VOL. 65 – NO. 28 JULY 13, 2018

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 22-397, Fiscal Year 2019 Local Budget Act of 2018
- Department of Consumer and Regulatory Affairs establishes $200 business license fee for the sale of stun guns
- Department of Housing and Community Development schedules a public hearing on the District of Columbia's Fiscal Year 2019 Annual Action Plan
- Office of the State Superintendent of Education updates regulations for early intervention and special education services
- D.C. Zoning Commission proposes text amendments to permit the construction of three athletic playing fields and associated accessory structures on unzoned land next to the Robert F. Kennedy Memorial Stadium

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.

Viewing the DC Register

The Office of Documents and Administrative Issuances publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C. Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C. Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register*. News services are encouraged to publish all or part of the *Register*.

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

ROOM 520S – 441 4th STREET, ONE JUDICIARY SQUARE - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

CONTENTS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

FINAL RULEMAKING

PROPOSED RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY RULEMAKING

EMERGENCY AND PROPOSED RULEMAKING

NOTICES, OPINIONS, AND ORDERS
BOARDS, COMMISSIONS, AND AGENCIES

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-393

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 29, 2018

To amend the Neighborhood Engagement Achieves Results Amendment Act of 2016 to require the Mayor to encourage the use of donations to leverage local funds appropriated to fund community violence interruption and prevention and expanded mental health responses to incidents of violence.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Community Violence Intervention Fund Emergency Amendment Act of 2018".

Sec. 2. Section 103 of the Neighborhood Engagement Achieves Results Amendment Act of 2016, effective June 30, 2016 (D.C. Law 21-125; D.C. Official Code § 7-2413), is amended as follows:

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

(1) Paragraph (2) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (3) is amended by striking the period at the end and inserting the phrase "; and" in its place.

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

"(4) Providing critical mental health services in response to shootings and homicides.".

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

"(e)(1) The Mayor shall make best efforts to encourage donations by public and private entities to be deposited in the Fund pursuant to subsection (b)(3) of this section in an amount that exceeds the funds appropriated by the District pursuant to subsection (b)(1) of this section.

"(2) In making best efforts pursuant to paragraph (1) of this subsection, the Mayor shall engage in outreach to no fewer than 10 public or private entities in each fiscal year.".

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

UNSIGNED
Mayor
District of Columbia
June 27, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-396

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 10, 2018

To amend the Helicopter Landing Pad Public Nuisance Act of 1987 to permit the operation of a singular helicopter landing pad at a hospital that is certified as a Level One Trauma Center as of the date of the construction of the helicopter landing pad, to require the Mayor to conduct an analysis of newly constructed helicopter landing pads used for more than 175 round-trip flights in a calendar year and to take further action as appropriate, to require the Mayor to determine whether to curtail helicopter flights between the hours of 11:00 p.m. and 6:00 a.m. from newly constructed helicopter landing pads at hospitals that are certified as Level One Trauma Centers, and to grant the Mayor rulemaking authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Helicopter Landing Pad Amendment Act of 2018".

Sec. 2. The Helicopter Landing Pad Public Nuisance Act of 1987, effective October 9, 1987 (D.C. Law 7-40; D.C. Official Code § 9-1211.01), is amended as follows:

(a) Section 2 (D.C. Official Code § 9-1211.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "pad, which was not in operation prior to July 14, 1987, in any" and inserting the phrase "pad in any" in its place.

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

"(c) This section shall not apply to:

"(1) A helicopter landing pad that was in operation before July 14, 1987;

"(2) A helicopter landing pad constructed to replace a helicopter landing pad that was in operation before July 14, 1987; and

"(3) A singular helicopter landing pad at a hospital in the District of Columbia that, as of the date construction is complete, is certified as a Level One Trauma Center by the Department of Health pursuant to section 20 of the Emergency Medical Services Act of 2008, effective March 25, 2009 (D.C. Law 17-357; D.C. Official Code § 7-2341.19); provided, that, for purposes of this act, such certification need not remain current following construction of the helicopter landing pad.".

(b) New sections 2a and 2b are added to read as follows:

"Sec. 2a. Analysis and review requirements.

"(a)(1) If a helicopter landing pad constructed after the effective date of the Helicopter Landing Pad Amendment Act of 2018, passed on 2nd reading on June 5, 2018 (Enrolled version

of Bill 22-579), is used for more than 175 round-trip flights during a calendar year, the Mayor shall, no later than 60 days following the end of that period:

"(A) Conduct an analysis to ascertain the specific uses of the helicopter landing pad and the reasons for the use of the helicopter landing pad for more than 175 round-trip flights; and

"(B) Determine whether to pursue the adoption of rules 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.*), to restrict the use of the helicopter landing pad or take other action as the Mayor shall deem appropriate.

"(2) In conducting an analysis pursuant to this subsection, the Mayor shall utilize a plan to receive public comments and input from the affected community and Advisory Neighborhood Commissions.

"(3) The information generated and received pursuant to this subsection shall be reported to the Council and to affected Advisory Neighborhood Commissions.

"(4) A determination made pursuant to paragraph (1)(B) of this subsection shall be made in writing and shall be published in the District of Columbia Register.

"(b)(1) The Mayor shall determine, in consultation with affected Advisory Neighborhood Commissions, whether to pursue the adoption of rules 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.*), to curtail helicopter flights between the hours of 11:00 p.m. and 6:00 a.m. from helicopter landing pads that are:

"(A) Located at hospitals that are certified as Level One Trauma Centers; and

"(B) Constructed after the effective date of the Helicopter Landing Pad Amendment Act of 2018, passed on 2nd reading on June 5, 2018 (Enrolled version of Bill 22-579).

"(2) The determination made pursuant to paragraph (1) of this subsection shall be made in writing and shall be published in the District of Columbia Register.

"Sec. 2b. Rules.

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

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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
July 10, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-397

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 10, 2018

To adopt the local portion of the budget of the District of Columbia government for the fiscal year ending September 30, 2019.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2019 Local Budget Act of 2018".

Sec. 2. Adoption of the local portion of the Fiscal Year 2019 budget.

The following expenditure levels are approved and adopted as the local portion of the budget for the government of the District of Columbia for the fiscal year ending September 30, 2019.

DISTRICT OF COLUMBIA BUDGET FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2019

PART A--SUMMARY OF EXPENSES

The following amounts are appropriated for the District of Columbia government for the fiscal year ending September 30, 2019 ("Fiscal Year 2019"), out of the General Fund of the District of Columbia ("General Fund"), except as otherwise specifically provided; provided, that notwithstanding any other provision of law, except as provided in section 450A of the District of Columbia Home Rule Act, approved November 22, 2000 (114 Stat. 2440; D.C. Official Code § 1-204.50a), and provisions of this act, the total amount appropriated in this act for operating expenses for the District of Columbia for Fiscal Year 2019 shall not exceed the lesser of the sum of the total revenues of the District of Columbia for such fiscal year or $14,583,405,000 (of which $8,419,318,000 shall be from local funds (including $566,439,000 from dedicated taxes), $1,021,919,000 shall be from federal grant funds, $2,400,505,000 shall be from Medicaid payments, $704,367,000 shall be from other funds, $4,247,000 shall be from private funds, $91,405,000 shall be from funds requested to be appropriated by the Congress as federal payments pursuant to the Fiscal Year 2019 Federal Portion Budget Request Act of 2018, and $1,941,645,000 shall be from enterprise and other funds); provided further, that of the local funds, such amounts as may be necessary may be derived from the General Fund balance;

provided further, that of these funds the intra-District authority shall be $710,006,000; in addition, for capital construction projects, an increase of $3,433,401,000, of which $2,951,944,000 shall be from local funds, $650,000 shall be from private grant funds, $66,590,000 shall be from local transportation funds, $54,822,000 shall be from the District of Columbia Highway Trust Fund, and $359,396,000 shall be from federal grant funds, and a rescission of $635,502,000, of which $463,879,000 shall be from local funds, $34,187,000 shall be from local transportation funds, $14,314,000 shall be from the District of Columbia Highway Trust Fund, and $123,122,000 shall be from federal grant funds appropriated under this heading in prior fiscal years, for a net amount of $2,797,899,000, to remain available until expended; provided further, that all funds provided by this act shall be available only for the specific projects and purposes intended; provided further, that amounts appropriated under this act may be increased by the amount transferred from funds appropriated in this act as Pay-As-You-Go Capital funds; provided further, that amounts provided under this heading are to be available, allocated, and expended at the rates and subject to the provisions set forth under the heading "Division of Expenses"; provided further, that this amount may be increased by proceeds of one-time transactions, which are expended for emergency or unanticipated operating or capital needs; provided further, that such increases shall be approved by enactment of local District law and shall comply with all reserve requirements contained in the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*); provided further, that this amount may be further increased by such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government and such sums may be paid from the applicable or available funds of the District of Columbia; provided further, that local funds are appropriated, without regard to fiscal year, in such amounts as may be necessary to pay vendor fees, including legal fees, that are obligated in this fiscal year, to be paid as a fixed percentage of District revenue recovered from third parties on behalf of the District under contracts that provide for payment of fees based upon and from such District revenue as may be recovered by the vendor; provided further, that, in addition, there are appropriated any amounts received, or to be received, without regard to fiscal year, from the Potomac Electric Power Company, or any of its related companies, successors, or assigns, for the purpose of paying or reimbursing the District Department of Transportation for the costs of designing, constructing, acquiring, and installing facilities, infrastructure, and equipment for use and ownership by the Potomac Electric Power Company, or any of its related companies, successors, or assigns, related to or associated with the undergrounding of electric distribution lines in the District of Columbia, and any interest earned on those funds, which amounts and interest shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year or at any other time, but shall be continually available, without regard to fiscal year, until expended for the designated purposes; provided further, that this amount may be further increased by amounts deposited into the Attorney General Restitution Fund, which shall be continually available, without regard to fiscal year, until expended; provided further, that local and other funds appropriated under this act may be used to pay expenses for District government attorneys at the Office of the Attorney

General for the District of Columbia to obtain professional credentials, including bar dues and court admission fees, that enable these attorneys to practice law in other state and federal jurisdictions and appear outside the District in state and federal courts; provided further, that amounts appropriated pursuant to this act as operating funds may be transferred to enterprise and capital funds and such amounts, once transferred, shall retain appropriation authority consistent with the provisions of this act; provided further, that there may be reprogrammed or transferred for operating expenses any local funds transferred or reprogrammed in this or the 4 prior fiscal years from operating funds to capital funds, and such amounts, once transferred or reprogrammed, shall retain appropriation authority consistent with the provisions of this act, except, that there may not be reprogrammed for operating expenses any funds derived from bonds, notes, or other obligations issued for capital projects; provided further, that the local funds (including dedicated tax) and other funds appropriated by this act may be reprogrammed and transferred as provided in subchapter IV of Chapter 3 of Title 47 of the District of Columbia Official Code, or as otherwise provided by law, through November 15, 2019; provided further, that during Fiscal Year 2019 and any subsequent fiscal year, notwithstanding any other provision of law, the District of Columbia may expend funds as necessary to pay capital and operating obligations created by the District of Columbia and the National Park Service in annual or multiyear agreements to improve, maintain, operate, or manage National Parks located in the District of Columbia, and such sums may be paid from the applicable or available funds of the District of Columbia, which, once allocated, shall retain appropriation authority consistent with the provisions of this act, without any limitation as to amount, duration, or fiscal year; provided further, that local funds and other funds appropriated under this act may be expended by the Mayor for the purpose of providing food and beverages, not to exceed $30 per employee per day, to employees of the District of Columbia government while such employees are deployed in response to a declared snow or other emergency; provided further, that any unspent amount remaining in a nonlapsing fund described in Part B of this act at the end of Fiscal Year 2018 is to be continually available, allocated, appropriated, and expended for the purposes of such fund in Fiscal Year 2019 in addition to any amounts deposited in and appropriated to such fund in Fiscal Year 2019; provided further, that there are appropriated any amounts deposited, or to be deposited, without regard to fiscal year, into the Washington Metropolitan Area Transit Authority ("WMATA") Dedicated Financing Fund for the purpose of funding WMATA capital improvements, which amounts shall not revert to the unrestricted fund balance of the General Fund at the end of a fiscal year or at any other time, but shall be continually available until expended for the designated purposes; provided further, that the Chief Financial Officer shall take such steps as are necessary to assure that the foregoing requirements are met, including the apportioning by the Chief Financial Officer of the appropriations and funds made available during Fiscal Year 2019; provided further, that during Fiscal Year 2019 and any subsequent fiscal year, notwithstanding any other provision of law, the District of Columbia may expend funds, certified as available by the Chief Financial Officer of the District of Columbia, as necessary to pay termination costs of multiyear contracts entered into by the District of Columbia to design, construct, improve, maintain, operate, manage, or finance infrastructure projects

procured pursuant to the Public-Private Partnership Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*), and such termination costs may be paid from appropriations available for the performance of such contracts or the payment of termination costs or from other appropriations then available for any other purpose, not including the Emergency Reserve or Contingency Reserve Funds (D.C. Official Code § 1-204.50a), which once allocated to these costs, shall be deemed appropriated for the purposes of paying termination costs of such contracts and shall retain appropriations authority and remain available until expended.

PART B--DIVISION OF EXPENSES

GOVERNMENTAL DIRECTION AND SUPPORT

Governmental direction and support, $869,000,000 (including $754,747,000 from local funds (including $1,350,000 from dedicated taxes), $31,574,000 from federal grant funds, $81,021,000 from other funds, and $1,657,000 from private funds) to be allocated as follows; provided, that any program fees collected from the issuance of debt shall be available for the payment of expenses of the debt management program of the District:

(1) Council of the District of Columbia. - $26,879,000 from local funds; provided, that not to exceed $25,000 shall be available for the Chairman from this appropriation for official reception and representation expenses and for purposes consistent with section 26 of the Discretionary Funds Act of 1973, approved October 26, 1973 (87 Stat. 509; D.C. Official Code § 1-333.10); provided further, that all funds deposited, without regard to fiscal year, into the Council Technology Projects Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(2) Office of the District of Columbia Auditor. - $6,229,000 from local funds;

(3) Office of Advisory Neighborhood Commissions. - $1,146,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the Agency Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(4) Uniform Law Commission. - $60,000 from local funds;

(5) Office of the Mayor. - $15,450,000 (including $11,367,000 from local funds and $4,083,000 from federal grant funds); provided, that not to exceed $25,000 of such amount, from local funds, shall be available for the Mayor for official reception and representation expenses and for purposes consistent with section 26 of the Discretionary Funds Act of 1973, approved October 26, 1973 (87 Stat. 509; D.C. Official Code § 1-333.10); provided further, that all funds deposited, without regard to fiscal year, into the Emancipation Day Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(6) Mayor's Office of Legal Counsel. - $1,634,000 from local funds;

(7) Office of the Senior Advisor. - $3,219,000 from local funds;

(8) Office of the Secretary. - $4,157,000 (including $3,057,000 from local funds and $1,100,000 from other funds);

(9) Office of the City Administrator. - $10,028,000 (including $8,669,000 from

local funds, $250,000 from other funds, and $1,109,000 from private funds); provided, that not to exceed $10,600 of such amount, from local funds, shall be available for the City Administrator for official reception and representation expenses and for purposes consistent with section 26 of the Discretionary Funds Act of 1973, approved October 26, 1973 (87 Stat. 509; D.C. Official Code § 1-333.10);

(10) Office of the Deputy Mayor for Greater Economic Opportunity. - $5,513,000 from local funds; provided, that $4,279,000 in local funds shall be available for the Workforce Investment Council for activities consistent with the Workforce Investment Implementation Act of 2000, effective July 18, 2000 (D.C. Law 13-150; D.C. Official Code § 32-1601 *et seq.*), and consistent with the DC Central Kitchen Grants Amendment Act of 2018, passed on 1st reading on May 15, 2018 (Engrossed version of Bill 22-753);

(11) Office of Risk Management. - $4,102,000 from local funds;

(12) Department of Human Resources. - $9,428,000 (including $8,866,000 from local funds and $561,000 from other funds);

(13) Office of Disability Rights. - $1,771,000 (including $1,133,000 from local funds and $638,000 from federal grant funds);

(14) Captive Insurance Agency. - $2,306,000 (including $2,095,000 from local funds and $211,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Agency Fund (Free Standing Clinics/Insurance Fund) are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Captive Insurance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(15) Office of Finance and Resource Management. - $27,595,000 (including $27,123,000 from local funds and $472,000 from other funds);

(16) Office of Contracting and Procurement. - $24,945,000 (including $23,393,000 from local funds and $1,552,000 from other funds);

(17) Office of the Chief Technology Officer. - $80,131,000 (including $70,035,000 from local funds and $10,095,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the DC-NET Services Support Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(18) Department of General Services. - $318,529,000 (including $310,152,000 from local funds (including $1,350,000 of dedicated taxes), and $8,377,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Eastern Market Enterprise Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the West End Library/Firehouse Maintenance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(19) Contract Appeals Board. - $1,556,000 from local funds;

(20) Board of Elections. - $10,666,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the Ethics Fund are authorized for expenditure and

shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Open Government Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(21) Office of Campaign Finance. - $4,101,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the Fair Elections Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(22) Public Employee Relations Board. - $1,509,000 from local funds;

(23) Office of Employee Appeals. - $2,178,000 from local funds;

(24) Metropolitan Washington Council of Governments. - $542,000 from local funds;

(25) Office of the Attorney General for the District of Columbia. - $104,114,000 (including $67,163,000 from local funds, $23,583,000 from federal grant funds, $12,819,000 from other funds, and $548,000 from private funds); provided, that not to exceed $10,600 of such amount, from local funds, shall be available for the Attorney General for official reception and representation expenses; provided further, that all funds deposited, without regard to fiscal year, into the Child SPT-TANF/AFDC Collections Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Child SPT-Reimbursements and Fees Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Child SPT-Interest Income Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Drug-, Firearm-, or Prostitution-Related Nuisance Abatement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Litigation Support Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that this amount may be further increased by amounts deposited into the Attorney General Restitution Fund, which shall be continually available, without regard to fiscal year, until expended;

(26) D.C. Board of Ethics and Government Accountability. - $2,450,000 (including $2,298,000 from local funds and $153,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Lobbyist Administration and Enforcement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Board of Ethics and Government Accountability Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(27) Statehood Initiatives. - $242,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the New Columbia Statehood Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(28) Office of the Inspector General. - $18,763,000 (including $15,943,000 from local funds and $2,820,000 from federal grant funds); and

(29) Office of the Chief Financial Officer. - $179,757,000 (including $133,877,000 from local funds, $450,000 from federal grant funds, and $45,431,000 from other funds); provided, that not to exceed $10,600 of such amount, from local funds, shall be available for the Chief Financial Officer for official reception and representation expenses; provided further, that amounts appropriated by this act may be increased by the amount required to pay banking fees for maintaining the funds of the District of Columbia; provided further, that all funds deposited, without regard to fiscal year, into the OFT Central Collection Unit Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Recorder of Deeds Surcharge Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the OPEB Trust Administration Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

ECONOMIC DEVELOPMENT AND REGULATION

Economic development and regulation, $684,007,000 (including $365,237,000 from local funds (including $29,430,000 from dedicated taxes), $87,287,000 from federal grant funds, $230,644,000 from other funds, and $839,000 from private funds), to be allocated as follows:

(1) Office of the Deputy Mayor for Planning and Economic Development. - $42,602,000 (including $21,783,000 from local funds and $20,819,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Industrial Revenue Bond program are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the H Street Retail Priority Area Grant Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Soccer Stadium Financing Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Economic Development Special Account are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Walter Reed Redevelopment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Walter Reed Reinvestment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the St. Elizabeths East Campus Redevelopment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(2) Office of Planning. - $10,988,000 (including $10,231,000 from local funds, $547,000 from federal grant funds, $200,000 from other funds, and $10,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Historic Landmark and

Historic District Filing Fees (Local) Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Historical Landmark and Historic District Filing Fees (O-Type) Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(3) Department of Small and Local Business Development. - $15,089,000 (including $14,621,000 from local funds and $468,000 from federal grant funds); provided, that all funds deposited, without regard to fiscal year, into the Small Business Capital Access Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Streetscape Loan Relief Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Ward 7 and Ward 8 Entrepreneur Grant Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(4) Office of Cable Television, Film, Music, and Entertainment. - $14,678,000 (including $1,690,000 from local funds and $12,988,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Film, Television and Entertainment Rebate Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Cable Franchise Fees Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(5) Office of Zoning. - $3,117,000 from local funds;

(6) Department of Housing and Community Development. - $90,756,000 (including $31,772,000 from local funds, $55,830,000 from federal grant funds, $3,134,000 from other funds, and $20,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Compensation Units 1 and 2 Affordable Housing Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Department of Housing and Community Development Unified Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Land Acquisition for Housing Development Opportunities (LAHDO) Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the RLF Escrow Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Rehab Repay Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Home Again Revolving Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Home Purchase Assistance Program-Repay Fund are authorized for expenditure and shall remain available for expenditure until September

30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Housing Preservation Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(7) Department of Employment Services. - $139,647,000 (including $69,423,000 from local funds, $29,876,000 from federal grant funds, $39,561,000 from other funds, and $787,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Workers' Compensation Administration Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Unemployment Insurance Administrative Assessment Tax Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Unemployment Insurance Interest/Penalties Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Workers' Compensation Special Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Reed Act Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(8) Real Property Tax Appeals Commission. - $1,763,000 from local funds;

(9) Department of Consumer and Regulatory Affairs. - $60,729,000 (including $23,202,000 from local funds and $37,527,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Basic Business License Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Green Building Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Real Estate Guaranty and Education Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Nuisance Abatement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Occupational and Professional Licensing Administration-Special Account are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Board of Engineers Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Corporate Recordation Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Re-Appraisal Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Vending Regulation Fund are authorized for expenditure and shall remain available for expenditure until September 30,

2019;

(10) Office of the Tenant Advocate. - $4,254,000 (including $3,745,000 from local funds and $509,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Rental Unit Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Rental Housing Registration Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(11) Commission on the Arts and Humanities. - $31,199,000 (including $31,000,000 from local funds (including $28,138,000 from dedicated taxes) and $199,000 from other funds); provided, that grant funding is competitively awarded to nonprofit fine and performing arts organizations based in and primarily serving the District; provided further, that funds in the available fund balance of the Arts and Humanities Enterprise Fund may be obligated in Fiscal Year 2019, pursuant to grant awards, through September 30, 2022, and that such funds so obligated are authorized for expenditure and shall remain available for expenditure until September 30, 2022;

(12) Alcoholic Beverage Regulation Administration. - $9,299,000 (including $1,292,000 from local funds (including $1,292,000 from dedicated taxes) and $8,007,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the ABC-Import and Class License Fees Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Dedicated Taxes Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(13) Public Service Commission. - $15,751,000 (including $566,000 from federal grant funds, $15,163,000 from other funds, and $22,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Operating-Utility Assessment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the PJM Settlement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(14) Office of the People's Counsel. - $9,746,000 (including $775,000 from local funds and $8,971,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Advocate for Consumers Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(15) Department of Insurance, Securities, and Banking. - $28,565,000 from other funds; provided, that all funds deposited, without regard to fiscal year, into the Insurance Regulatory Trust Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Foreclosure Mediation Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Capital Access Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(16) Housing Authority Subsidy. - $111,489,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the DCHA Rehabilitation and Maintenance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Tenant-Based Rental Assistance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(17) Housing Production Trust Fund Subsidy. - $39,335,000 from local funds; and

(18) Business Improvement Districts Transfer. - $55,000,000 from other funds.

PUBLIC SAFETY AND JUSTICE

Public safety and justice, $1,356,947,000 (including $1,143,355,000 from local funds, $162,626,000 from federal grant funds, $150,000 from Medicaid payments, $47,410,000 from other funds, $435,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for the District of Columbia National Guard" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018, $2,300,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment to the Criminal Justice Coordinating Council" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018, and $670,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Judicial Commissions" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018), to be allocated as follows:

(1) Metropolitan Police Department. - $522,187,000 (including $510,080,000 from local funds, $3,907,000 from federal grant funds, and $8,200,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Asset Forfeiture Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(2) Fire and Emergency Medical Services Department. - $258,243,000 (including $256,481,000 from local funds and $1,762,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Fire and Emergency Medical Services Department EMS Reform Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(3) Police Officers' and Firefighters' Retirement System. - $92,322,000 from local funds;

(4) Department of Corrections. - $164,937,000 (including $143,917,000 from local funds and $21,020,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Correction Trustee Reimbursement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Welfare Account are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Correction Reimbursement-Juveniles Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(5) District of Columbia National Guard. - $14,425,000 (including $4,810,000 from local funds, $9,179,000 from federal grant funds, and $435,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for the District of Columbia National Guard" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018); provided, that the Mayor shall reimburse the District of Columbia National Guard for expenses incurred in connection with services that are performed in emergencies by the National Guard in a militia status and are requested by the Mayor, in amounts that shall be jointly determined and certified as due and payable for these services by the Mayor and the Commanding General of the District of Columbia National Guard; provided further, that such sums as may be necessary for reimbursement to the District of Columbia National Guard under the preceding proviso shall be available pursuant to this act, and the availability of the sums shall be deemed as constituting payment in advance for emergency services involved;

(6) Homeland Security and Emergency Management Agency. - $142,222,000 (including $5,153,000 from local funds and $137,069,000 from federal grant funds);

(7) Commission on Judicial Disabilities and Tenure. - $395,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Judicial Commissions" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018;

(8) Judicial Nomination Commission. - $275,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Judicial Commissions" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018;

(9) Office of Police Complaints. - $2,538,000 from local funds;

(10) District of Columbia Sentencing Commission. - $1,186,000 from local funds;

(11) Criminal Code Reform Commission. - $724,000 from local funds;

(12) Office of Neighborhood Safety and Engagement. - $5,431,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the Neighborhood Safety and Engagement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(13) Office of the Chief Medical Examiner. - $12,352,000 from local funds;

(14) Office of Administrative Hearings. - $10,285,000 (including $10,135,000 from local funds and $150,000 from Medicaid payments);

(15) Criminal Justice Coordinating Council. - $4,105,000 (including $1,655,000 from local funds, $150,000 from federal grant funds, and $2,300,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment to the Criminal Justice Coordinating Council" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018);

(16) Office of Unified Communications. - $48,310,000 (including $34,113,000 from local funds, and $14,197,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Emergency and Non-Emergency Number Telephone Calling Systems Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(17) Department of Forensic Sciences. - $26,561,000 (including $26,101,000 from local funds and $460,000 from federal grant funds); provided, that all funds deposited, without regard to fiscal year, into the Department of Forensic Sciences Laboratory Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(18) Corrections Information Council. - $744,000 from local funds;

(19) Office of Victim Services and Justice Grants. - $48,109,000 (including $34,017,000 from local funds, $11,862,000 from federal grant funds, and $2,231,000 from other funds); provided, that $10,057,256 shall be made available to award a grant to the District of Columbia Bar Foundation for the purpose of administering the Access to Justice Initiative, established by section 201 of the Access to Justice Initiative Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 4-1702.01), and the Civil Legal Counsel Projects Program, established by section 3053 of the Expanding Access to Justice Amendment Act of 2017, effective December 13, 2017 (D.C. Law 22-33; D.C. Official Code § 4-1802), of which not less than $382,000 shall be available to fund the District of Columbia Poverty Lawyer Loan Repayment Assistance Program, established by section 401 of the Access to Justice Initiative Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 4-1704.01), and of which not less than $4,500,000 shall be made available to award a grant to the District of Columbia Bar Foundation for the purpose of administering the Civil Legal Counsel Projects Program, established by section 3053 of the Expanding Access to Justice Amendment Act of 2017, effective December 13, 2017 (D.C. Law 22-33; D.C. Official Code § 4-1802); provided further, that the funds authorized for expenditure for the District of Columbia Poverty Lawyer Loan Repayment Assistance Program and the Civil Legal Counsel Projects Program shall remain available for expenditure, without regard to fiscal year, until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Crime Victims Assistance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Domestic Violence Shelter and Transitional Housing Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Community-Based Violence Reduction Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Private Security Camera Incentive Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; and

(20) Office of the Deputy Mayor for Public Safety and Justice. - $1,596,000 from local funds.

