

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council enacts Act 22-257, Relieve High Unemployment Tax Incentives Act of 2018
- D.C. Council schedules a public hearing on Bill 22-0687, Adverse Childhood Experiences Task Force Act of 2018
- D.C. Council schedules a public hearing on Bill 22-0689, Omnibus Assisted Living Residence Improvement and Quality Long Term Care Act of 2018
- Office on Aging announces funding availability for the Fiscal Year 2019 Senior Transportation Program Grant
- Board of Elections schedules a public hearing to consider the proposed initiative “DC Bike Life Access and Use of Non-Traditional Vehicles Act of 2018”
- Board of Ethics and Government Accountability publishes the 2018 list of registered lobbyists
- Department of For-Hire Vehicles updates standards for taxicabs
- Department of Health solicits public comments on the 2018 Annual Preventive Health & Health Services Block Grant

# DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

**D.C. ACT 22-257**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**FEBRUARY 7, 2018**

To amend Title 47 of the District of Columbia Official Code to authorize the Mayor to provide real and personal property tax abatements, tax credits, and other incentives to retain certain existing businesses located in a high unemployment area and to incentivize certain businesses to locate in a high unemployment area; and to authorize the Mayor to establish a tax increment financing area in a high unemployment area.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Relieve High Unemployment Tax Incentives Act of 2018".

TITLE I. HIGH UNEMPLOYMENT AREA TAX RELIEF

Sec. 101. Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new Chapter 50 designation to read as follows:

"50. High unemployment area tax relief."

(b) A new Chapter 50 is added to read as follows:

"Chapter 50. High unemployment area tax relief.

"Sec.

"47-5001. Definitions.

"47-5002. Tax incentives.

"47-5003. Abatement and credit approval process.

"47-5004. Certification by Mayor.

"47-5005. Rules.

"§ 47-5001. Definitions.

"For the purposes of this chapter, the term:

"(1) "High unemployment area" means a geographical area, which may be an entire ward or a part of a ward, that, according to the Department of Employment Services' unemployment statistics, suffers from chronic unemployment due to the lack of jobs, commerce, or transportation at a rate of 7% or more for 3 consecutive months in a year.

"(2) "Non-retail" means a business that leases office, warehouse, or other commercial space.

"(3) "Personal property" means the machinery, equipment, material, and supplies used in the operation of a business.

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“(4) “Production costs” means costs that are attributable to the use of personal property, tangible property, or the performance of services in the District of Columbia and related, predominantly, to the production, including pre-production and post-production, of a qualified film.

“(5) “Qualified company” means a for-profit entity that will create new jobs and generate new revenues by making a substantial capital investment in the minimum amount of \$50 million by constructing a new building or making improvements to an existing building in a high unemployment area.

“(6) “Qualified employee” means a District resident who is a full-time employee of a qualified company who works a minimum of 30 hours a week.

“(7) “Qualified film” means a feature-length film or television film, including a television pilot or each episode of a television series, regardless of the means by which the film, pilot, or episode is created or conveyed.

“(8) “Qualified film, television, and digital media production facility” means a building or complex of buildings and their improvements and associated backlot facilities with multiple production uses in which films and television programming, including news shows, commercials, music videos, photos, digital media production, or alternative visual content are regularly produced, such as broadcast and live streaming programs, training and educational videos, entertainment filming, news and advertising, and photography sessions for celebrity, automotive, culinary, and fashion programming, along with the necessary production and technology infrastructure for production of digital content, virtual reality, animation, interactive design and gaming, visual effects and audio, and post-production actions, and that offers District residents an opportunity to enroll in industry-certified training programs within areas of study, including film, broadcast, audio engineering, digital marketing, media production, design, animation, and other developing technologies.

“(9) “Qualified tenant” means a person that signs a lease of at least 3 years for a retail or non-retail business in a high unemployment area who makes a minimum investment corresponding to the total value of the rental tax credit provided pursuant to § 47-5002(a)(4).

“(10) “Retail” means a business that sells or otherwise disposes of tangible goods directly to the ultimate user or consumer.

“§ 47-5002. Tax incentives.

“(a) Subject to § 47-5003, the Mayor may provide:

“(1) A tax abatement on real property to a qualified company of up to 100% of the real property tax otherwise due, for not more than 30 years;

“(2) A tax abatement to a qualified company on all tangible personal property purchased for new investments and expansion of existing business of up to 100% of the personal property tax otherwise due, for not more than 30 years;

“(3) An employment tax credit to a qualified company of up to 20% on the first \$15,000 in wages paid to District residents or up to \$3,000 per qualified employee per year for up to 10 consecutive years; provided, that this tax credit shall be capped at \$1.5 million for each qualified company;



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“(4) A tax credit of \$2.50 per square foot to a qualified tenant in the retail or non-retail business for up to 5 consecutive years; and

“(5) A tax abatement or credit to a qualified film, television, and digital media production facility if the Mayor determines that the proposed project will have a substantial impact in reducing the unemployment rate and is consistent with the purposes of this chapter, and, in addition, a 10% tax credit on eligible production costs for a qualified film; provided, that at least 75% of the total stage work is conducted at the qualified film, television, and digital media production facility; provided further, that any tax abatement or credit provided pursuant to this paragraph shall apply to only 3 film, television, and digital media production facilities, each having one studio with a minimum of 7,000 square feet or more and 2 studios of 20,000 square feet or more of contiguous multipurpose production space; except, that more than one studio may be located in a single qualified film, television, and digital media production facility.

