP supplemented the TPP by detailing the Applicant's commitment and approach to ensure adequate transit capacity will be in place prior to the occupancy of the proposed development.

240. The supplemental report also noted that DDOT, in 2016, completed the Crosstown Multimodal Transportation Study to identify improvements along east-west connections between Wards 1 and 5, address safety concerns, optimize mobility and operations, and improve efficiency for all modes along this crosstown corridor from 16th Street, N.W. to South Dakoda Avenue, N.W. DDOT indicated that the study's recommendations are consistent with the mitigations identified in the TPP and TIP, and that the Applicant's requirement to provide 1,100 peak-hour additional transit seats by full buildout can be accomplished without the recommended transit improvements on Michigan Avenue, for which further study and yet to be identified funding is needed.

241. Finally, DDOT assured the Commission that other future developments within the vicinity will include the PUD as a background development to understand their impacts.

242. The agency reports discussed below were appended to OP report. (Ex. 897.)

243. In a letter dated March 6, 2017, the Executive Director of DCOA concluded that the proposed project is fully consistent with its agency mission and furthers the goal of creating and maintaining accessible and affordable housing options for seniors.

244. In a letter dated March 13, 2017, the Director of DHCD noted that one key tool that the District of Columbia uses to produce affordable housing is using land values from District-owned land dispositions to create affordable housing. For the McMillian Project, this assisted in the creation of the substantial housing already described. Thus, the outcomes of the proposed project align with the recommendations contained in the most recent city comprehensive housing reports dated 2006 and 2013, respectively. (Ex. 897A, p. 2.)

245. MPD submitted an undated letter suggesting that the Applicant should consider such public safety measures as enhanced lighting and security features, particularly in courtyard areas, which are needed due to the proposed increase in both residential and commercial space; and that the Applicant should complete, in conjunction with DDOT, a traffic impact plan in anticipation of increased vehicular activity at the intersections of North Capitol Street and Michigan Avenue, and First Street and Michigan Avenue. The Commission finds that the lighting plans for the North and South Service Courts and the internal streets will address the security concerns identified and that recommended traffic studies have already been completed.

246. In a memorandum dated March 9, 2017, FEMS indicated that it had no objection to the approval of the proposed project if the following requirements are met: (i) fire access is not compromised and is maintained on all lots and squares to be developed, their adjacent properties' lots and squares, and any newly constructed buildings and roadways in accordance with Chapter 5 Fire Service Features, Section 503 Fire Apparatus Access Roads and Appendix "D" of the International Fire Code 2012 edition; and (ii) the surrounding roadways, North Capitol Street, N.W., First Street, N.W., Michigan Avenue, N.W., and Channing Street, N.W., are considered to be fire department access roads for the proposed project site and the surrounding property lots and squares, including the hospital complex north of Michigan Avenue; therefore, none of the stated roadways can be closed or blocked in any way that would prevent access to fire department vehicles during the proposed development or thereafter. Compliance with these requirements shall be deemed to be a condition of this Order.

247. DPR provided its comments in an undated report. DPR found that: (i) the proposed project's features, which include a 6.2-acre-park, and a multi-function recreation/community space with an attached aquatic facility, support DPR's mission to promote health and wellness, conserve the natural environment, and provide universal access to parks and recreation; (ii) the proposed project furthers the overarching priority of the city's most recent park planning works, the Comprehensive Plan Capital Space (2010), Sustainable DC (2013) and Parks and Recreation Master Plan (2014), by providing safe and equitable access to high-quality park spaces for all people throughout the city (Ex. 897A, pp. 7-8.); and (iii) the neighborhood clusters around the development site currently have limited access to parkland space and indoor aquatic space when compared to other parts of the city based on the level of service analysis completed in the Parks and Recreation Master Plan (2014); therefore, the proposed project will help bridge the gap providing area residents with access to green space and an indoor aquatic facility.

248. The report of DOEE is discussed in relation to Remand Issue 4.

Advisory Neighborhood Commissions.

249. Of the three affected ANCs, only ANC 5E submitted a resolution in response to notice of this proceeding. The resolution was adopted at its properly notice public meeting held March 21, 2017, with a quorum present. ANC 5E's resolution noted its support of the proposed project over the past several years, but also noted that it still retained some concerns. A discussion of the issues and concerns identified in that resolution, and Commission's response is provided in General Conclusions of Law 10 - 14.

CONCLUSIONS OF LAW

The Court of Appeals remanded this case back to the Commission to further analyze the consistency of the PUD with the Comprehensive Plan and the potential for the PUD to cause adverse impacts. The Commission has just made 249 findings with respect to these issues, but before applying these findings to the applicable law, it will first address several procedural issues that arose during this proceeding.

A. Procedural Issues.

(1) The motion to postpone the March 23, 2017 hearing or to strike the Applicant's response.

FOMP argues that the Applicant's response should not have been accepted because: (1) the Applicant did not object to the remand issues; (2) the Commission could only request briefs, and therefore the Applicant's submission must be viewed as a late-filed motion to modify its application; and (3) that it included exhibits.

(a) Failure to object to the remand questions.

The Notice of Limited Scope Hearing indicated, among other things, that the parties had until March 13, 2017 (10 days prior to the hearing) to file an objection to how the notice characterized the remand issues. In the next paragraph, the notice stated that "[i]n addition, any party by that same date and time may file a written statement responding to the remand issues stated above." The Applicant submitted such a response without objecting to the remand issues. FOMP submitted nothing, but two days later filed a letter requesting a 30-day postponement of the hearing, or in the alternative that the Applicant's filing be struck. (Ex. 900.)

FOMP argued that because the Notice of Limited Scope Hearing first established March 13, 2017 as the date for the submission of objections to the wording of the remand issues, and then stated that "[i]n addition, any party by that same date and time may file a written statement" responding to the remand issues, that written statement could only be submitted by a party objecting to the formulation of the remand issues. Since neither the Applicant nor FOMP objected to the remand issues, neither could file a written statement.

FOMP's reading of the Notice of Limited Scope Public Hearing as only permitting a party who objects to the remand questions to respond to them is nonsensical. The notice simply indicated that one or two things were due on March 21, 2017, either just a response to the issues or a both a response and an objection to how those issues were stated. There is no logical reason why the Commission should only allow the party that objected to the issues to respond to them.

The Commission could only request briefs.

The Commission's rules on remands provide that after the receipt of a memorandum of legal advice from OAG, "the Commission may meet to determine whether it should request the parties to submit briefs, provide additional oral or documentary evidence, present oral argument, or to augment the record by other means." (11-Z DCMR § 901.3.)

The Commission interpreted the rule as giving the Commission several options that can be used alone, together, or not at all. The rule was also intended to provide flexibility, and not place the Commission in a straightjacket. For this remand, rather than insist on the formality of briefs, the Commission decided "to augment the record" by requesting less formal written responses. This was clearly within its authority to do.

That being the case, the Commission will not respond to FOMP's claim the Applicant's timely response was an untimely modification of its application in violation of 11-Z DCMR § 401, except to note that the provision identifies the

materials that an applicant must file before notice for the first public hearing may be issued. Here, a Notice of a Limited Scope Public Hearing had already been issued, which identified exactly what could be filed and when.

The Inclusion of Exhibits.

There was nothing in the Remanded Order to preclude the Applicant from attaching exhibits and the Commission cannot understand what prejudice resulted by its doing so. FOMP does not contend that the exhibits could not be introduced at the start of the hearing, or at the time a witness testified. By submitting the exhibits when it did, the Applicant gave FOMP and the public an advance opportunity to review the documentary evidence upon which it would rely and actually allowed FOMP more time to prepare its cross–examination than would otherwise have been the case.

For these reasons, the Applicant's statement and the attached exhibits were not struck and the hearing not postponed. However, the Commission decided to alter the usual order of testimony. Instead of the parties presenting their witnesses first, and members of the public testifying afterward, the order would be reversed, with the public and agency testimony being heard on March 23, 2017, and, if needed on April 9, 2017, and the parties presenting their witnesses on April 19, 2017.

(2) The objection to the order of testimony and the limitation on written evidence.

By letter dated April 3, 2017, FOMP objected to the Commission's reordering of the presentation of testimony and its refusal to accept written statements from persons who did not testify at the hearing. Although all persons present on March 23, 2017 had been given a full opportunity to testify and present written statements, FOMP requested the Commission afford individuals and organizations an opportunity to again testify following the parties' presentation of their respective cases, *i.e.,* those witnesses in support would testify after the Applicant's case and those opposed would testify after FOMP's final witness. The letter also requested that the Commission accept the submission of written statements from persons who had not testified. FOMP claimed that the re-ordering of the testimony had shifted the burden of proof from the Applicant but did not indicate to whom it was shifted.

The Commission's decision to hold a limited scope hearing was not required by law. The Opinion noted that the Commission could have deliberated upon the record and heard from no witnesses at all. For this remand, the Commission decided that additional oral and documentary evidence would be useful. However, its remand rules provide that "testimony at any further hearing shall be limited to witnesses called by the parties, unless the procedural order states otherwise." (11-Z DCMR § 901.6.) The Commission decided to waive that rule, but in doing so, did not impose any burden on the public. Nor did its decision to change the usual order of testimony shift the Applicant's burden to the public witnesses who spoke, in favor or in

opposition. Also, because the Applicant provided advance notice of its case and its exhibits, which its presentation essentially followed, the public witnesses could and often did respond to the specific arguments being made.

On March 23, 2017, the Commission heard from 25 public witnesses and an ANC Chair. All those present who wished to testify did. The public witnesses provided valuable testimony to the Commission, which it considered in determining whether the Applicant had met its burden of proof. The Commission found that no purpose would be served by a repeat performance

As to permitting written submissions by non-witnesses, the Commission's rules do allow for the public to submit written submissions up to the date of a public hearing. However, while the Commission considered it appropriate to permit the public to testify, it saw no reason to further increase an already voluminous record (886 pre-remand exhibits) for written testimony. The District of Columbia Administrative Procedures Act provides that "[e]very "*party* shall have the right to present in person or by counsel his case or defense by oral and documentary evidence." (D.C. Official Code § 2-509(b) (emphasis added).) No similar right to submit documentary evidence is extended to the general public. The Commission offended no law nor infringed on any right by refusing to accept written submissions by non-witnesses.

(3) The motion in limine.

As noted above, the April 18, 2017 hearing ended with the conclusion of the cross-examination of FOMP's witnesses and was then continued to May 1, 2017 to allow Ms. Barragan to testify, which would be followed by rebuttal, sur-rebuttal, and a closing statement by the Applicant. FOMP objected to the rebuttal being deferred and contended that only DOEE witnesses should be permitted to testify since they were the only rebuttal witnesses identified.

On April 20, 2017, counsel for FOMP emailed the Applicant's counsel requesting the names of all rebuttal witness the Applicant intended to call. (Ex. 942A.) The request was refused in an email dated April 25, 2017. FOMP then waited until the day of the May 1, 2017 hearing to file a "*motion in limine"* to request that the Commission bar the Applicant from presenting "any new expert witnesses or rebuttal testimony, including testimony by the D.C. Department of Energy and the [SIC] Environment." In the alternative, FOMP requested that hearing be postponed, and that Applicant be required to submit a list of rebuttal witnesses.

FOMP identified no Commission rule of procedure that required the identification of rebuttal witnesses. Instead, FOMP noted that the Applicant's response to the remand issues indicated that if a new expert witness was offered on rebuttal, the Applicant would submit the witness's resume to the Commission prior to the witness's testimony. Also, FOMP argued that the Applicant could only call those witnesses it had called during its direct case, except those who are public officials. In support of this latter point, FOMP cited 11-Z DCMR § 408.9(k), which allows for "rebuttal by

Applicant." Finally, in support of its request for a postponement, FOMP stated that the Applicant's refusal to provide the names of its rebuttal representatives amount to a "surprise" within the meaning of 11-Z DCMR § 408.10, which states:

> If surprise to the applicant or to a party in a contested case is clearly shown and the inability to proceed is demonstrated, a hearing may be adjourned to allow the applicant or party sufficient time to offer rebuttal evidence. This evidence shall be filed with the Director at least fourteen (14) days before the hearing is resumed.

The Applicant responded in writing on May 1, 2017 and suggested that the motion was a delaying tactic, but did not object to the Commission's consideration of its merits. (Ex. 943.) The Applicant requested that the motion be denied because: (1) FOMP failed to cite a provision that requires an Applicant to provide a list of the rebuttal witnesses it intends to call; and (2) the Applicant only intends to call witnesses who already testified. As to the ability of DOEE representatives to testify, the Applicant pointed out that it had indicated its intent to call DOEE witnesses during the April 19, 2017 hearing, and that in any event the presiding officer has the flexibility to permit these witnesses to testify.

The Commission denied the motion. The Applicant is correct that no Commission rule requires an Applicant to provide a list of its rebuttal witnesses for the obvious reason that an Applicant would not know who they were until after a party in opposition had completed its case. The Commission's ruling is consistent with the Superior Court's Rule of Civil Procedure, which provides that "[n]o witness may be called at trial, *except for rebuttal* or impeachment purposes, unless he or she was named on the list filed by one of the parties. (D.C. Super. Ct. R. Civ. P. 16 (b)(5)(b) (emphasis added).) Although the Superior Court rules do not apply to the Commission, they do provide persuasive guidance.

As to 11-Z DCMR § 408.10, that rule identifies a circumstance when a hearing may be adjourned for the purposes of allowing time for a surprised party to prepare rebuttal evidence. In that instance, the party must provide the rebuttal evidence 15 days before the hearing resumes. That is not the circumstances here. At the time the Chair decided to adjourn the case, it was approximately 10:00 p.m., and he had ruled that Ms. Barragan could testify on FOMP's behalf when the hearing resumed. The Chair could not compel the Applicant to present rebuttal before FOMP had completed its presentation. Further, the Chair retained the discretion to adjourn and continue a hearing at any point he deemed appropriate, which given the lateness of the hour was appropriate. (11-Z DCMR § 408.1 (f).)

Lastly, FOMP's interpretation of 11-Z DCMR § 408.9, which allows "rebuttal by the Applicant" to preclude rebuttal by persons who did not comprise the Applicant, is ludicrous. The provision clearly is intended to allow rebuttal offered by the Applicant. In any event, the "Applicant" in this case includes the District of Columbia, and therefore its officials, employees, and agents.

B. The Merits.

Response to the Remand Issues

The Court of Appeals has remanded this case to the Commission to address issues concerning whether the Applicant has met its burden to prove:

1. The proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; and (11 DCMR § 2403.4)

2. The impact of the project on the surrounding area and the operation of city services and facilities are not unacceptable, but shall instead be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. (§ 2403.3.)

The Commission has formulated five discrete remand issues, with the first three pertaining to the PUD's consistency with Comprehensive Plan, the fourth and fifth concerning the impact on the surrounding area and on city services and facilities.

(1) Consistency with the Comprehensive Plan

Issue 1A: Could the parks, recreation, and open space designation of the FLUM be fulfilled and the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?

Answer: In fact, development on the site is limited to moderate and medium density. However, if medium density is equated to a height limitation of 90 feet, then the parks, recreation, and open space designation of the FLUM cannot be fulfilled and the other policies cited in the Remanded Order and in this Order, cannot be advanced.

(a) With Parcel 1 zoned CR, the PUD Site is limited to medium- and moderate-density uses.

To be consistent with the Opinion, this issue assumes that the Parcel 1 Building is a high-density commercial use. For the reasons stated below, the Commission finds its mapping of Parcel 1 in the CR Zone District, results in the Parcel 1 Building being consistent with the Comprehensive Plan's definition of medium-density commercial and inconsistent with its definition of high-density commercial. Further, the Commission agrees with the conclusion of FOMP's expert, Ms. Richards, that a high-density building could be consistent with MC-2.6.5 if it was a compatible use, which the Commission finds the Parcel 1 Building to be.