PUBLIC EDUCATION SYSTEM

Public education system, including the development of national-defense education programs, $2,653,963,000 (including $2,283,908,000 from local funds (including $4,676,000 from dedicated taxes), $278,205,000 from federal grant funds, $21,113,000 from other funds, $736,000 from private funds, $40,000,000 from federal payment funds requested to be

appropriated by the Congress under the heading "Federal Payment for Resident Tuition Support" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018, and $30,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for School Improvement" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018), to be allocated as follows:

(1) District of Columbia Public Schools. - $889,684,000 (including $847,736,000 from local funds, $16,173,000 from federal grant funds, $10,132,000 from other funds, $644,000 from private funds, and $15,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for School Improvement" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018); provided, that not to exceed $10,600 of such local funds shall be available for the Chancellor for official reception and representation expenses; provided further, that, notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia Public Schools on July 1, 2019, an amount equal to 10 percent of the total amount of the local funds appropriations provided for the District of Columbia Public Schools in the proposed budget of the District of Columbia for Fiscal Year 2020 (as transmitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the District of Columbia Public Schools for Fiscal Year 2020; provided further, that all funds deposited, without regard to fiscal year, into the E-Rate Education Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the ROTC Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the DHHS Afterschool Program-Copayment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the At-Risk Supplemental Allocation Preservation Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the DCPS Sales and Sponsorship Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the District of Columbia Public Schools' Nonprofit School Food Service Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that the District of Columbia Public Schools ("DCPS") is authorized to spend appropriated funds to pay for DCPS-sponsored student travel, including the cost of transportation, lodging, meals, and admission fees for students and adult chaperones, to locations and venues outside DCPS facilities in accordance with rules promulgated by the Chancellor pursuant to section 105(c)(5) of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-174(c)(5)); provided further, that such travel be related to the students' curriculum or for the purpose of rewarding student curricular or extra-curricular achievement;

(2) Teachers' Retirement System. - $53,343,000 from local funds;

(3) Office of the State Superintendent of Education. - $487,257,000 (including $170,337,000 from local funds (including $4,676,000 from dedicated taxes), $260,919,000 from federal grant funds, $1,001,000 from other funds, $40,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Resident Tuition Support" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018, and $15,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for School Improvement" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018); provided, that of the amounts provided to the Office of the State Superintendent of Education, $1,000,000 from local funds shall remain available until June 30, 2019, for an audit of the student enrollment of each District of Columbia public school and of each District of Columbia public charter school; provided further, that all funds deposited, without regard to fiscal year, into the Charter School Credit Enhancement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Student Residency Verification Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Community Schools Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Special Education Enhancement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Child Development Facilities Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Access to Quality Child Care Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Common Lottery Board Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Healthy Schools Fund are authorized for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Healthy Tots Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Special Education Compliance Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the School Safety and Positive Climate Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(4) District of Columbia Public Charter Schools. - $889,379,000 from local funds; provided, that there shall be quarterly disbursement of funds to the District of Columbia public charter schools, with the first payment to occur within 15 days of the beginning of the fiscal year; provided further, that if the entirety of this allocation has not been provided as payments to any public charter schools currently in operation through the per pupil funding formula, the funds shall remain available for expenditure until September 30, 2019 for public education in

accordance with section 2403(b)(2) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1804.03(b)(2)); provided further, that of the amounts made available to District of Columbia public charter schools, $230,000 shall be made available to the Office of the Chief Financial Officer as authorized by section 2403(b)(6) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1804.03(b)(6)); provided further, that, notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the District of Columbia public charter schools on July 1, 2019, an amount equal to 35 percent, or for new charter school Local Education Agencies that opened for the first time after December 31, 2018, an amount equal to 45 percent, of the total amount of the local funds appropriations provided for payments to public charter schools in the proposed budget of the District of Columbia for Fiscal Year 2020 (as transmitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for such payments for Fiscal Year 2020; provided further, that the annual financial audit for the performance of an individual District of Columbia public charter school shall be funded by the charter school;

(5) University of the District of Columbia Subsidy Account. - $87,353,000 from local funds; provided, that this appropriation shall not be available to subsidize the education of nonresidents of the District at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 2019, a tuition-rate schedule that establishes the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area; provided further, that, notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the University of the District of Columbia on July 1, 2019, an amount equal to 10 percent of the total amount of the local funds appropriations provided for the University of the District of Columbia in the proposed budget of the District of Columbia for Fiscal Year 2020 (as transmitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the University of the District of Columbia for Fiscal Year 2020; provided further, that not to exceed $10,600 of the amount provided for the University of the District of Columbia Subsidy Account shall be available for the President of the University of the District of Columbia for official reception and representation expenses;

(6) District of Columbia Public Library. - $64,302,000 (including $61,816,000 from local funds, $1,113,000 from federal grant funds, $1,356,000 from other funds, and $17,000 from private funds); provided, that not to exceed $8,500 of such amount, from local funds, shall be available for the Public Librarian for official reception and representation expenses; provided further, that all funds deposited, without regard to fiscal year, into the Copies and Printing Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the SLD E-Rate Reimbursement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without

regard to fiscal year, into the Library Collections Account are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Books From Birth Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(7) District of Columbia Public Charter School Board. - $8,525,000 from other funds;

(8) Non-Public Tuition. - $63,500,000 from local funds;

(9) Special Education Transportation. - $90,039,000 from local funds; provided, that, notwithstanding the amounts otherwise provided under this heading or any other provision of law, there shall be appropriated to the Special Education Transportation agency under the direction of the Office of the State Superintendent of Education, on July 1, 2019, an amount equal to 10 percent of the total amount of the local funds appropriations provided for the Special Education Transportation agency in the proposed budget for the District of Columbia for Fiscal Year 2020 (as transmitted to Congress), and the amount of such payment shall be chargeable against the final amount provided for the Special Education Transportation agency for Fiscal Year 2020; provided further, that amounts appropriated under this paragraph may be used to offer financial incentives as necessary to reduce the number of routes serving 2 or fewer students;

(10) State Board of Education. - $1,850,000 from local funds;

(11) District of Columbia State Athletics Commission. - $1,289,000 (including $1,189,000 from local funds and $100,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the State Athletic Acts Program and Office Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; and

(12) Office of the Deputy Mayor for Education. - $17,441,000 (including $17,366,000 from local funds and $75,000 from private funds).

HUMAN SUPPORT SERVICES

Human support services, $4,962,714,000 (including $2,105,082,000 from local funds (including $83,687,000 from dedicated taxes), $404,708,000 from federal grant funds, $2,400,355,000 from Medicaid payments, $46,647,000 from other funds, $923,000 from private funds, and $5,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Testing and Treatment of HIV/AIDS" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018); to be allocated as follows:

(1) Department of Human Services. - $554,834,000 (including $383,496,000 from local funds, $152,925,000 from federal grant funds, $17,381,000 from Medicaid payments, and $1,032,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the SSI Payback Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(2) Child and Family Services Agency. - $222,484,000 (including $161,239,000 from local funds, $60,223,000 from federal grant funds, $1,000,000 from other funds, and

$23,000 from private funds);

(3) Department of Behavioral Health. - $269,688,000 (including $249,752,000 from local funds, $14,831,000 from federal grant funds, $2,024,000 from Medicaid payments, $2,352,000 from other funds, and $730,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Addiction Prevention and Recovery Administration-Choice in Drug Treatment (HCSN) Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(4) Department of Health. - $252,661,000 (including $84,168,000 from local funds, $135,965,000 from federal grant funds, $27,387,000 from other funds, $142,000 from private funds, and $5,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Testing and Treatment of HIV/AIDS" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018); provided, that all funds deposited, without regard to fiscal year, into the Health Professional Recruitment Fund (Medical Loan Repayment) are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Board of Medicine Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Pharmacy Protection Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the SHPDA Fees Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Civic Monetary Penalties Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the SHPDA Admission Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the ICF/MR Fees and Fines are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Human Services Facility Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Communicable and Chronic Disease Prevention and Treatment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Animal Education and Outreach Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(5) Department of Parks and Recreation. - $53,423,000 (including $50,624,000 from local funds and $2,799,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Department of Recreation Enterprise Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(6) Office on Aging. - $48,186,000 (including $38,391,000 from local funds, $7,043,000 from federal grant funds, and $2,752,000 from Medicaid payments);

(7) Unemployment Compensation Fund. - $6,680,000 from local funds;

(8) Employees' Compensation Fund. - $24,132,000 from local funds; provided, that all funds deposited, without regard to fiscal year, into the Workers' Compensation Rev-Settlement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Agency Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(9) Office of Human Rights. - $5,367,000 (including $5,000,000 from local funds, $339,000 from federal grant funds, and $27,000 from private funds);

(10) Office on Latino Affairs. - $3,404,000 from local funds;

(11) Office on Asian and Pacific Islander Affairs. - $872,000 from local funds;

(12) Office of Veterans' Affairs. - $622,000 (including $617,000 from local funds and $5,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Office of Veterans Affairs Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(13) Department of Youth Rehabilitation Services. - $94,968,000 from local funds; provided, that of the local funds appropriated for the Department of Youth Rehabilitation Services, $12,000 shall be used to fund the requirements of the Interstate Compact for Juveniles;

(14) Department of Disability Services. - $172,959,000 (including $121,992,000 from local funds, $31,062,000 from federal grant funds, $10,789,000 from Medicaid payments, and $9,116,000 from other funds); provided that all funds deposited, without regard to fiscal year, into the Randolph Shepherd Unassigned Facilities Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Cost of Care-Non-Medicaid Clients Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Contribution to Costs of Supports Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(15) Department of Health Care Finance. - $3,240,650,000 (including $867,963,000 from local funds (including $83,687,000 from dedicated taxes), $2,322,000 from federal grant funds, $2,367,409,000 from Medicaid payments, and $2,956,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Healthy DC Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Nursing Homes Quality of Care Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Stevie Sellows Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Medicaid Collections-3rd Party Liability Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Bill of Rights (Grievance

and Appeals) Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Hospital Provider Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Hospital Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Individual Insurance Market Affordability and Stability Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(16) Not-for-Profit Hospital Corporation Subsidy. - $10,000,000 from local funds; and

(17) Office of the Deputy Mayor for Health and Human Services. - $1,782,000 from local funds.

PUBLIC WORKS

Public works, including rental of one passenger-carrying vehicle for use by the Mayor and 3 passenger-carrying vehicles for use by the Council of the District of Columbia and leasing of passenger-carrying vehicles, $901,369,000 (including $681,938,000 from local funds (including $258,489,000 from dedicated taxes), $39,994,000 from federal grant funds, $179,346,000 from other funds, and $91,000 from private funds), to be allocated as follows:

(1) Department of Public Works. - $147,564,000 (including $139,781,000 from local funds and $7,783,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Solid Waste Disposal Fee Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Super Can Program Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(2) Department of Transportation. - $142,590,000 (including $107,583,000 from local funds, $11,474,000 from federal grant funds, and $23,533,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Bicycle Sharing Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Performance Parking Program Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Tree Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the DDOT Enterprise Fund-Non Tax Revenues Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Sustainable Transportation Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that, in addition, there are appropriated any amounts received, or to be received, without regard to fiscal year, from the Potomac Electric Power Company, or any of its related companies, successors, or assigns, for the purpose of paying or reimbursing the District Department of

Transportation for the costs of designing, constructing, acquiring, and installing facilities, infrastructure, and equipment for use and ownership by the Potomac Electric Power Company, or any of its related companies, successors, or assigns, related to or associated with the undergrounding of electric distribution lines in the District of Columbia, and any interest earned on those funds, which amounts and interest shall not revert to the unrestricted fund balance of the General Fund at the end of a fiscal year or at any other time, but shall be continually available without regard to fiscal year limitation until expended for the designated purposes; provided further, that all funds deposited, without regard to fiscal year, into the Vision Zero Pedestrian and Bicycle Safety Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Transportation Infrastructure Project Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(3) Department of Motor Vehicles. - $40,454,000 (including $30,373,000 from local funds and $10,080,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Motor Vehicle Inspection Station Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(4) Department of Energy and Environment. - $140,836,000 (including $28,951,000 from local funds, $28,520,000 from federal grant funds, $83,274,000 from other funds, and $91,000 from private funds); provided, that all funds deposited, without regard to fiscal year, into the Storm Water Permit Review Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, all funds deposited, without regard to fiscal year, into the Sustainable Energy Trust Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Brownfield Revitalization Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Anacostia River Clean Up and Protection Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Wetlands Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Energy Assistance Trust Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the LUST Trust Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Soil Erosion and Sediment Control Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the DC Municipal Aggregation Program Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Fishing License Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided

further, that all funds deposited, without regard to fiscal year, into the Renewable Energy Development Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that funds in the available fund balance of the Renewable Energy Development Fund may be obligated in Fiscal Year 2019, pursuant to grant awards, through September 30, 2022, and that such funds, so obligated are authorized for expenditure and shall remain available for expenditure until September 30, 2022; provided further, that all funds deposited, without regard to fiscal year, into the Special Energy Assessment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Air Quality Construction Permits Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the WASA Utility Discount Program Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Pesticide Product Registration Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Storm Water Fees Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Stormwater In-Lieu Fee Payment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Economy II Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Residential Aid Discount Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Residential Essential Services Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Benchmarking Enforcement Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Product Stewardship Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Rail Safety and Security Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Indoor Mold Assessment Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(5) Department of For-Hire Vehicles. - $17,600,000 (including $5,924,000 from local funds, and $11,675,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Taxicab Assessment Act Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Public Vehicles for Hire Consumer Service

Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(6) Washington Metropolitan Area Transit Commission. - $151,000 from local funds; and

(7) Washington Metropolitan Area Transit Authority. - $412,175,000 (including $369,175,000 from local funds (including $258,489,000 from dedicated taxes) and $43,000,000 from other funds); provided, that all funds deposited, without regard to fiscal year, into the Dedicated Taxes Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Parking Meter WMATA Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds budgeted without regard to fiscal year for the adult learner transit subsidy program established by section 2(i) of the School Transit Subsidy Act of 1978, effective March 6, 1979 (D.C. Law 2-152; D.C. Official Code § 35-233(i)), are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

FINANCING AND OTHER

Financing and Other, $1,213,761,000 (including $1,085,050,000 from local funds (including $188,807,000 from dedicated taxes), $17,525,000 from federal grant funds, $98,186,000 from other funds, and $13,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Emergency Planning and Security Costs in the District of Columbia" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018), to be allocated as follows:

(1) Repayment of Loans and Interest. - $758,887,000 (including $735,610,000 from local funds, $17,525,000 from federal grant funds, and $5,753,000 from other funds), for payment of principal, interest, and certain fees directly resulting from borrowing by the District of Columbia to fund District of Columbia capital projects as authorized by sections 462, 475, and 490 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code §§ 1- 204.62, 1-204.75, and 1-204.90);

(2) Debt Service - Issuance Costs. - $8,000,000 from local funds for the payment of debt service issuance costs;

(3) Repayment of Revenue Bonds. - $7,839,000 from local funds (including $7,839,000 from dedicated taxes) for the repayment of revenue bonds;

(4) Commercial Paper Program. - $10,000,000 from local funds;

(5) Settlements and Judgments.- $21,825,000 from local funds for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government; provided, that this amount may be increased by such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government and such sums may be paid from the applicable or available funds of the District of Columbia;

(6) John A. Wilson Building Fund. - $4,726,000 from local funds for expenses associated with the John A. Wilson building;

(7) Workforce Investments. - $51,767,000 from local funds for workforce investments; provided, that all funds deposited, without regard to fiscal year, into the Compensation Units 1 and 2 Compensation and Classification Reform Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019; provided further, that all funds deposited, without regard to fiscal year, into the Workforce Investments Account are authorized for expenditure and shall remain available for expenditure until September 30, 2019;

(8) Non-Departmental. - $6,272,000 (including $2,050,000 from local funds and $4,222,000 from other funds), to be transferred by the Mayor of the District of Columbia within the various appropriations headings in this act, to account for anticipated costs that cannot be allocated to specific agencies during the development of the proposed budget;

(9) Emergency Planning and Security Fund. - $13,000,000 from federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment for Emergency Planning and Security Costs in the District of Columbia" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018; provided, that, notwithstanding any other law, obligations and expenditures that are pending reimbursement under the heading "Federal Payment for Emergency Planning and Security Costs in the District of Columbia" may be charged to this appropriations heading;

(10) Master Equipment Lease/Purchase Program. - $11,844,000 from local funds;

(11) Pay-As-You-Go Capital Fund. - $86,467,000 (including $4,421,000 from local funds and $82,046,000 from other funds) to be transferred to the Capital Fund, in lieu of capital financing;

(12) District Retiree Health Contribution. - $46,000,000 from local funds for a District Retiree Health Contribution;

(13) Highway Transportation Fund. - Transfers. - $28,176,000 (including $25,426,000 from local funds (including $25,426,000 from dedicated taxes) and $2,750,000 from other funds); and

(14) Convention Center Transfer. - $158,959,000 (including $155,543,000 from local funds (including $155,543,000 from dedicated taxes) and $3,415,000 from other funds).

ENTERPRISE AND OTHER FUNDS

The amount of $1,941,645,000 from enterprise and other funds (including $221,994,000 from enterprise and other funds - dedicated taxes), shall be provided to enterprise funds as follows; provided, that, in the event that certain dedicated revenues exceed budgeted amounts, the General Fund budget authority may be increased as needed to transfer all such revenues, pursuant to local law, to the Capital Improvements Program, the Highway Trust Fund, the Washington Convention Center and Sports Authority, and the Washington Metropolitan Area Transit Authority.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

For operation of the District of Columbia Water and Sewer Authority, $582,781,000 from enterprise and other funds. For construction projects, $3,614,820,000, to be distributed as follows: $757,526,000 for Wastewater Treatment; $493,195,000 for the Sanitary Sewer System; $678,934,000 for the Water System; $88,002,000 for Non Process Facilities; $1,301,873,000 for the Combined Sewer Overflow Program; $108,284,000 for the Washington Aqueduct; $21,770,000 for the Stormwater Program; and $165,236,000 for the capital equipment program; in addition, $40,000,000 from Federal payment funds requested to be appropriated by the Congress under the heading "Federal Payment to the District of Columbia Water and Sewer Authority" in the Fiscal Year 2019 Federal Portion Budget Request Act of 2018; provided, that the requirements and restrictions that are applicable to General Fund capital improvement projects and set forth in this act under the Capital Outlay appropriation heading shall apply to projects approved under this appropriation account.

WASHINGTON AQUEDUCT

For operation of the Washington Aqueduct, $64,061,000 from enterprise and other funds.

OFFICE OF LOTTERY AND CHARITABLE GAMES

For the Lottery and Charitable Games Enterprise Fund, established by the District of Columbia Appropriations Act, 1982, approved December 4, 1981 (Pub. L. No. 97-91; 95 Stat. 1174), for the purpose of implementing the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; codified in scattered cites in the D.C. Official Code), $225,282,000 from enterprise and other funds; provided, that, after notification to the Mayor, amounts appropriated herein may be increased by an amount necessary for the Lottery and Charitable Games Enterprise Fund to make transfers to the General Fund and to cover prizes, agent commissions, and gaming-related fees directly associated with unanticipated excess lottery revenues not included in this appropriation.

DISTRICT OF COLUMBIA RETIREMENT BOARD

For the District of Columbia Retirement Board, established pursuant to section 121 of the District of Columbia Retirement Reform Act of 1979, approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-711), $43,579,000 from the earnings of the applicable retirement funds to pay legal, management, investment, and other fees and administrative expenses of the District of Columbia Retirement Board; provided, that the District of Columbia Retirement Board shall provide to the Congress and the Mayor and to the Council of the District of Columbia a quarterly report of the allocations of charges by fund and of expenditures of all funds; provided further, that the District of Columbia Retirement Board shall provide to the Mayor, for transmittal to the Council of the District of Columbia, an itemized accounting of the planned use of appropriated funds in time for each annual budget submission and the actual use of such funds in time for each annual audited financial report.

BALLPARK REVENUE FUND

For the Ballpark Revenue Fund, $58,773,000 from enterprise and other funds (including $46,829,000 from enterprise and other funds - dedicated taxes).

WASHINGTON CONVENTION AND SPORTS AUTHORITY

For the Washington Convention Center Enterprise Fund, $200,612,000 from enterprise and other funds.

HOUSING FINANCE AGENCY

For operation of the District of Columbia Housing Finance Agency, $13,460,000 from enterprise and other funds; provided that all funds budgeted without regard to fiscal year for the Reverse Mortgage Foreclosure Prevention Program are authorized for expenditure and shall remain available for expenditure until September 30, 2020.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

For the University of the District of Columbia, $171,309,000 from enterprise and other funds; provided, that these funds shall not revert to the General Fund at the end of a fiscal year or at any other time, but shall be continually available for expenditure until September 30, 2019, without regard to fiscal year limitation; provided further, that all funds deposited, without regard to fiscal year, into the Higher Education Incentive Program Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

UNEMPLOYMENT INSURANCE TRUST FUND

For the Unemployment Insurance Trust Fund, $185,382,000 from enterprise and other funds.

HOUSING PRODUCTION TRUST FUND

For the Housing Production Trust Fund, $100,000,000 from enterprise and other funds (including $60,665,000 from enterprise and other funds - dedicated taxes); provided, that all funds deposited, without regard to fiscal year, into the Housing Production Trust Fund are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

TAX INCREMENT FINANCING (TIF) PROGRAM

For Tax Increment Financing, $60,377,000 from enterprise and other funds (including $60,377,000 from enterprise and other funds - dedicated taxes).

REPAYMENT OF PILOT FINANCING

For Repayment of Payment in Lieu of Taxes Financing, $54,123,000 from enterprise and other funds (including $54,123,000 from enterprise and other funds - dedicated taxes).

NOT-FOR-PROFIT HOSPITAL CORPORATION

For the Not-For-Profit Hospital Corporation, $144,000,000 from enterprise and other funds.

HEALTH BENEFIT EXCHANGE AUTHORITY

For the District of Columbia Health Benefit Exchange Authority, $31,144,000 from enterprise and other funds.

OTHER POST-EMPLOYMENT BENEFITS TRUST ADMINISTRATION

For the Other Post-Employment Benefits Trust Administration, $6,763,000 from enterprise funds.

CASH FLOW RESERVE ACCOUNT

All funds deposited, without regard to fiscal year, into the Cash Flow Reserve Account, established pursuant to D.C. Official Code § 47-392.02(j-2), are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

FISCAL STABILIZATION RESERVE ACCOUNT

All funds deposited, without regard to fiscal year, into the Fiscal Stabilization Reserve Account, established pursuant to D.C. Official Code § 47-392.02(j-1), are authorized for expenditure and shall remain available for expenditure until September 30, 2019.

CAPITAL OUTLAY

For capital construction projects, an increase of $3,433,401,000 of which $2,951,944,000 shall be from local funds, $650,000 shall be from private grant funds, $66,590,000 shall be from local transportation funds, $54,822,000 shall be from the District of Columbia Highway Trust Fund, and $359,396,000 shall be from federal grant funds, and a rescission of $635,502,000 of which $463,879,000 shall be from local funds, $34,187,000 shall be from local transportation funds, $14,314,000 shall be from the District of Columbia Highway Trust Fund, and $123,122,000 shall be from federal grant funds appropriated under this heading in prior fiscal years, for a net amount of $2,797,899,000, to remain available until expended; provided, that all funds provided by this act shall be available only for the specific projects and purposes intended; provided further, that amounts appropriated under this act may be increased by the amount transferred from funds appropriated in this act as Pay-As-You-Go Capital funds.

Sec. 3. Local portion of the budget.

The budget adopted pursuant to this act constitutes the local portion of the annual budget for the District of Columbia government under section 446(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46(a)).

ENROLLED ORIGINAL

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.

As provided in section 446(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1-204.46(a)), this act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in 602(c)(l) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(l)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
July 10, 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

B22-886 Mypheduh Films DBA Sankofa Video and Books Real Property Tax Exemption Act of 2018

Intro. 7-3-18 by Councilmember Nadeau and referred to the Committee on Finance and Revenue

B22-887 Hyacinth's Place Equitable Real Property Tax Relief Act of 2018

Intro. 7-5-18 by Councilmember McDuffie and referred to the Committee on Finance and Revenue

B22-892 Prescription Drug Monitoring Program Amendment Act of 2018

Intro. 7-6-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PROPOSED RESOLUTIONS

PR22-953 5308 E Street, SE Disposition Approval Resolution of 2018

Intro. 6-29-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

PR22-954	157 Forrester St. SW Disposition Approval Resolution of 2018 Intro. 6-29-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-955	2413 Shannon Place, SE Disposition Approval Resolution of 2018 Intro. 7-2-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-956	36 Channing Street, NW Disposition Approval Resolution of 2018 Intro. 7-2-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-957	5328 James Place NE Disposition Approval Resolution of 2018 Intro. 7-2-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization
PR22-958	Council Period 22 Recess Rules Amendment Resolution of 2018 Intro. 7-9-18 by Chairman Mendelson and Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B22-894, Office of Public-Private Partnerships Delegation of Authority Temporary Amendment Act of 2018, **B22-896**, Eviction Procedure Reform Temporary Amendment Act of 2018, and **B22-898**, D.C. General Resident Relocation Temporary Act of 2018 were adopted on first reading on July 10, 2018. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on September 18, 2018.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 13, 2018
Protest Petition Deadline:	August 27, 2018
Roll Call Hearing Date:	September 10, 2018
License No.:	ABRA-106575
Licensee:	To the Heavens, LLC
Trade Name:	Grand Duchess
License Class:	Retailer's Class "C" Tavern
Address:	2337 18th Street, N.W.
Contact:	Michael Fonseca, Esq.: (202) 625-7700

WARD 1 ANC 1C SMD 1C07

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 September 10, 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 the inside of the premises to include a new bar, kitchen, and second bathroom, resulting in an increase in seating capacity from 15 to 38. Total Occupancy Load will increase from 15 to 48.

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

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

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 6pm – 2am
Saturday and Saturday 6pm – 3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Thursday 11am – 10pm
Friday and Saturday 11am – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 13, 2018
Protest Petition Deadline:	August 27, 2018
Roll Call Hearing Date:	September 10, 2018
Protest Hearing Date:	November 7, 2018

License No.:	ABRA-110402
Licensee:	Penny Whisky Bar, LLC
Trade Name:	Penny Whisky Bar, LLC
License Class:	Retailer's Class "C" Restaurant
Address:	618 H Street, N.W., Suite 200
Contact:	Jeffery Deisem: (941) 323-8777

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on September 10, 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 **November 7, 2018 at 4:30 p.m.**

NATURE OF OPERATION

A new restaurant serving American bar classics. Seating capacity of 50 inside. Total Occupancy Load of 60. The license will include an Entertainment Endorsement.

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

Sunday 10am – 1am, Monday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 13, 2018
Protest Petition Deadline:	August 27, 2018
Roll Call Hearing Date:	September 10, 2018
License No.:	ABRA-104119
Licensee:	Rito Loco, LLC
Trade Name:	Rito Loco-El Techo
License Class:	Retailer's Class "C" Restaurant
Address:	606 Florida Avenue, N.W.
Contact:	Louie Hankins: (703) 732-0000

WARD 6 ANC 6E SMD 6E02

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 September 10, 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 Total Occupancy Load from 49 to 79, to include the 1st floor and roof deck.

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION (INSIDE PREMISES)

Sunday – Thursday 9am – 2am
Friday – Saturday 9am – 3am

CURRENT HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)

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

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION (ROOFTOP SUMMER GARDEN)

Sunday – Thursday 10am – 12am
Friday – Saturday 10am – 1:30am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 13, 2018
Protest Petition Deadline:	August 27, 2018
Roll Call Hearing Date:	September 10, 2018
Protest Hearing Date:	November 7, 2018
License No.:	ABRA-110414
Licensee:	Tap Rebels, LLC
Trade Name:	Tap Rebels
License Class:	Retailer's Class "IB" (Internet Only)
Address:	1701 Florida Avenue, N.W.
Contact:	Alex Watley: (571) 337-3307

WARD 1 ANC 1C SMD 1C07

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 September 10, 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 **November 7, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class IB retailer selling beer and wine online only for off-premises consumption. This location will not be open to the public.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 13, 2018
Protest Petition Deadline:	August 27, 2018
Roll Call Hearing Date:	September 10, 2018
Protest Hearing Date:	November 7, 2018
License No.:	ABRA-110576
Licensee:	The new ACD, LLC
Trade Name:	The new ACD
License Class:	Retailer's Class "C" Restaurant
Address:	5532 Connecticut Avenue, N.W.
Contact:	Risa Hirao, Esq.: (202) 544-2200

WARD 3 ANC 3G SMD 3G06

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 September 10, 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 **November 7, 2018 at 1:30 p.m.**

NATURE OF OPERATION

A new restaurant serving American cuisine. Seating Capacity of 111 inside. Summer Garden with 54 seats. Total Occupancy Load of 165.

HOURS OF OPERATION INSIDE PREMISES AND FOR THE OUTDOOR SUMMER GARDEN

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

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

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

DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
NOTICE OF PUBLIC HEARING
DISTRICT OF COLUMBIA'S
FISCAL YEAR 2019 ANNUAL ACTION PLAN

Polly Donaldson, Director, DC Department of Housing and Community Development (DHCD or the Department) will conduct a public hearing on Wednesday, July 25, 2018, to discuss the District's Draft Fiscal Year (FY) 2019 Action Plan and in its use of funds received from the U.S. Department of Housing and Urban Development (HUD).