“(b) A film, television, and digital media production facility constructed pursuant to subsection (a)(5) of this section shall be eligible for all the incentives provided under part B of subchapter II-A of Chapter 12 of Title 2.

“§ 47-5003. Abatement and credit approval process.

“(a) To qualify for a tax abatement or credit authorized by this chapter, an applicant shall certify to the Mayor annually that 50% of its full-time employees are District residents.

“(b) An entity covered by this chapter may seek one or more of the tax abatements or credits authorized by this chapter by submitting an application to the Mayor.

“(c) The Mayor shall approve an application for a tax abatement or credit if the Mayor determines that the proposed project has a substantial possibility of decreasing the unemployment rate in a high unemployment area.

“(d) If the Mayor approves an application for a tax abatement or credit, the Mayor may submit a draft act of the proposed tax abatement or credit to the Council for introduction pursuant to § 1-204.22(5).

“§ 47-5004. Certification by Mayor.

“(a) In each year of an abatement or credit, the Mayor shall certify to the Office of Tax and Revenue the entity’s eligibility for the abatement or credit. The Mayor’s certification shall include:

“(1) The entity or property that has been awarded a tax abatement or credit;

“(2) The entity’s taxpayer identification number;

“(3) A description of the eligible property, by street address and square, lot, parcel, or reservation number, and a description of the eligible premises, including the number of floors, location, and square footage;

“(4) The type of abatement or credit granted;

“(5) The duration of the abatement or credit; and

“(6) Any other information that the Mayor considers necessary or appropriate for the Office of Tax and Revenue to implement the abatement or credit.

“(b) The Mayor shall notify the Office of Tax and Revenue if an entity loses eligibility for a previously awarded abatement or credit.

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“§ 47-5005. Rules.

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

## TITLE II. TIF AUTHORIZATION.

Sec. 201. High unemployment area; TIF authorization.

(a) The Mayor may establish a TIF area for part of the public and private infrastructure improvements required in a high unemployment area; provided, that:

(1) The TIF revenue will be used for eligible projects that the Mayor determines have a substantial possibility of attracting new businesses to or expanding existing businesses in a high unemployment area and of providing jobs and generating tax revenue;

(2) The establishment of the TIF area shall not conflict with or be detrimental to any tax abatements granted pursuant to Chapter 50 of Title 47 of the District of Columbia Official Code; and

(3) The issuance of TIF Bonds to finance an eligible project and the terms of the resolution approving the issuance of the TIF Bonds:

(A) Are subject to approval by the Council as set forth in the TIF Act; and

(B) An approval of the issuance of TIF Bonds pursuant to this section in no way guarantees that the District will authorize the issue of TIF Bonds in any amount, that the TIF Bonds will be approved by the District, or that the TIF Bonds will actually be issued.

(b) For the purposes of this section, the term:

(1) “Eligible project” shall have the same meaning as provided in section 2(18) of the TIF Act.

(2) “High unemployment area” shall have the same meaning as provided in § 47-5001(1).

(3) “Tax increment” shall have the same meaning as provided in section 490(n)(6) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 809; D.C. Official Code § 1-204.90(n)(6).

(4) “TIF” means tax increment financing.

(5) “TIF area” means any area designated and established for TIF pursuant to the TIF Act.

(6) “TIF Act” means the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01 *et seq.*).

(7) “TIF Bonds” means bonds, notes, or other obligations issued pursuant to the TIF Act.

(c) This section shall sunset 10 years after its effective date; provided, that a commitment made pursuant to this section before its expiration shall be honored beyond its expiration.



ENROLLED ORIGINAL

TITLE III. GENERAL PROVISIONS

Sec. 301. Applicability.

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

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

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


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

Sec. 302. 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. 303. Effective date.

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

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

\_\_\_\_\_  
UNSIGNED  
Mayor  
District of Columbia  
February 6, 2018



ENROLLED ORIGINAL

## A RESOLUTION

22-391

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Health Occupations Revision Act of 1985 to allow pharmacists to prescribe and dispense certain contraceptives pursuant to established protocols; to amend the Women's Health and Cancer Rights Federal Law Conformity Act of 2000 to require insurers to cover certain health care services without cost-sharing, to require that insurers authorize dispensing of up to a 12-month supply of a self-administered hormonal contraceptive prescribed and dispensed by a licensed pharmacist, to provide to certain employers a religious exemption from or accommodation for the coverage of contraceptive products and services, and to require insurers to provide information regarding coverage to enrollees and potential enrollees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Defending Access to Women's Health Care Services Congressional Review Emergency Declaration Resolution of 2018".