The Commission recognizes that the Court of Appeals described the Parcel 1 Building as a "high density use". The Opinion noted that the C-3-C zoning corresponded only to the Framework Elements definition of high-density commercial and that the density and height of the Parcel 1 Building exceeded the matter-of-right limits of those zones that correspond to the medium- and moderate-commercial density definition (C-2-B, C-2-C, C-3-A, and C-3-B) and exceeded the density permitted for a PUD for the zones that generally correspond to moderate-density zones (C-2-C, C-3-A, and C-3-B).

In its August 21, 2017 submission, the Applicant suggested that the Commission consider changing the originally approved PUD related map amendment for Parcel 1 from C-3-C to CR. The Applicant pointed out that the CR zone would permit a 110-foot height through the PUD process and an additional five percent of height "upon a finding that "the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter." (11 DCMR § 2405.3.) The Commission voted to approve the CR zoning for the parcel and found that the § 2405.3 standard was met. As previously stated in this Order, an eight-story building with less than 113 feet in height could not accommodate the greater floor-to-ceiling heights required by potential healthcare tenants, and a further reduction of any height would render the building unmarketable and the shifting of height to other portions of the PUD Site would result in unacceptable impacts.

It is the Commission's view that this re-designation of zoning allows it to consider the question whether the Parcel 1 Building is a medium-density commercial use, as asserted by the Applicant and agreed to by OP.[18] But first, the Commission must address the appropriateness of the CR zoning for Parcel 1.

(i) The appropriateness of zoning Parcel 1 in the Mixed-Use Commercial/ Residential (CR) Zone District.

The Remanded Order approved CR for all portions of the site other than Parcel 1, and the validity of CR zoning for the PUD Site was not disturbed on appeal. Including Parcel 1 within the CR Zone District is consistent with that zone's purposes. (FF ¶¶ 9-11.) Taken together, the PUD will result in "a mixture of uses and building densities … intended to carry out elements of District of Columbia development plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality." (11 DCMR § 600.4.) OP indicated no

[18] *See* FN 10.

objection to zoning Parcel 1 CR and found it to be a solution that fits the site. (FF ¶ 14.)

This amendment changes no aspect of the approved PUD. As such, it is technical in nature, and could have been accomplished as a minor modification or a modification of consequence without advertisement, hearing, or referral to NCPC. (11-Z DCMR § 703.) Although NCPC staff provided significant comments during the proceeding concerning the impact of the Project on views from the Armed Forces Retirement Home, NCPC itself did not provide official comment after the application was referred to it.

The Commission's adoption of a zone classification different from that advertised has only been found unlawful when a substantive change resulted and when:

> (1) there is evidence that those who attended the hearing were in favor of the classification announced in the notice, and (2) if they had no opportunity at the original hearing to make their views known on the classification finally adopted.

(Gerstenfeld v. Jett, 374 F.2d 333, 334 (D.C. Cir. 1967).)

Here, the C-3-C zoning was proposed by the Applicant, and it was the Applicant who suggested the change to CR. Therefore, even had this been a map amendment unrelated to a PUD, the adoption of the CR classification for Parcel 1 without re-advertisement would have been valid.

In its response to the Applicant's submission, FOMP did not indicate that it objected to the Commission's approval of the CR Zone District without further advertisement or hearing. It did, however, claim that because CR was a mixed residential and commercial zone, the Commission could not adopt CR zoning for a parcel intended only for commercial use. The argument is unpersuasive because, except in the context of a PUD, the Commission does not know whether the property it zones CR will be used for any particular use. Rather, CR zoning applies where a mixture of uses will carry out elements of District of Columbia development plans. As has been explained, those areas are shown with striped colors on the FLUM, and one of those areas is the PUD site. The application of the CR Zone District to the entire PUD site will result in a geographic area with exactly the mixture of uses contemplated for the CR Zone District.

FOMP also asserts that if Cell 14 is excluded from the computation of FAR, the Parcel 1 Building would exceed the maximum 4.0 non-residential FAR permitted for CR PUDs by 11 DCMR § 2405.2. FOMP states that Cell 14 must be excluded "as MC-2.6.5 requires," but offers no explanation why, and none is evident. The Comprehensive Plan cannot dictate how FAR is computed and the Opinion found that the Parcel 1 Building "would have a floor-area ratio of 4.08." (149 A.3d at 1033 (D.C. 2016).) Although that figure also exceeds the 4.0 non-residential maximum, the issue is a red herring. This is a multi-building PUD, all of which will be zoned CR. Subsection 2405.2 provides that the "floor area ratio of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several zone districts included within the project area."

Essentially, that regulation treats a PUD site as a combined lot for the purposes of calculating maximum FAR, which the CR Zone District also permits as a matter of right. (11 DCMR § 631.3.) Here, the aggregate FAR within the PUD Site is 1.92 (2.36 FAR excluding the private rights-of-way), and therefore well below the 6.0 matter-of-right FAR permitted in the CR Zone District for residential uses and the 3.0 FAR matter-of-right limit for non-residential uses. The aggregation of FAR permits some buildings in a PUD to exceed the applicable FAR limits if the aggregate falls within the limit permitted for a PUD. That is exactly the circumstance here.

(ii) The CR zone is among the other zone districts for which the medium-density commercial land use category applies.

The Framework Element does not identify the CR Zone District as generally corresponding to any residential or commercial land use category. That cannot mean the CR Zone District applies to none. Rather, as was pointed out by OP, CR is a flexible zone that is consistent with medium commercial density. (Tr. September 19, 2017 Meeting at 7.) The zone was created for mixed-use areas, such as the PUD Site, for which the mixing of two or more land uses is encouraged. (10-A DCMR § 225.18.)

The Commission has previously approved PUD-related map amendments to the CR Zone District for properties designated as medium-density residential or mixed-use and for comparable height. (FF ¶ 31.) OP has previously indicated that the zone "is generally consistent with the medium density residential use designation" and the Commission agreed that the zone was "congruent" with that category. (FF ¶¶ 32-33.) For this PUD, the

Commission granted first-stage approval for a mixed-use building and healthcare facility on Parcels 2 and 3, respectively, with maximum heights of 110 feet. Neither building's height nor CR zoning was questioned by the Court of Appeals.

With the CR zoning, the Parcel 1 Building meets all the elements of the definition of medium-density commercial and none of the elements of high-density commercial. The building's eight stories place it squarely in the medium-commercial density definition and outside that for high density, as does its location outside the central employment district of the city and other major office employment centers on the downtown. In terms of actual density, which is a function of floor area ratio, the Parcel 1 Building is identical to the density of a 90-foot office building, and its additional height is purely a result of greater floor-to-ceiling heights required to the unique MEP and equipment needs of its potential healthcare tenants.

As noted by the Court of Appeals, "the FLUM's definitions of 'moderate density' and 'medium density' focus on buildings' actual physical characteristics, such as the number of stories or units in a building." (*Durant v. D.C. Zoning Comm'n*, 139 A.3d 880, 884 (D.C. 2016).) The same is true for the definition of high-density commercial. Since the physical characteristics of the Parcel 1 Building fall squarely within the definition of medium-density commercial and are inconsistent with both the physical and location characteristic upon which the definition of high-density commercial focusses, the building clearly is medium-density commercial.

Like the C-3-C zoning for Parcel 1, FOMP asserted in the original proceeding that the CR zoning for the remainder of the PUD Site was also high-density and therefore inconsistent with MC-2.6.5. (FF ¶ 35.) The Commission's finding to the contrary was not disturbed by the Court of Appeals. Notwithstanding that fact, Ms. Richards continued to make the same assertion in this proceeding. The Commission believes that FOMP is barred from revisiting this, but in any event, her view is unpersuasive for the reasons stated above.

Therefore, the Commission finds that the Parcel 1 Building is a medium-density use that is consistent with MC-2.6.5.

(b) Even if the Parcel 1 Building is a high-density commercial use, it is still consistent with MC-2.6.5 because it is a compatible use

The second sentence of MC-2.6.5 states:

> Where development takes place, it should consist of moderate- to medium-density housing, retail, and other compatible uses.

It first bears noting that although MC-2.6, like all area elements, "focus on issues that are unique to particular parts of the District," it is "still general in nature" and does not "prescribe specific uses or design details." (10-A DCMR § 104.6.)

MC-2.6.5 states as an objective for the McMillian site that where development occurs it should consist of (1) moderate- to medium-density housing, (2) retail, and (3) other compatible uses. The phrase "moderate to medium" does not apply to "other compatible uses.". FOMP's expert witness, Ms. Richards, stated that there is no "per se rule" precluding a high-density use so long as the use was designated in the Comprehensive Plan for the site. (FF ¶ 178). As an example, Ms. Richards stated a high-density residential use was potentially allowed. However, Ms. Richards concluded that the healthcare use proposed was institutional, and not commercial. The basis for this statement was the potential that the Washington Hospital Center might be a tenant and because the hospital site is designated Institutional on the FLUM, Parcel 1 Building is institutional as well. However, the Commission finds that the potential lessee of a healthcare facility does not determine whether it is an institutional or commercial use. Further, the Community Services and Facilities Element groups healthcare facilities in its discussion of Primary and Emergency Care CSF-2.1.1, while hospitals are treated as "another important part of the health care delivery system." (10-A DCMR § 1106.8.)

In her written testimony, Ms. Richards stated that healthcare uses would be compatible "if the scale were appropriate." (Ex. 937, p. 10.) The Commission has found that the potential visual impacts of the building have been mitigated and that Policy LU-1.2.5 encourages facilities of this type for sites such as McMillan and is therefore presumptive compatible. (FF ¶ 180.)

Therefore, even if the Parcel 1 Building is a high-density use, it is a compatible one and one that is not inconsistent with MC-2.6.5

(c) <u>The parks, recreation, and open space designation of the FLUM cannot be fulfilled and the other policies cited in the Order cannot be advanced if development on the site were limited to a height of 90 feet</u>.

In FF ¶ 40, the Commission identified the other Comprehensive Plan issues cited in the Remanded Order as advanced by the concentration of commercial density on Parcel 1. FF ¶ 41 identified two additional policies related to large District-owned sites like McMillan and referred to both sets as the "Identified Policies." The Commission then grouped these policies

into categories consisting of (1) Parks, Open Space, and Recreation, (2) Housing and Affordable Housing, (3) Historic Preservation, (4) Urban Design, (5) Maintenance and Incorporation of Vistas, and (6) Public Benefits including Healthcare and Civic Facilities. For each category, the Commission explained how the PUD significantly advanced associated policies. In its discussion of the Parks, Open Space, and Recreation category, the Commission also explained why the PUD fully implements the related FLUM designation for the site. (FF ¶¶ 44-91.)

The Commission finds that the PUD significantly advances all the Identified Policies.

The PUD fully implements the Parks, Recreation, and Open Space FLUM designation; and significantly advances the related policies for large District-owned sites, LU-1.2.1, LU-1.2.5, LU-1.2.6, and for the McMillan Site, and MC-2.6. The PUD also significantly advances the related policies in the Parks, Recreation, and Open Space Element, PROS-1.3.6 PROS-3.3.1. As detailed in FF ¶¶ 44- 49, the Project will provide approximately 7.95 acres of parks and open space (9.38 acres, including the Olmsted Walk). Adding in the area of the North and South Service Courts, the total area of open space increases to approximately 12 acres. This amounts to approximately 49% of the PUD.

The PUD significantly advances LU-1.2.1 (create local housing opportunities), LU-1.2.5 (include affordable housing on District-owned sites when reused), and H.1.2.4. (require that a substantial percentage of the housing units built on publicly-owned sites are reserved for "low and moderate-income households"). (FF ¶¶ 51-60.) The PUD will provide approximately 924,583 square feet of GFA devoted to residential uses, or approximately 677 units of new housing in principal and multiple-family dwellings with both rental and ownership opportunities. (FF ¶ 52.) Further, a substantial percentage of the housing units (20% of the residential GFA) will be devoted to housing set-aside for low- or very-low income households. (FF ¶¶ 55-57.).

In terms of historic preservation, the PUD significantly advances LU-1.2.7 (identify and protect historic buildings, historic site plan elements) and MC-2.6.2: Historic Preservation at McMillan Reservoir. As requested by the HPRB, the Project was designed to articulate the essential characteristics of the landmark, which were a tripartite organization with two long east/west courts with above-ground features, the plinth, views across the site from First Street to North Capitol Street, and the perimeter Olmstead Walk.

The design accomplished this by making the tripartite organization as the basis of the current design. The above grade north and south service courts

are maintained and incorporated as well as their sand filtration process structures, including all 20 sand storage bins, all four regulator houses, at least one sand washer, plus many of the filter bed portals and much of the service court walls. The plinth that establishes the exterior character landmark to the community is maintained. The Olmstead Walk is reestablished and three historic stairs will be reconstructed. Potentially, a historic fountain will be returned. Views from across the landmark are maintained in the park and the service courts. Underground cells are incorporated into the public experience of the site fully at Cell 14, and partially at Cell 28. In total, approximately 1.5 acres of underground cells will be preserved and slated for future use. (FF ¶¶ 61-64.)

The PUD significantly advances the portion of LU-1.2.5 that states:

> Given the significant leverage the District has in redeveloping properties which it owns, include appropriate public benefit uses on such sites if and when they are reused. Examples of such uses are affordable housing, new parks and open spaces, health care and civic facilities, public educational facilities, and other public facilities.

In addition to providing substantial affordable housing and parks and open spaces, the PUD will provide two new healthcare facilities on Parcels 1 and 3, the latter of which will be the subject of a future second-stage application. Together, the two facilities will add over a 1,000,000 square feet of new GFA devoted to healthcare uses.

The Applicant has demonstrated that the District is in urgent need of new healthcare facilities. (FF ¶¶ 77-78.) That testimony is corroborated by CSF-1.2:

> According to the District of Columbia Primary Care Association (DCPCA), a local nonprofit health care organization, more than half of the District's residents live in neighborhoods without adequate primary health care facilities or services. Many of the existing community health centers have significant unmet capital needs and do not have access to funds to renovate or replace their facilities

(11 DCMR § 1106.6.)

The public benefits offered by the PUD have already been described in FF ¶¶ 83 - 91. These include funding of a new project association or business improvement district to which the Applicant will contribute $225,000 to facilitate business start-ups and $1,250,000 for its operating budget. The Applicant will also contribute $1,000,000 to a workforce development fund, $125,000 to the D.C. Education Fund, $500,000 for fabricating,

installing, repairing, and restoring tree box fence enclosures; planting trees and ground cover plants, and installing certain neighborhood signage; and $150,000 to the North Capitol Main Street, Inc., for its storefront improvement program.

The Commission concludes that the Applicant has met its burden to show that none of these Comprehensive Plan policies, can be advanced if the Parcel 1 Building were limited to a height of 90 feet. The Parcel 1 Building contains the minimum amount of critical commercial uses needed for the PUD to succeed economically and to allow 49% of the PUD site to be devoted to parks, recreation, and open space. (FF ¶¶ 104-106,) The building can only be marketable as a healthcare facility if it is approved at its proposed height of 113 feet, which is the minimum needed to include both the minimum GFA and the minimum floor-to-ceiling heights required by most of its likely tenants. (FF ¶¶ 108-114.) Reducing the building's height by an amount greater than the two feet as identified by the Applicant's August submission, would make the building unmarketable to its potential tenants, including the critical anchor tenants. (FF ¶¶ 117-119, 124, 130.) The Parcel 1 Building's developable area has already been severely reduced. (FF ¶¶ 117-118). The Commission credits the testimony of Mr. Weer's that Trammel Crows current negotiations with potential anchor tenants cannot survive more lost GFA. (FF ¶ 119.) Reducing building height by even one story and shifting the lost density elsewhere on the project would result in lost housing, historic preservation, and open space. (FF ¶ 120.) Accomplishing the same reduction through the manipulation of building footprint would also impact the preservation of cell 14 and the creation of a park or create adverse visual or traffic impacts. (FF ¶¶ 127-129.)