The District of Columbia will receive over $36,000,000 from HUD in Fiscal Year 2019 through four programs: the federal Housing Trust Fund (HTF); the Community Development Block Grant (CDBG) Program; the HOME Investment Partnerships Program (HOME); the Emergency Shelter Grant (ESG) Program; and the Housing for Persons with AIDS (HOPWA) Program. DHCD administers the CDBG and HOME funds directly; the Department entered into an agreement with the DC Department of Human Services (DHS) for the Prevention of Homelessness to administer the ESG grant; and transferred the HOPWA grant to the DC Department of Health (DOH).

Residents and stakeholders are strongly encouraged to come out and participate in the development of policies and programs in the following areas: **1**) affordable housing; **2**) special needs housing; **3**) homelessness; **4**) homeownership; and, **5**) community development and public service activities. The Department is also interested in receiving community feedback on innovative strategies to enhance community participation during this planning process. Public comment period for the plan is from July 12 to August 13, 2018.

SCHEDULED PUBLIC HEARING:

Wednesday July 25, 2018 ~ 6:30 pm
Lamond-Riggs Neighborhood Public Library,
5401 South Dakota Ave NE, Washington, DC 20011 (Fort Totten Metro (Red/Yellow/Green Lines)

District of Columbia residents who would like to present oral testimony are encouraged to register in advance either by e-mail at DHCD.EVENTS@dc.gov or by calling Tilla Hall at (202) 442-7239. Please provide your name, address, telephone number, and organization affiliation, if any.

Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter will be provided upon request by calling Tilla Hall at (202) 442-7239 five days prior to the hearing date.

Residents who require language interpretation should specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Deadline for requesting services of an interpreter is five days prior to the hearing date. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted for the record at the hearing, or until close of business on Tuesday, July24, 2018. Mail written statements to: Polly Donaldson, Director, DHCD, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, September 13, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 17-03 (Office of Planning (Text Amendment to Subtitle A §§ 301.5(a) & 301.7 (re: Vesting of Building Permits))

THIS CASE IS OF INTEREST TO ALL ANCs

On January 23, 2017, the Office of Zoning (OZ) received a report that served as a petition from the District of Columbia Office of Planning (OP) proposing text amendments to 11-A DCMR § 301.5(a). On May 4, 2018, OZ received an amended report from OP proposing revised text for § 301.5(a) and an additional text amendment to 11-A DCMR § 301.7

Subtitle A § 301.5 governs how building permit applications are processed when a map amendment to rezone the site is pending before the Zoning Commission. The crucial date is the date upon which the Commission votes to set down the case for a hearing (Setdown Date). Section 301.5(a) provides that building permit applications filed on or before the Setdown Date that are sufficiently complete to permit processing without substantial change or deviation are processed in accordance the site's existing zone classification. Section 301.5(b) provides that building permit applications filed after the Setdown Date are processed based upon the zone classification adopted, or if the case is still pending, in accordance with whichever is the most restrictive, either the zone classification being considered for the site or, the site's current zone classification. Section 301.5(b) is known as the "Setdown Rule".

OP proposed to amend § 301.5(a) to require that a building permit application must be "officially accepted as being complete" on or before the Setdown Date to be protected against the Setdown Rule. In addition, a protected application would become subject to the Setdown Rule if it is amended to increase the intensity of a proposed use, change the use, or deviate from the submitted plans, except for certain identified deviations. Finally, the amendments clarify that a building permit application protected against the Setdown Rule, for which a building permit is not issued on or before the date the new zoning classification becomes effective, must be processed in accordance the Zoning Regulations applicable to the property's new zone classification.

Subtitle A § 301.7 provides that building permits filed pursuant to Board of Zoning Adjustment (BZA) orders may be processed based upon the Zoning Regulations in place as of the date of the BZA's vote to approve the application. The proposed amendments would extend that protection to building permits authorized by Zoning Commission orders granting contested case

applications under the same circumstances. The amendment clarifies that in all instances this protection is limited to the extent the proposed building or structure is depicted on any plans approved.

The OP set down report served as a pre-hearing filing.

On May 14, 2018, the Commission voted to set down the revised petition for a public hearing.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined text** and deleted text is shown ~~in strikethrough through~~).

Section 301, BUILDING PERMITS, of Subtitle A, AUTHORITY AND APPLICABILITY, is amended as follows:

Paragraph (a) of § 301.5 is amended to read as follows:

301.5 If an application for a type of building permit enumerated in Subtitle A § 301.6 is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone classification of the site of the proposed construction, the processing of the application and the completion of work pursuant to the permit shall be governed as follows:

(a) If one (1) of the building permit applications listed in Subtitle A § 301.6 is ~~filed~~ **officially accepted as being complete by the Department of Consumer and Regulatory Affairs** on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by **the property's existing zone classification** pursuant Subtitle A § 301.4. **However, if no building permit has been issued prior to the date that the zoning map amendment becomes effective, the building permit application shall be processed in accordance with the adopted zoning map amendment**. The **building permit** application shall**:**

(1) **Be** ~~be~~ accompanied by any fee that is required, and by the plans and other information required by Subtitle A § 301.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information that are required to permit complete review of the entire application under any applicable District of Columbia regulations; **and**

(2) **Be sufficiently complete to permit processing without changing the proposed use or increasing the intensity of the use, and without deviations from the submitted plans, except for plan deviations that:**

(A) **Address the requirements of the Construction Codes (12 DCMR), subject to Subtitle A § 304.2; or**

(B) **Increase the extent to which the proposed structure complies with matter-of-right standards under the existing zone designation, such as by:**

(i) **Reducing lot occupancy, gross floor area, building height, penthouse height, the number of stories or number of units; or**

(ii) **Increasing the size of yards or other setbacks from property lines.**

Subsection 301.7 is amended to read as follows:

301.7 All applications for building permits authorized by orders of the Board of Zoning Adjustment**, or authorized by orders of the Zoning Commission in a contested case,** may be processed in accordance with the Zoning Regulations in effect on the date the vote was taken to approve the **Board or Commission** application**, to the extent the proposed building or structure is depicted on any plans approved by the Board or Commission**~~; provided, that all applications for building permits shall be accompanied by the plans and other information required by Subtitle A § 301.2, which shall be sufficiently complete to permit processing without substantial change or deviation~~.

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

This public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 5.

How to participate as a witness.

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

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.	Organizations	5 minutes each
2.	Individuals	3 minutes each

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

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

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

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

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

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

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

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

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.

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

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

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-09 (Office of Planning – Text Amendments to Subtitle B § 307.6 & Subtitle U § 502.1)

THIS CASE IS OF INTEREST TO ALL ANCs

On June 15, 2018, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning ("OP") proposing two text amendments to 11 DCMR. One text amendment is proposed to Subtitle B § 307.6 and would establish the building height measuring point "as the level of the curb, opposite the middle of the front of the building" in those zones in which the height of buildings is permitted to be ninety feet (90 ft.) or greater; the amendment would be consistent with the way height was measured under the 1958 regulations and the recent changes proposed in case 17-18. A second text amendment is proposed to Subtitle U § 502 and would add "Art gallery and museum" to the list of uses permitted as a matter of right in MU Use Group A.

On June 25, 2018, the Commission voted to set down the petition for a public hearing. The OP set down report served as a pre-hearing filing.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~strikethrough~~ text:

Section 307, RULES OF MEASUREMENT FOR BUILDING HEIGHT: NON-RESIDENTIAL ZONES, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Paragraph 307.6 is amended to read as follows:

307.6 Except as provided in Subtitle B § 307.4, in those zones in which the height of **a** building is permitted to be ninety feet (90 ft.) or greater, the ~~height of buildings shall be measured from the finished grade level at~~ **BHMP shall be established at the level of the curb, opposite** the middle of the front of the building **and the building height shall be measured from the BHMP** to the highest point of the roof excluding parapets not exceeding four feet (4 ft.) in height.

Section 502, MATTER-OF-RIGHT USES (MU-USE GROUP A), of Subtitle U, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Paragraph 502.1 is amended to read as follows:

502.1 In addition to the uses permitted by Subtitle U § 501, the following uses shall be permitted in MU-Use Group A as a matter of right subject to any applicable conditions:
(a)…

(k) Trade or any other school; ~~and~~

(l) Utilities limited to only telephone exchange, electric substation using non-rotating equipment, and natural gas regulator station**; and**

(m) Art gallery and museum.

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

This public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 5.

How to participate as a witness.

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

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.	Organizations	5 minutes each
2.	Individuals	3 minutes each

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

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

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

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

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

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

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

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

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.

ለመተፍ ዕርዳታ ያስፈልማዎታል? የ ተለየ እርዳታ ካስፈለገ ዎት ወይም የ ቋንቋ እርዳታ አገ ልግለሎች (ትርጉም ወይም ማስተርጎማ) ካስፈለገ ዎት እባክዎን ከስብሰባው አማስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገ ናኙ። እነ ኝህ አገ ልግለሎች የ ሚሰጡ በነ ጻ ነ ው።

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to Section 101(b) of the Omnibus Regulatory Reform Amendment Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 47-2851.04(c)(1) (2015 Repl.)), Section 10(b) of An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 652; D.C. Official Code § 22-4510(b) (2012 Repl.)), and Section 3 of the Streamlining Regulation Act of 2003, effective October 28, 2003 (D.C. Law 15-38; 50 DCR 6913 (August 22, 2003)), hereby adopts the following amendment to Chapter 5 (Basic Business License Schedule of Fees) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends Chapter 5 to add a fee schedule in a new Section 517.

Action is needed to ensure that the endorsement for stun gun sales required by the "Stun Gun Regulation Emergency Amendment Act of 2016" (D.C. Bill 21-986), and substantially similar emergency, temporary, and permanent legislation, exists for those wishing to sell stun guns in the District of Columbia.

A Notice of Third Emergency Rulemaking was published on June 22, 2018 at 65 DCR 6879. A Notice of Second Emergency Rulemaking was published on January 19, 2018 at 65 DCR 459. A Notice of Emergency and Proposed Rulemaking was published at 64 DCR 7274 on July 28, 2017. No comments were received.

Pursuant to Section 10(a) of the Act, a proposed resolution approving the proposed amendments was submitted to the Council of the District of Columbia, on January 5, 2018 for a forty-five (45) day period of review. The 45-day period of review having expired on February 23, 2018 with no Council action to approve or disapprove the proposed resolution, the proposed amendments are deemed approved.

No substantive changes were made to the final rulemaking. These rules were adopted as final on March 14, 2018 and will become effective upon publication in the *D.C. Register*.

Chapter 5, BASIC BUSINESS LICENSE SCHEDULE OF FEES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by adding the following Section 517:

517 STUN GUN SALES ENDORSEMENT

517.1 The Director shall charge fees for business license categories with a Stun Gun Sales Endorsement as follows:

(a) Stun gun sales: $200.00

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education ("Superintendent"), pursuant to the authority set forth in Sections 3(b)(8), 3(b)(9), 3(b)(10), 3(b)(11), and 3(b)(15) of the State Education Office Establishment Act of 2000, effective October 21, 2000, (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(8), (b)(9), (b)(10), (b)(11) and (b)(15) (2012 Repl. & 2017 Supp.)); Section 102(b) of the Enhanced Special Education Services Amendment Act of 2014, effective March 10, 2015 (D.C. Law 20-195; D.C. Official Code § 38-2614(a)(3) & (b) (2012 Repl. & 2017 Supp.)) ("Enhanced Special Education Services Act"); Sections 102(a) and 115 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.15 (2012 Repl. & 2017 Supp.)); Mayor's Order 2007-149, dated June 28, 2007; Section 504 of the Early Intervention Program Establishment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 7-863.04 (2012 Repl. & 2017 Supp.)); Mayor's Order 2009-167, dated September 28, 2009; Part B and Part C of the Individuals with Disabilities Education Act, approved December 3, 2004 (118 Stat. 2738; 20 USC §§ 1400 *et seq.*) ("IDEA") and regulations promulgated thereunder at 34 CFR parts 300 and 303; hereby: (i) amends Section 3108 (Child Eligibility for Services) in Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) in the District of Columbia Municipal Regulations ("DCMR"); and (ii) amends Sections 3001, 3002, 3004, 3005, 3017, 3024, and 3025 of Chapter 30 (Special Education) of Subtitle E (Original Title 5) of Title 5 DCMR (Education) .

This final rulemaking amends the definition of developmental delay in Section 3108 (Child Eligibility for Services) in Chapter 31 (Early Intervention Program for Infants and Toddlers with Disabilities) of Title 5-A to comply with Section 102(b) of Title I of the Enhanced Special Education Services Act (D.C. Official Code § 38-2614(a)(3) & (b)), which requires OSSE to expand eligibility for early intervention services to those experiencing a twenty-five percent (25%) delay in one developmental area.

Further, this final rulemaking amends sections in Chapter 30 (Special Education) of Title 5-E to address critical gaps and clarify existing responsibilities related to: child find obligations (or the obligation to identify, locate, and evaluate all children suspected of having a disability), referrals for initial evaluation, local education agency (LEA) responsibility to conduct reasonable efforts to obtain parent consent prior to an initial evaluation, considerations for reviewing data during the initial evaluation of a child under the age of six (6), LEA responsibilities related to extended school year services, and requirements related to the provision and documentation of prior written notice.

A Notice of Proposed Rulemaking was published in the *D.C. Register* for a forty-five (45) day public comment period on April 6, 2018, at 65 DCR 3653. The comment period officially closed on May 21, 2018, with the State Superintendent having received fifteen (15) comments from various local education agencies, community advocates, and stakeholders that focused on the proposed amendments to 5-E DCMR Chapter 30.

OSSE did not receive any substantive comments for Section 3108 (Child Eligibility for Services) in 5-A DCMR Chapter 31. OSSE made two minor technical amendments to this section. First, in § 3108.3, and throughout the rulemaking, OSSE replaced all gender specific pronouns, such as "she or he," "her or him," or "hers or his," with gender neutral pronoun such as "they," "their," or "theirs," or replaced by gender neutral language such as "the child" to demonstrate inclusion of students with nonbinary gender identities. Second, OSSE amended the opening language in § 3108.4 to ensure clarity around when the provision became effective in accordance with the Enhanced Special Education Services Act.

Based on the comments received regarding the provisions set forth in 5-E DCMR Chapter 30, OSSE made the following changes to correct grammar, clarify initial intent, clarify proposed procedures, or lessen the burdens established by the proposed rules. The changes do not substantially alter the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the Notice of Proposed Rulemaking.

Subsection 3002.1 describes child find obligations (or the obligation to identify, locate, and evaluate all children suspected of having a disability). OSSE received a number of comments that requested amendment of § 3002.1(c). OSSE did not made any changes to this subsection because the provisions are consistent with the established definition of enrollment in 5-A DCMR § 2199. Additionally, OSSE amended § 3002.1(d) in response to a comment requesting the Superintendent clarify the provision to explain that a child remains eligible until the LEA is obligated to reassess eligibility, and clarify the general entitlement to a free appropriate public education for consistency with 34 CFR § 300.101.

Subsection 3002.6 continues to describe child find obligations. One commenter noted that the way the subsection was written lead to an inconsistency with the federal regulations governing IDEA, 34 CFR § 300.111(c)(1). To ensure that there is no inconsistency, OSSE struck the phrase "may be" and inserted the phrase "suspected of being a child with a disability even though they are" in its place. This was a drafting error and this amendment was necessary to ensure consistency with the federal requirements. Further, OSSE amended § 3002.8 to add the phrase "and the methods available to request those services and programs" to the end of the provision for clarity and consistency with federal requirements.

Additionally, OSSE received comments requesting amendments to § 3002.9(a), which describes the Part C to Part B transition. OSSE has elected not to incorporate the commenters' suggested changes because this provision is consistent with 34 CFR § 300.124, which ensures the smooth and effective transition of children transitioning from Part C early intervention services to Part B special education services, as clarified in *DL v. D.C.*, 194 F. Supp. 3d 30, 100 (D.D.C. 2016), aff'd, 860 F.3d 713 (D.C. Cir. 2017). The provisions in the final regulation do not change the requirements or expectations of LEA, but rather restates existing requirements under IDEA and 5-A DCMR § 2199.

OSSE also received comments regarding an LEA's responsibilities related to extended school year (ESY) services in § 3002.9(b). Although OSSE did not receive comments that suggested ESY responsibilities did not belong to the prior LEA, a number of comments sought clarity on

when the new LEA's responsibility began. Therefore, OSSE amended the language in § 3002.9(b) to clearly state when a prior LEA's obligation to provide FAPE, regardless of ESY end dates, actually ends and the when a new LEA's obligation to provide FAPE commences. While OSSE acknowledges there are technological challenges associated with these processes, it is committed to providing technical assistance and facilitation to ensure LEAs are supported in meeting their obligations.

Section 3004 (Identification and Referral for Initial Evaluation) addresses critical gaps and clarifies existing responsibilities related to the referrals for initial evaluation. OSSE made two minor technical amendments in this section. First, in § 3004.1, OSSE inserted "(d) An employee of a public agency, as defined by 34 CFR § 300.33, who has knowledge of the child." This amendment did not change the intent of § 3004.1 but rather corrected a drafting error as this phrase was omitted by mistake. The federal law states that a public agency may refer a child for evaluation, consistent with 34 CFR § 300.301(b). Second, § 3004.4 is amended by striking the word "unreasonably" to ensure consistency with federal requirements and guidance. The inclusion of the word "unreasonably" was a drafting error.

In § 3004.2, a number of commenters requested that OSSE add various entities to the list of referral sources. OSSE considered these comments; however, OSSE has elected not to incorporate the commenters' suggested changes because the groups identified by commenters in (b) and (d) are inclusive of many suggested entities. *DL v. D.C.*, 194 F. Supp. 3d at 101, specifically provides a list of required referral sources, although LEAs may consider information provided by any source. Further, OSSE moved § 3004.3 to § 3002.11 to resolve a drafting error.

Section 3005 (Evaluation and Reevaluation) describes the LEA responsibility to conduct reasonable efforts to obtain parent consent prior to an initial evaluation. Commenters requested that OSSE amend § 3005.1(a) to align with the "Enhanced Special Education Services Amendment Act of 2014", as amended by the Fiscal Year 2019 Budget Support Act of 2018. To ensure that no such misunderstanding occurs as to the effective date of this change, OSSE amended the opening language in § 3005.2(a). Additionally, OSSE amended § 3005.2(c) by striking the phrase "and be completed no later than five (5) days prior to the deadline for the initial evaluation" to ensure consistency with existing law. This amended language is consistent with the original intent in the proposed rulemaking but clarifies the requirement.

The amendments in this final rulemaking to 5-E DCMR Chapter 30 also considered comments received on these topic areas in OSSE's June 26, 2017 Advanced Notice of Proposed Rulemaking ("ANPR"), which was published on OSSE's website to provide stakeholders an opportunity to provide advanced comment on proposed amendments to a new Chapter 30. While OSSE has decided to move forward with this shorter final rulemaking now to address and clarify the critical gaps discussed above, OSSE does plan to issue another Notice of Proposed Rulemaking that provides a comprehensive update to the regulatory framework governing the education of children with disabilities that also considers the comments received from the ANPR and the proposed rulemaking in Fall 2018. OSSE believes that this timeline will allow for greater time to provide training and align data systems to ensure stakeholders are appropriately positioned to implement the comprehensive overhaul of the foundational regulations governing the provision of special education and related services to children with disabilities in the District

of Columbia. Furthermore, OSSE believes this timeline will allow for deeper engagement, and plans to also include a public hearing session for only parents and families to provide comments on the future rulemaking. OSSE will also conduct additional public engagement to ensure clarity with the LEA community regarding the intents and impacts of these regulations.

The final rules are being adopted in substantially the same form as proposed with clarifications and deletions taking into account suggestions received in public comments. These changes do not substantially alter or change the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the notice of proposed rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Chapter 31, EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:

Amend Section 3108, CHILD ELIGIBILITY FOR SERVICES, to add language in § 3108.3 and add a new § 3108.4 to read as follows:

3108.3 Until § 3108.4 takes effect, pursuant to Part C IDEA regulations at 34 CFR §§ 303.21 and 303.111, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and their third (3rd) birthday and any of the following apply:

(a) The child demonstrates a delay of fifty (50%) percent, using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:

(1) Physical development, including vision or hearing;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development.

(b) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

(c) In addition to the above criteria, effective July 1, 2013, the child demonstrates a delay of twenty-five percent (25%), using appropriate diagnostic instruments and procedures, in two (2) or more of the following developmental areas:

(1) Physical development, including vision or hearing;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development;

(5) Adaptive development

3108.4 Beginning July 1, 2018, a child is eligible for District of Columbia Part C early intervention services if the child is between the age of birth and their third (3rd) birthday and any of the following apply:

(a) The child demonstrates a delay of twenty-five percent (25%), using appropriate diagnostic instruments and procedures, in one (1) of the following developmental areas:

(1) Physical development, including vision or hearing;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development; or

(b) The child is diagnosed as having a physical or mental condition that has a high probability of resulting in developmental delay, including conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

Chapter 30, SPECIAL EDUCATION, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Amend Section 3001, DEFINITIONS, in by adding the following definitions to Subsection 3001.1:

3001.1 . . .

Child find – A set of policies, procedures, and public awareness activities designed to locate, identify, and evaluate children who may require special education and related services.

. . .

Enrollment –A process through which a student obtains admission to a public or public charter school. .

. . .

Section 3002, LEA RESPONSIBILITY, is amended as follows:

Subsection 3002.1 is amended to read as follows:

3002.1 Provision of FAPE

(a) The LEA shall make a free appropriate public education (FAPE) available to each child with a disability, ages three to twenty-two, who resides in, or is a ward of, the District including children who are suspended or expelled and highly mobile children, such as migrant or homeless children, even if they are advancing from grade to grade.

(b) For DCPS, the responsibility to make FAPE available extends to all children with disabilities between the ages of three (3) and twenty-two (22) years old, who are residents of the District of Columbia but are not enrolled in a public charter school LEA, and children with disabilities attending private and religious schools in the District of Columbia, pursuant to the requirements of IDEA.

(c) Unless otherwise provided in § 3002.9, a public charter school LEA's obligation to determine eligibility for special education services or to provide special education services on an existing IEP is triggered upon completion of the registration of the student in the Student Information System (SIS) by the school upon receipt of required enrollment forms and letter of enrollment agreement, in accordance with subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199.

(d) A child with a disability shall remain eligible for special education and related services through the end of the semester the child turns twenty-two (22).

(e) If a child with a disability turns twenty-two (22) during the summer, the child shall be ineligible for further special education and related services under this chapter.

(f) The services provided to the child must address all of the child's identified special education and related services needs and must be based on the child's unique needs and not on the child's disability.

(g) When a child with a disability can receive FAPE in the child's local school without transportation, the LEA is not required to provide transportation to an alternative placement unilaterally selected by the child, parent or guardian.

(h) For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to §3002.9.

. . .

Subsection 3002.3 is repealed:

3002.3 . . .

(a) [REPEALED]

. . .

New Subsections 3002.6 through 3002.10 are added to read as follows:

3002.6 Each LEA and public agency shall implement child find policies and procedures to ensure that:

(a) All children with disabilities between the ages of three (3) and twenty-two (22) years of age enrolled in the LEA, including children with disabilities who are homeless, children who are in the custody of the District of Columbia Child and Family Services Agency or committed to the District of Columbia Youth Rehabilitation Services Agency, children who are suspected of being a child with a disability even though they are making progress from grade to grade, and highly mobile children, who are in need of special education and related services, are identified, located, and evaluated; and

(b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

3002.7 The District of Columbia Public Schools shall also implement child find policies and procedures to ensure that:

(a) All children with disabilities between three (3) and twenty-two (22) years who are residents of the District of Columbia but are not enrolled in a LEA, and who are in need of special education and related services, are identified, located, and evaluated; and

(b) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

(c) For children under the age of six (6) years old, DCPS shall:

(1) Maintain, and update at least annually, a list of primary referral sources, including physicians, hospitals, and other health providers; day care centers, child care centers, and early childhood programs; District departments and agencies; community and civic organizations; and advocacy organizations. In addition:

(A) Contact primary referral sources at least once a month until a referral relationship is established and then every three (3) months thereafter;

(B) Develop a system to track frequency and type (in person, email, phone, etc.) of contacts with the primary referral sources described in paragraph (c)(1) to ensure that outreach occurs on a regular basis; and

(C) Develop, publish, and distribute printed materials for primary referral sources to inform them of the preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to make a referral;

(2) Develop and publish printed materials for parents to provide information regarding preschool special education and related services available from DCPS, the benefits and cost-free nature of these services, and how to obtain the services. These materials shall be:

(A) Written at an appropriate reading level and translated into multiple languages as required by local law; and

(B) Distributed to all primary referral sources described in paragraph (c)(1), all DCPS and public charter schools, District of Columbia Public Libraries, Economic Security Administration (ESA) Service Centers, District of Columbia Parks and Recreation facilities, and other locations designed to reach as many parents or guardians of preschool children who may be eligible for special education and related services as possible; and

(3) Ensure that appropriate DCPS outreach staff (*e.g.*, the Child Find Field Coordinators) contact primary referral sources or a staff member in the primary referral source's office who are instrumental in making referrals at least once a month until a referral relationship is established and then every three (3) months thereafter. The initial meeting shall be face-to-face whenever possible when pursuing referrals from new referral sources and then less frequently thereafter, using the method of contact preferred by the referral sources (*e.g.*, e-mail, texting, or telephone calls).

3002.8 DCPS shall conduct public awareness activities sufficient to inform parents and the community regarding the availability of special education and related services and the methods available to request those services and programs. District public charter school LEAs shall conduct similar awareness activities to inform parents and community members that interact with the public charter school LEA of the availability of special education and related services and the methods available to request those services and programs.

3002.9 The LEA's obligation to make FAPE available to a child with a disability commences upon completion of the child's registration, in accordance with subparagraph (4) in the definition of enrollment in 5-A DCMR § 2199, except that:

(a) For children transitioning from early intervention services under IDEA Part C to special education and related services under IDEA Part B, the LEA shall ensure a smooth and effective transition pursuant to 34 CFR § 300.124, including ensuring that:

(1) The LEA participates in transition planning conferences, as appropriate;

(2) The LEA has developed an IEP by the child's third birthday, including:

(A) For public charter school LEAs, the LEA has developed an IEP by the third birthday of any child who is currently enrolled in the public charter school LEA or has completed the registration process for the upcoming school year; or

(B) For DCPS, the LEA has developed an IEP by the third birthday of any child who is a resident of the District of Columbia who is not enrolled in a public charter school LEA; and

(3) The LEA is implementing the IEP by the child's third birthday or, if the third birthday occurs on a non-school day or during the summer, within a timeframe established by the state education agency (SEA), including ensuring the provision of all special education and related services in the child's IEP.

(b) For all other children not covered by paragraph (a) transferring between LEAs between school years, the new LEA's obligation to make FAPE available begins on the new LEA's first day of the school year.

(c) If a child is registered in the Student Information System (SIS) for more than one (1) LEA, the most recent date of documented parental consent for enrollment shall determine the LEA that is responsible for making FAPE available to the child.

3002.10 DCPS is responsible for conducting child find activities for children who are homeschooled and resident and nonresident parentally-placed private school child over three (3) years of age attending religious and other private elementary and secondary schools located in the District and may not require enrollment in the LEA prior to evaluation or development of an IEP.

3002.11 To determine if a child is suspected of being a child with a disability, the LEA may:

(a) Conduct screenings;

(b) Consider existing child data and information; and

(c) Consult with the parent.

Section 3004, IDENTIFICATION & REFERRAL FOR INITIAL EVALUATION, is amended to read as follows:

3004 IDENTIFICATION AND REFERRAL FOR INITIAL EVALUATION

3004.1 The LEA shall treat a referral from the following individuals as a request for initial evaluation in accordance with 34 CFR § 300.301(b):

(a) The child's parent;

(b) The child, provided that educational rights have transferred to the child;

(c) An employee of the LEA the child is enrolled in, who has knowledge of the child; and

(d) An employee of a public agency, as defined by 34 CFR § 300.33, who has knowledge of the child.

3004.2 For children under the age of six (6), the LEA shall also treat a referral from the following individuals, as a request for initial evaluation in accordance with 34 CFR § 300.301(b):

(a) Pediatrician or other medical professional, including physicians, hospitals, and other health providers;

(b) Child development facilities, including day care centers, child care centers, and early childhood programs;

(c) District agencies and programs, including IDEA Part C programs;

(d) Community and civic organizations; and

(e) Advocacy organizations.