FOMP contends that the Applicant must prove "that there is no alternative moderate density development scenario that could satisfy the goals of the comprehensive plan" (Ex. 925, p. 4.) The issue is not moderate-density but moderate- and medium-density, and the Commission does not believe that the Applicant is required to engage in such a theoretical and pointless exercise. Rather, the Applicant met its burden by showing that it has designed a project that maximizes the benefits envisioned by the Comprehensive Plan for this site and that further lowering the height of the Parcel 1 Building by any appreciable amount would result in those benefits being lost and shifting the equivalent density to other portions of the site will diminish those benefits to essentially where this Project began in 2008.

Issue 1B: Since the policies cited in the Remanded Order cannot be advanced, which of the competing policies should be given greater weight and why?

Answer: The Identified Policies should be given greater weight because collectively they reflect the essence of what the Comprehensive Plan

envisioned for this site and although the loss of such benefits cannot be mitigated, the potential visual impacts resulting from the Parcel 1 Building's height has been.

The choice is stark. There is no means to give effect to the second sentence of MC-2, and Urban Design Elements collectively envision the development of McMillan Site as a unique opportunity to generate new housing (both market and affordable); create parks, recreational activities, and open space; restore key above-ground historic elements; establish magnificent vistas, and to provide substantial public benefits, including healthcare facilities, neighborhood serving retail, and the quantity and quality of benefits being offered as part of the Community Benefits Agreement. These policies should be given greater weight over a non-mandatory height limitation because they reflect the essence of what the Comprehensive Plan envisioned for this site. Further, while the loss of these benefits cannot be mitigated, the visual impact of the height of the Parcel 1 Building has been mitigated through the open-space buffers to the north and east, its movement away from the North Service Court, the shifting of its west façade by 15 feet to the east, the reduction of its height from 130 to 113 feet, and the stepping down of that height to 110 feet. As a result, the Commission believes that its giving greater weight to the Identified Policies is not tantamount to its disregard of MC-2.6.5. In *Durant v. D.C. Zoning Comm'n*, 139 A.3d 880, 884 (D.C. 2016), the Court of Appeals rejected such mitigations as being relevant to whether a building falls within a land use category. However, that opinion acknowledged that "those considerations are potentially relevant to other issues." The Commission believes that determining consistency with an area element that speaks in terms of density is one such issue.

Lastly, and as previously found, the Council of the District of Columbia adopted a Mayorally-proposed resolution approving the disposition of the land comprising the PUD Site after the Commission took final action to approve this PUD. As reflected in the Committee Report, the Council was fully aware of the Parcel 1 Building's height and proposed use. It was also aware of the benefits offered by the PUD, the extent to which historic preservation would occur, the extent of the parks and open space to be provided, and the amount of affordable housing created, and at what income levels. The report concluded that the Project was "thorough and balanced development that is the culmination of years of planning, community engagement, and execution by the District government, Vision McMillan Partners, and many affected ANCs, community groups and stakeholders." The Commission agrees with Deputy Mayor Kenner that this conclusion and the Council's subsequent adoption of the resolutions "demonstrates that the Council believes that the McMillan development is in the best interest of the District and that the competing policies should be weighed in favor of approving the plan with the existing height on Parcel 1." (Ex. 930.)

Issue 2: Do the Comprehensive Plan policies cited in the Opinion or by FOMP in the record of this case weigh against approval of the Project?

Answer: All weigh in favor of approval.

The Commission's relevant findings on this issue are stated in FF ¶¶ 145-180. Rather than repeat, these findings, the Commission offers the following cross references:

Policy	Finding(s) of Fact
LU-1.2.6: New Neighborhoods and the Urban Fabric, 10-A DCMR § 305.11	147-150
LU-2.1.5: Conservation of Single Family Neighborhoods, 10-A DCMR § 309.10	151 and 152
LU-2.1.10: Multi-Family Neighborhoods, 10-A DCMR § 305.15	153
The introductory paragraph to CSF-2 Health and Human Services", 10–A DCMR § 1105.1	154-159
MC-2.6.2: Historic Preservation at McMillan Reservoir, 10-A DCMR § 2016.6	160-164
MC-2.6.3: Mitigating Reuse Impacts, 1 0-A DCMR § 2016.7	165-169
MC-2.6.4: Community Involvement in Reuse Planning, 10-A DCMR § 2016.9	170-173
MC-2.6.5: Scale and Mix of New Uses 10-A DCMR § 2016.8	174-183

Issue 3: Is the 113-foot-high building proposed for the site the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes?

Answer: Yes.

In FF ¶ 184, the Commission found that the approximately 12 acres of new parks and open space is a substantial part of the PUD site. In order to devote this much area to parks and open space, and sustain the pre-development costs needed to make the site usable for recreation purposes, the commercial uses critical to the success of the PUD were concentrated at the northern portion of the site. Because office uses were not marketable, but commercial healthcare uses were, and because those uses require higher floor-to-ceiling heights, a building with a height of not less than 113 feet was needed. The six iterations of the Master Plan described in FF ¶¶ 95-101, shows that the introduction of healthcare uses and the concentration of those uses on Parcel 1 resulted in an increase in open space and parks on the site from six to 12 acres. The Commission therefore finds that the

Applicant has met its burden to prove that the height of the Parcel 1 Building, whether that be high-density or not, is the only way to retain a substantial part of the property as open space and make the site usable for recreational purposes.

2. The impact of the Project on the surrounding area and the operation of city services.

A. Impact of the Project on the Surrounding Area.

Issue 4A: Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case?

Answer: No.

Issue 4B: If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects?

Answer: In the context of this remand, the balancing is not needed because no adverse impacts were found. However, the general balancing of the potential adverse impacts is part of the ultimate decision whether to grant a PUD, and therefore that balancing will be described after all the remand issues are addressed.

The PUD will not result in environmental problems.

Based upon FF ¶¶ 187-220, the Commission finds the PUD will not result in environmental problems.

The Environmental Policy Act requires the preparation of an EISF whenever a "major action is likely to have a substantial negative impact on the environment, if implemented." (D.C Official. Code § 8–109.03(a) (2012 Repl.).) The EISF process is the means for the lead District agency (for this project, DCRA) to determine whether an Environmental Impact Statement ("EIS") was needed. (20 DCMR §§ 7201, 7203.)

The EISF review process evaluates the site across a multitude of different environmental issues including water, sewer and stormwater implications, natural environment, including impacts to wetlands and other sensitive habitat areas, air quality, and noise. (FF 190.) Based upon the recommendations of DOEE, DDOT, the Solid Waste Management Administration of DPW, WASA, and OP, DCRA concluded that the Project is not likely to have a substantial negative impact on the environment; therefore, submission of an EIS was not required for the proposed project. (Ex. 896F, p. 1.) The Commission finds the

environmental analysis conducted utilized the methodology required by DCEPA, its implementing regulations, and DOEE and USEPA standards and guidelines.

FOMP's expert, Dr. Sacoby Wilson, concluded that the environmental analysis was not in compliance with the DCEPA because it did not include public health impacts. This is not correct. The impact of the PUD on air quality was determined using NAAQS, which is used to determine public health impacts, including impacts on vulnerable populations. (FF ¶ 205.) The PUD exceeded those minimum standards. (FF ¶¶ 210-211.)

Dr. Jacoby further indicated that the EISF process must assess the totality of a project's impacts, even if those impacts are regulated by another agency, such as the D.C. Department of Health ("DOH"). DCRA, as the lead agency, was responsible "for the coordination of the preparation and review of the EISF." (20 DCMR § 7203,1. *See, e.g.* D.C. Official Code §§ 8-109.02 (5).) Neither DCEPA or the implementing regulations identify which agencies should be coordinated with, thereby leaving it in the discretion of the lead agency. The EISF for this case was referred to the agencies identified above. The Commission sees no basis for second guessing DCRA's determination that these referrals sufficed.

Dr. Jacoby also expressed concerns that the environmental review did not consider the impacts on low-income households or on vulnerable populations. However, the evidence showed that the NAAQS takes into account the impact of a project's air quality on vulnerable population. Further, the evidence reflects that the environmental review included an environmental justice review, which resulted in DOEE's Office of Enforcement finding that the PUD would not be environmentally burdensome nor would it otherwise pose a disparate and unjustified health risk to the community to which it will be sited. (FF ¶¶ 205, 216.)

FOMP's other environmental expert, Claudia Barragan, faulted the environmental analysis for not discussing the potential increase in traffic, the fumes that may be coming from the parking garages, the impact of diesel vehicles, and the findings of the March 13, 2017 DDOT report. Further, Ms. Barragan criticized the evaluation for what she claimed to be the asserted absence of a thorough landscape and wildlife assessment, the inclusion of a statement that there are no water bodies in the area, and the failure of OP to send archeological teams to conduct an examination of the site.

Addressing each assertion, the Commission finds that the TIS used baseline traffic information from 2012 and 2013 and then applied growth rates derived from the Metropolitan Washington Council of Governments and applied to the roadways in study. (FF ¶ 207.) As to garages, the Air Quality Analysis provided by the Applicant in fact did model the CO attributable to the parking garages and the surface parking areas to be developed. (FF ¶ 208.) In determining that it was

not necessary to require the Applicant to perform particulate matter modeling, DOEE looked at projected increases in diesel vehicle trips from the Project and compared it to a threshold for requiring an evaluation found in EPA guidance. The number of diesel trips was far below the EPA threshold in this case. (Tr. May 1, 2017 Hearing at 45.) The Commission does not fault the 2016 environmental analysis from not the mentioning a 2017 DDOT report, which in fact stated that the Applicant's mitigation measures were consistent with those found in the study. (FF ¶ 238.).

As to the absence of a wildlife assessment, DOEE found no apparent significant adverse impact to habitat for fish, wildlife, or plants as a result of the proposed project based upon the fact that there are no endangered species on the site. Also, because the site is in an urban location, there is limited habitat for fish, wildlife, or plants. (FF ¶ 201.) The Commission finds that conclusion to be based upon a reasoned analysis. Contrary to Ms. Barragan's assertion, the report did not state that there were no water bodies in the area, but rather indicated that the site is not in close proximity to a hydraulically down gradient natural surface water body, something the Commission does not understand FOMP to dispute. (FF ¶ 199.) With respect to the need for an archeological examination, Ms. Barragan stated that DOEE understood that the sediment on the site is from the Cretaceous Age, but she does not explain how that fact is more than informational, or why an examination is needed for the purposes of determining environmental impact. In making this observation, the Commission is not shifting the burden of proof to FOMP but is stating that it cannot address an expert's conclusion when no basis is provided.

Ms. Barragan believes that the Commission should have compelled the Applicant to provide its completed EISF and the supporting documentation. The Commission cannot compel the introduction of evidence and would not have required the submission of such evidence if it could. The analysis provided by the reviewing agencies indicates the basis for their conclusions and providing the base data would not have proved helpful to the Commission given its limited expertise in the subject matter. If Ms. Barragan needed that information to complete her analysis she could have asked DCRA to provide it.

The Commission concludes the recommendations made by the reviewing agencies utilized the accepted methodology for determining the potential for the PUD to have a substantial negative impact on the environmental and the individual conclusions reached by each agency, and the ultimate reached by DCRA, followed from the analysis made. Although the recommendations did not directly address the impact of noise, the Commission agrees with the Applicant that since it must abide by the applicable maximum noise levels established in 20 DCMR, Chapter 28, there will not be environmental problems caused by noise.

Finally, DOEE, in its 2017 report to the Commission, indicated that the PUD is designed to meet or exceed the minimum regulations and is consistent with the city's Comprehensive Plan. (Ex. 894.)

Therefore, considering all the facts in the record, the Commission finds that the Applicant met its burden to show the PUD will not result in environmental problems, and in fact demonstrated that the PUD will result in significant environmental benefits.

The PUD will not cause the destabilization of land values, or the displacement of neighboring residents.

As noted in FF ¶ 226, there is no doubt that the neighborhoods surrounding the Project are experiencing an increase in land values, home prices, and rents, but that alone does not fully answer the questions posed for the remand. Instead, the Commission must determine whether: these increases can, in whole or in significant part, be attributed to an anticipation of the PUD's development or whether the PUD once constructed would alone cause or significantly contribute to an increase to housing costs that would cause displacement. For the most part, the parties focused on the impact that anticipation of the PUD has had on increased housing costs.

For the reasons stated in FF ¶¶ 227-234, the Commission agrees with the Applicant's expert, Leonard Bogorad, that of the numerous causes of gentrification identified in the scholarly literature, none are attributed to projects such as this PUD. (FF ¶ 227.) Studies of gentrification in Bloomingdale do not mention the Project. (FF ¶ 228.) Further, the Bloomingdale LeDroit Park rowhouses that are relatively closer to McMillan have experienced less rapid price increases than those located farther from McMillan, indicating that the plans for McMillan were not a significant cause of the price increases that have been occurring for many years in the neighborhood. (FF ¶ 229.) There is no market distress occurring on Channing Street as stated by the FOMP's expert Dr. Williams nor will development of McMillan pressure landlords of large Edgewood apartment buildings to convert to more expensive housing as Dr. Williams also asserts. (FF ¶¶ 230-231.) The Commission finds no basis for Dr. Williams' reliance on the testimony of one witness to demonstrate that the mere potential of the Project is drawing in new and affluent residents in such numbers as to explain the increase in land values and housing costs being experienced.

Rather, these increases reflect a District-wide phenomenon that is part of a fourth waive of displacement witnessed by the District since 1920. This waive, like the previous three before it, share a common cause; namely demand from a flood of young, well-educated professionals wanting to live in the city. In all four waves, individual homeowners, renters, developers, and investors participated in renovating and as relevant, occupying the housing. The dramatic price and rent

increases that have occurred are not attributable to individual projects, but are the result of general economic and real estate market forces. (FF ¶ 233.)

The Applicant has therefore met its burden to show that the PUD has not and will not cause destabilization of land values, or the displacement of neighboring residents.

The PUD does not have the potential to cause any other adverse impacts identified by the FOMP in the record of this case.

Through its preceding discussion of remand issues, the Commission has addressed all the adverse impacts identified by FOMP in the context of the Comprehensive Plan, increased traffic that also effect the provision of city services. The next portion of this Order will discuss all the impacts on city services identified by the many District agencies that provided reports to OP or directly to the Commission.

Balancing

The balancing called for in Remand Issue 4B only needed to occur if the PUD was likely to cause any of the adverse impacts identified in Remand Issue 4A, and the Commission found none would be. However, the Commission in its June 29, 2017 deliberations, recognized balancing required by 11 DCMR § 2403.8, cannot occur until the elements of a PUD have been resolved. Therefore, the Commission postponed the balancing required by 11 DCMR § 2403.8 until after its completed its discussion of the remand issues. This Order will do the same.

B. Impact on City Services.

Issue 5A: Will the PUD have a favorable impact on the operation of city services and facilities?

Answer: For certain agencies yes.

Issue 5B: If not, is the impact capable of being mitigated, or acceptable given the quality of public benefits in the project?

Answer: For those agencies that identified a potential non-favorable impact, in each instance the impacts were capable of being mitigated.

The Commission received written reports either directly or through OP from DCOA, DHCD, MPD, FEMS, DPR, DDOT, and DOEE. The findings of each agency are summarized in FF ¶¶ 237-248.