3004.3 The LEA shall not delay or deny a timely initial evaluation to conduct screenings or implement pre-referral interventions.

3004.4 The LEA shall notify the parent of receipt of any referral received under § 3004.2. This notification shall include information regarding:

(a) The initial evaluation process;

(b) Parental consent requirements; and

(c) Resources the parent may contact for assistance.

3004.5 A referral for an initial evaluation may be oral or written.

3004.6 Upon receiving an oral referral for an initial evaluation, the LEA shall:

(a) Assist any outside referral source, including but not limited to the parent and other public agencies, to document an oral referral in writing; and

(b) Document the date of any oral referral within three (3) business days of receipt.

Section 3005, EVALUATION AND REEVALUATION, is amended as follows:

By adding paragraphs (b)-(d) to Subsection 3005.2 and adding paragraphs (b)-(c) to Subsection 3005.4 to read as follows:

3005.2 . . .

(a) Beginning July 1, 2018, an LEA shall assess or evaluate a student who may have a disability and who may require special education services within sixty (60) days from the date that the student's parent or guardian provides consent for the evaluation or assessment. The LEA shall make reasonable efforts to obtain parental consent within thirty (30) days from the date the student is referred for an assessment or evaluation.

(b) The LEA shall document reasonable efforts to obtain parental consent. Reasonable efforts include at least three (3) documented attempts using at least two (2) of the following modalities on at least three (3) different dates:

(1) Telephone calls made or attempted and the results of those calls;

(2) Correspondence sent to the parents and any responses received; or

(3) Visits made to the parents' home or place of employment and the results of those visits.

(c) Reasonable efforts for the purposes of obtaining parental consent for initial evaluation shall begin no later than ten (10) business days from the referral date.

(d) The initial evaluation timeline in this Section does not apply to the LEA if:

(1) The LEA has made and documented reasonable efforts under this Section and the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) The child enrolls in a new LEA after the initial evaluation process timeline has begun, but before an eligibility determination has been made by the child's previous LEA, provided that the new LEA is making sufficient progress to ensure prompt completion of the evaluation, and the parent and new LEA agree to a specific time when the evaluation will be completed, not to exceed an additional thirty (30) days.

. . .

3005.4 . . .

(b) Review, for children under the age of six (6):

(1) Relevant information provided by any agency, medical professional, service provider, child care provider, early childhood program, or relative who may have relevant information regarding the child; and

(2) IDEA Part C assessments and other related data.

(c) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(1) Whether the child has a particular category of disability under this chapter or, in the case of a reevaluation of a child, whether the child continues to have such a disability;

(2) The present levels of performance and educational needs of the child;

(3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

. . .

Section 3017, EXTENDED SCHOOL YEAR SERVICES, is amended as follows:

Subsections 3017.1 and 3017.2 are amended to read as follows:

3017.1 The IEP Team shall determine whether the provision of extended school year services is necessary for the provision of FAPE to a child with a disability on an individual basis, as part of the initial IEP development and the annual IEP review.

3017.2 In determining whether extended school year services are necessary for the provision of FAPE, the IEP team shall utilize at least three (3) months of progress monitoring data from the current school year, or any relevant current data or information if three (3) months of progress monitoring data from the current school year is not available, to consider and document each of the following:

(a) The impact of break in service on previously attained or emerging critical skills;

(b) The likelihood and degree of regression related to previously attained or emerging critical skills; and

(c) The time required for recoupment of previously attained or emerging critical skills.

Section 3024, PROCEDURAL SAFEGUARDS – PRIOR WRITTEN NOTICE, is amended to read as follows:

3024 PROCEDURAL SAFEGUARDS--PRIOR WRITTEN NOTICE.

3024.1 Consistent with 20 USC § 1415(b)(3), the LEA shall provide written notice to the parent of a child with a disability a reasonable time before the LEA:

(a) Proposes to initiate or change the identification, evaluation, educational placement, including the service location of the educational placement, or the provision of FAPE to the child; or

(b) Refuses to initiate or change the identification, evaluation, educational placement, including the service location of the educational placement, or the provision of FAPE to the child.

3024.2 Prior written notice shall be:

(a) Written in language understandable to the general public;

(b) Documented in the system of record each time it is provided to the parent, including the mode of delivery;

(c) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and

(d) If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure all of the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements of this paragraph have been met.

Section 3025, PRIOR WRITTEN NOTICE CONTENT, is amended to read as follows:

3025 PRIOR WRITTEN NOTICE CONTENT

3025.1 Prior written notice shall include the following:

(a) A description of the action the LEA is proposing or refusing to take;

(b) An explanation of why the LEA proposes or refuses to take the action;

(c) A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;

(d) A statement that the parent of a child with a disability has protection under the procedural safeguards of the IDEA and this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(e) Sources for the parent to contact to obtain assistance in understanding the provisions of the IDEA and this chapter, including:

(1) Parent Training and Information Center established pursuant to Section 671 of IDEA (20 USC § 1471);

(2) Office of the Ombudsman for Public Education (D.C. Official Code §§ 38-351 *et seq.*); and

(3) Office of the Student Advocate (D.C. Official Code §§ 38-371 *et seq.*);

(f) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(g) If applicable, a description of other factors relevant to the LEA's proposal or refusal.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 18-04
Office of Planning
(Text Amendment to Subtitle A §§ 209.2 and 301.3 to Permit the Construction of Playing Fields and Accessory Structures at RFK)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitle A (Authority and Applicability), of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The proposed text amendments would permit the construction of three athletic playing fields and associated accessory structures on unzoned land located next to the Robert F. Kennedy Memorial Stadium. The amendments would also provide for Commission design review of an unenclosed pavilion structure adjacent to the fields.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR (Zoning Regulations of 2016) are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~strikethrough~~ text):

Chapter 2, ADMINISTRATIVE AND ZONING REGULATIONS, of 11-A DCMR, AUTHORITY AND APPLICABILITY, is amended as follows:

Subsection 209.2, of § 209, RESTRICTIONS ON UNZONED LAND, is amended as follows:

209.2 Nothing in this chapter shall prevent the following:

(a) Minor repairs and alterations to buildings and structures for which no building permit is required under the D.C. Construction Code Supplements; ~~or~~

(b) A caretaker from residing on property formerly owned by the Government of the United States, or property in the Central Area formerly owned by the government of the District of Columbia, for which zoning has not been designated, for the purpose of maintaining and preventing the deterioration of the premises~~.~~; **or**

(c) Installation and use of playing fields and associated accessory structures to support such fields on the unzoned property comprising and abutting the Robert F. Kennedy Memorial Stadium, more

specifically known as Parcel 149, Lots 65 and 66, subject to the following:

(1) Three (3) accessory structures shall be permitted: a visitor building, a storage building, and restroom facilities. Each permitted accessory structure shall not exceed a maximum height of twenty feet (20 ft.) and one (1) story, and a maximum gross floor area of one thousand square feet (1,000 sq. ft.); and

(2) In addition to the three (3) accessory structures listed in § 209.2(c)(i), an unenclosed pavilion shall be permitted and used provided the Zoning Commission finds that said structure, as designed, meets the standards of Subtitle X, Chapter 6 other than § 604.8. The pavilion shall be either covered or uncovered, and have no greater than a six thousand square foot (6,000 sq. ft.) footprint. If covered, a canopy no greater than thirty feet (30 ft.) in height may be installed.

Chapter 3, ADMINISTRATION AND ENFORCEMENT, is amended as follows:

Subsection 301.3, of § 301, BUILDING PERMITS, is amended as follows:

301.3 Except as provided in the building lot control regulations for Residence Districts in Subtitle C and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled "An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code § 9-101.05), a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; except a building permit may be issued for:

(a) Buildings and structures related to a fixed right-of-way mass transit system approved by the Council of the District of Columbia;

(b) Boathouse, yacht club, or marina that fronts on a public body of water, is otherwise surrounded by public park land, and is zoned MU-11;

(c) Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure;

(d) Trapeze school and aerial performing arts center to be constructed pursuant to Subtitle K;

(e) A structure in the USN zone to be constructed on an air rights lot that is not a lot of record; ~~and~~

(f) Buildings and structures approved as part of a campus or private school plan or medical campus plan~~.~~**; and**

(g) Playing fields and associated accessory structures to support such fields and, if permitted by the Zoning Commission, an unenclosed pavilion, on the unzoned property comprising and abutting the Robert F. Kennedy Memorial Stadium, subject to Subtitle A § 209.2(c).

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to authority granted by Sections 3 and 4 of the MLB All-Star Game Stadium Special Events Zone Emergency Act of 2018, passed on an emergency basis on June 5, 2018 (Enrolled version of Bill 22-0873), and by Section 11 of the Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.10 (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of the following amendments adding Sections 508a, 509a and 529a to Chapter 5 (Vendors) of Title 24 (Public Space and Safety), of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to protect the public peace, health, safety and welfare of citizens and visitors to the 2018 Major League Baseball All-Star Game by immediately establishing a time-limited, geographically defined area surrounding Nationals Park within which licensed vendors must hold a Stadium Special Events Zone Permit or Expanded Stadium Special Events Zone Permit to engage in vending. The emergency rulemaking is further necessary to expand the geographic area designated by the MLB All-Star Game Stadium Special Events Zone Emergency Act of 2018 to safely and peacefully accommodate the anticipated foot traffic that the MLB All-Star Game will attract, and ensure that vending occurring in connection with the Game will be conducted consistent with District law.

This emergency rulemaking was adopted on June 29, 2018, became effective immediately, and will remain in effect until it expires on July 25, 2018.

Chapter 5, VENDORS, of Title 24 DCMR, PUBLIC SPACE AND SAFETY, is amended by adding the following sections:

508a STADIUM SPECIAL EVENTS PERMIT; EXPANDED STADIUM SPECIAL EVENTS PERMIT; GENERAL REQUIREMENTS

508a.1 No individual or entity may engage in vending or advertising pursuant to § 503.1 from public space in the Stadium Special Events Zone or Expanded Stadium Special Events Zone without a valid Stadium Special Events Permit or Expanded Stadium Special Events Permit issued by the DCRA Director pursuant to this chapter.

508a.2 The Stadium Special Events Permit shall authorize the permittee to occupy a specific Vending Location for the purpose of vending in the Stadium Special Events Zone for a period not to exceed seven (7) days, and for a period ending no later than July 25, 2018. The Expanded Stadium Special Events Permit shall authorize the permittee to occupy a specific Vending Location for the purpose of

vending in the Expanded Stadium Special Events Zone for a period not to exceed seven (7) days, and for a period ending no later than July 25, 2018.

508a.3 A vendor may vend only at the assigned Vending Location stated on the permittee's Stadium Special Events Permit or Expanded Stadium Special Events Permit.

508a.4 Eligibility for a Stadium Special Events Permit or an Expanded Stadium Special Events Permit is limited to licensed D.C. vendors:

(a) In good standing with DCRA and the District of Columbia Department of Health (DC Health); and

(b) Who are in compliance with D.C. Official Code § 47-2862.

508a.5 A licensed D.C. vendor may not receive a Stadium Special Events Permit or Expanded Stadium Special Events Permit if the vendor has a DCRA or DC Health violation pending resolution.

508a.6 A licensed D.C. vendor may not receive such a permit if the vendor has been subject to a summary suspension by DC Health in the six (6) months immediately preceding their Stadium Special Events Permit or Expanded Stadium Special Events Permit application.

508a.7 Licensed D.C. vendors with existing Vending Site Permits issued pursuant to § 510.1 for Vending Locations within the Stadium Special Events Zone or Expanded Stadium Special Events Zone, who otherwise meet all other qualifications of this section, may continue to do business at their Vending Locations if they obtain a Stadium Special Events Permit or Expanded Stadium Special Events Permit. The fee for such a permit shall be waived for these vendors.

508a.8 Nationals Park lottery locations do not qualify as existing Vending Locations for the purpose of § 508a.7.

508a.9 The DCRA Director may immediately and summarily suspend and seize the Vending Business License and Vending Site Permit of any vendor for any of the reasons enumerated in § 507, including but not limited to the possession, sale, or offering for sale of counterfeit merchandise pursuant to §§ 507.2 and 507.6.

508a.10 In accordance with **§** 507.4, the Director of DC Health may immediately and summarily suspend and seize the Vending Business Licenses of vendors pursuant to § 507.2, or pursuant to § 4409 of Title 25-A DCMR for Food Code violations.

509a. STADIUM SPECIAL EVENTS PERMIT AND EXPANDED STADIUM SPECIAL EVENTS PERMIT APPLICATION AND FEES

509a.1 An individual or entity shall submit an application for a Stadium Special Events Permit or Expanded Stadium Special Events Permit to the DCRA Director.

509a.2 Application for a Stadium Special Events Permit and Expanded Stadium Special Events Permit shall be made on a form prescribed by the DCRA Director and shall include such information and documents as may be required by the DCRA Director to evaluate the application. A Clean Hands Certificate will be required of all applicants.

509a.3 The fee for a Stadium Special Events Permit or an Expanded Stadium Special Events Permit shall be three hundred dollars ($300.00).

509a.4 Applicants for a Stadium Special Events Permit or Expanded Stadium Special Events Permit may apply by walk in at DCRA, located at 1100 4th St S.W.

529a. STADIUM SPECIAL EVENTS ZONE, EXPANDED STADIUM SPECIAL EVENTS ZONE AND VENDING LOCATIONS

529a.1 The Stadium Special Events Zone shall be the geographic area of land in the District bounded by N Street, S.E., Potomac Avenue, S.E., South Capitol Street and First Street, S.E.

529a.2 The Expanded Stadium Special Events Zone shall be the geographic area of land in the District bounded by I Street, S.E., South Capitol Street, Potomac Avenue, S.E., Yards Park and Fourth Street, S.E.

529a.3 The DCRA Director shall assign the Vending Locations in the Stadium Special Events Zone and Expanded Stadium Special Events Zone by lottery.

529a.4 Mobile Roadway Vending vehicles with Stadium Special Events Permits or Expanded Stadium Special Events Permits shall be legally parked or in a designated Stadium Special Events Zone or Expanded Stadium Special Events Zone area. These vehicles shall comply with emergency and event parking restrictions, pursuant to § 535.

529a.5 Licensed sidewalk vendors with Stadium Special Events Permits or Expanded Stadium Special Events Permits shall comply with location guidelines for legal vending locations pursuant to § 525.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 08-06Q
Office of Planning
(Minor Modification to Z.C. Order No. 08-06A re: Subtitle B § 304.2 [Rules of Measurement] and Subtitle I § 200 [Density – Floor Area Ratio], and Request for Emergency Action)

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), and the requirements of Title 1 (Mayor and Executive Agencies), Chapter 3 (Rules of the Office of Documents and Administrative Issuances) of the District of Columbia Municipal Regulations (DCMR), § 311, hereby gives notice of the adoption, on an emergency basis, of minor modifications to amendments made by Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016. This rulemaking amends Subtitle B (Definitions, Rules of Measurement, and Use Categories) and Subtitle I (Downtown (D) Zones) of Title 11 (Zoning Regulations of 2016) of the DCMR.

The proposed minor modifications would exclude all lodging use gross floor area (GFA) from the calculation of residential floor area ratio (FAR) in the D zones, as was the rule in the former DD Zone District under the Zoning Regulations of 1958. Under both the 1958 and 2016 regulations the creation of new housing downtown was and is among the key objectives. Lodging uses, such as hotels, are transient uses; therefore, allowing lodging to use housing incentive (such as unlimited FAR) generates less housing. With the proposed minor modifications, lodging uses would again need to purchase development rights, now known as "Credits", from residential developments to reduce applicable minimum residential requirements and exceed maximum non-residential FAR limits in the D zones. Because these amendments represent the continuation of a decades-long policy, rather than the initiation of a new one, they can be adopted with a hearing or referral to the National Capital Planning Commission.

Although the amendments are minor, their immediate adoption is required. The Office of Planning has advised the Commission that the owner of at least one hotel project has applied for a building permit without having purchased Credits to make up for its lack of housing and its excess commercial FAR. Permitting these projects to go forward will result in a significant and irretrievable loss of housing. For this reason, the Commission found that emergency adoption of these amendments necessary "for the immediate preservation of the public . . . welfare . . ." (1 DCMR § 311.5(d).)

The Commission adopted these emergency rules at its public meeting held on June 25, 2018, at which time the amendments became effective. The emergency rules shall remain in effect until

October 23, 2018 (one hundred and twenty (120) days from the adoption date), unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

Title 11 DCMR (the Zoning Regulations of 2016) is amended as follows: (additions are shown in **bold** underlined text and deletions are shown in ~~strikethrough~~ text):

Chapter 3, GENERAL RULES OF MEASUREMENT, of 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Subsection 304.2 of § 304, RULES OF MEASUREMENT FOR GROSS FLOOR AREA (GFA), is amended as follows:

304.2 **Except as provided in Subtitle I § 200.1,** ~~Non~~ **non**-residential floor area shall be the total GFA of a building not dedicated to one (1) of the following uses:

(a) Residential;

(b) Community-based institutional facility;

(c) Emergency shelter;

(d) Lodging use with less than thirty (30) rooms;

(e) Guest rooms and service areas of a lodging use with thirty (30) or more rooms; or

(f) Education uses that are operated or chartered by the District government.

Chapter 2, GENERAL DEVELOPMENT STANDARDS FOR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN (D) ZONES, is amended as follows:

Subsection 200.1 of § 200, DENSITY - FLOOR AREA RATIO (FAR), is amended as follows:

200.1 Gross floor area shall be measured as specified in Subtitle B § 304~~.~~**, except that all GFA in a Lodging Use including guest rooms and service areas shall be counted as non-residential GFA.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning

Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

OFFICE OF ADMINISTRATIVE HEARINGS

DISTRICT OF COLUMBIA ADVISORY COMMITTEE

NOTICE OF CANCELLATION OF PUBLIC MEETING

The Advisory Committee to the Office of Administrative Hearings (OAH) hereby gives notice that the meeting originally scheduled for June 28, 2018, at 4:00 p.m. at 441 Fourth Street NW, Suite 540 South, Washington, DC 20001, was **CANCELLED**. The meeting has not been rescheduled at this time. Any information regarding rescheduling this hearing will be published when such arrangements become finalized by the OAH Advisory Committee. This **NOTICE OF CANCELLATION** will be posted on the D.C. Register website, the OAH website at www.oah.dc.gov and the Office of Open Government/BEGA website at www.open-dc.gov.

For further information, please contact Louis Neal at Louis.Neal@dc.gov or 202-724-3672.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JULY 18, 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-00045
Yoef Inc., t/a Stanton Liquors
1044 Bladensburg Rd. NE
License #071601
Retailer A
ANC 5D
Application to Renew the License

Protest Hearing (Status) **9:30 AM**

Case # 18-PRO-00043
Ratnakrupa, LLC, t/a Peacock Liquors
1625 New York Ave. NE
License #96105
Retailer A
ANC 5D
Application to Renew the License

Protest Hearing (Status) **9:30 AM**

Case # 18-PRO-00047
English Standard, LLC, t/a The Imperial
2001 19th St. NW
License #109169
Retailer CT
ANC 1C
Application to Transfer to a New Location

Board's Calendar
July 18, 2018

Show Cause Hearing (Status) **9:30 AM**

Case # 18-CMP-00058
The Elroy Bar LLC, t/a The Elroy
1423 H St. NE
License #96771
Retailer CT
ANC 6A
Cover Charge Without Entertainment Endorsement, Operating After Hours

Protest Hearing (Status) **9:30 AM**

Case # 18-CMP-00024
Techno Excess LLC, t/a Ababa Ethiopian Restaurant
2106 18th St. NW
License #103289
Retailer CR
ANC 1C
Failure to and Carry Licenses, No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**

Case # 18-CMP-00063
SBII, LLC, t/a The Codmother
1334 U St. NW
License #86231
Retailer CT
ANC 1B
Failure to Obtain Board-approval to Increase Occupancy, No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**

Case # 18-CIT-00110
Southeast Restaurant Group, LLC, t/a DCity Smokehouse
203 Florida Ave NW
License #98368
Retailer CT
ANC 5E
No ABC Manager on Duty

Board's Calendar
July 18, 2018

Show Cause Hearing (Status) **9:30 AM**

Case # 18-CIT-00111
Southeast Restaurant Group, LLC, t/a DCity Smokehouse
203 Florida Ave NW
License #98368
Retailer CT
ANC 5E
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**

Case # 18-CMP-00012
Anyado Group LLC, t/a XO Restaurant and Lounge
1426 L St. NW
License #098370
Retailer CT
ANC 2F
Failure to Obtain Board-approval to Increase Occupancy

Fact Finding Hearing* **10:00 AM**

Case # 18-251-00090
Café Dupont, LLC, t/a Café Citron
1343 Connecticut Ave. NW
License #60138
Retailer CR
ANC 2B
Assault Inside of the Establishment

Fact Finding Hearing* **10:30 AM**

Case # 18-251-00115
Don Juan Restaurant, Inc., t/a Don Juan Restaurant & Carry-out
1660 Lamont St. NW
License #15934
Retailer CR
ANC 1D
Threats to do Bodily Harm, Failure to Comply with Security Plan

Board's Calendar
July 18, 2018

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA
1:00 PM

Fact Finding Hearing* **1:30 PM**

Case # 18-251-00118
BL Restaurant Operation, LLC, t/a Bar Louie
707 7th St. NW
License #84428
Retailer CR
ANC 1B
Sick Person Taken to the Hospital

***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
INVESTIGATIVE AGENDA

WEDNESDAY, JULY 18, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On Wednesday, July 18, 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-CMP-00130, The Front Page Restaurant & Grille, 1333 New Hampshire Avenue N.W., Retailer CR, License # ABRA-001910

---

2. Case# 18-CMP-00155, Capitol Fine Wine & Spirits, 415 H Street N.E., Retailer A, License # ABRA-082981

---

3. Case# 18- CMP-00128, Café 8, 424 8th Street S.E., Retailer CR, License # ABRA-0777097

---

4. Case# 18-CMP-00151, Dops, Inc, 2611 Evarts Street N.E., Retailer A Wholesaler, License # ABRA-060731

---

5. Case# 18-CMP-00158, District Taco, 656 Pennsylvania Avenue S.E., Retailer DR, License # ABRA-092791

---

6. Case# 18-CMP-00156, Scion Restaurant, 2100 P Street N.W., Retailer CR, License # ABRA-082174

---

7. Case# 18-CC-00065, & Pizza, 705 H Street N.W., Retailer CR, License # ABRA-098584

---

8. Case# 18-AUD-00042, Acadiana, 901 New York Avenue N.W., Retailer CR, License # ABRA-072593

---

9. Case# 18-AUD-00043, El Amigo Restaurant, 3612 14th Street N.W., Retailer CR, License # ABRA-070876

---

10. Case# 18-AUD-00045, Bread Furst, 4434 Connecticut Avenue N.W., Retailer CR, License # ABRA-096024

---

11. Case# 18-AUD-00046, Filomena, 1063 Wisconsin Avenue N.W., Retailer CR, License # ABRA-003618

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JULY 18, 2018 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Summer Garden with seating for 148 patrons. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:*** Sunday-Thursday 8am to 11pm, Friday-Saturday 8am to 12am. ANC 6D. SMD 6D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Hilton Washington DC/National Mall***, 480 L'Enfant Plaza SW, Retailer CH, License No. 093846.

---

2. Review Request for Change of Hours of Entertainment and Alcoholic Beverage Sales. ***Approved Hours of Operation:*** Sunday-Saturday 12am to 12am (24-hour operations). ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday- Saturday 11am to 1am. ***Approved Hours of Live Entertainment:*** Sunday-Saturday 6pm to 12am. ***Proposed Hours of Alcoholic Beverage Sales and Consumption and Live Entertainment:*** Sunday-Thursday 8am to 2am, Friday-Saturday 8am to 3am. ANC 6D. SMD 6D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Hilton Washington DC/National Mall***, 480 L'Enfant Plaza SW, Retailer CH, License No. 093846.

---

3. Review Request to store alcoholic beverage inventory in the basement level of the licensed premises. ANC 8B. SMD 8B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Lax Wine & Spirits***, 3035 Naylor Road SE, Retailer A Liquor Store, License No. 082054.

***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.**

CEDAR TREE ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Multiple Services

Cedar Tree Academy Public Charter School invites proposals for the following:

- **Financial Accounting**
- **Janitorial and Maintenance**
- **Professional Development**
- **Data Management**
- **Special Education Related Service Provider**

Bid specifications may be obtained from our website at www.Cedartree-dc.org. Any questions regarding these bids must be submitted in writing to Lhenderson@Cedartree-dc.org before the RFP deadline. Bids must be submitted to Dr. LaTonya Henderson, Executive Director, Cedar Tree Academy PCS 701 Howard Road SE, Washington DC 20020.

Cedar Tree Academy will receive bids until Friday, July 27, 2018, no later than 2:00PM.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Vacant Building Enforcement

Address:	**Square:**	**Lot:**
716 A Street NE	0896	0810

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Hardship for the above property for real property tax year for **2017 & 1st half 2018** for the following reasons:

> *You provided sufficient evidence to support your extraordinary circumstances and hardship. Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, "A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*
> *(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship."*

DCRA will immediately notify the Office of Tax and Revenue (OTR) to reclassify the subject property as exempt or Class 1/Class 2.

DC INTERNATIONAL PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACT

District of Columbia International School ("DCI") intends to enter into a sole source contract with Urban Teachers, a highly effective Teacher Training Program for teacher fellows to be placed at DC International School.

Urban Teacher fellows receive a master's degree from the Johns Hopkins School of Education, one of the top 10 graduate schools of education in the country, and become dually certified to teach in either elementary education, secondary English or secondary math, and special education. Urban Teachers offer more comprehensive coursework and personalized support than any other teacher training program. Their participants take part in a residency as they work alongside an experienced teacher in an urban classroom while taking graduate courses after school. In the second year, our participants become fellows, moving into full-time, salaried teaching positions, while receiving expert coaching from our clinical faculty. That guidance and support continues for a third year, during which time, our fellows develop their teaching practices to provide students with the support they need to thrive.

The decision to sole source is due to the fact that they provide excellent teacher training that is unmatched in DC. DCI wishes to enter into a contract with Urban Teachers for teacher fellows that we can place as full time teachers in our classrooms as our school continues to grow. The fee to provide these services will be contingent upon how many teacher fellows DCI secures for each school year, at $25,000 for each teacher fellow.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Eagle Academy Public Charter School intends to award a sole source contract to M. Russell & Associates to continue to provide professional educational consulting services for the 2018-2019 academic year, up to a cost of $120,000. M. Russell & Associates was the only firm that fully met the requirements in a 2016 RFQ seeking *a nationally recognized early childhood expert with at least 15 years of experience working with DC public schools to implement an instructional evaluation program, including review, observations, professional development, and other related services.* For the past eighteen (18) months, Mr. Maurice Sykes has gained extensive knowledge of the instructional staff and students' needs and has built trust with the staff. To interject another service provider to replace Mr. Sykes would create a disruption that would result in substantial delays and additional costs that Eagle could not recoup through the competitive bidding process.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be directed to Joe Smith at jsmith@eagleacademypcs.org via email only.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT

ANNOUNCES JULY 19, 2018 PUBLIC MEETING
DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL
CREDIT ENHANCEMENT COMMITTEE

The Office of the State Superintendent of Education (OSSE) hereby announces that it will hold a public meeting for the District of Columbia Public Charter School Credit Enhancement Committee as follows:

12:30 p.m. – 1:30 p.m.
Thursday, July 19, 2018
1050 First St. NE, Washington, DC 20002
Conference Room 536 (LeDroit Park)

For additional information, please contact:

Debra Roane, Financial Program Specialist
Office of Public Charter School Financing and Support
Office of the State Superintendent of Education
1050 First St. NE, Fifth Floor
Washington, DC 20002
(202) 478-5940
Debra.Roane@dc.gov

The draft agenda for the above-referenced meeting will be:

I. Call to Order
II. Approval of agenda for the July 19, 2018, committee meeting
III. Approval of minutes from June 21, 2108, committee meeting
IV. Review Conflict of Interest – Transaction Disclosure Checklist
V. St. Paul at Fourth St., Inc. - $532,064 direct loan
VI. Statesmen College Preparatory Academy for Boys Public Charter School - $350,000 credit enhancement

Any changes made to the agenda that are unable to be submitted to the DC Register in time for publication prior to the meeting will be posted on the public meetings calendar no later than two (2) business days prior to the meeting.

D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF CLOSED MEETING

Homeland Security Commission

July 12, 2018

10:30 a.m. to 12:30 p.m.

1350 Pennsylvania Avenue, NW

Washington, D.C. 20004

Room 527

On July 12, 2018 at 10:30 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 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004 in room 527.