The reports provide sufficient detail for the Commission to determine the impact of the PUD on city services. The reports from DCOA, DHCD, and DPR indicate the impact on the services each offer will be favorable.

With respect to transportation impacts, as part of the initial proceeding, DDOT submitted reports through which it eventually concluded that the mitigations identified in the TPP and the TIP will adequately mitigate the anticipated impacts of the development. (FF ¶ 237.) The Commission concurred in that assessment, and the Opinion did not find otherwise. (FF ¶ 238.) Through a supplemental report dated March 13, 2017, DDOT reaffirms its earlier conclusion and the Commission does the same; finding that "traffic mitigation measures required by this Order will adequately ameliorate traffic on the streets surrounding the PUD Site."

The remaining agencies noted the potential for impacts on their services, which would be mitigated either by compliance with existing laws and standards or with the conditions imposed by this Order. Therefore, the Commission finds that impact of this PUD on city services will be favorable in certain instances or capable of being mitigated in others. In no respect will the impact of the PUD be unacceptable.

General 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.)

2. Development of the property included in this application carries out the purposes of 11 DCMR, Chapter 24 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.

3. The PUD meets the minimum area requirements of 11 DCMR § 2401.1.

4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations under the proposed CR Zone District for the PUD Site, with the additional height flexibility permitted by 11 DCMR § 2405.3 when, as here, the additional height is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of the PUD regulations. The uses for this project are appropriate for the PUD Site and compatible with the surrounding neighborhoods.

5. Pursuant to 11 DCMR § 2403.2, the Applicant has met its burden of proof to justify the granting of the application according to the standards set forth in 11 DCMR § 2405.

6. As required by 11 DCMR § 2403.3, the Applicant has demonstrated that the impact of the project on the surrounding area is capable of being mitigated and that impact on city services is favorable in some instances and capable of being mitigated in others.

7. Pursuant to 11 DCMR § 2304.4, the Applicant has proven that the Commission may find, and the Commission does find, that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.

8. As provided by 11 DCMR § 2304.5, the Commission, evaluated the specific public benefits and Project amenities of the proposed development in the context of the Comprehensive Plan and found that these benefits and amenities, including, but not limited to, the additional market-rate and affordable housing; the provision of substantial open space, recreation, and parks in the site; the restoration of key above-ground historic elements; the retention of Cell 14 and the partial retention of Cell 28; the permanent and full-time jobs created; the provision of significant neighborhood-serving retail; the establishment of at least 860,000 square feet of healthcare uses; and the $5,000,000 worth of community benefits advance the related Comprehensive Plan policies to a degree that few if any planned unit developments have achieved.

9. Lastly, the Commission in deciding whether to again grant this application judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of this case. (11 DCMR § 2403.8.) This balance weighs overwhelmingly in favor of again granting this application. The value of the public benefits is exceedingly high, the zoning flexibility comparatively modest, and the potential adverse impacts capable of being mitigated.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1021; D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC's recommendation. As noted in the Remanded Order, on June 17, 2014, ANC 5E voted 4-0-3 to support the Project, with two members absent and one seat vacant. The PUD Site also borders ANC 1B and ANC 5A, and thus their views are also entitled to great weight. On May 1, 2014, ANC 1B voted 8-0-1 to defer to and participate in the process established by ANC 5E. On January 29, 2014, ANC 5A voted 7-0-0 to support the PUD application. ANC 5E also filed a motion for reconsideration, which was dismissed as untimely through Z.C. Order No. 13-14(3).

11. Only ANC 5E submitted a report in this remand proceeding, and its Chair's testimony consisted of a verbatim reading of its resolution.[19] (Ex. 913.)

12. That resolution, which was adopted at its properly notice public meeting held March 21, 2017, with a quorum present, indicated that while it has passed several resolutions of support over the past several years, it still retained some concerns about the Project, chief among them is the potential impacts of the increased motor vehicle traffic and "fears that the amenities package now being offered to ANC 5E residents may not go far enough in mitigating the adverse effects of the increased traffic." Therefore, the ANC requested that the Mayor and DDOT, in conjunction with OP, conduct a comprehensive traffic study of the likely and potential impacts of the PUD on the north/south, as well as the east/west corridors adjacent to and flowing out of the McMillan site and around the neighborhoods from which traffic from the site is likely to flow.

13. Further, ANC 5E requested that the study focus not just on identifying problems, but also on developing proposed solutions to alleviate adverse impacts identified in the study. Lastly, if the study determines that certain adverse traffic impacts of the PUD cannot be avoided, or sufficiently reduced, that Vision McMillan Partnership be required to work with ANC 5E and neighborhood civic associations to offer increased community benefits, specifically directed to benefit the residents of those neighborhoods where adverse traffic impacts cannot be mitigated.

14. It appears that the ANC's report is directed at OP and the Mayor rather than the Commission, but to the extent that the ANC is suggesting further delay of this proceeding to perform the traffic analysis it requested; the Commission does not find the advice to be persuasive. DDOT has fully examined the transportation impacts of this Project on the District's transportation network and determined that potential impacts would be mitigated. For the purposes of this Application, no further reviews are needed.

15. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.

16. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December l3, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq*.).

[19] Nevertheless, counsel for FOMP asked the ANC Chair, whether he was "aware that … allegations have been made that various Advisory Neighborhood Commissioners, not necessarily in your ANC, but possibly, have received things of value, gifts, in return for the ANC support of the Vision McMillan Project?" FOMP's counsel claimed that the question went to the witness's credibility, even though the Chair was simply reading a resolution already introduced into evidence. The clear purpose of this line of questioning was to introduce unattributed, inflammatory, and irrelevant information into the record. The objection was therefore sustained.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia again **ORDERS APPROVAL** of the Application for preliminary review and approval of a first-stage PUD, consolidated PUD, and a related map amendment to zone the PUD Site to the CR Zone District, except that should the Court of Appeals, or other court with jurisdiction, determine that the Commission could not approve CR zoning with respect to Parcel 1, then the related zoning for that parcel shall be C-3-C to a depth of 277 feet as measured from the middle of the curb at Michigan Avenue, N.W. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below:

A. FIRST-STAGE PUD DEVELOPMENT PARAMETERS

1. *Architectural Plans*: The PUD shall be developed in accordance with the Master Plan (Volume 1) and the PUD and Consolidated Stage Two (Volume 2) prepared by EEK Perkins Eastman Architects, dated April 11, 2014, marked as Exhibits 32A1A1-32A1A26 and 32A2A1-32A2A72 (hereinafter Ex. 32A), and supplemented by drawings submitted on June 23, 2014, marked as Exhibits 832A1-832A3 (hereinafter "Ex. 832A") in the record, the drawings submitted on August 25, 2014, marked as Exhibit 849A1-849A2 (hereinafter "Ex. 849A"), and the drawing submitted on August 21, 2017, marked as Exhibit 952D (collectively, the "Plans"); as modified by the guidelines, conditions, and standards herein.

2. *Project Uses and Density*: The PUD shall be a mixed-use development devoted to residential, retail, service, institutional, community, and medical and related office uses, as shown on the approved Master Plan. The PUD shall have a maximum overall density of 1.92 FAR (2.36 FAR excluding the private rights-of-way), and a combined GFA of approximately 2,070,753 square feet.

3. *Building Heights*: The maximum building height of the Healthcare Facility on Parcel 1, to be located in the CR Zone District, shall not exceed 113 feet. The maximum building height on Parcel 2, to be in the CR Zone District, shall be 110 feet. The maximum building height on Parcel 3, to be located in the CR Zone District, shall be 110 feet. The maximum building height on Parcel 4, to be located in the CR Zone District, shall be 77 feet. The maximum building height on Parcel 5, located in the CR Zone District, shall be 48 feet. The maximum building height on Parcel 6, located in the CR Zone District, shall be 26 feet. Parcel 7 shall be improved with the existing historic silos (sand bins) and regulator houses.

4. *Design and Public Art Guidelines:* The Applicant shall implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects marked as Exhibit 17C to the record; and the Cultural DC Public Art Master Plan as marked as Exhibit 17D10 to the record.

B. CONSOLIDATED PUD DEVELOPMENT PARAMETERS

1. *Parcel 1:* Parcel 1 shall be developed as a Healthcare Facility with approximately 860,000 square feet of space devoted to medical offices and related healthcare uses and 15,000 square feet to retail. The Parcel 1 Building shall have a maximum FAR of 4.08, and a maximum building height of 113 feet including the area of the proposed private Half Street. Parcel 1 shall be developed as a single building for zoning purposes, with the above-grade connection located at the main level of the building along the North Service Court. Approximately 1,900 vehicle parking spaces shall be provided in a below-grade garage. Approximately 200 bike parking or storage spaces shall be provided in the garage. Loading shall be provided as shown on the drawings.

2. *Parcel 4:* Parcel 4 shall be developed as a mixed-use residential/grocery building consisting of approximately 305,847 square feet of GFA, or a maximum density of 3.21 FAR. Approximately 55,567 square feet of GFA shall be devoted to a grocery store use (inclusive of loading) and approximately 258,235 square feet of GFA shall be devoted to multi-family residential uses (inclusive of loading), which equates to approximately 196 market-rate units and 85 affordable units for senior citizens (55 years of age or older) whose household income is between 50% and 60% of the area median income "(AMI"). The condition pertaining to this affordable housing component is set forth in Condition C.6 below. The maximum height of the building shall be 77 feet, as measured from North Capitol Street, N.W. Approximately 329 vehicle parking spaces shall be provided in a below-grade garage, with 154 spaces devoted to the retail uses and 175 spaces devoted to the residential uses. Approximately 100 bike parking or storage spaces shall be provided in the garage. Loading shall be provided as shown on the drawings submitted August 25, 2014, marked as Exhibit 849A in the record.

3. *Parcel 5*: Parcel 5 shall be developed with 146 row dwellings, consisting of approximately 350,000 square feet of GFA, or a maximum density of 1.42 FAR. The row dwellings shall have a maximum height of 48 feet, which equates to four stories. Each row dwelling shall provide a minimum of one parking space. The affordable housing conditions applicable to this parcel are set forth in the Condition C.6 below.

4. *Parcel 6:* Parcel 6, which includes the South Service Court, shall be developed as a Park including a 6.2-acre open space with a community center, as shown on the drawings prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A to the record, and as supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record. The community center shall be constructed to a maximum height of 26 feet and contain approximately 17,500 square feet of GFA, or a density of approximately .07 FAR. The community center shall include gallery space with exhibits on the

history of the McMillan site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity shall be open to the public and provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room shall include moveable partitions to create smaller and larger spaces for gathering. Parcel 6 shall have 21 dedicated parking spaces and a dedicated loading area located in the South Service Court.

5. *Parcel 7:* Parcel 7 shall include the North Service Court with preserved historic silos and regulator houses, two-way circulation for all modes, and pedestrian facilities, as described in Condition C.4.

6. The Applicant shall have the flexibility with the design of the PUD in the following areas:

   a. To provide a range in the number of residential units on Parcel 4 of plus or minus 10% from the number depicted on the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record;

   b. From the roof structure set back requirements, consistent with the roof plans submitted as part of the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record, and drawings submitted August 25, 2014, marked as Exhibit 849A of the record;

   c. From the loading requirements, consistent with the loading diagrams submitted in Exhibit 699B, and as modified by Exhibit 832A, and drawings submitted August 25, 2014, marked as Exhibit 849A of the record;

   d. From the rear yard depth requirements, consistent with the plans dated April 11, 2014, marked as Exhibit 32A, and supplemented by drawings submitted on May 13, 2014, marked as Exhibit 699A in the record;

   e. From the rear yard requirements for all of the Rowhouses except Buildings 9 and 19, consistent with the submitted plans;

   f. From the open court width requirements at Building 9 in order to provide a 9.5-foot-wide court where 10 feet is required;

   g. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not substantially change the exterior configuration of the buildings;

h. To vary the location and configuration of the affordable units on Parcels 2 and 4. Except for the affordable senior units on Parcel 4, the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units shall not exceed the proportion of market-rate studio, efficiency, and one-bedroom units to all market-rate units within a mixed-income building. The affordable units shall be of a size equal to the market-rate units, provided that the affordable units may be the smallest size of each market-rate type and have no luxury-scaled unit counterpart;

i. To vary the garage layout, the number, location, and arrangement of the parking spaces on each of the Parcels, provided that the total number of parking spaces is not reduced below the minimum level required by the Commission;

j. To vary the layout of the loading facilities on Parcel 1, provided that the dimensions and number of loading facilities are not reduced;

k. 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 and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Building Code, the recommendations of the HPRB or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;

l. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants;

m. To vary the location and size of signs on the buildings, as long as they conform to the sign guidelines for the PUD;

n. To vary the location, attributes, and general design of the public spaces and streetscapes incorporated in the PUD to comply with the requirements of the approval by DDOT's Public Space Division;

o. To vary the final selection of plantings and beds within the range and types as proposed, based on availability at the time of installation during the appropriate planting season for the material selected, without reducing the quality of plantings or the layout or arrangement; and

p. If any retail areas are leased by a restaurant or food service user, flexibility to vary the location and design of the ground-floor components of the building(s) in order to comply with any applicable District of Columbia laws and regulations, including DOH, that are otherwise necessary for licensing and operation of any restaurant use.

7. The Applicant shall have the option to construct the Project in phases, as shown on the plans, as follows:

a. Phase I consists of Parcels 1, 4, 5, 6, and 7, which include the Olmstead Walk and the internal roadways; and

b. Phase II consists of Parcels 2 and 3.

The deadline for filing applications for building permits and to construct the phases is set forth in Condition E.2.

C. Public Benefits

1. Urban Design, Architecture, and Site Planning: The PUD shall be developed in accordance with the Plans as modified by the guidelines, conditions, and standards herein. **Prior to the issuance of a Certificate of Occupancy for the Healthcare Facility on Parcel 1**, the Applicant shall obtain a building permit for all the necessary public infrastructure to support the development of Parcels 1, 4, 5, 6, and 7, including all project site work; all streets, alleys, sidewalks, and bike paths; historic and commemorative signage throughout the PUD site to create a walking museum of preserved buildings and views; and all related utilities.

2. Parks, Open Space, and Landscaping: **Prior to the issuance of a Certificate of Occupancy for the Healthcare Facility on Parcel 1**, the Applicant shall obtain a building permit to construct the Community Center, and approximately 500,000 square feet of public open space comprised of the South Park, the North and South Service Courts, the Healing Gardens, and preserved Cell 14. The South Park shall include covered seating areas with at least four durable high quality picnic tables and benches, an amphitheater adjacent to the Community Center, a children's playground, a "spray-ground," an outdoor adult fitness area, a pond, and open lawns for casual sports, all as shown on the drawings (pp. 33-35) and marked as Exhibit 32A210-32A2A12. The PUD shall provide all related streetscape improvements and street furniture, including lighting, benches, trash receptacles, and bicycle racks.

3. Design Guidelines; Public Art Guidelines: The Applicant shall implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects marked as Exhibit 17C to the record; and the Cultural DC Public Art Master Plan as marked as Exhibit 17D10 to the record.

4. Historic Preservation: **The Applicant shall obtain a building permit within three years of the effective date of this Order** to retain and rehabilitate and renovate the North and South Service Courts, including all 20 sand storage bins, all four regulator houses, at least one sand washer, 11 filter bed portals and extended portions of the service court walls, and the preservation of Cells 14 and 28, all in accordance with the plans. **The Applicant shall also obtain a building permit within three years of the effective date of this Order** to re-establish the Olmsted Walk around the perimeter of the site, as shown on the plans, and this shall be accessible to persons with disabilities and include benches along the walk. **The preservation work shall be completed prior to the issuance of the Certificate of Occupancy for the community center on Parcel 6**. The Applicant shall seek permission from the U.S. Army Corps of Engineer or other responsible government agency to obtain the historic McMillan Fountain, formerly located on portion of the McMillan Reservoir west of First Street and, if permission is granted, to install it on the PUD Site.

5. Housing: The PUD shall provide approximately 924,583 square feet of GFA devoted to residential uses, or approximately 674 units of new housing in single-family and apartment houses, for both rental and ownership opportunities.

6. Affordable Housing: A portion of the total square feet of GFA devoted to housing shall be set aside for affordable housing, as follows: On Parcel 4, a minimum of 67,018 square feet of GFA of the total new housing provided, or approximately 85 units, shall be set aside as senior housing (55 years of age or older) for households earning 50% to 60% of AMI. An additional 25 units, or approximately 21,341 square feet of total GFA devoted to housing, shall be set aside on Parcel 2 for household earning 80% of the AMI. Finally, 22 of the single-family rowhouses on Parcel 5 shall be set aside as affordable housing. Nine of the affordable rowhouses will be made available to households earning no more than 50% of the AMI and the remaining affordable rowhouses will be made available to households earning no more than 80% of the AMI. The affordable housing units shall be constructed prior to or concurrently with the market-rate units on a given parcel, except that if the development is phased, the affordable units shall be constructed at a pace that is proportional with the construction of the market-rate units. All affordable units will remain subject to the applicable rental or price controls for so long as the project is in existence.[20]

7. CBE Participation: **Prior to the issuance of a building permit,** the Applicant shall execute a CBE Agreement with DSLBD to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for

[20] As noted, the Applicant intends to seek an exemption from the IZ regulations set forth in Chapter 26 of the Zoning Regulations of 1958. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ regulations impose more restrictive standards.

the project to be created as a result of the PUD. Business opportunities will be posted on the DSLBD website, and the Applicant shall give opportunities to CBE businesses for smaller contracts, such as catering, trash collection, and delivery service. The Applicant shall continue to work cooperatively with DSLBD, its contractors and with the Business Development Councils and other local community organizations to maximize opportunities for CBE firms throughout the process. The PUD shall also include 20% equity sponsor participation by a CBE.

8. Training and Employment Opportunities: During construction of the project, the Applicant shall abide by the terms of the executed First Source Employment Agreement with DOES to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the PUD project. To the extent permitted by law, first preference for employment opportunities shall be given to Wards 1 and 5 residents. The Applicant and its contractor, once selected, shall coordinate training, job fairs and apprenticeship opportunities with construction trade organizations or with healthcare facility and other organizations to maximize participation by District residents in the training and apprenticeship opportunities in the PUD.

9. Project Association: **Prior to the issuance of the first Certificate of Occupancy for the PUD**, the Applicant shall establish a project association or business improvement district for the PUD that will be responsible for the maintenance and improvements of the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, historic resources, streetscapes, street furniture and fixtures, and signage within the PUD boundaries. Additionally, the project association will contribute to funding for programming and staging events within the PUD for the benefit of the public.

10. Environmental Benefits: The Master Plan for the overall development for the PUD Site shall be evaluated for LEED-Neighborhood Development and shall be certified at least LEED-Gold or its equivalent. Each project shall be LEED-Silver or Green Communities compliant, depending on its commercial or residential designation. Upon completion, the overall PUD Site shall achieve, at minimum, the applicable provisions of the Green Construction Code of the 2013 Construction Code of the District of Columbia. The Applicant shall put forth its best efforts to achieve a LEED-Silver rating or higher for the buildings on Parcels, 1, 4, 5, and 6, but the Applicant shall not be required to obtain the certification from the U.S. Green Building Council.

11. Uses of Special Benefit to the Community and City: The Applicant shall provide the following community benefits. The Certificates of Occupancy described in subparagraph (a) and subparagraphs (c) - (h) shall not be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided:

a. **Prior to the issuance of the first Certificate of Occupancy for the Healthcare Facility on Parcel 1**, the Applicant shall initiate, and show evidence to the Zoning Administrator in accordance with 11 DCMR § 2403.6 of annual payments of $140,000 each over a five-year period ($700,000 total) to CFNCR to support workforce development initiatives to improve low-income workers' skills, credentials, career prospects, earnings, and job placement, particularly in key local industries and occupations. Additionally, prior to settlement on the sale of the first townhouse on Parcel 5, the Applicant shall initiate annual payments of $60,000 each over a five-year period ($300,000 total) to CFNCR to support scholarships for higher education, training, or job-related certification encouraging "legacy" career paths such as civil engineering, landscape architecture, or on-site jobs in the medical field, with a preference for Ward 1 and 5 residents to the extent permitted by law;

b. **Prior to settlement on the sale of the first townhouse on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator** in accordance with 11 DCMR § 2403.6 of annual payments of $25,000 each over a five-year period ($125,000 total) to the D.C. Education Fund to be used to improve science, technology, engineering, and math teacher professional development and instruction, as well as student learning and achievement, particularly at Dunbar High School, McKinley Technical High School, and Langley Educational Campus;

c. **Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator** in accordance with 11 DCMR § 2403.6 of annual payments of $50,000 over a 10-year period ($500,000 total) to the Partnership, as defined by FF ¶ 89, to hire high-school age residents and senior residents to provide guided tours of the McMillan site highlighting the preserved historic resources;

d. **Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall initiate, and show evidence to the Zoning Administrator** in accordance with 11 DCMR § 2403.6 of annual payments of $75,000 over a 10-year period ($750,000 total) to the Partnership operating budget to create a community market, outdoor cafe, and space for art installations between the South Service Court and South Park, and to activate the South Service Court and existing elements, such as regulator houses for small business incubators, silos as hanging gardens, water features and observation points;

e. **Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4**, the Applicant shall show evidence to the Zoning Administrator in accordance with 11 DCMR § 2403.6 of payment of $225,000 to the Partnership to facilitate business start-ups by awarding grants or in-kind resources to small, local retail/service businesses looking to locate and operate on site to try out their retail/service concepts. A "local" business is a retailer/service provider that is either a CBE or a business headquartered in the District of Columbia; a "small" business is a retailer/service provider owning or operating fewer than eight retail/service outlets in the aggregate at the time such retailer/service provider enters into a lease at the PUD (inclusive of such outlet at the PUD);

f. **Prior to the issuance of the first Certificate of Occupancy for the building on Parcel 4 and prior to the first settlement on the sale of a house on Parcel 5, the Applicant shall provide evidence to the Zoning Administrator** in accordance with 11 DCMR § 2403.6, that it has initiated payments to a contractor or otherwise will incur costs in the amount of $500,000 over a five-year period for fabricating, installing, repairing, and restoring tree box fence enclosures; planting trees and ground cover plants; and installing certain neighborhood signage in coordination with the Bates, Bloomingdale, Eckington, Edgewood, Hanover Area, and Stronghold Civic Associations;

g. **Prior to the issuance of the Certificate of Occupancy for the Community Center**, the Applicant shall use best efforts to provide free WiFi for public use in the community center and park; and

h. **Prior to the issuance of the first Certificate of Occupancy** for the mixed-use building on Parcel 4, the Applicant shall initiate annual payments in the amount of $30,000 each over a five-year period ($150,000 total) to North Capitol Main Street, Inc. for storefront improvements located on North Capitol Street, N.E. and N.W., between Channing Street and New York Avenue.

12. The Applicant will provide a total of approximately 97,770 square feet of GFA devoted to retail and service uses on the PUD Site. The retail space will include a full-service grocery store.

D. Transportation Mitigation Measures

1. Transportation Features: The PUD Site shall be a multi-modal transit hub that accommodates transit services, such as the Metrobus, Circulator Bus, and the future Streetcar, and provides simple connections to Capital Bikeshare stations. The Applicant shall provide 80 Bikeshare docks on the PUD Site. The Applicant shall provide short- and long-term bicycle storage and changing facilities, and

on- and off-street parking facilities, as shown on the Plans. The Applicant shall also do the following:

a. **Prior to the issuance of the building permit for the Healthcare Facility on Parcel 1**, the Applicant shall coordinate with DDOT and nearby institutions to provide a detailed final TIP. The Final TIP shall include the following:

i. Recommended improvements to nearby bus routes to better serve the PUD Site and the neighbors, including instituting rush hour express bus service;

ii. Recommended acceleration of planning and development of the planned Brookland-Columbia Heights Streetcar;

iii. The provision of an interim shuttle service to the Brookland Metrorail Station prior to the District's implementation of a Circulator Bus route and streetcar line that would serve the PUD Site, without regard to cost; and

iv. The Applicant's commitment to incentivize on-site residents and retail tenants to use public transit, such as providing space for a Transit Store, supplementing employee SmarTrip cards, and providing car-sharing and Capital Bikeshare memberships;

b. **For the life of the Project**, the Applicant shall implement the loading and curbside management plan, as set forth in Exhibits 832F2-832F3 to the record;

c. **For the life of the Project**, the Applicant shall abide by the TPP dated August 25, 2014, submitted to the record as Exhibit 849B, and updated by Exhibit 862. The Applicant shall have the flexibility to modify the TPP if approved by DDOT in writing;

d. **For the life of the Project**, the Applicant shall implement the transportation infrastructure improvements recommended by Gorove/Slade Associates and DDOT; and

e. **For the life of the Project**, the Applicant shall provide the electric car charging stations stated in Exhibit 849B. **The car charging stations on Parcel 1 shall be completed prior to the issuance of a Certificate of Occupancy for Parcel 1. The car charging station on Parcel 4 shall be completed prior to the issuance of a Certificate of Occupancy for Parcel 4. The car charging station on Parcel 6 shall be completed prior to the issuance of the Certificate of Occupancy for Parcel 6.**

E. Miscellaneous

1. The Zoning Regulations Division of DCRA shall not issue any building permits 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 OAG and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The Consolidated PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 13-14(6). Within such time, an application must be filed for a building permit for the construction of Phase I of the project (described in B.7 above) as specified in 11 DCMR § 2409.1. Construction of Phase I of the project must commence within three years of the effective date of this Order. The Applicant shall not be required to file an application for a building permit for the park on Parcel 6 or the improvements to Cell 14 on Parcel 1 until six months prior to the date that D.C. Water intends to vacate that particular portion of the Phase I PUD site. Construction of the park on Parcel 6 or the improvements to Cell 14 must commence within one year after the building permit is issued for that portion of the Phase I PUD site.

3. The first-stage PUD shall be valid for a period of two years after the effective date of this Order during which time the Applicant shall file a stage-two PUD application for Phase II of the PUD. The Applicant shall provide the Commission with an update of its implementation of the TIP, and its compliance with the Community Benefits Chart and Payment Schedule, with each second-stage PUD application. (Ex. 849C.)

4. 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 and 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.

On September 14, 2017, upon the motion of Commissioner Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** this Application at its Special Public Meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, and Peter G. May to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 8, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-29(2)
Z.C. CASE NO. 15-29
Jemal's Gateway DC, LLC
(Extinguishment of Approved Consolidated PUD and Related Map Amendment)
Square 2960, Lot 17
May 14, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on May 14, 2018, to consider a request of Jemal's Gateway DC, LLC ("Applicant") to extinguish an approved planned unit development ("PUD") 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 ("PUD Site"),[1] approved in Z.C. Order No. 15-29. The Commission considered the request pursuant to Subtitle X, Chapter 4 and Subtitle Z of the District of Columbia 2016 Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The Commission granted the request.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 15-29, dated September 12, 2016, and effective on February 17, 2017, the Commission approved a PUD and a Zoning Map amendment from the C-2-A and R-1-B Districts to the C-2-B District for the PUD Site. 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.

2. The approved PUD contemplated development of a new mixed-use residential and retail building with approximately 273,308 square feet of gross floor area (3.12 FAR) and a maximum building height of 74 feet, 3 inches. Approximately 189,099 square feet of gross floor area was approved for residential use (approximately 199 units, plus or minus 10%) and approximately 58,400 square feet of gross floor area was approved for retail use.

3. The parties to Z.C. Case No. 15-29 were the Applicant and Advisory Neighborhood Commission ("ANC") 4A. Also participating in the case as persons in opposition were Reverend David L. Jefferson and Naima Jefferson (the "Jeffersons"), who live at 1121 Kalmia Road, N.W.

4. Following issuance of Z.C. Order No. 15-29, on February 21, 2017, the Jeffersons filed a Motion for Leave to File and Motion to Reconsider Z.C. Order No. 15-29. Pursuant to Z.C. Order No. 15-29(1), dated March 13, 2017, and effective on August 11, 2017, the Commission denied the Jeffersons' motion. On March 10, 2017, the Jeffersons appealed

[1] Under the 2016 Zoning Regulations, the C-2-A Zone District converted to the MU-4 zone; the R-1-B Zone District was maintained as R-1-B, and the C-2-B Zone District converted to the MU-5-A zone. The public alley has since been closed as is now known as Lot 817 in Square 2960.

the issuance of Z.C. Order No. 15-29 to the District of Columbia Court of Appeals (17-AA-0255).

5. On May 3, 2018, the Applicant submitted a letter to the Commission requesting the extinguishment of the PUD pursuant to 11-X DCMR § 310.2(b) to permit matter-of-right development at the PUD Site under the old C-2-A and R-1-B Zone Districts (MU-4 and R-1-B zones, respectively).

6. At its public meeting of May 14, 2018, the Commission voted to extinguish the PUD and Zoning Map amendment.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)

2. Once a PUD is approved, any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards, is not permitted until (a) the validity of the PUD order expires; or (b) the Commission issues an order granting the applicant's motion to extinguish the PUD. (11-X DCMR § 310.2.)

3. In this case, the Commission finds that the Applicant no longer intends to build the approved PUD. Thus, the Commission finds that extinguishing the PUD will allow the Subject Property to be developed under matter-of-right standards pursuant to the R-1-B and MU-4 Zone Districts as applicable.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request of the Applicant to extinguish the PUD approved pursuant to Z.C. Order No. 15-29.

On May 14, 2018, by the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the request for extinguishment of the PUD at its public meeting by a vote of 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve, Peter A. Shapiro not present not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 8, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 18-07
(Lean Development, LLC – Map Amendment @ Square 750)
May 29, 2018

THIS CASE IS OF INTEREST TO ANC 6C

On May 22, 2018, the Office of Zoning received an application from Lean Development, LLC ("Petitioner") for approval of a map amendment for the above-referenced property.

The property that is the subject of this petition consists of Lots 128 and Lots 156-158 in Square 750 in northeast Washington, D.C. (Ward 6), on a site bounded by K Street, N.E. (north), 2nd Street, N.E. (west), and other properties in the square to the south and east. The property is currently zoned Production, Distribution and Repair ("PDR")-1. The Petitioner is proposing a map amendment to rezone portions of Lots 156-158 to the Mixed-Use ("MU")-4 and MU-5-A zones and Lot 128 to the MU-5-A zone.

The MU-4 zone is intended to: permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside of the central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate-bulk mixed-use centers. The MU-4 zone allows a maximum height of 50 feet, maximum lot occupancy of 60% (75% for Inclusionary Zoning ["IZ"]), and maximum density of 2.5 floor area ratio ("FAR") (3.0 FAR with IZ and 1.5 FAR for non-residential).

The MU-5 zone is intended to: permit medium-density, compact mixed-use development with an emphasis on residential use; provide facilities for shopping and business needs, housing, and mixed-uses for large segments of the District outside of the central core; and be located on arterial streets, in uptown and regional centers, and at rapid transit stops. The MU-5-A zone allows a maximum height of 65 feet (70 feet with IZ); maximum lot occupancy of 80%; and maximum density of 3.5 FAR (4.2 FAR with IZ and 1.5 FAR for non-residential).