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. You may also contact Jon Stewart, Regional Programs Coordinator, by phone at 202-430-7110, or by email at jonathan.stewart@dc.gov.

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL

NOTICE OF PUBLIC MEETING

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting 3:00 PM, Thursday, July 19, 2018. The meeting will be held at the DC Department of Insurance, Securities and Banking, 1050 First Street, NE, 8th Floor Conference Room, Washington, D.C. 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at http://disb.dc.gov. Please RSVP to Idriys J. Abdullah, idriys.abdullah@dc.gov, for additional information call (202) 442-7832 or e-mail idriys.abdullah@dc.gov

DRAFT AGENDA

I. Call to Order
II. Welcoming Remarks
III. Minutes of the Previous Meeting
IV. Unfinished Business
DC Financial Literacy Council Bi-Monthly E-Newsletter
DC Financial Literacy Council Website Content Update
Council Financial Literacy Recommendations Report
V. New Business
April Financial Literacy Month Conference
VI. Executive Session
VII. Adjournment

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

PEPPOR 2018-01, PURCHASE OF RECEIVABLES

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Official Code,[1] and pursuant to Order No. 17052 directing the Potomac Electric Power Company (Pepco or the Company) to implement a Purchase of Receivables (POR) program in the District of Columbia,[2] of its final tariff action approving Pepco's tariff filing revising the POR tariff and Supplier Discount Rate.[3] The Commission issued a Notice of Proposed Tariff (NOPT) published in the *D.C. Register* on May 11, 2018,[4] inviting comments on Pepco's proposed tariff. No comments were filed in response to the NOPT.

2. Pepco implemented the POR Supplier Discount on October 7, 2013. The first true-up of the POR Supplier Discount Rate was derived based on the POR activity from October 2013 through December 2014. The second true-up was derived based on POR activity from January 2015 through August 2016. This filing is the third true-up based on POR activity from September 2016 through December 2017. Pepco's proposed tariff modifies the Company's Electric Supplier Coordination Tariff (Electric Supplier--P.S.C. of D.C. No. 1). Attachment A of the tariff filing includes the revisions to the Supplier Tariff Schedule 3, which describes the components and derivation of the POR Supplier Discount Rates.[5] Specifically, in this tariff Pepco proposes to revise the following tariff pages:

Electricity Supplier Coordination Tariff, P.S.C. of D.C. No.1
Current Fifth Revised Page No. i to Sixth Revised Page No. i
Current Fifth Revised Page No. ii to Sixth Revised Page No. ii
Current Fifth Revised Page No. iii to Sixth Revised Page No. iii
Current Fifth Revised Page No. iv to Sixth Revised Page No. iv
Current Second Revised Page No. 41 to Third Revised Page No. 41
and Current Second Revised Page No. 42 to Third Revised Page No. 42

3. Pepco's proposed tariff applies a discount rate on the receivables associated with Residential customers of 0.0000% on Schedules R and MMA. The

[1] D.C. Code §§ 34-802 and 2-505 (2001).

[2] *Formal Case No. 1085, In the Matter of the Investigation of a Purchase of Receivables Program in the District of Columbia* (*"Formal Case. No. 1085"*), Order No. 17052, rel. January 18, 2013.

[3] *PEPPOR 2018-01, Purchase of Receivables*, Purchase of Receivables Tariff Filing, filed April 19, 2018 ("Proposed Tariff").

[4] 65 *D.C. Reg.* 005213-005215 (May 11, 2018).

[5] Proposed Tariff Attachment A at 7-8.

Company is proposing to apply a discount rate of 0.0000% on receivables associated with Small Commercial customers, Schedules GS-LV-ND, T, SL, TS and TN, and 0.0000% on the receivables associated with Large Commercial customers, Schedules GS-LV, GS-3A, GT-LV, GT-3A, GT-3B, and RT, and finally, 0.0000% for Market Priced Customers, Schedules GS-LV-ND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL, and TS. Pepco notes that Schedules AE and RTM have been eliminated as directed by the Commission in *Formal Case No. 1139*, Order No. 18846.[6] The Company states that customers who had received service under Schedules AE and RTM are now billed under Schedule R. Pepco adds that references to new Schedule MMA are now included.

4. In Attachments B through D of the tariff filing, Pepco provides information detailing how the Discount Rates are derived using the POR data for the period of September 2016 through December 2017. Pepco states that Attachment B to this filing is a summary showing the results of the Write-Offs, including Reinstatements, and Late Payment Revenues expressed as a percentage of Third Party Supplier Revenues for Residential Customers served under Schedules R and MMA; Small Commercial customers served under Schedules GS-LV-ND, T, SL, TS and TN; Large Commercial customers served under Schedules GS-LV, GS-3A, GT-LV, GT-3A, GT-3B and RT; and Market Priced Service customers served under Schedules GS-LV-ND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL and TS.

5. In Order No. 16916,[7] the Commission approved a Risk Component to be included in the Discount Rate. In the same Order, the Commission allowed for a Cash Working Capital adjustment. Pursuant to the Commission's directive that both components be set to zero and that they may not be changed without the Commission's written authorization, Pepco sets the Risk Component and the Cash Working Capital adjustment to zero. Pepco states that the Interest and Reconciliation Factors are added to arrive at the Discount Rates for each of the four rate classes described above.

6. In Attachment C, Pepco lists by month from September 2016 through December 2017, and by customer type, the Electric Revenues Billed, less POR Discounts, the Net Electric Revenues Billed, and the Write-Offs, net of Reinstatements. Pepco asserts that there is a timing difference of about six months between billing the customer and writing off the account as uncollectible. The Company represents that its policy for uncollectibles is to write off delinquent accounts after 120 days. The interest is calculated based on the cumulative Over/(Under) Collection at 7.65% per Order No.

---

[6] *Formal Case No. 1139, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1139"*), Order No. 18846, rel. July 25, 2017.

[7] *Formal Case. No. 1085*, Order No. 16916, rel. September 20, 2012.

17424[8] from September 1, 2016, through August 14, 2017, at 7.46% per Order No. 18846[9] from August 15, 2017, through the December 31, 2017.

7. In Attachment D, Pepco provides the detailed calculation by customer type for the Reconciliation and Interest Factor. The Company states that the Reconciliation factor is derived by adding the Amortization of Program Cost to the POR Discounts less Write-Offs, plus Late Fee Revenues. Pepco states that the net Over/(Under) Collection is divided by the Electric Revenues billed for September 2016 through December 2017. Pepco states that the Interest Factor is derived by dividing the Interest from Attachment C by the Electric Revenues billed for September 1, 2016, through December 31, 2017.

8. Pepco states that because the Program Development and Operation Cost is fully amortized, Attachments E and F that were included in previous tariff filings are omitted in this filing.

9. The Commission issued a NOPT published in the *D.C. Register* on May 11, 2018, giving notice of the Commission's intent to act upon Pepco's proposed tariff filing. No comments were filed in response to the NOPT. The Commission at its regularly scheduled open meeting held on June 28, 2018, took final action approving Pepco's POR tariff filing. Pepco's POR tariff filing shall become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

[8] *Formal Case No. 1103, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17424, rel. March 26, 2014.

[9] *Formal Case No. 1139*, Order No. 18846, rel. July 25, 2017.

RICHARD WRIGHT PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

RICHARD WRIGHT PUBLIC CHARTER SCHOOL is requesting bids for various services for the 2018-19 School Year. Services required include the following:

- Textbooks
- IT Services
- Accounting Services
- Computers/Laptops/Chromebooks
- SIS/Data Support for Powerschool
- Human Resources Back Office Support
- Special Education Services
- Student Meal Services
- Field Trip/Athletics Transportation
- Contracted Legal Advice and Representation
- Maintenance Supplies
- Office Supplies

If you are a vendor and interested in offering any of these services to our school, please e-mail:

Alisha Roberts
Chief of Operations
Richard Wright PCS
770 M Street SE
Washington, DC 20003
aroberts@richardwrightpcs.org

Further information on what will be required to fulfill the contract will be emailed. Please also note that all bids must include evidence of experience in the field, the qualifications of principles, estimated fees, and sent via ***email.*** All proposals must be emailed **by 5 pm on Friday, July 13, 2018**.

SOMERSET PREP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Financial Management & Accounting Services

Somerset Prep Public Charter School is soliciting bid proposals from qualified vendors for the 2018-2019 school year.

GUIDELINES
The school must receive a PDF version of your proposal no later than 5pm EDT on **July 23, 2018.** Proposals should be emailed to sspdc_bids@somersetprepdc.org.

No phone call submissions or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

Interested parties and vendors will state their credentials and qualifications and provide appropriate licenses, references, insurances, certifications, proposed costs, and work plan. Please include any pertinent disclosures that may be present.

SCOPE OF WORK
Contractor proposals should address the following items:

- Financial Management & Accounting Services

CONSIDERATION
Any additional work outside the scope of work as defined above will be quoted separately as required.

PAYMENT
Please indicate proposed payment schedule. Submission of invoices is required for payment.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, July 26, 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 lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	Summary of Internal Audit Activity - Internal Audit Status	Internal Auditor
3.	Executive Session	Chairman
4.	Adjournment	Chairman

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

DC Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) DC Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, July 24, 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 lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Monthly Updates	Chief Financial Officer
3.	Committee Work Plan	Chief Financial Officer
4.	Other Business	Chief Financial Officer
5.	Executive Session	Committee Chairperson
6.	Adjournment	Committee Chairperson

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, July 19, 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 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

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, July 26, 2018 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	June, 2018 Financial Report	Committee Chairperson
3.	Agenda for September, 2018 Committee Meeting	Committee Chairperson
4.	Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19558 of 1240 Mount Olivet Road LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703 from the minimum parking number requirements of Subtitle C § 701.5, to construct a self-storage facility in the PDR-1 Zone at premises 1240 Mount Olivet Road, N.E. (Square 4092, Lot Parcel 141/79).

HEARING DATES: October 4, 2017 and November 8, 2017
DECISION DATE: November 29, 2017

DECISION AND ORDER

This application was submitted on June 13, 2017 by 1240 Mount Olivet Road LLC ("Applicant"), the owner of the property that is the subject of the application. The application requests special exception approval pursuant to Subtitle C § 703.2 of Title 11 DCMR (Zoning Regulations of 2016) ("Zoning Regulations") for relief from parking requirements in order to develop a self-storage facility ("the Project") at the subject property. Following public hearings, the Board of Zoning Adjustment ("Board") voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated July 11, 2017, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 5; Advisory Neighborhood Commissions ("ANC") 5C, the ANC for the area within which the subject property is located; ANC 5D, the ANC located directly across the street from the subject property; and the single-member district representative for ANC 5C04. Pursuant to 11 DCMR Subtitle Y § 402.1, on July 31, 2017, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 5C, ANC 5D, and the owners of all property within 200 feet of the subject property.[1] Notice was published in the *D.C. Register* on August 18, 2017 (64 DCR 33).

Party Status. The Applicant, ANC 5C, and ANC 5D were automatically parties in this proceeding. There were no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed self-storage facility and the need for the requested relief from the minimum parking requirements.

[1] Notice was initially sent to the above-referenced recipients on July 11, 2017, for a hearing date originally scheduled for September 20, 2017. However, the hearing date was rescheduled to October 4, 2017, at the Applicant's request in order to allow the Applicant to present at the September meeting of ANC 5C, which did not meet during the months of July or August.

The Applicant asserted that the proposal satisfied the applicable requirements of the Zoning Regulations under Subtitle C § 703.2. (Exhibits 10, 54, and 60.) The Applicant also submitted a Comprehensive Transportation Review ("CTR") into the record. (Exhibit 47A.)

OP Report. In its memorandum dated September 22, 2017 (Exhibit 50), OP recommended approval of the requested relief, finding that the application met multiple independent criteria for approval of the requested relief under Subtitle C § 703.2.

DDOT Report. In its memorandum dated September 22, 2017 (Exhibit 51), DDOT stated that the vehicle parking relief requested by the application is appropriate and that the proposed action would have no adverse impacts on the travel conditions of the District's transportation network. In conclusion, DDOT had no objection to the approval of the requested special exception with the conditions that (1) the Project provides one short-term bicycle parking space, and (2) the Project provides a total of four indoor secure long-term bicycle parking spaces.

ANC Report. Both ANC 5C and ANC 5D were automatically parties to the application. ANC 5D did not submit any report regarding the application. On the day of the Board's public hearing on the application on November 8, 2017, the Board received an email submission from the Chair of ANC 5C, which attached the Board's Form 129 ANC Report. (Exhibit 58.) However, due to technical issues with the electronic form that was submitted, the form appeared blank to Office of Zoning staff and a version of the form that appeared incomplete was uploaded to the public record for the application. During the public hearing, a member of the Board was able to view the form and read the ANC's issues into the record.[2] (*See* Public Hearing Transcript ("Tr.") of Nov. 8, 2017 at 8:10–9:2.) A memorandum from the Board of Zoning Adjustment summarizing the procedure and content of the incomplete ANC 5C report was submitted into the record on November 28, 2017. (Exhibit 61.) The ANC's issues, as read into the record, were with respect to: (i) the potential increase of trash in public space as a result of the Project; (ii) that Ward 5 has more than eight storage businesses within a two mile radius and that the Applicant did not agree with the ANC's recommendation to increase the number of parking spaces and decrease the number of floors; (iii) that the Applicant had not provided an ending date for the lease associated with the Project; and (iv) the existing challenges related to traffic on Mt. Olivet Road, N.E. during rush hour. The Applicant responded to these issues raised by ANC 5C in a post-hearing submission into the record dated November 15, 2017. (Exhibit 60.)

Persons in Opposition. There were no letters or testimony in opposition to the application.

Persons in Support. Letters of support of the application were submitted by the Catholic Cemeteries of the Archdiocese of Washington, Inc. (Exhibit 52), Janice Crauder (Exhibit 56), and Margaret Williams (Exhibit 57).

[2] Although Office of Zoning staff attempted to contact the ANC Chair following the hearing to receive a complete copy of the submission, no such copy has been submitted as of the issuance of this Order.

FINDINGS OF FACT

1. The subject property is located at 1240 Mt. Olivet Road, N.E. (Parcel 141/79) (the "Property").

2. The Property is comprised of approximately 17,980 square feet of land area and is situated on the northern side of Mt. Olivet Road, N.E.

3. The Property is relatively long and narrow, with street frontage only along Mt. Olivet Road, N.E., and does not have rear alley access.

4. The Property is improved with a one-story commercial structure.

5. A transmission garage is located to the west of the Property, District government property to the north and east, and Mt. Olivet Road, N.E. to the south. To the south of Mt. Olivet Road, across from the Property, are small commercial and retail establishments.

6. The block of Mt. Olivet Road on which the Property is located is lined primarily with one-story buildings, many of which are retail, service, or production, distribution, and repair establishments. The Property is adjacent to low density warehouse and retail which provide their own parking.

7. The Property is located in the PDR-1 Zone District.

8. The Applicant proposes to construct a self-storage facility on the Property (the "Project").

9. The Project will be 50 feet and five stories in height and have approximately 62,000 square feet of gross floor area for floor-to-area ratio ("FAR") purposes, resulting in an FAR of approximately 3.45. The first floor will include the self-storage facility's office space and the remainder of the building will be utilized for storage.

10. Pursuant to Subtitle C § 701.5, a self-storage facility is required to provide one parking space for each 3,000 square feet of gross floor area. For purposes of calculating parking requirements, the Project will include approximately 65,740 square feet of gross floor area.[3] As a result, the Project has a parking requirement of 22 spaces.

11. The Applicant is significantly constrained in its ability to provide the required parking and site access.

[3] The Project will include approximately 67,380 square feet of floor area, including penthouse habitable space, but will include an "overhang" at the front of the building of approximately 1,640 square feet utilized for parking spaces, which does not count towards the Project's gross floor area, as defined in Subtitle B § 100.2 of the Zoning Regulations, for purposes of calculating parking requirements.

12. The proposed building will be set back from Mt. Olivet Road, N.E. approximately 45 feet, nine inches. Within this forecourt, the Project will provide four compliant parking spaces, two tandem (i.e. non-compliant) spaces for employees, and two loading berths. Accordingly, the Applicant requests special exception relief pursuant to Subtitle C § 703 for the remaining 18 required parking spaces. The requested reduction in the required number of parking spaces is for only the amount of parking that the Applicant is physically unable to provide and is proportionate to the reduction in parking demand.

13. Approximately 23 on-street parking spaces are located on the south side of Mt. Olivet Road N.E., between Montello Avenue and Trinidad Avenue, which spaces are available for public parking during non-peak hours.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under 11 DCMR Subtitle C § 703.2 of the Zoning Regulations to provide four compliant parking spaces, or 18 fewer parking spaces than is required by Subtitle C § 701.5. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property, subject to specific conditions. (*See* 11 DCMR Subtitle U § 901.2.)

The Board's discretion in reviewing an application for a special exception under Subtitle C § 703.2 is limited to a determination of whether the applicant has complied with the requirements of Subtitle C § 703.2 and Subtitle X § 901.2 of the Zoning Regulations. If the applicant meets its burden, the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *see also Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18–19 (D.C. 1980).

Pursuant to Subtitle C § 703.2, to obtain relief from applicable parking requirements, an applicant must meet at least one of ten specific criteria. In this case, the application meets multiple criteria under Subtitle C § 703.2, including the following criteria with particularity:

(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;

(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;

(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;

(d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood; and

(e) The nature of the use or structure or the number of residents, employees, guests, customers, or clients who would reasonably be expected to use the proposed building or structure at one time would generate demand for less parking than the minimum parking standards.

In satisfaction of Subtitle C § 703.2(a), the Property is long and narrow and surrounded by occupied properties and government facilities. The site has narrow frontage on Mt. Olivet Road, N.E. and no rear alley access. As a result, the Applicant is significantly constrained in its ability to provide the required parking and site access. Moreover, as the Applicant has demonstrated, the Project has been designed to be constructed across the entire width of the Property in order to provide the necessary building width for a productive and efficient use of the Property. Accordingly, there is no ability to locate additional parking at the rear of the building.

As the Applicant has shown, to reduce the size of the proposed building to meet the minimum parking requirement would require reducing the Project to an impracticable and non-economic size or else conducting significant excavation or ramping or driveways to the rear of the Property, which would further inhibit the viability of the Project.

In satisfaction of Subtitle C § 703.2(b), in addition to the significant constraints associated with providing parking and site access for the Project, the application also qualifies for relief because the site is well served by mass transportation. Specifically, the Property is served by the D4 and D8 metrobus routes, which connect passengers to the Union Station, Rhode Island Avenue, Farragut Square, and Dupont Circle metrorail stations, providing access to multiple metrorail lines, MARC and VRE commuter trains, and numerous other bus lines.

In satisfaction of Subtitle C § 703.2(c), the Property is surrounded on two sides by government property and is adjacent to low density warehouse and retail which provide their own parking. The proposed use, while potentially generating customer parking needs, has a particularly low number of employees. In addition, the Board also notes that, as demonstrated by the Applicant's transportation expert at the November 8, 2017 hearing, there are approximately 23 on-street parking spaces on the same block as the Property, located on the south side of Mt. Olivet Road NE, which are available for use during non-peak hours. (Tr. of Nov. 8, 2017 at 20:9–21; Exhibit 54 at 25.)

In satisfaction of Subtitle C § 703.2(d), a Comprehensive Transportation Review ("CTR") from the Applicant (Exhibit 47A) and a DDOT report was submitted (Exhibit 51). The 11 peak hour trips generated (as described in the Applicant's CTR) by the proposed self-storage use should

have minimal impact on any existing traffic conditions and is not anticipated to impact or create neighborhood traffic. DDOT's report agreed with these findings.

In satisfaction of Subtitle C § 703.2(e), self-storage facilities such as the instant use are generally not considered high-turnover uses. The Applicant's CTR concludes that the proposed use will not generate a high degree of demand and, as such, the amount of parking demand will be restrained. DDOT's report agreed with these findings.

As required by Subtitle C § 703.3, the Applicant has demonstrated through exhibits and testimony that the requested reduction in the required number of parking spaces is for only the amount of parking that the Applicant is physically unable to provide and is proportionate to the reduction in parking demand. The Applicant is providing the maximum four compliant parking spaces (plus two tandem (i.e. non-compliant) spaces) that are feasible on site, as shown in the plans submitted with the application.

Additionally, the Applicant has proposed a transportation demand management plan approved by DDOT, as required under Subtitle C § 703.4, which includes providing one short-term bicycle parking space. Also, pursuant to the Applicant's testimony at the hearing, the Project will also include four long-term bicycle parking spaces per DDOT's request.

The Board further finds that, in addition to meeting the specific criteria for approval under Subtitle C § 703.2, the proposed relief is in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring properties, in compliance with Subtitle X § 901.2. The proposed relief will enable the development of an in-demand use in one of the limited locations where the use is permitted in the District as a matter of right. The Board also finds that, given the nature of the self-storage use, multiple vehicles are not likely to visit the site at one time for extended periods of time and, thus, the proposed parking will be adequate to serve the demand generated by the Project, despite not meeting the strict requirements of the Zoning Regulations. As the Applicant demonstrated in its CTR and testimony, the self-storage use is not a high net generator of vehicular trips and thus the effect, if any, on the availability of parking in the surrounding area will be minimal.

The Board is required to give "great weight" to the recommendations of the Office of Planning. (*See* D.C. Official Code § 6-623.04 (2001).) In this case, OP recommended approval of the application and described how the Applicant met multiple standards for the requested special exception approval, and the Board concurs with that recommendation. We also note that DDOT recommended approval of the application subject to conditions that the Applicant incorporated into their Project.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (*See* Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) ("ANC Act").) In this case, ANC 5D, the ANC located across Mt.

Olivet Road, N.E. from the Project, did not submit any written report or otherwise provide comments on the Project. As discussed above, ANC 5C submitted a written report on the application on November 8, 2017, the day of the Board's public hearing on the application, which report was ultimately read into the record by a Board member due to technical issues that prevented the submitted electronic form from being readable. As outlined above, ANC 5C's issues related to: (1) the potential increase of trash in public space resulting from the Project; (2) the number of storage businesses located in Ward 5 and the Applicant not agreeing to provide additional parking spaces and reduce the number of floors for the Project; (3) the lack of an ending date for the lease associated with the Project; and (4) the existing level of traffic during rush hours on Mt. Olivet Road, N.E.

As a preliminary matter, the Board notes that the ANC Act requires an agency to give great weight to the issues and concerns expressed in an affected ANC's written report received at any time prior to an agency's decision. Therefore, the ANC's submission was timely. The Board's Rules of Practice and Procedure only imposes a deadline if an affected ANC wishes to participate as a party, in which case its first report is due seven days in advance of the public hearing for the application. (11-Y DCMR § 503.3.) Even then, an affected ANC party may file subsequent reports at any time prior to the Board's vote without requesting a waiver. Therefore, the ANC submission was timely.

The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted). That decision noted that Council in enacting the ANC Act "did not intend to empower the [ANC] Commissions to expand the factors that a board or agency may otherwise lawfully consider in reaching its decision." *Id*.

Several of the ANC's issues and concerns relate to matters not relevant to the Board's consideration of this application. The Applicant requests special exception relief to reduce the amount of required vehicle parking. As stated above, the Board's discretion in reviewing an application for a special exception under Subtitle C § 703.2 is limited to a determination of whether the applicant has complied with the requirements of Subtitle C § 703.2 and Subtitle X § 901.2 of the Zoning Regulations, and, if the applicant meets its burden, the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973). In this case, ANC 5C's issues with respect to trash, the number of storage facilities in Ward 5, and the end date of the Project's lease do not pertain to the requirements of Subtitle C § 703.2 and Subtitle X § 901.2, and therefore are not legally relevant. *See Wheeler, supra.*

ANC 5C's "recommendation" to increase the number of parking spaces and decrease the number of floors was detailed as impossible by the Applicant in its application materials, presentation and post-hearing submission since the Project would not have been financially feasible without one of its floors and there was no ability to add parking to the site. ANC 5C's issue relating to traffic levels on Mt. Olivet Road, N.E. at morning and evening rush hours were shown to not be

exacerbated by the Project in the CTR. In fact, a full CTR was not required for the Project due to the smaller size of the Project and the lower degree of anticipated traffic it will generate. The Board believes that the Applicant addressed ANC 5C's relevant issues in its post-hearing submission. (Exhibit 60.) With respect to the requested relief and applicable requirements, for all of the reasons discussed above, the Board finds that the application satisfies the standards for relief from the minimum parking requirements. Specifically, as outlined above, the physical constraints of the Property and existing condition of the surrounding properties prevent the Applicant from providing the required 22 spaces on-site or within 600 feet, and the site is particularly well served by mass transit. In addition, the land use characteristics of the neighborhood minimize the need for required parking spaces at the Property while the amount of traffic congestion which the Project would reasonably be expected to create in the neighborhood is minimal due to the minor traffic and parking generating nature of the self-storage use. Accordingly, to the extent that ANC 5C has expressed concerns regarding the requested relief, the Board has considered those concerns and disagrees with the ANC's recommendation that the application be denied.

Based on the case record, the testimony at the hearing, and the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under 11 DCMR Subtitle C § 703.2, to reduce the number of required parking spaces from 22 to four in order to construct a self-storage facility at the Property. Accordingly, 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 – ARCHITECTURAL PLANS AND ELEVATIONS - AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide one short-term bicycle parking space.

2. The Applicant shall provide four indoor secure long-term bicycle parking spaces.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Robert E. Miller (by absentee ballot) to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 29, 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. 19755 of Dale Denton and Morgan Washburn, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), under Subtitle E §§ 5007 and 5201 from the accessory structure rear setback requirements of Subtitle E § 5004.3, and under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck and a rear roof deck addition and convert the existing residential care facility to a flat in the RF-1 Zone at premises 1208 T Street N.W. (Square 275, Lot 47).

HEARING DATE: June 6, 2018
DECISION DATE: June 27, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 4 and 13 (original), 31 (revised), and 44 (final). 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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, 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 May 3, 2018, at which a quorum was present, the ANC voted 11-0-0 in support of the application. (Exhibit 34.) The Chair of ANC 1B confirmed support for the revised plans. (Exhibit 47.)

The Office of Planning ("OP") submitted two reports in this case. In its original report, dated May 30, 2018, OP recommended approval of special exceptions requested, but recommended

[1] The original application also included a special exception for alley line setback and a variance for lot occupancy. **(**See, Exhibits 4 and 13.**)** Before the application was advertised, the Applicant withdrew the request for alley line setback. **(**See, Exhibit 31.**)** The Applicant subsequently revised its plans to reduce the lot occupancy (Exhibit 46) to what is allowable by special exception and amended the relief accordingly (Exhibit 44). The caption has been changed to reflect the amended relief.

denial of the request for a variance for lot occupancy under Subtitle E § 304. (Exhibit 40.) OP subsequently submitted a supplemental report dated June 20, 2018 in which it recommended approval of the application, as amended. In that supplemental report OP noted that after the hearing on June 6, 2018, the Applicant revised the architectural drawings to reduce lot occupancy to that which is permitted by special exception. Also, OP noted that while in its original report it stated that relief for a parking space under Subtitle C § 712.3 might be needed, that relief was no longer necessary. (Exhibit 48.)

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 37.)

Five letters of support from neighbors were submitted to the record. (Exhibit 10.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), under Subtitle E §§ 5007 and 5201 from the accessory structure rear setback requirements of Subtitle E § 5004.3, and under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1 and the rear yard requirements of Subtitle E § 306.1, to construct a rear deck and a rear roof deck addition and convert the existing residential care facility to a flat in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the 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 C §§ 1502.1(b) and (c) and 1504, and Subtitle E §§ 304.1, 306.1, 5004.3, 5007, and 5201, 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 REVISED PLANS AT EXHIBIT 46**.

VOTE: **5-0-0** (Carlton E. Hart, Lesylleé M. White, Lorna L. John, Frederick L. Hill (by absentee ballot), and Robert E. Miller 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: June 28, 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. 19780 of 79 81 U Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the side yard requirements of Subtitle E § 307.3, to construct two new flats in the RF-1 Zone at premises 79-81 U Street N.W. (Square 3117, Lots 69 and 68).

HEARING DATE: June 27, 2018
DECISION DATE: June 27, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on May 15, 2018, at which a quorum was present, the ANC voted 8-0-0 in support of the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a report, recommending approval of the application. (Exhibit 36.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 31.)

A letter of support from a neighbor was submitted to the record. (Exhibit 30.)