PDR-1 zone is intended to: permit moderate-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. The PDR-1 zone allows a maximum height of 50 feet and maximum density of 3.5 FAR (2.0 FAR for restricted uses).

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department	
Petitioner	PERB Case No. 18-A-08
v.	Opinion No. 1660
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Lawrence Bailey)	
Respondent	

DECISION AND ORDER

Petitioner Metropolitan Police Department ("the Department") has filed an arbitration review request appealing from the second of two arbitration awards issued in the arbitration of a an employee's grievance. For the reasons stated herein, the arbitration review request is granted in part.

I. Statement of the Case

A. The First Award

On April 22, 2011, the Department discharged Officer Lawrence Bailey ("the Grievant") for disobeying orders. Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union") filed a grievance contesting the Grievant's dismissal. The Union invoked arbitration. The Union contended that the Grievant was not served with a notice of proposed adverse action and as a result was not able to request an adverse action hearing. The Union requested that the Arbitrator, Homer C. LaRue, dismiss the discipline and reinstate the Grievant or alternatively that the Arbitrator conduct a hearing in the arbitration on the charges against the Grievant.

The parties submitted the following issue to the Arbitrator: "Whether this matter is arbitrable before this Arbitrator in this arbitration based on the alleged procedural irregularity and, if not arbitrable before this Arbitrator, what should the remedy be?" This was an anomalous issue to present because it asked what the remedy should be without asking whether the contract

was violated. Instead the issue's unusual condition for a remedy was that the matter was *not* arbitrable. The Arbitrator answered the question of whether the matter was arbitrable by stating that "[t]his matter is not arbitrable before this Arbitrator in this arbitration based on the found procedural defects."[1] Despite the conventional understanding that an arbitrator exceeds his authority by arbitrating a dispute that is not arbitrable,[2] the Arbitrator then proceeded to issue the first of a series of awards and orders. The first award was entitled "Decision & Award" ("the First Award") and was issued September 4, 2017.

It appears that the Arbitrator did not mean that the entire case was not arbitrable. One can glean from what he said and did that in his view the termination was not arbitrable in the absence of an adverse action hearing but the procedural defects preceding the termination were arbitrable. He refers to them as "the *found* procedural defects," and indeed he found that the Grievant was denied his right under the parties' collective bargaining agreement ("Agreement") and General Order 120.21 to a notice of proposed adverse action and a hearing.[3]

The First Award concluded in the following manner:

> **AWARD**
>
> Having heard the evidence and the arguments of the parties, the Arbitrator awards as follows:
>
> 1. This matter is not arbitrable before this Arbitrator in this arbitration based on the found procedural defects.
>
> **Order of Remedy**
>
> 2. The Department is ordered to provide Officer Bailey with a hearing before the Adverse Action Panel to determine whether Officer Bailey is to be disciplined and/or discharged.
>
> 3. The decision of the Adverse Action Panel shall be subject to review in arbitration by this Arbitrator pursuant to the Collective Bargaining Agreement and General Order 120.21.
>
> **Retention of Jurisdiction**
>
> 4. This Arbitrator's jurisdiction over this matter is continuing until the conclusion of the review of the Panel's decision by this Arbitrator, if demanded, or unless the Panel dismisses the Proposed Adverse Action.

[1] Decision & Order ("First Award") 22.
[2] *E.g., Town of Johnston v. R.I. Council 94, AFSCME, Local 1491*, 159 A.3d 83, 86 (R.I. 2017); *Trident Technical Coll. v. Lucas & Stubbs, Ltd.*, 333 S.E.2d 781, 786 (S.C. 1985).
[3] First Award 19-20.

Allocation of the Arbitrator's Fees and Expenses

5. The parties shall share equally the fees and expenses for the Arbitrator's services in the instant matter[.][4]

The day after the Arbitrator issued the First Award, the Union asked the Arbitrator to clarify whether the Grievant must be reinstated and must receive back pay and other make-whole remedies. On September 12, 2017, the Arbitrator sent the parties an e-mail responding that the Grievant's discharge is to be rescinded and the Grievant is to be placed in the status he would have been in on February 11, 2011, and made whole for any wages and lost benefits from the date of his discharge to the date of his return to work. The Arbitrator subsequently denominated this order as "Post-Award Order No. 01."

Neither party appealed from the First Award as clarified. It is too late for either party to question the procedure or the substance of the First Award.

Two months after the issuance of Post-Award Order No. 01, the Union called the Arbitrator's attention to the Department's failure to reinstate the Grievant. On November 22, 2017, the Arbitrator issued "Post-Award Order No. 02," which recited "the clarification of the Order of Remedy issued on September 12, 2017 (Post-Award Order No. 01)" and ordered the parties to make a written submission by November 28, 2017, on the authority of the Arbitrator to issue sanctions against the Department for failing to reinstate the Grievant with back pay. The Arbitrator instructed the Department to include in its submission its authority for not reinstating the Grievant.

The parties made their submissions on that date, whereupon the Arbitrator issued "Post-Award Order No. 03." Post-Award Order No. 03 again recited Post-Award Order No. 01's clarification requiring reinstatement of the Grievant, and it ordered the parties to make another written submission on the sanctions question by December 8, 2017, this time discussing *Reliastar Life Insurance Co. v. EMC National Life Co.*,[5] which the Arbitrator said was a persuasive case. The parties complied with that briefing order.

On December 12, 2017, the Department filed with the Board an arbitration review request, Case No. 18-A-06, challenging the Arbitrator's authority to issue Post-Award Order Nos. 02 and 03.

B. The Second Award

On December 19, 2017, the Arbitrator issued the second of the two awards in the arbitration, which he entitled "Final Partial Award" ("the Second Award"). The Second Award incorporated Post-Award Order Nos. 01 through 03. The Second Award found that the Department failed to fully implement the First Award, as clarified, and that this failure

[4] First Award 22.
[5] 564 F.3d 81 (2d Cir. 2009).

was bad faith conduct that caused the Union to incur expenses to seek compliance and warranted the imposition of three sanctions—attorney's fees, arbitration fees, and punitive damages. The Arbitrator issued the following award:

AWARD

The Arbitrator, having retained jurisdiction to clarify the Order of Remedy, and the request to clarify the Order of Remedy having been appropriately requested, the Arbitrator makes this Final Partial Award as follows:

Status of Prior Awards and Orders

1. Unless otherwise specifically modified in this Award, the Award dated September 4, 2017, is unchanged and remains in full force and effect, except as clarified or modified in Post-Hearing Order No. 01, in Post-Hearing Order No. 02 or in Post-Hearing Order No. 03.
2. The Award, dated September 4, 2017, the Post-Hearing Order No. 01, the Post-Hearing Order No. 02 and the Post-Hearing Order No. 03 are incorporated, by reference, into this Award, dated December 19, 2017.
3. The actions of the District of Columbia Metropolitan Police Department, in failing fully to implement the Award, dated September 4, 2017, constitutes bad faith conduct as set forth in this Decision and Award.
4. The bad faith conduct of the District of Columbia Metropolitan Police Department warrants the imposition of sanctions.

Sanctions

a. Attorney's Fees

5. The District of Columbia Metropolitan Police Department (the "MPD") is responsible for and shall pay all the attorney's fees for the Fraternal Order of Police/Metropolitan Police Department Labor Committee (the "FOP") dating from September 12, 2017, the date of Post-Hearing Order No. 01 up to and including the final resolution of the instant dispute.

b. Arbitration Fees

6. The "MPD" is responsible for and shall pay all the arbitration, dating from September 12, 2017, the date of Post-Hearing Order No. 01 up to and including the final resolution of the instant dispute.

a) The MPD shall reimburse the FOP for any arbitration fees which shall have been paid by the FOP following the issuance of the Award, dated September 4, 2017.
b) The FOP shall pay one-half of the arbitration fees associated with this Award, dated December 19, 2017.
c) The MPD shall reimburse the FOP for the arbitration fees paid to the Arbitrator connected with this Award, dated December 19, 2017.
d) The MPD shall reimburse the FOP for any future arbitration fees paid to the Arbitrator by the FOP up to and including the final resolution of the instant dispute.

c. Punitive Damages

7. The MPD shall pay directly to the FOP the cumulative penalty of one thousand dollars $1000.00 per day dating from September 12, 2017, the date of Post-Hearing Order No. 01, up to and including the date that MPD fully complies with the Award, dated September 4, 2017 as clarified.

Interest on Back-Pay

8. The MPD shall pay Officer Bailey interest on the back-pay to which he is owed. Such interest shall be at the legal rate of interest permitted by D.C. Code § 28-3302.
    a) The interest shall be applied to the back-pay owed Officer Bailey beginning September 4, 2017;
    b) Such interest shall continue to accrue on the principal until the MPD has paid Officer Bailey the total amount of his back-pay, including interest.

Final Partial Award

9. The Arbitrator declares the Award, dated December 19, 2017, to be a *Final Partial Award*.

10. That portion of this Award, answering affirmatively the question as to the Arbitrator's authority to impose sanctions for the bad faith conduct of the MPD, is final.

11. That portion of this Award, imposing sanctions (i.e., attorney's fees, arbitration fees and punitive damages, for the bad faith conduct of the MPD, is final.

12. The determination of the amount to be paid because of the sanctions imposed on the MPD is incomplete.

Retention of Jurisdiction of the Incomplete Portion of the Award

13. The Arbitrator retains jurisdiction over that portion of this Award that is incomplete, that is, the determination of the amount owed because of the imposition of sanctions.

14. This Arbitrator's jurisdiction over this matter is continuing until the conclusion of the review of the Panel's decision by this Arbitrator, if demanded, or unless the Panel dismisses the Proposed Adverse Action. [6]

In response to the Second Award, the Department filed the instant arbitration review request ("Request"), Case No. 18-A-08, along with a motion to consolidate the case with Case No. 18-A-06 and a motion for an immediate stay of the sanctions imposed by the Second Award. The Union filed an opposition to the motion to stay and an opposition to the Request.

On February 21, 2018, the Board dismissed Case No. 18-A-06 on grounds of prematurity[7] and denied the Department's motion to consolidate and motion for a stay.[8] The Department's Request is before the Board for disposition.

II. Discussion

A. Positions of the Parties

The Department contends that the Arbitrator had no authority to issue the Second Award or to impose sanctions on the Department. The Department asserts that nowhere in the Agreement is the arbitrator authorized to enforce his own award, sanction noncompliance with an award, or take any action on an issue not presented to him. Article 19(E)(5) of the Agreement provides that an arbitrator "shall confine his decision solely to the precise issue submitted to the arbitrator." The Arbitrator decided and then clarified his decision on the precise issue submitted to him.[9] Having done so, he cannot enforce his own decision. Only the Board has authority to enforce an arbitration award.[10]

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[6] Second Award 21-23.
[7] *MPD v. FOP/Metro. Police Dep't Labor Comm. (on behalf of Bailey)*, Slip Op. No. 1653, PERB Case No. 18-A-06 (Feb. 21, 2018).
[8] *MPD v. FOP/Metro. Police Dep't Labor Comm. (on behalf of Bailey)*, Slip Op. No. 1654, PERB Case No. 18-A-08 (Feb. 21, 2018).
[9] Request 9.
[10] Request 11 (citing *MPD v. FOP/MPD Labor Comm.*, 997 A.2d 65, 79-80 (D.C. 2010)).

The Department further contends that the punitive damages component of the sanctions is contrary to law and public policy. The Department recounts that grossly excessive punitive damages have been held to violate due process.[11] The punitive damages imposed by the Arbitrator, the Department contends, are unlimited and are excessive in comparison to the actual pecuniary harm to the Grievant.

Regarding jurisdiction, the Union argues in response that arbitrators have broad discretion to remedy contract violations as long as the contract does not expressly limit this discretion.[12] The Agreement does not expressly bar the Arbitrator from enforcing his award. Further, he expressly retained jurisdiction over the matter until the case was resolved.[13]

Regarding law and public policy, the Union contends that the amount of punitive damages is not excessive in view of the Department's refusal to rectify its illegal personnel action that cost the Grievant his career, his livelihood, and his pension.[14] The Union argues that the Board may not modify or set aside the Second Award simply because the Department disagrees with the Arbitrator's "bargained-for interpretation of the statute."[15] The Union does not say what statute it is talking about, nor does it say where in the Agreement the Department bargained for the Arbitrator's interpretation of it.[16]

B. General Principles

The Board's authority to review an arbitration award is narrow. The Board is permitted to modify or set aside an arbitration award "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."[17] The test the Board employs in determining whether the arbitrator was without or exceeded his jurisdiction is whether the award draws its essence from the collective bargaining agreement.[18] The award "must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice."[19]

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[11] Request 11-12 (citing *BMW of N. Am. v. Gore*, 517 U.S. 559, 560-62 (1996)).
[12] Opp'n 5-6.
[13] Opp'n 6-7.
[14] Opp'n 9-10.
[15] Opp'n 10.
[16] *See MPD v. FOP/MPD Labor Comm. (on behalf of Fowler)*, 64 D.C. Reg. 10115, Slip Op. No. 1635 at 6-9, PERB Case No. 17-A-06 (2017) (holding that parties bargain for an arbitrator's interpretation of external law only where interpretation of their contract requires interpretation of the law or the law is otherwise incorporated into the contract).
[17] D.C. Official Code § 1-605.02(6).
[18] *MPD v. FOP/MPD Labor Comm. (on behalf of Allen and Taylor)*, 64 D.C. Reg. 10138, Slip Op. No. 1637 at 3, PERB Case No. 17-A-04 (2017).
[19] *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 38 (1987) (*quoted in MPD v. FOP/MPD Labor Comm. (on behalf of Bell)*, 63 D.C. Reg. 12581, Slip Op. No. 1591 at 5, PERB Case No. 15-A-16 (2017); *D.C. Sewer & Water Auth. v. AFSCME Local 2091*, 59 D.C. Reg. 10742, Slip Op. No. 1276 at 3, PERB Case No. 04-A-24 (2012)) *Accord United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).

The Arbitrator could derive authority to reopen the case and issue a supplemental award only from a statute or from the Agreement.[20] The Board will first consider whether the provisions of the Second Award are authorized by statute and then whether they are authorized by contract.

C. Statutory Authority

1. The Back Pay Act

The first item of sanctions is found in paragraph 5 of the Second Award. It orders the Department to pay the Union's attorney's fees from September 12, 2017 (the date of Post-Award No. 01) up to and including final resolution of the instant dispute. The Arbitrator cited the federal Back Pay Act[21] as authority for awarding attorney's fees.[22]

In *AFGE, Local 2725 v. Department of Consumer and Regulatory Affairs*[23] the Board considered a petition to an arbitrator for supplemental attorney's fees that was filed after the parties had litigated an arbitrator's award and order of attorney's fees. The Board adopted the Federal Labor Relations Authority's holding that the Back Pay Act independently confers jurisdiction on arbitrators to consider requests for attorney's fees made within a reasonable period of time after the award of back pay becomes final even if the arbitrator did not retain jurisdiction for that purpose.[24] In one of the cases the Board cited with approval, the Federal Labor Relations Authority stated,

> Parties may agree to establish a time period governing when an attorney fees request may be filed with an arbitrator. In the absence of such an agreement, a request for attorney fees must be filed within a reasonable time after an award, which includes a backpay remedy, becomes final and binding.[25]

The record submitted to the Board by the parties does not contain a request for attorney's fees filed by the Union after the award of back pay. The Second Award does not refer to such a request. Rather, it presents attorney's fees as one of the sanctions the Arbitrator devised to enforce his First Award.[26] As the record does not reflect that a request for attorney's fees was filed within a reasonable time after the First Award, the Board cannot find that the Back Pay Act authorized the Arbitrator to award attorney's fees in the Second Award.

[20] *Univ. of D.C. and Univ. of D.C. Faculty Ass'n/NEA*, 38 D.C. Reg. 5024, Slip Op. No. 276 at 6, PERB Case No. 91-A-02 (1991).
[21] 5 U.S.C. § 5596.
[22] Second Award 17.
[23] 61 D.C. Reg. 7565, Slip Op. No. 1444, PERB Case No. 13-A-13 (2013).
[24] *Id.* 11-14.
[25] *Phila. Naval Shipyard Activity and Phila. Metal Trades Council*, 32 F.L.R.A. 417, 421 (1988)
[26] Second Award 17, 21.

Paragraph 8 of the Second Award orders the payment of interest on the back pay that Post-Award Order No. 01 had ordered. The Back Pay Act not only authorizes but requires interest on back pay.[27] For that reason we find that paragraph 8 of the Second Award is authorized by the Back Pay Act. The Arbitrator's retention of jurisdiction in paragraph 13 to determine the amount owed is also authorized by the Back Pay Act insofar as the paragraph retains jurisdiction to determine the amount of interest on back pay.

2. The Uniform Arbitration Act

In section 16-4420(a) of the D.C. Official Code, the Uniform Arbitration Act provides for modification or clarification of awards in certain narrow circumstances. The D.C. Court of Appeals has not ruled on whether section 16-4420(a) applies to arbitrations subject to the Comprehensive Merit Personnel Act ("CMPA"). But even if section 16-4420(a) applies to arbitrations subject to the CMPA, it does not apply to the Second Award because the Second Award was not issued upon a timely motion for modification or clarification made in accordance with section 16-4420(b).

The Arbitrator stated that the Uniform Arbitration Act, in particular section 16-4421, sets forth the policy of the District of Columbia on the authority of arbitrators to impose punitive damages. The Arbitrator said he looked to the D.C. Code for guidance on the extent of arbitral authority permitted by the Agreement.[28]

Section 16-4421(a) provides that "[a]n arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim." Section 16-4421 does not state that an arbitrator may impose punitive damages to enforce a prior award. If it did, it would be inapplicable to this case. The D.C. Court of Appeals in *Metropolitan Police Department v. Fraternal Order of Police Department/Metropolitan Police Department Labor Committee*[29] held that the CMPA preempts the Uniform Arbitration Act on the subject of enforcement.[30] The exclusive avenues for enforcement of an award in a CMPA-sanctioned arbitration are provided by the CMPA.[31] The court specified two methods under the CMPA for enforcing an award that were available to the FOP, the appellee in the case: "First, FOP could have petitioned the Board to enforce its order affirming the award. D.C. Code § 1–605.02(16); 6–B DCMR § 560.1. Second, FOP could have challenged MPD's alleged resistance by filing an unfair labor practice complaint. D.C. Code § 1–605.02(3); 6–B DCMR §§ 520.1, et seq."[32] That second option is available now to the Union as well. Citing this case, the Department rightly asserts that "[p]er the D.C. Comprehensive Merit

[27] 5 U.S.C. § 5596(b)(2)(A).
[28] Second Award 18.
[29] 997 A.2d 65 (D.C. 2010).
[30] *Id.* at 68, 76.
[31] *Id.* at 76-80.
[32] *Id.* at 80.

Personnel Act, the Public Employee Relations Board is the proper authority to enforce an arbitration award."[33]

Enforcement of an award by the arbitrator who issued it is not one of the enforcement methods to be found in the CMPA. Since the CMPA's methods of enforcing an award subject to the CMPA are the exclusive methods for doing so, no District of Columbia statute authorized the Arbitrator to enforce the First Award.

D. Contractual Authority

The Department contends that no provision of the Agreement authorizes an arbitrator to enforce his own award. The Department's contention is unrebutted. Neither the Arbitrator nor the Union cites any provision of the Agreement authorizing an arbitrator to enforce a prior award that he had issued. Instead they rely on the remedial authority that an arbitrator necessarily has in order to adjudicate a grievance. The Arbitrator examined *Reliastar Life Insurance Co. v. EMC National Life Co.*,[34] and *Synergy Gas Co. v. Sasso*,[35] and drew from those cases the conclusion that when a contract confers comprehensive arbitral authority, arbitrators have the discretion to order such remedies as they deem appropriate, including the equitable authority to sanction a party's bad faith participation in the arbitration.[36] The Arbitrator stated that Article 19 of the Agreement, entitled "Grievance Procedure," and the parties' stipulated submission "bestowed on the Arbitrator the authority to determine the appropriate remedy for the Department's contract violation."[37]

The Arbitrator equivocated, however, on what contract violation he was remedying. On the one hand, he implied that it was the Department's dismissal of the Grievant: "It cannot be gainsaid that when the parties agreed to arbitrate the issue of Officer Bailey's dismissal, they agreed also that the Arbitrator had the authority to determine the remedy if one was appropriate."[38] But on the other hand, he implied that it was the Department's noncompliance with the First Award: "The contractual agreement between the Union and the Department carries with it the presumption of good faith and fair dealing. In agreeing to arbitrate, both parties covenant that each will fully abide by the ruling of the arbitrator."[39] The Second Award's findings address only the latter violation.[40] The Union does not specify either one. Its Opposition merely discusses remedial authority in general.

We shall next analyze separately the Arbitrator's authority to remedy each of the violations to which the Arbitrator alluded.

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[33] Request 10.
[34] 564 F.3d 81 (2d Cir. 2009).
[35] 853 F.2d 59 (2d Cir. 1998).
[36] Second Award 12-16.
[37] Second Award 13.
[38] Second Award 12.
[39] Second Award 15.
[40] Second Award 21, paragraphs 3 and 4; *supra* p. 4.

1. The Arbitrator's Authority to Remedy the Grievant's Dismissal

If the contract violation the Arbitrator sought to remedy in the Second Award was the Grievant's dismissal, he was without authority to do so because he was *functus officio*.

> The Latin phrase *functus officio* refers to an officer or official body "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." BLACK'S LAW DICTIONARY 696 (8th ed. 2004). In this context, the *functus officio* doctrine holds that "once an arbitrator has made and published a final award his authority is exhausted and he is *functus officio* and can do nothing more in regard to the subject matter of the arbitration."[41]

The First Award was final with respect to the issues that were decided therein.[42] The Arbitrator and the Union acknowledged the finality of the First Award by commenting that the Department did not appeal from it.[43] The Arbitrator's retention of jurisdiction does not affect the finality of the First Award with respect to the issues it decided. In the First Award the Arbitrator ordered that an adverse action panel determine whether the Grievant should be discharged and that the panel's decision would be subject to his review. The First Award further stated, "This Arbitrator's jurisdiction over this matter is continuing until the conclusion of the review of the Panel's decision by this Arbitrator, if demanded, or unless the Panel dismisses the Proposed Adverse Action."[44] When an arbitrator retains jurisdiction to decide an issue not previously arbitrated—here the forthcoming decision of an adverse action panel—the arbitrator remains without authority to make determinations on issues that have already been determined in the prior arbitral proceeding.[45]

The First Award did not include attorney's fees, arbitrator's fees, or a daily penalty until the Grievant's reinstatement among its remedies for the Grievant's dismissal. The Arbitrator had no authority to add those remedies to those he had already awarded for the dismissal in his First Award. The arbitrators in the cases that the Second Award relies upon did not attempt to do something like that. In *Reliastar Life Insurance Co. v. EMC National Life Co.*,[46] the case the Arbitrator ordered the parties to brief, and *Synergy Gas Co. v. Sasso*,[47] the arbitrators awarded

[41] *Williams v. Richey*, 948 A.2d 564, 567 n.1 (D.C. 2008) (quoting *Washington–Balt. Newspaper Guild, Local 35 v. Washington Post Co.*, 442 F.2d 1234, 1238 (D.C. 1971) (*quoted in FOP/Dep't of Corr. Labor Comm. v. Dep't of Corr.*, 59 D.C. Reg. 10804, Slip Op. No. 1303 at 7-8, PERB Case No. 10-A-02 (2011)).
[42] *See Univ. of D.C. and AFSCME, Local 287*, 46 D.C. Reg. 4833 Slip Op. No. 473 at 4, PERB Case No. 95-A-06 (1996).
[43] Second Award 11; Opp'n 5.
[44] First Award 22.
[45] *Univ. of D.C. v. AFSMCE, Local* 2087, 46 D.C. Reg. 4833, Slip Op. No. 473 at 3, PERB Case No. 96-A-06 (1996).
[46] 564 F.3d 81 (2d Cir. 2009).
[47] 853 F.2d 59 (2d Cir. 1998).

penalties in their initial awards.[48] Those cases lend no support to a supplemental award that the Arbitrator issued when he was *functus officio*.

The D.C. Court of Appeals and the Board have recognized as exceptions to the *functus officio* doctrine an arbitrator's ability to resolve questions related to attorney's fees[49] and to clarify an ambiguity in an award.[50] As discussed, the record does not reflect that the parties raised any questions related to attorney's fees.

The Arbitrator made a *pro forma* attempt to bring the Second Award within the exception for clarification of an ambiguity by stating, "The Arbitrator, having retained jurisdiction to clarify the Order of Remedy, and the request to clarify the Order of Remedy having been appropriately requested, the Arbitrator makes this Final Partial Award as follows . . ."[51] The record does not reflect that the Arbitrator retained jurisdiction to clarify the remedy or that the requests the Union made to the Arbitrator after the issuance of Post-Award No. 01 were for clarification.[52] While the Second Award is not entirely a clarification, paragraphs 1 and 2 of the Second Award can be seen as clarifications of the First Award except for their incorporation of Post-Award Nos. 02 and 03, which are not clarifications of the First Award. Paragraph 8 clarifies Post-Award No. 01's order that the Grievant be made whole for any wages and benefits lost during the period of discharge. Paragraph 14 of the Second Award is a repetition of paragraph 4 of the First Award. However, paragraphs 3, 4, 5, 6, and 7 do not clarify any ambiguity or correct any error to be found in the First Award.[53] They address circumstances that developed after the First Award. Those circumstances, as we explain below, cannot serve as the justification for the Second Award either.

2. The Arbitrator's Authority to Remedy the Department's Noncompliance with the First Award

If a failure to "fully abide by the ruling of the arbitrator" violates the Agreement's "presumption of good faith and fair dealing," as the Arbitrator implies,[54] the Board is unable to find authority for the Arbitrator to remedy such a violation. The submission that the Arbitrator claimed empowered him does not refer to this subsequent violation. No grievance regarding that violation has been presented to the Arbitrator.

No one denies that arbitration comes at the end of the grievance procedure. Article 19(A) of the Agreement provides that a grievance is "an allegation that there has been a violation,

[48] *Reliastar*, 564 F.3d at 84-85; *Synergy*, 853 F.2d at 61.
[49] *D.C. Dep't of Consumer & Regulatory Affairs v. AFGE, Local 2725*, 59 D.C. Reg. 5502, Slip Op. No. 992 at 4, PERB Case No. 09-A-03 (2009).
[50] *Williams v. Richey*, 948 A.2d 564, 567 (D.C. 2008); *D.C. Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401*, Slip Op. No. 956 at 7-8, PERB Case No. 08-A-07 (May 21, 2010).
[51] Second Award 20.
[52] First Award 22; Attachments B and D to Post-Award Order No. 02.
[53] *Cf. In re Rollins, Inc.*, 552 F. Supp. 2d 1318, 1325 (M.D. Fla. 2004) (holding that critical changes made by a supplemental award were neither corrections nor clarifications), *rev'd in part on other grounds*, 167 F. App'x 798 (11th Cir. 2006).
[54] Second Award 15.

misapplication, or misinterpretation of the terms of this Agreement." After a grievance is filed in accordance with Article 19(B) of the Agreement, a grievance procedure then ensues. That procedure entails an informal step and two formal steps, which are set forth in Article 19(C) and (D). Article 19(E)(2) provides that "arbitration is the method of resolving grievances which have not been satisfactorily resolved pursuant to the Grievance Procedure." As there is no suggestion that an unresolved grievance about noncompliance with the First Award was before the Arbitrator, there was nothing in that regard for the Arbitrator to remedy.[55]

III. Conclusion

The Arbitrator had statutory authority to award interest on back pay in paragraph 8 of the Second Award and to retain jurisdiction in paragraph 13 to determine the amount of interest. He had contractual authority to make certain clarifications in paragraphs 1, 2, and 8 and to repeat in paragraph 14 language from the First Award. The Arbitrator was without jurisdiction to issue paragraphs 3, 4, 5, 6, and 7 of the Second Award.

Because we have determined that the Arbitrator had no authority to impose the punitive damages in paragraph 7, it is unnecessary to consider the Department's claim that the punitive damages were contrary to law and public policy.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Request is granted in part.

2. The Second Award is modified in the following respects:
   (a) Paragraphs 3, 4, 5, 6, and 7 are stricken from the Second Award;
   (b) References to Post-Award Nos. 02 and 03 are stricken from paragraphs 1 and 2;
   (c) The Arbitrator shall retain jurisdiction under paragraph 13 to determine only the amount of interest on back pay.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.
March 27, 2018

[55] *See U.S. Dep't of the Army, Fort Eustis, Va. and Nat'l Ass'n of Gov't Employees*, 39 F.L.R.A. 768 (1991) (denying exceptions to an award in which the arbitrator "stated that no grievances had been filed as to the new job description and determined that he lacked authority to consider either an oral grievance or one that had not proceeded through the normal steps of the parties' negotiated grievance procedure.").

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-08 is being transmitted via File & ServeXpress to the following parties on this the 5th day of April 2018.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	PERB Case No. 17-U-26
Petitioner	)	Opinion No. 1661
v.	)	**Motion for Reconsideration**
District of Columbia Metropolitan Police Department	)	
Respondent	)	

DECISION AND ORDER

I. Introduction

On February 14, 2018, the Metropolitan Police Department ("Department"), filed this motion for reconsideration. The Department seeks reconsideration, in part, of the Board's Decision and Order issued on January 31, 2018, Slip Opinion No. 1651. The Department requests the Board reconsider its Decision and Order and declare the unfair labor practice petition in PERB Case No. 17-U-26 untimely. The Fraternal Order of Police/District of Columbia Metropolitan Police Department Labor Committee ("Union") filed an opposition to the motion for reconsideration.

For the following reasons, the Department's motion for reconsideration is denied.

II. Standard of Review

It is well settled that a motion for reconsideration cannot be based on a mere disagreement with the initial decision.[1] The moving party must provide authority which compels reversal of the initial decision. Absent such authority, the Board will not overturn its decision.[2]

[1] *AFSCME District Council 20, Local 2921 and D.C. Public Schools*, 62 D.C. Reg. 9200, Slip Op. No. 1518 at p. 3-4, PERB Case No, 12-E-10 (2015). *See also, F.O.P. /Metro. Police Dep't Labor Comm. v. Metro, Police Dep't,* Slip Op. No. 1554 at 8-9, PERB Case No. 11-U-17 (Nov. 19, 2015); *Rodriguez v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 4680, Slip Op. No. 954 at 12, PERB Case No. 06-U-38 (2010).

[2] *FOP Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 12058, Slip Op. No. 1400 at p. 6, PERB Case No. 11-U-01 (2013).