Meridith Moldenhauer testified on behalf of the adjacent neighbor, 2003 1st Street LLC, in opposition. Ms. Moldenhauer, representing the adjacent neighbor of the property (2003 1st Street LLC), appeared to make a verbal request for party status and to waive the deadline for filing the request, as no written request had been made at that time. She explained that she had been retained that morning (and showed written authorization) and that the neighbor did not file a timely request because he did not receive proper notice of the hearing date. Based on testimony

from the Applicant rebutting the contention that notice was deficient, the Board denied the request to waive the filing deadline, and thereby denied the verbal party status request.[1]

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 side yard requirements of Subtitle E § 307.3, to construct two new flats in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. Because the request to file a late party status request was denied, 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 a variance from 11 DCMR Subtitle E § 307.3, 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.

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 14.**

VOTE: **4-0-1** (Carlton E. Hart, Robert E. Miller, Lesylleé M. White, and Lorna L. John to APPROVE, Frederick L. Hill, not participating.)

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: June 29, 2018

[1] Counsel for 2003 1st Street LLC raised two alleged notice defects and asked that the hearing be postponed. First, she raised the issue that the letter mailed to the adjacent neighbor's address contained the incorrect name, based on the Office of Tax and Revenue's records and the neighbor's recent purchase of the property. The returned letter is under Exhibit 32, which notes that it was returned to sender because the property is vacant. Counsel for the neighbor also showed an image, said to be taken that morning, showing that the notice sign was not posted on the property. The record also contains an affidavit of posting from the Applicant (Exhibit 37) and an affidavit of maintenance (Exhibit 38), indicating that the sign was posted June 12, 2018 and maintained after that date. Under Subtitle Y § 402.11, the Board considered the alleged notice defects and determined to continue with the hearing.

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-13A
Z.C. Case No. 16-13A
JS Congress Holdings, LLC
(Minor Modification to PUD @ Square 748, Lots 78 and 819)
November 27, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on November 27, 2017, to consider an application by JS Congress Holdings, LLC ("Applicant") for a minor modification of a consolidated planned unit development ("PUD") approved by Z.C. Order No. 16-13 for the property at 220 L Street, N.E., and 1109-1115 Congress Street, N.E., and more particularly identified as Square 748, Lots 78 and 819 ("Property"). The minor modification request was made pursuant to Subtitle Z, Chapter 7, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission approves the application.

FINDINGS OF FACT

A. The Applications, Parties, Hearing, and Post-Hearing Filings

1. Pursuant to Z.C. Order No. 16-13, dated June 12, 2017, and effective September 1, 2017 ("Order"), the Commission approved an application for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 Zone District to the C-2-B Zone District for the Property, and for a portion of the alley to be closed, in order to permit the redevelopment of the Property with a mixed-use building that has approximately 64 residential units and approximately 3,825 square feet of PDR uses. The proposed building will have a maximum height of 90 feet and density of a 6.0 floor area ratio ("FAR").

2. As part of the PUD, the Applicant is devoting 12% of the building's residential gross floor area ("GFA") to affordable housing. Eight percent of that affordable housing will satisfy the inclusionary zoning requirement ("IZ"); the remaining four percent is part of the PUD's public benefits package. Half of the IZ requirement (4%) will be located on-site. The other half of the IZ requirement and the affordable housing proffer will be provided at an off-site location, to be constructed in conjunction with D.C. Habitat for Humanity.

3. As set forth in Condition B.1 of the Order, the Applicant shall dedicate: (a) a minimum of four percent of the Project's residential gross floor area to households earning up to 80% of the AMI, and (b) a minimum of eight percent of the Project's residential gross floor area to households earning up to 50% of the AMI at an off-site location consistent with the Order. The on-site 80% AMI affordable units (1,815 sf GFA) and 1,893 square feet the off-site location at 50% AMI (3,708 sf GFA total) shall satisfy the minimum IZ set-aside requirement, and shall be maintained in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations. The remaining off-site affordable units offered at 50% AMI (approximately 2,607 square feet of GFA) shall also be governed by

restrictive covenants with D.C. Habitat. The Applicant has the flexibility to vary the location and unit layout of the on-site IZ units provided the percentage of square footage devoted to IZ units is consistent with condition B.1 of the Order. The off-site IZ units and affordable units shall be a minimum of 900 square feet each, shall be single-family residences or flats; and shall be located within the boundaries of ANC 6C, 6A, 6E, 5D, or 5E. The Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item.

B. Modification Request

1. On October 30, 2017, the Applicant filed an application with the Commission seeking a minor modification to Z.C. Order No. 16-13 to clarify that the off-site IZ location may exceed the 30% gross floor area limitation under 11 DCMR § 2607.2(g) (2013).[1]

2. Under § 2607.2(g) of the 1958 Zoning Regulations, an off-site IZ location may not have more than 30% of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties unless relief is granted by the Board of Zoning Adjustment. Here, as shown in evidence to the record, 50% of the off-site gross floor area will house the PUD's IZ requirement. While the Applicant was permitted flexibility from the off-site IZ requirements of § 2607 in Condition No. 4 of the Order, relief from § 2607.2(g) was not specifically enumerated. (*See* Order at 11, 28-29). Consequently, the Applicant seeks a minor modification of the Order to clarify that the off-site location may devote up to 50% of its residential gross floor area to IZ units.

3. Under the Zoning Regulations adopted September 6, 2016, additional relief or flexibility from the zoning regulations not previously approved is typically treated as a modification of significance. (*See* 11-Z DCMR § 703.6.) Here, there is no additional flexibility being requested because the Applicant's proffer and the final order in Z.C. case 16-13 fully described the off-site location as accommodating 50% of the project's IZ requirement (i.e., 1893 sq. ft. of GFA off-site and 1815 sq. ft. of GFA on-site totaling 3708 sq. ft. of GFA to satisfy the minimum IZ set aside requirement. (*See* Exhibit 60 p. 9 to Z.C. Case No. 16-13.) Further, the Office of Planning's ("OP") supplemental report indicated that half of the required IZ units would be provided off-site. (*See* Exhibit 49 to Z.C. Case No. 16-13 and Exhibit 1C to Z.C. Case No. 16-13A.) Therefore, this modification falls into the definition of a minor modification pursuant to Subtitle Z § 703.2 because it does not change the material facts upon which the Commission based its original approval of the application. The Commission's original intent was to allow flexibility from the limitation imposed in § 2607.2(g) in order for more than 30% of the off-site gross floor area to be occupied by IZ units,

[1] The PUD was processed under the 1958 Zoning Regulations. (*See* Z.C. Order No. 16-13 at 1.)

4. The record in Z.C. Case No. 16-13 demonstrates that the Applicant worked with the OP to identify a specific off-site location in Advisory Neighborhood Commissions ("ANC") 6C, 6A, 6E, 5D, or 5E to "ensure that the affordable units are introduced to neighborhoods with higher housing costs so that the affordable units help diversify the housing choices in a particular neighborhood and do not concentrate lower-income households in a particular area, consistent with the goals of the IZ program." (*Id.* at 4; *see also* OP Supplemental Report, Exhibit 1C; Order at 20 (¶ 71); Order at 29 (Condition B.1).) The Applicant further agreed to limit the type of housing to single family dwellings or flats. *Id.* Together, these conditions help achieve the purpose and intent of the off-site locational requirement to ensure that moderate- and low-income housing is interspersed with market-rate units to create mixed-income neighborhoods. The restriction limiting the type of housing to single-family dwellings or flats ensures that families with children can be accommodated. In negotiating its Memorandum of Understanding with Habitat for Humanity, the Applicant and Habitat for Humanity both contemplated that the off-site IZ units and affordable housing proffer would be provided at a single location. (*See* Exhibit 47A to Z.C. Case No. 16-13.) While the Applicant requested relief from several of the off-site IZ requirements at the time, the Applicant did not specifically request relief from § 2607.2(g) of the 1958 Zoning Regulations to allow more than 30% of the off-site gross floor area to be occupied by IZ units. The Applicant has identified a single site in a mixed-use district that can accommodate two flats (i.e., four units) but requires a minor modification of 11 DCMR § 2607.2(g) before it can secure the site.

5. Unlike typical requests for additional zoning relief or flexibility in a PUD, here the scope and nature of the minor deviation from the off-site IZ requirements was fully disclosed and vetted in the original application. Additionally, in setting the parameters for an off-site location, the Commission recognized that the Applicant may need more flexibility in identifying a site and allowed the Applicant flexibility to request another Ward 5 or Ward 6 location as a consent calendar item. The last sentence of Condition No. B.1 provides that "[t]he Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item." The nature of this current request to clarify that more than 30% of the off-site gross floor area is to be occupied by IZ units falls within this flexibility and can be deemed a minor modification.

6. The Applicant does not propose any changes to the approved PUD plans with this modification request.

7. The Commission, at its public meeting on November 27, 2017, determined that this application was properly a minor modification within the meaning of 11-Z DCMR § 703.2, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1.

8. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that ANC 6C was served with the application.

9. OP submitted a report on November 17, 2017. The OP report recommended approval, as a minor modification/technical correction, of the October 30, 2017, application to clarify that in approving Condition B.1 of Order 16-13, which permitted up to 50% of the required Inclusionary Zoning (IZ) units to be located off-site in exchange for the doubling of the IZ square footage and the provision of family-size units, the Commission also intended to grant relief from § 2707.2(g) of the 1958 Zoning Regulations, to permit the IZ units to occupy more than 30% of the off-site development's gross floor area.

10. ANC 6C did not address this request by the Applicant.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to minor modifications to final orders and plans without a public hearing. A minor modification "is one that does not change the material facts upon which the Commission based is original approval of the application or petition." 11-Z DCMR § 703.2.

2. The Commission concludes that the modification requested and as described in the above Findings of Fact, is a minor modification and therefore can be granted without a public hearing.

3. Pursuant to this modification, the relief granted to the Applicant rests within the four corners of Subtitle X, § 301.3 and does not resort to granting relief beyond the plain meaning of any regulation.

4. The 2016 Regulations govern modifications to PUDs initially determined under the 1958 Zoning Regulations.

5. The Commission finds that the proposed modifications are entirely consistent with the Commission's previous approval. The Applicant is only proposing that the Commission clarify that in approving Condition B.1 of Z.C. Order No. 16-13, which permitted up to 50% of the required Inclusionary Zoning (IZ) units to be located off-site in exchange for the doubling of the IZ square footage and the provision of family-size units, the Commission also intended to grant relief from § 2707.2(g) of the 1958 Zoning Regulations, to permit the IZ units to occupy more than 30% of the off-site development's gross floor area. That modification does not diminish or detract from the Commission's original approval of the PUD project. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give "great weight" to the issues and concerns of contained in the written report of an affected ANC. ANC 6C meets the definition of "affected ANC" as set forth in 11-B DCMR § 100.1. Since ANC 6C did not address this minor modification, there is nothing to give great weight to. The Commission is also required give great weight to the recommendations of OP (*See* D.C.

Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP's recommendation to approve this minor modification application.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a minor modification to the consolidated PUD project approved in Z.C. Case No. 16-13 as follows.

The conditions in Z.C. Order No. 16-13 remain unchanged except the following condition replaces Condition No. A.4 of Z.C. Order No. 16-13:

4. The Applicant is granted flexibility from the off-street parking requirements of 11 DCMR § 2101.1; the loading requirements of § 2201.1; the PUD minimum land area requirements of § 2401.1(c); the rear yard requirements of §§ 774.1 and 774.7, the court requirements of § 776, and the off-site IZ unit requirements of §§ 2607 and 2607.2(g), consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.

At its public meeting of November 27, 2017, upon the motion of Commissioner Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Peter Shapiro to approve; Michael G. Turnbull 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 July 13, 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. 16-13B
Z.C. Case No. 16-13B
JS Congress Holdings, LLC
(Modification of Consequence to PUD @ Square 748, Lots 78 and 819)
December 11, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on November 27, 2017 and December 11, 2017, to consider an application by JS Congress Holdings, LLC ("Applicant") for a modification of consequence to a consolidated planned unit development ("PUD") approved by Z.C. Order No. 16-13 for the property at 220 L Street, N.E., and 1109-1115 Congress Street, N.E., and more particularly identified as Square 748, Lots 78 and 819 ("Property"). The modification of consequence request was made pursuant to Subtitle Z, Chapter 7, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). For the reasons stated below, the Commission approves the application.

FINDINGS OF FACT

A. The Applications, Parties, Hearing, and Post-Hearing Filings

1. Pursuant to Z.C. Order No. 16-13, dated June 12, 2017, and effective September 1, 2017 (the "Order"), the Commission approved an application for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 Zone District to the C-2-B Zone District for the Property, and for a portion of the alley to be closed, in order to permit the redevelopment of the Property with a mixed-use building that has approximately 64 residential units and approximately 3,825 square feet of PDR uses. The proposed building will have a maximum height of 90 feet and density of a 6.0 floor area ratio ("FAR").

2. As part of the PUD, the Applicant is devoting 12 percent of the building's residential gross floor area ("GFA") to affordable housing. Eight percent of that affordable housing will satisfy the inclusionary zoning ("IZ") requirement; the remaining four percent is part of the PUD's public benefits package. Half of the IZ requirement (4%) will be located on-site. The other half of the IZ requirement and the affordable housing proffer will be provided at an off-site location, to be constructed in conjunction with D.C. Habitat for Humanity.

3. As set forth in Condition B.1 of the Order, the Applicant shall dedicate: (a) a minimum of four percent of the Project's residential gross floor area to households earning up to 80% of the AMI, and (b) a minimum of eight percent of the Project's residential gross floor area to households earning up to 50% of the AMI at an off-site location consistent with the Order. The on-site 80% AMI affordable units (1,815 sf GFA) and 1,893 square feet the off-site location at 50% AMI (3,708 sf GFA total) shall satisfy the minimum IZ set-aside requirement, and shall be maintained in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations. The remaining off-site affordable units offered at 50% AMI (approximately 2,607 square feet of GFA) shall also be governed by

restrictive covenants with D.C. Habitat. The off-site IZ units and affordable units shall be a minimum of 900 square feet each, shall be single-family residences or flats; and shall be located within the boundaries of ANC 6C, 6A, 6E, 5D, or 5E. The Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item.

4. In order to assist with the construction of the off-site IZ and affordable dwelling units at the off-site location, Condition B.2 of the Order requires the Applicant to pay D.C. Habitat for Humanity $625,000 no later than October 31, 2017.

5. Since the time of the issuance of the final order on August 23, 2017, Union Market Neighbors filed a Petition for Review of Z.C. Order No. 16-13 with the D.C. Court of Appeals to review the Commission's decision. *See* D.C. Court of Appeals Case No. 17-AA-1048.

B. Modification Request

1. On October 30, 2017, the Applicant filed an application with the Commission seeking a modification of consequence to Z.C. Order No. 16-13 to modify Condition No. B.2 of the Order to extend the October 31, 2017 deadline to six months after a favorable resolution of the petition for review filed with the D.C. Court of Appeals.

2. While the effective date of a PUD order is tolled by the filing of a petition for review under Subtitle Z § 705.8, the regulations are silent on whether fixed deadlines in a PUD order are similarly tolled. Out of an abundance of caution, the Applicant requested a modification to extend this payment date to six months after the favorable resolution of the court case. Changes to a condition of a final order are deemed modifications of consequence pursuant to 11-Z DCMR § 703.4.

3. Without an extended deadline, the Applicant would face difficulty securing financing for the overall project, including the affordable housing component, while the uncertainty of the court decision is pending. The Applicant has identified a single off-site location to accommodate the IZ and affordable housing component and has been diligently working to fulfill this condition of the order. However, the appeal has now jeopardized the Applicant's ability to proceed until the matter is favorably resolved by the court.

4. The Applicant does not propose any changes to the approved PUD plans with this modification request.

5. At its public meeting on November 27, 2017, the Commission determined that this application was properly a modification of consequence within the meaning of 11-Z DCMR § 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1. The Commission scheduled the matter for decision on

December 11, 2017, to allow Advisory Neighborhood Commission ("ANC") 6C the opportunity to comment on the modification request.

6. On December 5, 2017, ANC 6C notified the Commission by email that it did not plan to address this request.

7. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that ANC 6C was served with the application.

8. The Office of Planning ("OP") submitted a report on November 17, 2017. OP report recommended approval of the application to modify Condition B.2 of Order 16-13 to extend the deadline for fulfillment of the requirements of this condition from October 31, 2017 to a date 6 months after a favorable resolution of the petition for review by the D.C. Court of Appeals of Z.C. Order 16-13.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) Examples of modifications of consequence "include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)

2. The Commission concludes that the modification requested and as described in the above Findings of Fact, is a modification of consequence and therefore can be granted without a public hearing.

3. Pursuant to this modification, the relief granted to the Applicant rests within the four corners of Subtitle X, § 301.3 and does not resort to granting relief beyond the plain meaning of any regulation.

4. The Commission finds that the proposed modifications are entirely consistent with the Commission's previous approval. The Applicant is only proposing to modify Condition No. B.2 of the Order to extend the October 31, 2017, deadline to six months after a favorable resolution of the petition for review filed with the D.C. Court of Appeals. That modification does not diminish or detract from the Commission's original approval of the PUD project. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) to give "great weight" to the issues and concerns of contained in the written report of an affected ANC. ANC 6C meets the definition of "affected ANC" as set forth in 11-B DCMR § 100.1. Since ANC 6C chose not to address this modification of consequence, there is nothing to give great weight to. The Commission is also required give great weight to the recommendations of OP (*See* D.C. Official Code § 6-623.04

(2012 Repl.)). The Commission concurs with OP's recommendation to approve this modification of consequence application.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD project approved in Z.C. Case No. 16-13 as follows.

The conditions in Z.C. Order No. 16-13 remain unchanged except the following condition replaces Condition No. B.2 of Z.C. Order No. 16-13:

> **Prior to the issuance of a building permit**, the Applicant shall provide proof to the Zoning Administrator that it has paid $625,000 to D.C. Habitat for Humanity no later than six months after a favorable resolution of the petition for review by the D.C. Court of Appeals (No. 17-AA-1048), that D.C. Habitat for Humanity has the off-site housing location under its control, that each of the off-site units will consist of a minimum of 900 square feet and two bedrooms, and that the units will be constructed as single-family residences or flats.

At its public meeting of December 11, 2017, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter 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 July 13, 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. 17-16
Z.C. Case No. 17-16
251 Massachusetts Avenue, LLC
(Map Amendment @ Square 560)
May 14, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on April 2, 2018 to consider an application by 251 Massachusetts Avenue, LLC ("Applicant") for approval of a Zoning Map Amendment pursuant to 11-X DCMR § 500.1 of the District of Columbia Zoning Regulations ("Zoning Regulations of 2016"), Title 11 of the District of Columbia Municipal Regulations. The application is to amend the Zone Map from the MU-6 zone to the D-4 zone for Lot 853 in Square 560.

The Commission considered the application for the Map Amendment pursuant to Subtitles X and Z of the Zoning Regulations of 2016. The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 400 et seq. As discussed below, no party, person, or entity appeared in opposition to the application at the public hearing. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to 11-Z DCMR § 604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby approves the application.

Application, Parties, and Hearing

1. The property that is the subject of the Map Amendment consists of Lot 853 in Square 560 ("Property"). (Exhibit ["Ex."] 2.)

2. The Property is currently in the MU-6 zone. The Property is designated on the Future Land Use Map of the Comprehensive Plan for Mixed Use: High-Density Residential and High-Density Commercial. (Ex. 2, 2B, 2C)

3. On September 1, 2017, the Applicant filed an application for approval of the Map Amendment. (Ex. 1, 2-2I.)

4. Prior to filing the application, on July 18, 2017, the Applicant mailed a notice of intent to file the map amendment application to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission ("ANC") 6E. The Applicant also reached out to ANC 6E and planned to present at a meeting after filing, per the ANC's request. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Ex. 2D.)

5. The application satisfied the filing requirements of 11-Z DCMR § 304 et seq. (Ex. 2E.)

6. On November 13, 2017, the Commission set the case down for a public hearing based on the recommendation of the Office of Planning ("OP"). (Ex. 10.)

7. On January 31, 2018, the Applicant filed a supplemental submission that requested a public hearing and detailed the Applicant's planned presentation for the hearing. (Ex. 11.)

8. Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 400 et seq. (Ex. 14, 15, 17.)

9. On March 12, 2018, the Applicant filed a supplemental prehearing submission that updated the expert witness to testify at the public hearing. (Ex. 19-19A.)

10. The Property is located entirely within ANC 6E. At a duly noticed public meeting with a quorum present, the ANC voted in support of the application and submitted a report stating no issues and concerns. (Ex. 25.)

11. On April 2, 2018, the Commission held a public hearing in accordance with 11-Z DCMR § 408.

12. No person, party, or entity appeared in support or opposition to the application.

13. OP and the District Department of Transportation ("DDOT") each submitted reports in support of the application, and OP testified in support. (Ex 20, 21.)

14. Pursuant to 11-Z DCMR § 408.11, at the close of the hearing, the Commission took proposed action to refer the application to the National Capital Planning Commission ("NCPC").

15. On April 30, 2018, the Commission referred the proposed map amendment to the NCPC for review and comment pursuant to the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Section 1-201 et seq. (Ex. 28.)

16. By report dated May 3, 2018, pursuant to delegations of authority adopted by NCPC on October 3, 1996, its Executive Director found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests. (Ex. 29.)

As directed by 11-Z DCMR § 408.8, the Commission has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for approval of a Zoning Map amendment pursuant to 11-X DCMR § 500.

As required by law, the Commission must give "great weight" to the recommendations of OP as well as the issues and concerns identified by ANC 6E as the affected ANC, which is satisfied by the Commission acknowledging the written reports of OP and ANC 6E. OP recommended approval. Because the ANC 6E report identified no issues or concerns, there was nothing to give great weight to. The Commission finds this evidence to be persuasive.

Based upon the record before the Commission, the Commission concludes that the proposed map amendment from the MU-6 zone to the D-4 zone, where the Property is designated for Mixed Use: High-Density Residential and High-Density Commercial in the Future Land Use Map of the Comprehensive Plan, furthers multiple policies of the Comprehensive Plan. Pursuant to 11-X DCMR § 500.3, the Commission concludes that the map amendment is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the Property, as detailed in the application and in the OP Report.

DECISION

The Zoning Map is amended by reasoning Square 560, Lot 853 from the MU-6 zone to the D-4 zone.

On April 2, 2018, upon the motion of Commissioner May, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the close of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Peter A. Shapiro to approve; Michael G. Turnbull not present, not voting).

On May 14, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert Miller, Peter G. May, and Michael G. Turnbull to approve; 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 July 13, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Metropolitan Police Department	)	
Petitioner	)	PERB Case No. 18-A-04
v.	)	Opinion No. 1667
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	
Respondent	)	

DECISION AND ORDER

I. Introduction

On November 27, 2017, the Metropolitan Police Department ("Department") filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), seeking review of an Arbitrator's Opinion and Award ("Award"). The Award found that termination was not an appropriate penalty for the charges against Officer Michael Thomas ("Grievant") and instead imposed a forty-five (45) day suspension.

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.[1] The Department argues that the Award is contrary to law and public policy. Having reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, the Board concludes that the award on its face is not contrary to law and public policy. Therefore, the Board denies the Department's Request.

II. Statement of the Case

[1] D.C. Official Code § 1-605.02(6).

The charges against the Grievant are related to an off-duty incident that occurred at a private residence in Hyattsville, Maryland. Early in the morning of September 13, 2009, the Grievant saw a person, later identified as Julio Lemus ("Mr. Lemus"), standing by the Grievant's vehicle.[2] An altercation ensued between the Grievant and Mr. Lemus resulting in the Grievant drawing and discharging his service weapon twice, striking Mr. Lemus in the left thigh and abdomen.[3]

After an investigation by the Hyattsville Police, the Maryland state attorney decided not to file charges against either the Grievant or Mr. Lemus. On January 15, 2010, the Department served the Grievant with a Notice of Proposed Adverse Action which identified two charges: (1) the Grievant was involved in the commission of an act which would constitute a crime and (2) he failed to obey orders or directives issued by the Chief of Police, specifically no member shall draw and point a firearm at a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted.[4] The notice recommended a penalty of termination.[5] An Adverse Action Panel ("Panel") held a hearing on January 14, 2011, and found the Grievant guilty of both charges. A Final Notice of Adverse Action recommended termination as an appropriate penalty. On March 10, 2011, the Union demanded arbitration.

III. Arbitration Award

The Arbitrator first determined whether there was sufficient evidence to support the charges. According to the Arbitrator, it was clear that if the Grievant called 911 to report the incident to the Hyattsville police instead of confronting Mr. Lemus, none of the events culminating in the shooting of Mr. Lemus would have occurred.[6] The Arbitrator agreed with the Panel's decision that the Grievant's actions were reckless and showed poor judgment. The Arbitrator also agreed that the evidence presented by the Department was sufficient to support the alleged charges.[7]

The Arbitrator next determined whether termination was an appropriate penalty. *Douglas v. Veterans Administration*[8] requires twelve factors to be weighed in determining whether an agency's penalty in an adverse action case was reasonable. Based on the *Douglas* factors, the Arbitrator found that the Panel did not reach conclusions within "tolerable limits of reasonableness," citing the consistency of the penalty with those imposed on other employees for the same or similar offenses, the adequacy and effectiveness of alternative sanctions, and the potential for the Grievant's rehabilitation.[9]

[2] Award at 1.
[3] Award at 2.
[4] Award at 2-3.
[5] Award at 3.
[6] Award at 6.
[7] Award at 6.
[8] 5 M.S.P.B. 313 (1981).
[9] Award at 9.

The Arbitrator noted that the Panel cited no other disciplinary decision in reaching its conclusion that the termination was consistent with the penalty given to other employees for like or similar conduct. Three disciplinary cases were part of the arbitration record and in all three cases the penalty of termination was reduced to a suspension including one case in which the grievant shot and killed someone in self-defense.[10]

The Arbitrator stated that another penalty could have deterred the grievant and others, such as a long suspension without pay, mandatory retraining of the Grievant and, if necessary, counseling and educational meetings with officers with specific warnings of severe discipline for repeat offenses.[11] These alternative penalties may have also altered the Panel's conclusions regarding *Douglas* factor 10, the potential for an employee's rehabilitation. In light of the alternative penalties available, the Arbitrator disagreed with the Panel's conclusion that the Grievant could not be rehabilitated.

The Arbitrator ruled that the penalty should be reduced from termination to suspension.[12]

IV. Discussion

The Board has limited authority to overturn an arbitration award.[13] For the Board to find the Award contrary to law and public policy, the asserting party bears the burden of specifying the "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result."[14]

The Department's arguments in favor of overturning the Award repeatedly rely on *Stokes v. District of Columbia*[15] as the standard by which an Arbitration decision should be reviewed.[16] As the Union states in its response, *Stokes* establishes the deferential standard by which the Office of Employee Appeals ("OEA") is to review penalties that agencies impose on employees.[17] The Board has repeatedly held that *Stokes* is not the correct standard to apply to an arbitrator's review of agency decisions when the parties have agreed to submit the case to arbitration.[18] The Board has previously affirmed an arbitrator's decision reducing a police officer's penalty from termination to a thirty-day suspension. The Superior Court of the District of Columbia went on to hold that the Board reasonably found that the Arbitrator was not bound

[10] Award at 8.
[11] Award at 9.
[12] Award at 9.
[13] *FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 177 (D.C. 2009).
[14] *MPD and FOP/Metro. Police Dep't Labor Comm.*, 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).
[15] 502 A.2d 1006 (D.C. 1985).
[16] Appeal at 8-9.
[17] Response at 15.
[18] *AFGE, Local 872 v. D.C. Water and Sewer Authority*, 63 D.C. Reg. 6477, Slip Op No. 1566 at 7, PERB Case No. 15-A-09 (2016); *D.C. Metro Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Garcia)*, 63 D.C. Reg. 4573, Slip Op. No. 1561 at 3, PERB Case No. 14-A-09 (2016); *D.C. Metro Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Brown)*, Slip Op. No. 757 at 3, PERB Case No. 03-A-06 (2004).

by the standards that apply to OEA's review of agency decisions set forth in *Stokes*.[19] As stated earlier, and in many previous PERB Decisions and Orders, the arbitrator's authority does not arise from *Stokes*, but from the parties' contractual agreement to submit the case to arbitration.[20]

In this case, the parties presented two issues to the Arbitrator: (1) whether the evidence presented by the Department was sufficient to support the alleged charges and (2) whether termination was an appropriate remedy.[21] The Arbitrator concluded that there was sufficient evidence to support the alleged charges but did not agree that termination was an appropriate remedy. Arbitrators have wide latitude to construct equitable remedies, as long as those remedies are not expressly limited by the parties' collective bargaining agreement.[22] The Board has held that a mere disagreement with the Arbitrator's interpretation does not make an award contrary to law and public policy.[23] The Department has failed to specify applicable law and definite public policy that mandates the Arbitrator arrive at a different result.

Finally, the Department argues that the Award is contrary to the public policy requiring police officers to preserve the peace, protect life and uphold the law. The Department argues that reinstating the Grievant would violate this public policy because the misconduct fits squarely within the behavior proscribed by District of Columbia law and the Department's General Orders.[24] The Board has adopted 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."[25] The D.C. Circuit went on to explain that the "exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy."[26] The Board may not modify or set aside the Award as contrary to law and public policy in the absence of a clear violation on the face of the Award.[27]

---

[19] *D.C. Metro. Police Dep't. v. D.C. Pub. Emp. Rels. Bd.*, 2014 CA 007679 P(MPA) (December 16, 2015).
[20] *D.C. Metro. Police Dep't v. F.O.P/Metro. Police Dep't Labor Comm.(on behalf of Bell)*, 63 D.C. Reg. 12581, Slip Op. No. 1591, PERB Case No. 15-A-16 (2016); *FOP/Metro. Police Dep't Labor Comm. (on behalf of Cummings) v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 5801, Slip Op. No. 1347, PERB Case No. 10-A-22 (2012); *D.C. Metro. Police Dep't v. F.O.P/Metro. Police Dep't Labor Comm. (on behalf of Suggs)*, Slip Op. No. 933, at 7-8, PERB Case No. 07-A-08 (Mar. 12, 2008); *Metro. Police Dep't v. Nat'l Ass'n of Gov't Employees, Local R3-5 (on behalf of Burrell)*, 59 D.C. Reg. 2983, Slip Op. No. 785 at 5, PERB Case No. 03-A-08 (2006).
[21] Award at 1.
[22] *See FOP/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 5326, Slip Op. No. 1373, PERB Case No. 11-A-05 (2013); *D.C. Metro. Police Dep't v. FOP/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992).
[23] *D.C. Metro. Police Dep't v. F.O.P/Metro. Police Dep't Labor Comm.*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008); see also *District of Columbia Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Committee (on behalf of Thomas Pair)*,61 D.C. Reg. 11609, Slip Op. No. 1487 at 7-8, PERB Case No. 09-A-05 (2014) and *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).
[24] Award at 16.
[25] *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)).
[26] *Id.*
[27] *FOP/Dep't of Corr. Labor Comm. v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

The Department has offered no such clear violation of law and public policy. Therefore, the Department's challenge must be dismissed.

V. Conclusion

Based on the foregoing, the Board finds that the Arbitrator's Award is not contrary to law and public policy. Accordingly, the Department's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

May 17, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-04, Op. No. 1667 was transmitted to the following parties on this the 17th day of May, 2018.

John Schroth, Esq.
Pressler Senftle & Wilhite, P.C.
1432 K Street, NW
Twelfth Floor
Washington, D.C. 20005

Milena Mikailova, Esq.
Assistant Attorney General
Personnel and Labor Relations Section
441 4th Street, NW, Suite 1180N
Washington, D.C. 20001

/s/ Merlin M. George
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, DC 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Washington Teachers' Union, Local 6	)	
Complainant	)	PERB Case No. 15-U-28 Opinion No. 1668
v.	)	
District of Columbia Public Schools	)	
Respondent	)	

DECISION AND ORDER

I. Introduction

On June 17, 2015, Complainant Washington Teachers' Union ("Union") filed this unfair labor practice complaint and a request for preliminary relief alleging that the District of Columbia Public Schools ("DCPS") violated section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code. The complaint alleged that DCPS failed to: (1) bargain in good faith with the Union by unilaterally changing the licensure requirements for social workers and discharging all school social workers who did not obtain the new license by a certain time;[1] (2) bargain in good faith by refusing to honor its decision not to require school social workers to obtain the new license;[2] (3) bargain in good faith with the Union over the effects of the licensure change;[3] (4) bargain in good faith with the Union by communicating directly to the school social workers regarding the new license requirements.[4]

[1] Report at 1.
[2] Report at 2.
[3] Report at 2.
[4] Report at 2.

In an Answer filed on July 17, 2015, DCPS denied committing any unfair labor practices.[5] DCPS also opposed the Union's motion for preliminary relief and asked the Board to dismiss the complaint for untimeliness and failure to state a cause of action.[6] The Board referred the matter to a Hearing Examiner, who issued a Hearing Examiner's Report and Recommendation ("Report") on October 13, 2017.

The issues presented before the Hearing Examiner were as follows:

1. Whether the Union established that DCPS unilaterally and without bargaining with the Union unlawfully changed the licensing requirements for the school social workers represented by the Union;

2. Whether DCPS unlawfully bypassed the Union and directly dealt with the school social workers over the proposed change in the licensure requirement for school social workers; and

3. Whether the Union made a timely and proper request to bargain over the impact and effects of the proposed change in licensure requirements for the school social workers.[7]

For the reasons stated more fully herein, the Board affirms the Hearing Examiner's findings and recommendations that DCPS did not violate section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code as alleged. The Hearing Examiner's recommendations are reasonable, supported by the record, and consistent with Board precedent.

II. Hearing Examiner's Report and Recommendation

A. Facts

This matter involves social workers formerly employed by DCPS as licensed graduate social workers (graduate social workers").[8] At the time of the events set forth in the complaint, the D.C. Municipal Regulations required the clinical supervision of graduate social workers by licensed independent clinical social workers ("clinical social workers").[9] To be licensed as a clinical social worker, a graduate social worker was required, *inter alia*, to complete 100 hours of clinical supervision and then pass a licensing exam.[10]

[5] Report at 2.
[6] Report at 2.
[7] Report at 31.
[8] Report at 3.
[9] Report at 3.
[10] Report at 4.

In July 2010, DCPS established a new requirement that all DCPS clinicians providing social services be licensed as clinical social workers.[11] At the time, DCPS employed 140 social workers, 62 of whom were clinical social workers, and the remainder graduate social workers.[12]

In August 2010, DCPS informed the Union that it would change the position of school social workers, in pertinent part, to require a minimum qualification of clinical social worker for new social workers and to allow current graduate social workers up to three years to obtain the clinical social worker license.[13] DCPS stated that it would "provide clinical supervision of social workers licensed . . . as [graduate social workers] by social workers licensed as [a clinical social worker]."[14]

On September 24, 2014, DCPS, through its Director of Psychological Services, provided a draft memorandum to Union President Elizabeth Davis for her review.[15] The memorandum reiterated the change in the licensure requirement and outlined the clinical supervision program offered to graduate social workers.[16] This memorandum was not issued by DCPS.[17] On October 21, 2014, DCPS issued a different memorandum to all graduate social workers and copied Davis.[18] The memorandum stated that it was to serve as an update to the clinical supervision program offered to graduate social workers.[19] The letter also informed the affected employees that a failure to have the clinical social worker license would result in their termination.[20] Between October 21 and 29, 2015, DCPS informed all graduate social workers that those who had not obtained their clinical social worker license by June 30, 2015 would be discharged.[21]

On May 4, 2015, Union President Davis met with DCPS Chancellor Kaya Henderson and raised the issue of the graduate social workers who failed to obtain the clinical social worker license and faced termination.[22] Davis stated her belief that DCPS had not provided the affected social workers the 100 hours of required clinical supervision as DCPS had promised.[23] Accordingly, Davis believed that it was not the social workers' fault that they did not obtain the new license.[24] Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license, and thus avoid being terminated.[25] Davis made no other proposals to Henderson.[26]

[11] Report at 3.
[12] Report at 3.
[13] Report at 4.
[14] Report at 4.
[15] Report at 5.
[16] Report at 5-6.
[17] Report at 6.
[18] Report at 6.
[19] Report at 6.
[20] Report at 6.
[21] Report at 7.
[22] Report at 34, 35.
[23] Report at 35.
[24] Report at 35.
[25] Report at 35.
[26] Report at 35.

Henderson investigated Davis' claims regarding the issue of clinical supervision hours and presented the results to Davis by email of May 28, 2015.[27] Henderson determined that only three out of the affected 40 social workers did not complete the 100 hours of clinical supervision required to sit for the licensing exam.[28] Thereafter, Henderson proceeded to implement the change to the licensure requirement.[29]

By letter of July 2, 2015, DCPS notified graduate social workers who had not obtained their clinical social worker licenses that they would be terminated effective August 8, 2015.[30]

B. Recommendations

Based on a review of the evidence, the Hearing Examiner concluded that DCPS did not violate section 1-617.04(a)(1), (3), and (5) by failing to bargain in good faith over the Union's request to allow the social workers time to obtain a new license and unilaterally discharging social workers who did not obtain the new license by a certain time.[31]

The Hearing Examiner recommended that the Board dismiss the Union's allegations that DCPS failed to bargain in good faith over its decision to change the licensure requirement of the school social workers.[32] The Hearing Examiner agreed with the Union's concession that DCPS was permitted to change the licensure requirements for social workers as an exercise of its management rights and that the terminations of the affected graduate social workers were an effect of the change.[33] The Hearing Examiner also determined that the record did not support the Union's allegations that DCPS engaged in direct dealing with the Union members regarding the licensure change; therefore, no violation of the CMPA occurred.[34] Instead, the Hearing Examiner noted that the record shows DCPS "harbored no intent to bypass [the Union]."[35]

The Hearing Examiner recommended that the Board find that the Union made a timely and proper request to DCPS to bargain over the impact and effects of the licensure change.[36] The Hearing Examiner concluded that on May 4, 2015, Davis made a timely and proper request of DCPS to bargain when Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license.[37] Next, the Hearing Examiner determined that DCPS adequately responded to the Union's proposal before rejecting it.[38] Therefore, the Hearing

[27] Report at 14, 22, 35.
[28] Report at 35.
[29] Report at 35.
[30] Report at 7.
[31] Report at 33-35.
[32] Repost at 33.
[33] Report at 26, 33, 34.
[34] Report at 34.
[35] Report at 34.
[36] Report at 34.
[37] Report at 34, 35.
[38] Report at 35.

Examiner found that DCPS did not violate the CMPA and recommended that PERB dismiss the Union's allegations on this issue.[39]

Lastly, the Hearing Examiner recommended that the Board dismiss the Union's alleged violations of section 1-617.04(a)(3) of the D.C. Official Code.[40] This provision prohibits the District from discriminating in regards to hiring or tenure of employment or conditions of employment to encourage or discourage membership in any labor organization.[41] The Hearing Examiner concluded that the record does not support this allegation and that the Union did not produce any proof of this charge.[42]

III. Exceptions and Opposition to Exceptions

On November 3, 2017, the Union filed Complainant's Exceptions to the Hearing Examiner's Report and Recommendation and Brief in Support ("Exceptions")[43] in which it objects only to the Hearing Examiner's conclusion that DCPS bargained in good faith with regard to the Union's request to bargain over the impact and effects of the affected social workers' failure to obtain a license.[44]

The Union contends that the Hearing Examiner erred in finding that DCPS engaged in good faith bargaining with the Union. The Union first argues that it was undisputed before the Hearing Examiner that DCPS did not bargain with the Union over the termination of the social workers.

The Union objects to the Hearing Examiner's reliance on *American Federation of Government Employees, Local 631 v. Department of General Services* ("Slip Opinion 1401") in determining that DCPS engaged in good faith bargaining.[45] The Union contends that the cited case conflicts with more recent precedent. The Union cites to the Board's standard for good faith bargaining articulated in *American Federation of Government Employees, Local 383 v. D.C. Department of Youth Rehabilitation Services*.[46] The Union contends that bargaining requires more than a response or discussion; it requires "an honest effort to reach agreement, involving a 'give and take' with 'full and unabridged opportunities by both parties to advance, exchange, and reject specific proposals.'"[47]

The Union argues that rather than bargain, DCPS responded that it had no obligation to do so.[48] Further, the Union asserts, DCPS' response was "not in the nature of an open-minded

[39] Report at 35.
[40] Report at 35.
[41] Report at 35.
[42] Report at 36.
[43] Exceptions at 1.
[44] Exceptions at 5-10.
[45] Exceptions at 8.
[46] 63 D.C. Reg. 9778, Slip Op. No. 1577, PERB Case No. 13-U-06 (2016).
[47] Exceptions at 7.
[48] Exceptions at 8.

effort to reach an agreement," but instead was "merely an explanation of the unilateral action from which DCPS would not consider deviating,"[49] The Union notes that in a decision by the National Labor Relations Board Division of Judges, *Mi Pueblo Foods v. International Brotherhood of Teamsters, Local 853,*[50] the administrative law judge held that good faith bargaining did not take place even though the employer agreed to meet with the union, because the employer repeatedly asserted that it had no duty to bargain.[51]

The Union contends that it is irrelevant that Davis did not make another proposal to Henderson after Henderson refused to offer the social workers more time to obtain clinical social worker license.[52] The Union argues that it was DCPS' obligations to engage in a genuine effort to reach an agreement. The Union believes that given DCPS' position that it had no obligation to bargain, any further efforts to engage DCPS were futile.[53]

The Union also objects to the Hearing Examiner's reliance on Slip Opinion 1401 on the grounds that the cases are factually distinct.[54] In the present matter, the Union argues, Davis did not merely request that DCPS respond to the proposal, but additionally requested the parties discuss the issue in general.[55] The Union also asserts that unlike in Slip Opinion 1401, where the agency responded "point by point," Henderson only addressed the clinical supervision issue and did not address whether the deadline should be extended.[56] The Union finally notes that in Slip Opinion 1401, the agency did not contend that it had no obligation to bargain with the union.[57]

On December 1, 2017, DCPS filed an opposition to the Union's exceptions ("Opposition"). DCPS contends that the Hearing Examiner's report is supported by the record and PERB precedent and therefore, the Union has not grounds for reversal.[58] Specifically, DCPS contends that the Union provides no basis for challenging the facts found by the Hearing Examiner in the Union's Background section of the Exceptions.[59] DCPS also disputes the Union's suggestion that DCPS did not respond to the Union's inquiry about clinical hours.[60]

IV. Discussion

The Board will affirm a Hearing Examiner's Report and Recommendations if the recommendations are reasonable, supported by the record, and consistent with Board

[49] Exceptions at 7.
[50] Case No. 32-CA-25677, 2012 WL 423515 at 1 (NLRB. Div. of Judges Feb. 9, 2012), *aff'd in part*, 360 NLRB 1097 (N.L.R.B. 2014)
[51] Exceptions at 8.
[52] Exceptions at 8.
[53] Exceptions at 8.
[54] Exceptions at 8.
[55] Exceptions at 9.
[56] Exceptions at 9.
[57] Exceptions at 9.
[58] Opposition at 2.
[59] Opposition at 3.
[60] Opposition at 3-4.

precedent.[61] Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."[62]

A. Unilateral Change to Licensure Requirement

The Board adopts the Hearing Examiner's Recommendation that PERB dismiss the Union's allegation that DCPS unilaterally and without bargaining changed the licensure requirements for social workers. The Hearing Examiner based his conclusion on the Board's holding in *Teamsters, Local Unions No. 639 and 730 v. District of Columbia Public Schools*.[63] In that case, the Board held that section 1-617.08(a) of the D.C. Official Code exempts from the duty to bargain an employer's decision to implement rights retained solely by its management.[64] In the instant matter, the Union conceded that DCPS permissibly changed the licensure requirements in an exercise of its management rights.[65] The Hearing Examiner agreed with DCPS that the decision to implement the requirement change was a "non-bargainable, management right."[66] Having made such determination with respect to DCPS' decision to implement changes to the licensure requirements, the Hearing Examiner recommended the dismissal of this aspect of the complaint.[67]

In the context of changes to job qualifications, the Board has held that the establishment of qualifications for an existing position is nonnegotiable as a management right.[68] Thus, the Board concludes that DCPS had no duty to duty to bargain with the Union over changes to the licensure requirements for social workers. The Board finds that the Hearing Examiners' conclusion is reasonable, supported by the record, and consistent with Board precedent.

B. Direct Dealing

The Board adopts the Hearing Examiner's recommendation that DCPS did not engage in direct dealing with the Union with regard to the licensure requirement change. The Hearing Examiner exclusively relied on cases from the National Labor Relations Board ("NLRB"), suggesting that the Board did not have extensive case law on the issue of impermissible direct dealing. The Board upholds the Hearing Examiner's analysis based on the Board's precedent on this issue, which is consistent with the cited NLRB cases.

---

[61] *See Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).
[62] *Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'r v. D.C. Pub. Schs.*,59 D.C. Reg. 6138, Slip Op. 1016 at 6, PERB Case No. 09-U-08 (2010).
[63] 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1990).
[64] *Id*.
[65] Report at 33.
[66] Report at 34.
[67] Report at 34.
[68] *AFGE, Local 631 v. D.C. Water and Sewer Authority*, 54 D.C. Reg. 3210, Slip Op. No. 877 at p. 10, PERB Case No. 05-N-02 (2007).

In *American Federation of State, County and Municipal Employees, District Council 20 v. District of Columbia*,[69] the Board held that communication from an agency to its employees regarding its collective bargaining position was not an unfair labor practice because in the communication, the employer "neither dealt directly with employees, disparaged the Union to its members, undermined it, nor coerced or interfered with employees in their right to bargaining collectively." Furthermore, the Board has held that mere communication with union members does not violate the CMPA.[70]

In the present matter, the Hearing Examiner concluded that the evidence did not support the claim of direct dealing.[71] Instead, the Hearing Examiner noted that the record evinced DCPS' many communications with the Union over the proposed license change. The Board finds that based on the Hearing Examiner's factual findings, there is no evidence of direct dealing.

In the unfair labor practice complaint, the Union assets that it considers a letter dated October 21, 2014, from DCPS' Deputy Chief of Inclusive Programing to graduate social workers and copied to President Davis, to be an unfair labor practice.[72] In the letter, DCPS' Deputy Chief updated the graduate social workers on the clinical supervision provided by DCPS.[73] The letter, however, does not contain any negotiations or proposals. Based on the Board's precedent on direct dealing, the Board finds that the Union has not met its burden of proof that DCPS committed a violation of the CMPA.

C. The Union's Request to Bargain

a. Timeliness and Sufficiency of the Union's Request to Bargain

The Board adopts the Hearing Examiner's recommendation that the Union made a timely and proper request to bargain over the impact and effects of the proposed change in licensure requirement. The Board has consistently held that an exercise of management rights does not relieve the employer of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of management rights.[74] The Board has held that "[a]ny general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision that is otherwise not bargainable."[75]

[69] 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1988).
[70] *AFGE, Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at 5, PERB Case No. 13-U-06 (2014).
[71] Report at 34.
[72] Unfair Labor Practice Complaint, Exhibit 6.
[73] Unfair Labor Practice Complaint, Exhibit 6.
[74] *Int'l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 41. D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994).
[75] *Int'l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 39 D.C. Reg. 9633, Slip Op. No. 322 at p. 3, PERB Case No. 91-U-14 (1992).

The Board has held that the question of whether there has been a timely request for impact and effects bargaining is an issue of fact.[76] In determining whether the Union's request to bargain was timely and proper, the Hearing Examiner relied on Slip Opinion 1401.[77] In that case, PERB determined that the submission of a union proposal to management that dealt with the impacts and effects of a management right was a proper request to bargain.[78] Although the Hearing Examiner did not explain how he reached the conclusion that the Union made a timely request to bargain, he concluded that on May 4, 2015, Davis made a timely and proper request of DCPS to bargain when Davis proposed that Henderson intervene and extend the time for the affected social workers to obtain the new license.[79] The Hearing Examiner stated his belief that Davis testified "credibly, sincerely and honestly" regarding her encounters with Henderson.[80] In that respect, Davis testified that in early May 2015, she was aware that DCPS planned to discharge 40 school social workers who did not obtain the clinical social worker license by June 2015.[81] Acting on this information, Davis met with Henderson on May 4, 2014 to discuss extending the time for the social workers to obtain the clinical social worker license.[82] The Board finds that the Hearing Examiner's recommendation is reasonable, consistent with Board precedent, and supported by the record.

b. DCPS' Response to the Union's Request to Bargain

The Board adopts the Hearing Examiner's finding that DCPS adequately responded to the Union's request to bargain. The Board has reiterated that in the context of impact and effects bargaining, an unfair labor practice has been committed when there has been a general request to bargain and a "blanket" refusal.[83] Where there "exists a duty to bargain over the impact and effects of a decision involving the exercise of a managerial prerogative . . . categorically refusing to bargain over this aspect is done so at the risk of management."[84]

Citing again to Slip Opinion 1401, the Hearing Examiner explained that PERB employs a broad interpretation of the employer's response to the union's request to bargain.[85] The Hearing Examiner noted that PERB stated that in such cases where the broad request is made, there is no violation where the employer responds to the proposal before rejecting it.[86] In the instant case, the Hearing Examiner found that Henderson "undertook careful investigation of Davis' claims"

[76] *Nat'l Ass'n of Gov't Emps., Local R3-06 v. D.C. Water and Sewer Authority*, 47 D.C. Reg. 7551, Slip. Op. No. 635 at 6, PERB Case No. 99-U-04 (2000).
[77] 60 D.C. Reg. 12068, Slip Op. 1401, PERB Case No. 13-U-23 (2013).
[78] *Id*.
[79] Report at 35.
[80] Report at 34.
[81] Report at 12.
[82] Report at 12-13.
[83] *AFSCME, Dist. Council 20 and Local 2091 v. Dep't of Pub. Works*, Slip Op. No. 1514 at 3, PERB Case No. 14-U-03 (2015) (citing *FOP v. Dep't of Corr.*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002); *Int'l Bhd. of Police Officers v. D.C. Gen. Hosp.*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992)).
[84] *Teamsters Locals 639 and 730 v. D.C. Pub. Sch*., 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1991).
[85] Report at 35.
[86] Report at 35.

regarding the clinical hours and presented the results to Davis.[87] Finding that only 3 out of the affected 40 social workers did not receive the 100 hours, Henderson rejected Davis' proposal and proceeded to implement the licensure change requirement.[88] Therefore, the Hearing Examiner found that DCPS did not violate the CMPA, and recommended that PERB dismiss the Union's allegations on this issue.[89] The Board finds that the Hearing Examiner's recommendation is reasonable, consistent with Board precedent, and supported by the record.

The Board rejects the Union's exceptions to the Hearing Examiner's recommendation that DCPS bargained in good faith over the impact and effects of DCPS' decision to change the licensure requirements of social workers. The Board rejects the Union's repeated assertions that DCPS did not bargain with the Union and that the Union presented more than one proposal to DCPS.[90] As previously stated, the Hearing Examiner determined that the only proposal presented to DCPS was a request to extend the time for affected social workers to obtain the new license.[91] The Hearing Examiner found that DCPS responded to the Union's request by presenting the Union with the findings of a "careful investigation" that revealed that only three of the 40 social worker did not receive the 100 hours of clinical supervision.[92]

The Board also disagrees with the Union's exception that the Hearing Examiner incorrectly relied on Slip Opinion 1401 in determining that DCPS bargained in good faith. The Decision and Order was upheld by the District of Columbia Superior Court and the Board has not reversed its position on this issue.[93] Finally, the Board rejects the Union's reliance on *Mi Pueblo Foods v. International Brotherhood of Teamsters, Local 853*.[94] The Board finds that the cited case and the present case are factually and legally distinct. The cited case involved an employer that refused to recognize the Union as the affected employees' bargaining representative and therefore did not engage in collective bargaining over the terms and conditions of employment.[95] However, in the present matter, the Union did not allege that DCPS failed to recognize the unit and the Hearing Examiner determined that the parties engaged in collective bargaining over the impact and effects of a management right. Therefore, the Board dismisses the Union's exceptions.

V. Conclusion

The Board finds that the Hearing Examiner's dismissal of the Union's unfair labor practice complaint is reasonable, consistent with Board precedent, and supported by the record. The Board adopts the Hearing Examiner's findings that the Union's allegations do not constitute

[87] Report at 35.
[88] Report at 35.
[89] Report at 35.
[90] Exceptions at 8, 9.
[91] Report at 35.
[92] Report at 35.
[93] *Civil Case No. 2013 CA 005870(July 30, 2015); See FOP/MPD Labor Committee v. MPD,* Slip Op. No. 1552, PERB Case No. 09-U-34 (2015).
[94] Case No.32-CA-25677, 2012 WL 423515 at 1 (N.L.R.B. Div. of Judges 2012).
[95] *Id*.

violations of section 1-617.04(a)(1), (3), and (5) of the D.C. Official Code and dismisses the complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. Washington Teachers' Union's unfair labor practice complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

May 17, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-28, Op. No. 1668 was sent by File and ServeXpress to the following parties on this the 17th day of May, 2018:

Daniel M. Rosenthal
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, D.C. 20036

Stephanie T. Maltz, Esq.
Office of Labor Relations and
Collective Bargaining
441 4th Street, N.W., Suite 820 North
Washington, D.C. 20001

/s/ Alexis Anderson
PERB Staff Attorney

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
D.C. Nurses Association Complainant	)	PERB Case Nos. 17-U-09, 17-U-21, 17-U-23, and 17-RC-01
v.	)	
Not-for-Profit Hospital Corporation Respondent	)	
and	)	Opinion No. 1669
National Association of Special Police and Security Officers Petitioner	)	
v.	)	
Not-for-Profit Hospital Corporation Respondent	)	

DECISION AND ORDER

The Executive Director administratively dismissed for lack of jurisdiction four cases involving the Not-for-Profit Hospital Corporation ("the Corporation"). Three of the cases were filed by the D.C. Nurses Association, and one was filed by the National Association of Special Police and Security Officers. Motions for reconsideration of the dismissals were filed with the Public Employee Relations Board ("Board" or PERB") by the Corporation and the D.C. Nurses Association ("Movants"). For the reasons explained in this decision and order, the Board finds that it lacks jurisdiction over the cases and that the motions for reconsideration offer no reason for reaching a different result. Accordingly, the motions are denied.

I. Statement of the Case

Four cases were filed with the Board naming the Corporation as respondent. Three of the cases are unfair labor practice cases brought by the D.C. Nurses Association, namely, *D.C. Nurses Association v. Not-for-Profit Hospital Corp., aka United Medical Center,* PERB Case No. 17-U-09; *D.C. Nurses Association v. Not-for-Profit Hospital Corp. (United Medical Center),* PERB Case No. 17-U-21; and *D.C. Nurses Association v. Not-for-Profit Hospital Corp., aka United Medical Center*, PERB Case No. 17-U-23. The fourth case is a representation case brought by the National Association of Special Police and Security Officers, namely, *National*

Association of Special Police and Security Officers v. United Medical Center, PERB Case No. 17-RC-01. On September 25, 2017, the Executive Director administratively dismissed all four of the cases. Citing sections 44-951.08(a) and 44-951.10(b) of the D.C. Official Code, the Executive Director stated that the Board was without jurisdiction to adjudicate the cases.

On October 25, 2017, two motions for reconsideration were filed in response to the dismissals. The Corporation and the Nurses Association jointly moved that the Board reconsider the Executive Director's dismissal of the unfair labor practice cases. The Corporation separately moved that the Board reconsider the Executive Director's dismissal of the representation case. The National Association of Special Police and Security Officers, the petitioner in the representation case, did not join in that motion for reconsideration.

The texts of the two motions for reconsideration ("Motions") are nearly identical, with only a few minor variations in wording. The Motions take the position that "the conduct of the District government, the D.C. Council and the Public Employee Relations Board precludes a finding that the PERB does not have jurisdiction."[1] Movants argue that the Board should continue to exercise jurisdiction over the Corporation, as it has done, and that failure to do so would violate the Due Process Clause of the U.S. Constitution.

The procedural fact that one of the Motions was filed jointly has no effect on the merits of the case. Parties cannot confer jurisdiction by their consent, agreement, or acquiescence.[2] Because the Motions pending in the four cases ("Cases") present the same issues, the Board has consolidated the Cases.[3] The Motions are before the Board for disposition.

II. The Jurisdiction of the Board

As an administrative agency, PERB is a creature of statute; it may not act in excess of its statutory authority.[4] Two statutes govern the Board's jurisdiction in the Cases: the Comprehensive Merit Personnel Act of 1978, Chapter 6 of Title 1 of the D.C. Official Code,[5] ("the CMPA") and the Not-for-Profit Hospital Corporation Establishment Amendment Act of 2011, Chapter 9A of Title 44 of the D.C. Official Code,[6] ("the Corporation Establishment Act").