III. Background

On May 5, 2017, the Union filed PERB Case 17-U-26. The Union alleged that the Department committed an unfair labor practice by refusing to comply with an Arbitrator's Award ("Award") regarding the reinstatement of Office Jay Hong ("Grievant"). The Department filed a Motion to Dismiss for Untimeliness. The Department argued that the Complaint is untimely and should be dismissed because it was filed more than 120-days after the date on which the alleged violation occurred.[3] The Board denied the Motion to Dismiss and found that the Department had violated section 1-617.04(a)(1) and (5) of the D.C. Official Code by refusing to implement the terms of the Award.[4]

IV. Discussion

According to the Department, the Board's decision incorrectly stated that the Department argued that the 120-day deadline began to run on August 8, 2016. Instead, the Department argues that the 120-day deadline began to run on August 29, 2016; the last day it could have appealed the Award.[5] The Department argues that by August 29, 2016, the deadline to file an arbitration review request with the Board, the Union should have known the Department failed to comply with the Award. Therefore, any violations that occurred after January 5, 2017 (120 days after August 29, 2016) are untimely.[6]

The Department further states that the Union's actions show that it knew of the alleged violation well before April 12, 2017, the date that the Union claims it became aware of the violation. On November 2, 2016, the Union's counsel emailed the Department acknowledging that the deadline to file an arbitration review request had expired and that the Department had yet to comply with the Award to reinstate the Grievant.[7] A similar email was again sent on November 16, 2016. Both of these emails were within the 120-day deadline and prove that the Union clearly knew that the Department had not complied with the Award.[8]

The Department also argues that the Board's 120-day deadline is "jurisdictional and mandatory" and parties' conduct cannot waive this deadline.[9] The Union's actions of sending emails and/or meeting with the Department does not relieve the Union of its obligation to preserve the 120-day deadline by a filing a complaint when it clearly knew of the violation.[10]

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[3] Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.
[4] *FOP Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't,* Slip Op. No. 1651 at 4-5, PERB Case No. 17-U-26 (Jan. 18, 2018).
[5] Motion for Reconsideration at 6.
[6] Motion for Reconsideration at 6.
[7] Motion for Reconsideration at 6.
[8] Motion for Reconsideration at 7.
[9] Motion for Reconsideration at 7.
[10] This case is ultimately decided on other matters, however; it should be noted that the Board stated in *Jenkins v. Department of Corrections*, Slip Op. No. 1652 at 10-12, PERB Case No. 15-U-31 (Jan. 18, 2018) that PERB Rule 520.4 is claim-processing, not mandatory and jurisdictional.

The Union has filed an opposition to the motion for reconsideration. According to the Union, it became aware of the unfair labor practice violation during a meeting between Matthew N. Mahl, the Union Chairman, and Mark Viehmeyer, Director of Labor Relations for the Department, on April 12, 2017.[11] Prior to the April 12, 2017 meeting, the Union believed, as shown by the email correspondence, that the Department was adhering to the Award and preparing to reinstate the grievant.[12] Since the Award was silent on the deadline of its implementation and the Department took no affirmative efforts to inform the Union that it had no intention of abiding by the Award until April 12, 2017, the Department's timeliness calculation is clearly flawed and it would be improper for the Board to find the complaint untimely.[13]

PERB Rule 520.4 states that an unfair labor practice shall be filed no later than 120-days after the date on which the alleged violations occurred. The Board has stated that the 120-day filing period for a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.[14] The Department stated, in its answer to the complaint, that January 5, 2017, was the deadline to file an unfair labor practice. However it never stated any reason why 120-days prior to this date, the Union knew or should have known of the alleged violation. The only date presented by the Department, other than the deadline of January 5, 2017, was the date the Award was issued, August 8, 2016. The Department now argues for the first time that the January 5, 2017 date is in reference to the deadline to file an arbitration review request of the Award. The Department does not dispute that it did not comply with the Award. But the pertinent question is when the Union knew or should have known that the Department would not fully comply prior to April 12, 2017.

The lack of an arbitration review request is not an indicator of a refusal to comply with the Award; in fact it can just as easily be seen as an intention to fully comply. The Union's November 2, 2016 email the Department referenced in its motion for reconsideration said "[t]he time for filing an appeal of this arbitration decision with PERB expired in September. To my knowledge, no appeal was filed. Therefore, I am asking that you contact [the grievant] to begin the reinstatement process." The Department's response to this email simply said "I will check on this reinstatement and will advise."[15] The Department has not pointed to any date when it indicated in any way to the Union that it would not comply with the Award. Therefore, the Board has no reason to find the complaint untimely.

V. Conclusion

The Department has done nothing but expand on its previous argument and failed to provide any authority which compels reversal of the initial decision. The Board finds that the Department's motion for reconsideration fails to assert any legal grounds that compel reversal of

[11] Opposition at 6.
[12] Opposition at 6.
[13] Opposition at 8.
[14] *Pitt v. D.C. Dep't of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).
[15] Attachment 4 at 2.

the Board's earlier decision in Slip Op. 1651. Therefore, the motion for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The motion for reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Mary Ann Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

March 27, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 17-U-26, Op. No. 1661 was transmitted to the following parties on this the 6th day of April, 2018.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Kevin Whaley)	
Petitioner	PERB Case No. 18-A-02
v.	Opinion No. 1662
Metropolitan Police Department	
Respondent	

DECISION AND ORDER

I. Introduction

On November 3, 2017, the Fraternal Order of Police/District of Columbia Metropolitan Police Department Labor Committee ("Union"), filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator's Opinion and Award ("Award"). The Award directed the Metropolitan Police Department ("Department") to set aside the termination of Master Patrol Officer Kevin Whaley ("Grievant") and ordered an alternative sanction of a 150-day suspension. The Union claims that the Award is, on its face, contrary to law and public policy.[1]

In accordance with the CMPA, the Board is permitted to modify or set aside an arbitration award in three narrow circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[2] Having reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, the Board concludes

[1] Request at 2.
[2] D.C. Official Code § 1-605.02(6).

that the Award, on its face is contrary to law and public policy. Therefore, the Board grants the Union's Request.

II. Statement of the Case

This case arises out of an off-duty incident involving the Grievant who caused an incident while visiting his wife at her place of employment. That incident was subsequently investigated by the Department's Internal Affairs Division. The Final Investigative Report sustained the allegations against the Grievant for violating departmental orders and directives by being under the influence of alcohol while off duty and in possession of a firearm.[3] The report also recommended sustaining the allegation that the Grievant knowingly carried an unregistered firearm as an off-duty weapon that was not approved by the Department to be utilized in that capacity.[4] The Grievant was served with a Notice of Proposed Adverse Action on November 23, 2010, which proposed a penalty of termination.[5] The Notice proposed the following charges: (1) failing to register a firearm; (2) being under the influence of alcoholic beverages when off duty; (3) being in possession of an unauthorized firearm and a personal non-issued pistol and holster that was not approved by the Department; (4) conduct unbecoming an officer; and (5) willfully and knowingly making an untruthful statement in the presence of a superior officer.

An Adverse Action Panel ("Panel") that consisted of three senior police officials was convened on May 19, 2011. After reviewing all of the witness testimony and documents submitted into evidence, the Panel found the Grievant guilty of conduct unbecoming an officer and accepted his guilty plea to the charge of being under the influence of alcohol. The Panel found the grievant not guilty of the three remaining charges and recommended a thirty (30) day suspension for each charge; a total suspension of sixty (60) days.[6]

The Director of the Office of Human Resource Management Division, Diana Haines-Walton ("Director"), considered the Panel's findings and conclusions and found the Grievant guilty of the three remaining charges and increased the penalty from suspension to termination. On August 22, 2011, the grievant was served with a Final Notice of Proposed Adverse Action which imposed a penalty of termination and his police powers were revoked.[7] The final decision was submitted to arbitration.

III. Arbitrator's Award

The first issue before the Arbitrator was whether the Department had the authority under D.C. law to increase the Trial Board's penalty from a sixty (60) day suspension to termination. The Arbitrator found, based on the overwhelming weight of precedent provided by the Union,

[3] Award at 5.
[4] Award at 5.
[5] Award at 5.
[6] Award at 9.
[7] Award at 9.

that neither the deciding official, the Director nor the Chief of Police has the authority to increase the Panel's recommended penalty of a 60-day suspension for the two sustained charges.[8]

The Union argued that there was insufficient evidence in the record to sustain the three charges that the Director sustained and the Panel did not sustain. Based on the record, the Arbitrator found there was sufficient evidence to sustain all three additional charges sustained by the Director.

As stated earlier, the Arbitrator found that the Director could not increase the penalty found by the Panel for the two charges. However, the Arbitrator further found that there was substantial evidence in the record for the Director to find the Grievant guilty of the additional charges.[9] Therefore, the Director could properly assess a penalty for the additional guilty charges sustained on review. The Arbitrator concluded that the Director did not reasonably weigh the relevant *Douglas* factors in assessing the penalty.[10] Rather than termination, the Arbitrator imposed an additional 30-day suspension for each of the charges the Director sustained; this resulted in an increase of the Grievant's total penalty from a 60-day suspension to a 150-day suspension.

IV. Discussion

The Union argues that the Arbitrator's Award violates 6-A DCMR section 1001.5 and the District of Columbia Court of Appeals' holding in *District of Columbia Metropolitan Police Department v. District of Columbia Public Employee Relations. Board*[11] Section 1001.5 provides that:

> upon receipt of a trial board's findings and recommendations, and no appeal to the Mayor has been made, the Chief of Police may either confirm the findings and impose the penalty recommended, reduce the penalty, or may declare the board's proceedings void and refer the case to another regularly appointed trial board.

According to the Union, this provision provides no option for the Chief of Police (or designee) to disregard the findings of the panel and impose a more severe penalty. The Arbitrator found that the Director may impose a 30-day penalty for the additional charges she found. The Arbitrator did not point to any legal provision that authorized the Director to make her own guilty determinations of the charges on review nor did he distinguish this methodology from the penalty limitations in section 1001.5. The Union states that the statutory framework and well-defined public policy underlying section 1001.5 and the CMPA comes from *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on Behalf of Dunkins)*,[12] which stated that a deciding official cannot increase

[8] Award at 12.
[9] Award at 21.
[10] Award at 22.
[11] 144 A.3d 14 (D.C. 2016).
[12] 60 D.C. Reg. 566, Slip Op. No. 1344, PERB Case No. 12-A-06 (2013).

the penalty recommended by a hearing officer by "whatever name."[13] The Union argues that to allow a reviewing official to make their own findings and/or increase a Hearing Panel's recommended penalty defeats the purpose of a hearing.[14]

The Department states that the Union has failed to point to any applicable law or definitive public policy that mandates that the Arbitrator arrive at a different result. The Union simply disagrees with the Arbitrator's legal conclusions based on relevant law and his interpretation of the collective bargaining agreement between the parties.

A. The Award is Contrary to Law

The Board has previously found that under section 1001.5 the Department does not have the authority to impose a sanction greater than that recommended by the Panel.[15] The Board has further stated that neither section 1001.5 nor 6-B DCMR section 1613 permit a deciding official to increase the recommended penalty. Section 1613 provides:

> 1613.1 The deciding official, after considering the employee's response in the report and recommendation of the hearing officer pursuant to section 1612, when applicable, shall issue a final decision
>
> 1613.2 The deciding official shall either sustain the penalty proposed, reduce it, remand the action with instruction for further consideration, or dismiss the action with or without prejudice, but in no event shall he or she increase the penalty.

If section 1613.2 did not preclude increasing the penalty, then section 1001.5 would supersede it and still preclude a deciding official from increasing the penalty.[16] In *Dunkins*, the Court of Appeals stated that it found no basis to conclude that the Board's application of section 1001.5 in this manner is unreasonable.[17]

Since the Board's decision in *Dunkins*, Chapter 16 of Title 6-B has been revised to implement a new disciplinary and grievance program effective February 3, 2016.[18] The new regulation uses similar language regarding a final agency decision. The regulation now states:

In making the final decision, the deciding official shall:

[13] Request at 10-11.
[14] Request at 11.
[15] *Dunkins,* 60 D.C. Reg. 566, Slip Op. No. 1344, PERB Case No. 12-A-06 (2013).
[16] *Id.*
[17] *MPD v. D.C. Pub. Emp. Rels. Bd.*, 144 A.3d 14 (D.C. App. 2016).
[18] 63 D.C. Reg. 1265

> (a) Consider the notice of proposed or summary action and supporting materials, the employee's response (if any), and any report and recommendation of a hearing officer, and
>
> (b) Either sustain or reduce the proposed summary action, remand the action to the proposing official with instructions for further consideration, or dismiss the action. A copy of any remand decision shall be served on the employee.[19]

The Board has limited authority to overturn an arbitration award.[20] In order for the Board to find the Award contrary to law and public policy, the asserting party bears the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."[21] A misinterpretation of law by the arbitrator must be apparent on the face of the Award.[22] In this case, the Arbitrator explicitly stated that he agreed with the Board's established precedent that the Director does not have the authority to increase the Panel's recommended penalty. However, he then ignored that precedent and stated that the Director does have the authority to increase the charges which then led to an increase in the penalty. The plain language of section 1001.5 and section 1623.2 give a deciding official three options in acting upon a disinterested designee's recommendation, none of which includes the right to increase the penalty recommended by the disinterested designee. The plain language of section 1001.5 states that the Department may (1) confirm the findings, (2) reduce the penalty, or (3) declare the proceedings void. The plain language of section 1623.2 states that the Department may (1) sustain or reduce, (2) remand, or (3) dismiss the action. It is clear and unmistakable that neither regulation allows the Department to increase the penalty. The Arbitrator's misinterpretation of the law is apparent on the face of the Award. Allowing the Director to increase the penalty is contrary to the plain meaning of 6-A DCMR section 1001.5, 6-B DCMR section 1623.2, and the Board's precedent as established by *Dunkins*.

B. The Award is Contrary to Public Policy

The Board has followed the U.S. Court of Appeals for the District of Columbia Circuit's holding that a violation of public policy "must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest."[23] The D.C. Circuit went on to explain that the "exception is designed

[19] 6-B DCMR § 1623.2
[20] *FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 177 (D.C. 2009).
[21] *MPD and FOP/Metro. Police Dep't Labor Committee*, 47 D.C. Reg. 717, Slip Op. 633 at 2, PERB Case No. 00-A-04 (2000); *See also D.C. Pub. Sch. v. AFSCME., District Council 20*, 34 D.C. Reg. 3610, Slip Op. 156 at 6, PERB Case No. 86-A-05 (1987).
[22] *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 64 D.C. Reg. 10115, Slip Op. No. 1635 at p.9, PERB Case No. 17-A-06 (2017).
[23] *FOP/Dep't of Corr. Labor Comm. v. D.C. Dep't of Corr.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 2, PERB Case No. 10-A-20 (2012) (*citing American Postal Workers Union v. U.S. Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986)).

to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy."[24]

The Award in this case, violates the Grievant' s right to have the Department comply with the 6-A DCMR section 1001.5 and 6-B DCMR § 1623.2 and violates the well-defined public policy underlying these regulations. The regulations explicitly state what actions a reviewing official can take when reviewing the panel's decision. A reviewing official is not permitted to override the findings of a hearing tribunal. It is the hearing tribunal, not the reviewing official, who is present at the hearing and in the best position to determine the facts, the credibility of the witnesses and a penalty. It would be contrary to the underlying policy of these regulatory provisions to allow the Department to disregard the explicit actions stated in the regulation.

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator's Award is contrary to law and public policy. Accordingly, the Award is reversed and remanded to the Arbitrator, with instructions to issue an Award consistent with this decision.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby granted.

2. The matter is remanded to Arbitrator Garvin Lee Oliver, with instructions to issue an Award consistent with this decision.

3. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Mary Ann Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

March 23, 2018

Washington, D.C.

[24] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-02, Op. No. 1662 was transmitted to the following parties on this the 6th day of April, 2018.

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