A. The CMPA

The CMPA states a policy in favor of collective bargaining between the District of Columbia government and its employees.[7] It sets forth rights and obligations of employees, labor organizations, and management. Subchapter V of the CMPA creates the Public Employee Relations Board. Subchapter XVII gives the Public Employee Relations Board jurisdiction over various types of actions involving District employees, including those that the Cases attempt to

[1] Motions at 1-2.
[2] *Hewsen v. Lynch*, 343 A.2d 45, 47 (D.C. 1975); *Guardian Investment Corp. v. Rubenstein*, 192 A.2d 296, 299 (D.C. 1963).
[3] *See AFGE v. Gov't of D.C. and AFSCME, Council 20 v. Gov't of D.C.*, 36 D.C. Reg. 235, Slip Op. No. 199, PERB Case Nos. 88-U-04 and 88-U-09 (1988).
[4] *See Dist. Intown Props. Ltd. v. D.C. Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1379 (D.C. 1996).
[5] D.C. Official Code §§ 1-601.01-1-636.03.
[6] *Id.* §§ 44-951.01-44-951.18.
[7] *Id.* §§ 1-601.02(a)(6): 1-617.01(a).

present, i.e., actions to certify exclusive bargaining unit representatives[8] and claims that unfair labor practices have been committed.[9]

The CMPA defines employee to "mean[], except when specifically modified in this chapter, an individual who performs a function of the District government and who receives compensation for the performance of such services."[10] In section 1-602.01, entitled "Coverage; exceptions," the CMPA specifies the employees that it covers. Section 1-602.01provides:

> (a) Except as provided in subsection (c) of this section, unless specifically exempted from certain provisions, this chapter shall apply to all employees of the District of Columbia government, except the Chief Judges and Associate Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the nonjudicial personnel of said Courts. With the exception of subchapters V and XVII of this chapter, and § 1-608.01(e), employees of the D.C. General Hospital and the D.C. General Hospital Commission shall be exempt from the provisions of this chapter.
>
> (b) Repealed.
>
> (c) The provisions of subchapter XV-A[11] shall apply to employees of the Council and all District agencies, including, but not limited to employees of subordinate agencies, independent agencies, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the District of Columbia Housing Authority, and the Metropolitan Police Department.
>
> (d) With the exception of subchapters V, XXVII, XV-A, XXI, XXII, XXIII and XXVI, employees of the District of Columbia Housing Authority shall be exempt from the provisions of this chapter.

As the title of section 1-602.01 implies, there are many exceptions to the application of the CMPA to employees of the District of Columbia government. Section 1-602.01(a) exempts the Superior Court, the Court of Appeals, the D.C. General Hospital, and the D.C. General Hospital Commission. Section 1-602.01(d) exempts employees of the Housing Authority from most chapters of the CMPA. Section 1-602.03(a) and (b) exempts educational employees from some chapters of the CMPA. A statute outside of the CMPA but within Title 1, section 1-204.25(a), exempts employees of the Office of the Chief Financial Officer from all of the

[8] *Id.* § 1-605.02(2)
[9] *Id.* § 1-605.02(3).
[10] *Id.* § 1-605.02(2)
[11] Whistleblower Protection

CMPA, stating that they "shall be considered at-will employees not covered by Chapter 6 of this title."

The Movants claim that employees of the Corporation are similarly situated to other employees of the District of Columbia who are covered by the CMPA.[12] But employees of the Corporation are also similarly situated to employees who are not covered by the CMPA. In addition, the exempted employees are also similarly situated to other employees of the District.

Exemptions for the employees of the Corporation appear in the next statute to be considered, the Corporation Establishment Act.

B. The Corporation Establishment Act

In section 44-951.02(a), the Corporation Establishment Act provides, "There is established as an instrumentality of the District government the Not-for-Profit Hospital Corporation, which shall have a separate legal existence within the District government." As the Corporation is "an instrumentality of the District government . . . within the District government," it is fair to conclude that its employees perform a function of the District government and thus would fall within the CMPA's definition of employee if the CMPA applied to them.[13] However, officers and employees of the Corporation are not District government employees for purposes of subchapter II of Chapter 4 of Title 2 ("Non-Liability of District Employees").[14]

The primary purposes of the Corporation are to take over the assets of the United Medical Center, to ensure the continued operation of that hospital, and to sell or transfer the hospital if a qualified buyer is found.[15] The Corporation is empowered to do "any and all things necessary and proper to carry out its corporate purposes."[16] The Corporation Establishment Act establishes a board of directors and vests the powers of the Corporation in the board of directors.[17]

In three different places, the Corporation Establishment Act forecloses the operation of the CMPA within its ambit, exempting from the CMPA employees of the Corporation, employees transferred to the Corporation, and the Corporation itself. Regarding employees, section 44-951.08(a) states, "Chapter 6 of Title 1 shall not apply to employees of the Corporation." Regarding transferred employees, section 44-951.10(b) states, "The employees transferred from the United Medical Center to the Corporation shall not be governed by Chapter 6 of Title 1, or its implementing regulations and shall not enjoy any rights, benefits, or obligations afforded by Chapter 6 of Title 1." Finally, with regard to the Corporation itself, section 44-951.08(f) states, "The Corporation shall have independent personnel authority, including the authority to establish its own personnel system, and shall not be subject to Chapter 6 of Title 1 or its implementing regulations." The Corporation Establishment Act also makes

[12] Motions at 15.
[13] D.C. Official Code § 1-603.01(7). *See* Motions at 9 n.7.
[14] D.C. Official Code § 44-951.14(a).
[15] D.C. Official Code § 44-951.02(b). For background on the transfer of the United Medical Center to the Corporation, see *UMC Development, LLC v. District of Columbia*, 120 A.3d 37, 38-40 (D.C. 2015).
[16] *Id.* § 44-951.06(20).
[17] *Id.* §§ 44-951.04, 44-951.05.

governmental procurement law, Chapter 3A of Title 2 of the D.C. Official Code, inapplicable to the Corporation.[18]

The Movants admit that "it clearly states in the D.C. Code that UMC employees shall not enjoy any rights and benefits afforded by the CMPA."[19] Despite that admission, the Movants attempt to suggest that the City Council intended something other than what it clearly and repeatedly said. The Movants claim that the Council has subsequently confirmed collective bargaining agreements of the Corporation under section 1-617.17 "and other CMPA procedures."[20] The Movants argue that by confirming collective bargaining agreements of the Corporation, the Council has made clear its intention that the CMPA should apply to the Corporation.[21] Exhibits to the motion the Corporation filed separately reflect that proposed resolutions approving pursuant to sections 44-951.02 and 1-617.17 the compensation provisions of agreements were submitted to the Council in 2015 and 2016.[22] Speculation over the meaning of a Council's adoption of such proposals cannot shed any light on the intent of an earlier Council in enacting sections 44-951.08 and 44-951.10 or render the plain language of those sections ambiguous. The D.C. Court of Appeals has said that the views of a subsequent legislature are a hazardous basis upon which to infer the intent of an earlier one.[23]

The Movants also claim without support that the Council passed the Corporation Establishment Act with the intention that it would be a temporary resolution.[24] The act contains no sunset clause. Repeal of a law is as much a legislative function as is the enactment of a law.[25]

The Movants' arguments for the proposition that the Council must have intended the opposite of what it clearly stated, although inventive, are unavailing. Where, as here, a statute is clear on its face, there is no need to search for legislative intent.[26] The Board cannot "read into an unambiguous statute language that is clearly not there."[27]

C. Reconciling the CMPA with the Corporation Establishment Act

Because the terms of the Corporation Establishment Act cannot be simply disregarded, as the Movants advocate, the two acts must be reconciled. On the one hand the CMPA states that "unless specifically exempted from certain provisions, this chapter shall apply to all employees of the District of Columbia government."[28] On the other hand, the Corporation Establishment Act provides that Chapter 6 of Title 1 does not apply to employees of the Corporation,[29] to

[18] D.C. Official Code § 44-951.11(a).
[19] Motions at 7.
[20] Motions at 6.
[21] Motions at 6, 7.
[22] Mot. for Recons. Case No. 17-RC-01 Ex. 2 part 1 at 7-8, part 2 at 7-8, & part 3 at 7-10.
[23] *Twin Towers Plaza Tenants Ass'n, Inc. v. Capitol Park Assocs., L.P.*, 894 A.2d 1113, 1120 n.14 (D.C. 2006).
[24] Motions at 7.
[25] *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 113-14 (1953).
[26] *Butler v. Butler*, 496 A.2d 621, 622 (D.C. 1985).
[27] *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 472 (D.C. 2002).
[28] D.C. Official Code § 1-602.01(a).
[29] *Id.* § 44-951.08(a).

employees transferred to the Corporation from the United Medical Center,[30] or to the Corporation.[31]

The D.C. Court of Appeals has said that "to the extent possible, we attempt to harmonize statutes, not read them in a way that makes them run headlong into one another."[32] The two acts can be harmonized by recognizing that section 1-602.01's phrase "unless specifically exempted from certain provisions" exempts the Corporation's employees from the CMPA. This is because the Corporation's employees are specifically exempted by the Corporation Establishment Act from all provisions of the CMPA. Thus, the acts dovetail perfectly.

It could be argued that the acts cannot be harmonized in that way because the Corporation Establishment Act does not specifically exempt employees of the Corporation "from certain provisions" of the CMPA, as section 1-602.01(a) permits. Rather, it exempts them from the entire chapter. While statutes should be harmonized if possible, when that is not possible the more specific statute prevails over the more general and the later supersedes the earlier.[33] Reconciling laws so that they make sense in combination assumes that the implication of a statute may be altered by a later statute, especially where the earlier statute is broad but the later statute addresses the topic at hand.[34] The principle that a specific statute prevails over a general one is particularly true of jurisdictional provisions.[35]

Employing those principles inescapably leads to the conclusion that, to the extent there is a conflict between the Corporate Establishment Act and the CMPA, the Corporation Establishment Act prevails. Sections 44-951.08 and 44-951.10 are more specific than section 1-602.01(a) because they concern only one entity and state an exception to a general rule. The Corporation Establishment Act is not only the more specific but also the later of the two acts. Even so, a specific statute creates exceptions to a general statute regardless of the priority of enactment.[36] Because a specific statute will not be controlled or nullified by a general one,[37] the rights, obligations, policies, and procedures set forth in the CMPA do not apply to the Corporation or its employees.

All of the foregoing means of reconciling the statutes lead to the same conclusion: sections 44-951.08 and 44-951.10 must be regarded as exemptions from section 1-602.01(a). The Movants say nothing to the contrary; they do not discuss the decisive issue of how the statutes should be read together. Instead they argue that the Corporation's management, employees, and unions have relied to their detriment on the Board's exercise of jurisdiction in past cases involving the Corporation. As we explain below, this claim is immaterial.

---

[30] *Id.* § 44-951.10(b).
[31] *Id.* § 44-951.08(f).
[32] *District of Columbia v. Am. Univ.*, 2 A.3d 175, 187 (D.C. 2010).
[33] *George Washington Univ. v. D.C. Bd. of Adjustment*, 831 A.2d 921, 943 (D.C. 2003).
[34] *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000).
[35] *Tulsa Airports Improvements Trust v. United States*, 120 Fed. Cl. 254, 262 (2015).
[36] *Brown v. Consol. Rail Corp.*, 717 A.2d 309, 313 (D.C. 1998); *Sanford v. Sanford*, 32 App. D.C. 315, 318, 286 F. 777, 780 (1923).
[37] *Brown v. Consol. Rail Corp.*, 717 A.2d at 313. "The applicable maxim of statutory construction is *generalia specialibus non derogant*, general words do not derogate from special." *Kentucky v. Schindler*, 685 S.W.2d 544, 545 (Ky. 1984).

D. Alleged Detrimental Reliance on Past Cases

1. Past Cases

The Movants contend that the Board has asserted jurisdiction over the Corporation's unfair labor practices and negotiations since 2013.[38] In reality, the Board has issued only one decision and order involving the Corporation, *Not-for-Profit Hospital Corp. v. Service Employees International Union, Local 1199*.[39] In that case, the union moved for dismissal on the ground that the Board lacked jurisdiction to enforce section 1-617.17(h)'s requirement of confidentiality in compensation negotiations. The Board held that it had jurisdiction over that type of claim because a violation of section 1-617.17(h) is cognizable as an unfair labor practice.[40] However, the Board found that the union did not commit an unfair labor practice.[41]

The five other unfair labor practice cases involving the Corporation that the Movants listed were voluntarily withdrawn. There have been two impasse cases involving the Corporation. One was referred to an arbitrator and closed, and the other was dismissed when the parties agreed they were no longer at impasse.

Although we must acknowledge the past confusion, whatever the Board has done in the past is irrelevant to its jurisdiction because nonexistent powers cannot be acquired by prescription through unchallenged exercise.[42] In *Christ the King Regional High School v. Culvert*,[43] the court gave no weight to the fact that the National Labor Relations Board had previously handled a few cases against a church-operated school over which it had no jurisdiction.[44] The D.C. Court of Appeals has said that "[a] court by its own words cannot create or extinguish its own subject matter jurisdiction."[45] Another court succinctly stated that a city's assessors "cannot acquire jurisdiction by deciding that they have it."[46] This Board cannot either.

The Movants caustically describe the Executive Director's dismissal of the Cases as "PERB's about-face and current abdication of its jurisdiction"[47] and claim that it "brings into serious question," "calls into question," "draws into question," and "opens up the question"[48] of the validity of PERB's prior rulings. There is no question. There was one prior ruling, and without question it is and was void *ab initio*. As the D.C. Court of Appeals has held, "The purported exercise of jurisdiction beyond that conferred upon the agency by the legislature is *ultra vires* and a nullity."[49] The decision and order in *Not-for-Profit Hospital Corp. v. Service Employees International Union* is hereby vacated. The nullity of that decision and order has no

[38] Motions at 15.
[39] 63 D.C. Reg. 10683, Slip Opinion 1580, PERB Case No 15-U-10 (2016).
[40] *Id.* at 3.
[41] *Id.* at 9.
[42] *United States v. Morton Salt Co.*, 338 U.S. 632, 647 (1950).
[43] 815 F.2d 219 (2d Cir. 1987).
[44] *Id.* at 222-23.
[45] *Appeal of A.H.*, 590 A.2d 123, 129 (D.C. 1991).
[46] *Union S.B. Co. v. City of Buffalo*, 82 N.Y. 351, 356 (1880).
[47] Motions at 15.
[48] Motions at 6, 15, 16, 18.
[49] *Dist. Intown Props. Ltd. v. D.C. Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1379 (D.C. 1996).

practical effect on the parties because the Board found no unfair labor practice and dismissed the case. The Board reached the right result although not for the right reason. The Board regrets the error, but no principle of administrative law consigns an agency to repeating a mistake into perpetuity.[50]

2. Alleged Detrimental Reliance

The Movants are not in a position to make a strong detrimental reliance argument. "[P]arties dealing with a public agency are bound at their peril to notice the measure of its authority."[51] The Movants did not take notice of the limits of the Board's authority. Even if the Movants had a better claim for equitable consideration, the outcome would be no different. Equitable considerations such as the detrimental reliance of litigants are altogether irrelevant in the absence of jurisdiction.[52]

Accordingly, we conclude that District of Columbia law expressly exempts the Corporation and all of its employees from Chapter 6 of Title 1. The Board's jurisdiction, including its jurisdiction over unfair labor practice and representation cases such as the consolidated Cases, comes exclusively from Chapter 6 of Title 1. Therefore, under District of Columbia law the Board has no jurisdiction over the Cases.

Having ascertained what District of Columbia law provides, we can now consider the Movants' constitutional claim.

III. The Constitutionality of Dismissing the Cases

As discussed, District of Columbia law withholds from the Board jurisdiction over the Corporation and its employees. The Movants do not contend that the law is unconstitutional. They contend that the Board's compliance with the law is unconstitutional. The two Motions make identical constitutional arguments. However, the headings above the argument in the two Motions are different. The heading in the motion filed by the Nurses Association and the Corporation in the unfair labor practice cases is: "PERB's dismissal of the instant cases would violate the Due Process Clause." The heading in the motion filed by the Corporation alone in the representation case is: "PERB's dismissal of the instant cases would violate the Equal Protection Clause." Although equal protection is in the heading of the latter motion, the Motions do not make an equal protection argument. They mention the Equal Protection Clause, and then proceed to make a procedural due process argument.

The Due Process Clause of the Fifth Amendment to the Constitution[53] provides, "No person shall be . . . deprived of life, liberty, or property without due process of law." The

[50] *Cleveland Nat'l Air Show, Inc. v. U.S. Dep't of Transp.*, 430 F.3d 757, 765 (6th Cir. 2005).
[51] *Treat v. Town Plan & Zoning Comm'n of the Town of Orange*, 143 A.2d 448, 449 (Conn. 1958). *See also Dade Park Jockey Club v. Kentucky*, 69 S.W.2d 314, 365 (Ky. 1933) ("Persons dealing with public bodies or public officials must take notice of their authority to act, since they can only act within the limits of the authority expressly or by necessary implication conferred upon them by law.").
[52] *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 (1988); *Felzen v. Andreas*, 134 F.3d 873, 877 (7th Cir. 1998).
[53] The Fifth Amendment applies to the District of Columbia rather than the Fourteenth Amendment, which applies to the states. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

Movants correctly state one of the elements of a procedural due process claim: "In order to invoke the Fifth Amendment's procedural due process protection, an employee must show that a protected liberty or property interest is implicated."[54] The Supreme Court has stated that there are two steps in the analysis of a procedural due process claim: "We first ask whether there exists a liberty or property interest of which a person has been deprived, and if so we ask whether the procedures followed by the State were constitutionally sufficient."[55] In the present matter, we do not reach the second step because a deprivation of a liberty or property interest has not been shown.

A. Asserted Liberty Interest

The Movants do not contend that they were deprived of a liberty or property interest. Their position is that employees of the Corporation have a protected interest (presumably a liberty interest), which is the right to organize and bargain collectively.[56] The Corporation does not have standing to assert the procedural due process rights of its employees.[57] The Nurses Association, however, has standing to represent the interests of employees in its bargaining unit ("employees"),[58] as it does in the motion for reconsideration it jointly filed in the unfair labor practice cases.

In that motion, the Nurses Association contends that dismissal of the unfair labor practice cases will deprive the employees of their protected interest in organizing and bargaining collectively.[59] A protected liberty interest can be the liberty to exercise a constitutionally recognized fundamental right or a liberty interest created by statute.[60] The right of association protected by the First Amendment "encompasses the combination of individual workers together in order better to assert their lawful rights."[61] But there is no constitutional right to collective bargaining.[62] Due to the absence of such a constitutional right, if the employees have a protected liberty interest in collective bargaining, it must come from a statute, as the U.S. District Court for

[54] Motions at 7 (citing *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972)).
[55] *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011) (per curiam).
[56] Motions at 7.
[57] *See Pennsylvania v. State Conference of Police Lodges of the FOP*, 520 A.2d 25, 27 (Pa. 1987) (holding that a public employer lacked standing to assert that an arbitration award establishing a closed shop violated the constitutional rights of public employees who chose not to join the union); *Metro. Alliance of Police, Barrington Hills Police Chapter 576 v. Village of Barrington Hills (Police Dep't)*, No. S-RC-10-049, slip op. at 6 (Ill. Labor Relations Bd. Mar. 1, 2010) (holding that Barrington Hills lacked standing to assert the procedural due process rights of its employees). *See generally FOP/Metro. Police Dep't Labor Comm. v. D.C. Office of Police Complaints*, 64 D.C. Reg. 2470, Slip Op. No. 1609 at 3, 19, PERB Case Nos. 12-U-16 and 13-U-38 (2017) (holding that a union lacked standing to bring a complaint on behalf employees it did not represent); *FOP/Metro. Police Dep't Labor Comm. v. D.C. Office of Unified Commc'ns*, 62 D.C. Reg. 2902, Slip Op. No. 1505 at 7-8, PERB Case No. 13-U-10 (2014) (same).
[58] D.C. Official Code § 1-617.11(a).
[59] Mot. for Recons. Case Nos. 17-U-09, 17-U-21, &17-U-23 ("Motion") at 7-8.
[60] *Kerry v. Din*, 135 S. Ct. 2128, 2133-37 (2015) (plurality opinion); *Hood v. United States*, 28 A.3d 533, 565-63 (D.C. 2011).
[61] *Lyng v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers*, 485 U.S. 360, 366, (1988).
[62] *Babbit v. United Farmworkers Nat'l Union*, 442 U.S. 289, 313 (1979); *Smith v. Ark. State Highway Employees, Local 1315*, 441 U.S. 463, 465-66 (1979) (per curiam); *Griffith v. Lanier*, 521 F.3d 398, 400 (D.C. 2008) (holding that a general order of the Metropolitan Police Department negating the right engage to collective bargaining under the CMPA did not violate the First Amendment).

the District of Columbia recognized with respect to Federal Reserve employees in *Fraternal Order of Police v. Board Governors of the Federal Reserve System*.[63]

In that case the plaintiffs, a union and its president, alleged that the Federal Reserve Bank's policy on labor relations denied them "the opportunity to adjudicate their disputes before an impartial decisionmaking body" and that payment of arbitration fees required by the policy could prevent employees from exercising their rights under the policy.[64] The plaintiffs claimed that the policy thereby deprived them of the right to bargain collectively in violation of the Due Process Clause of the Fifth Amendment.[65] The court stated that since there is no constitutional right to collective bargaining, "for a protected right to bargain to exist at all for Federal Reserve Bank employees, it must be conferred by statute."[66] The court found that no statute granted Federal Reserve Bank employees or their representatives a right to bargain collectively. "Accordingly," the court held, "there is no protected right to bargain in this case and, despite the Policy's shortcomings, it presents no due process problems."[67] Similarly, the Board turns to District of Columbia statutes to ascertain whether they confer a right to bargain collectively (under the Board's auspices or otherwise) on the Corporation's employees or their representatives.

They do not. As discussed, the CMPA, which confers such a right under the auspices of the Board, does not apply to the Corporation or its employees. The Corporation Establishment Act does not confer a right to collective bargaining on anyone.

The Nurses Association admits that the employees have no right to collective bargaining under the law, but it claims one anyway: "Although it clearly states in the D.C. Code that UMC employees shall not enjoy any rights and benefits afforded by the CMPA; during these past seven years, UMC employees have exercised their right to organize and bargain under the auspices of the PERB."[68] What the employees "exercised" was not a right: they did not have a right to organize and bargain collectively under the auspices of PERB, and they did not acquire that right by purporting to exercise it. PERB's erroneous acquiescence in one or more of their actions did not create such a right. Holding that a federal agency may not create a private right of action that Congress has not authorized, the Supreme Court said, "Agencies may play the sorcerer's apprentice but not the sorcerer himself."[69]

B. Alleged Deprivation

The Nurses Association contends that without PERB the employees will no longer have a forum in which "to enforce their right to organize and bargain collectively."[70] In support of its

[63] 391 F. Supp. 2d 1 (D.D.C. 2005).
[64] *Id.* at 8.
[65] *Id.*
[66] *Id.* at 9.
[67] *Id.*
[68] Motion at 7.
[69] *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001).
[70] Motion at 8.

claim that the employees will no longer have a forum, the Nurses Association argues that the National Labor Relations Board ("NLRB") does not have jurisdiction over the Corporation.[71]

PERB takes no position on the jurisdiction of the NLRB over the Corporation. That is a question for the NLRB to decide. If the NLRB did lack jurisdiction, the Nurses Association could not claim on that basis that dismissal of the unfair labor practice cases would deprive the employees of a liberty interest in organizing and collective bargaining. Neither the Corporation Establishment Act nor dismissal of the Cases pursuant to that act prohibits employees represented by the Nurses Association from organizing and bargaining collectively.[72] They do preclude the employees from doing so under the auspices of PERB, but that is not the equivalent of a prohibition even if the NLRB lacks jurisdiction. An absence of NLRB jurisdiction does not mean that either PERB has jurisdiction or no one does. Where the NLRB lacks jurisdiction over a labor dispute, jurisdiction may be exercised by state courts[73] or by the courts of the District of Columbia, whose jurisdiction is parallel to that of state courts.[74]

The District of Columbia Superior Court is a court of general jurisdiction.[75] Its jurisdiction includes contractually mandated arbitration proceedings. Under the Revised Uniform Arbitration Act, District of Columbia courts have jurisdiction to enforce an agreement to arbitrate; to compel or stay arbitrations; to grant provisional remedies and judicial relief; and to confirm, modify, correct, or vacate an arbitration award.[76] Because the CMPA is inapplicable to the Corporation and its employees, the CMPA's preemption of the jurisdiction of the courts to hear appeals from arbitration awards[77] is inapplicable to arbitrations involving the Corporation.

Despite the inapplicability of the CMPA, the Nurses Association relies upon the court of appeals' statement that "[w]ith few exceptions, the CMPA is the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind."[78] The Nurses Association fails to acknowledge that among the "exceptions" to the exclusivity of the CMPA's remedies are those made by sections 44-951.08 and 44-951.10. The cases cited by the Nurses Association on the limited, appellate role of the courts in matters to which the CMPA applies[79] have no bearing on matters to which the CMPA does not apply. In this regard, the Nurses Association incorrectly states, "As noted by the Court of Appeals, the CMPA was intended to be the exclusive avenue for remedies for UMC employees to resolve work-related issues such as

[71] Motion at 8-14.
[72] To the contrary, the Corporation Establishment Act recognizes the existence and validity of collective bargaining agreements between the Corporation and its employees. D.C. Official Code §§ 44-951.04(A)(1)(c); 44-951.08(c).
[73] *Incres S.S. Co. v. Int'l Maritime Workers Union*, 372 U.S. 24 (1963); *S. Jersey Catholic Teachers Org. v. St. Teresa of the Infant Jesus Elementary Sch.*, 696 A.2d 709, 714 (N.J. 1997).
[74] *Local 31, Nat'l Ass'n of Broad. Eng'rs & Technicians v. Timberlake*, 409 A.2d 629, 632 (D.C. 1979); *Karath v. Generales*, 277 A.2d 650, 651-53 (D.C. 1971).
[75] D.C. Official Code § 11-921(a).
[76] D.C. Official Code §§ 16-4405-16-4424.
[77] D.C. Official Code § 1-605.02(6).
[78] *Robinson v. District of Columbia*, 748 A.2d 409, 411 (D.C. 2000) *quoted in* Motion at 14.
[79] *Stockard v. Moss*, 706 A.2d 561 (D.C. 1997); *District of Columbia v. Thompson*, 593 A.2d 621 (D.C. 1990).

their right to join a union and bargain collectively."[80] The Court of Appeals never made any such statement about UMC employees.

As a result of the jurisdiction of the courts, dismissal of the unfair labor practice cases will not deny the employees a forum. Nor will it effect a deprivation of the interest that the Nurses Association asserts. Any dissatisfaction with the means available to the employees for adjudicating issues related to their organizing and collective bargaining in the absence of PERB's jurisdiction is a matter to be addressed to the legislature.

The first element of a procedural due process claim is absent: the Nurses Association has failed to show a protected liberty or property interest of which a person has been deprived. The Nurses Association's claim that dismissal of the unfair labor practice cases would violate due process fails because "*no* process is due if one is not deprived of 'life, liberty, or property.'"[81]

IV. Conclusion

The Executive Director was correct in deciding that the Cases should be dismissed due to the Board's lack of jurisdiction over them. The Movants have given no reason why a different result is warranted or even possible. Nor have they cast doubt on the constitutionality of dismissing the Cases. We reject the claim that the Board will deprive the employees of due process unless it continues to exercise jurisdiction it never had in the first place. Therefore, the Motions are denied, and the Cases are dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB Case Nos. 17-U-09, 17-U-21, 17-U-23, and 17-RC-01 are consolidated.
2. The motions for reconsideration filed in the consolidated cases are denied.
3. The Board's decision and order in Opinion No. 1580 is vacated.
4. PERB Case Nos. 17-U-09, 17-U-21, 17-U-23, and 17-RC-01 are dismissed with prejudice.
5. 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.
May 17, 2018

[80] Motion at 15.
[81] *Kerry v. Din*, 135 S. Ct. 2128, 2132 (2015) (plurality opinion).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in Case Nos. 17-U-09, 17-U-21, 17-U-23, and 17-RC-01 is being transmitted to the following parties on this the 23d day of May 2018.

Walakewon Blegay
Staff Attorney **by File&ServeXpress**
D.C. Nurses Association
5100 Wisconsin Ave. NW, suite 306
Washington, D.C. 20016

Michael D. Levy
Dean S. Aqui **by File&ServeXpress**
C. Michael Hathaway
Office of Labor Relations and Collective Bargaining
441 4th Street NW, suite 820 north
Washington, D.C. 20001

Gaby L. Fraser
Director of Operations **by U.S. Mail**
National Association of Special Police and Security Officers
840 First Street NE, third floor
Washington, D.C. 20002

/s/ David S. McFadden
Attorney-Advisor

District of Columbia REGISTER – July 13, 2018 – Vol. 65 - No. 28 007341 – 007498