Sec. 2. (a) On May 2, 2017, the Council passed Bill 22-225, the Defending Access to Women's Health Care Services Temporary Amendment Act of 2017 (D.C Act 22-54; 64 DCR 6712), which will expire on February 21, 2018.

(b) On January 9, 2018, the Council passed a permanent version, the Defending Access to Women's Health Care Services Amendment Act of 2017, which was signed by the Mayor on January 31, 2018 (D.C. Act 22-246).

(c) There will be a gap in authority between the expiration of the temporary act on February 21, 2018, and the end of the 30-day congressional review period for the permanent measure, the date of which is not yet projected. To prevent a gap in the law, it is necessary to move this identical congressional review emergency legislation.

(d) The temporary act requires Medicaid, the DC Healthcare Alliance, and private insurers in the District of Columbia to provide to women coverage without cost-sharing for preventive health services Congress required pursuant to section 2713 of the Patient Protection and Affordable Care Act ("ACA"), approved March 23, 2010 (124 Stat. 131; 42 U.S.C. § 300gg-13), and the act's implementing regulations, guidelines, and recommendations. The permanent version provides that the same services must be covered without cost-sharing, expands the preventive services that must be covered without cost-sharing, and, subject to appropriations, authorizes pharmacists to prescribe and dispense contraceptives. A gap in authority between the

**ENROLLED ORIGINAL**

temporary and permanent versions would create uncertainty for insurance providers and enrollees.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Defending Access to Women’s Health Care Services Congressional Review Emergency Amendment Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-392

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the reappointment of Mr. Enrique Cruz to the Public Charter School Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Public Charter School Board Enrique Cruz Confirmation Resolution of 2018”.

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

Mr. Enrique Cruz  
2835 Hurst Terrace, N.W.  
Washington, D.C. 20016  
(Ward 3)

as a member of the Public Charter School Board, established by section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14), for a term to end February 24, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-393

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Mr. Leif Dormsjo to the Board of Library Trustees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Library Trustees Leif Dormsjo Confirmation Resolution of 2018”.

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

Mr. Leif Dormsjo  
315 12th Street, N.E., Apt. #301  
Washington, D.C. 20002  
(Ward 6)

as a member of the Board of Library Trustees, established by section 4 of An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896 (29 Stat. 244; D.C. Official Code § 39-104), replacing Neil Albert, for a term to end January 5, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-394

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the reappointment of Mr. Edmund Fleet to the Commission on the Arts and Humanities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on the Arts and Humanities Edmund Fleet Confirmation Resolution of 2018”.

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

Mr. Edmund Fleet  
3608 Alabama Avenue, S.E.  
Washington, D.C. 20020  
(Ward 7)

as a member of the Commission on the Arts and Humanities, established by section 4 of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203), for a term to end June 30, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-395

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Mr. Clifton Lewis to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Clifton Lewis Confirmation Resolution of 2018".

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

Mr. Clifton Lewis  
306 Atlantic Street, S.E.  
Washington, D.C. 20032  
(Ward 8)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2019.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-402

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To approve multiyear Contract No. SO-17-032-0001584 with CSV, LLC. to jointly promote, develop, and expand the DC Bike Ride event.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “CSV, LLC, Sponsorship and Participation Agreement Approval Resolution of 2018”.

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code §1-204.51(c)(3)), the Council approves multiyear Contract No. SO-17-032-0001584 between the Washington Convention and Sports Authority and CSV, LLC to jointly promote DC Bike Ride, a 20-mile group bike ride throughout the District, for a yearly sponsorship fee of \$75,000 to \$95,000 and revenue sharing, to remain in effect through September 30, 2021.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-403

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Mr. Joshua Lopez to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Authority Board of Commissioners Joshua Lopez Confirmation Resolution of 2018”.

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

Mr. Joshua Lopez  
215 Emerson Street, N.W., Unit #103  
Washington, D.C. 20011  
(Ward 4)

as a public member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), for a term to end July 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

22-404

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Ms. Franselene St. Jean to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Authority Board of Commissioners Franselene St. Jean Confirmation Resolution of 2018”.

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

Ms. Franselene St. Jean  
1009 Anderson Place, S.E.  
Washington, D.C. 20032  
(Ward 8)

as a housing choice voucher program recipient member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), for a term to end July 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-405

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Ms. LaKeeshia A. Fox to the Housing Production Trust Fund Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Housing Production Trust Fund Board LaKeeshia A. Fox Confirmation Resolution of 2018”.

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

Ms. LaKeeshia A. Fox  
1301 Branch Avenue, S.E.  
Washington, D.C. 20020  
(Ward 7)

as a member, with significant knowledge of an area related to the production, preservation, and rehabilitation of affordable housing for lower-income households, of the Housing Production Trust Fund Board, established by section 3a of the Housing Production Trust Fund Act of 1988, effective June 8, 1990 (D.C. Law 8-133; D.C. Official Code § 42-2802.01), for a term to end January 14, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-406

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Ms. Kristi C. Whitfield as the Director of the Department of Small and Local Business Development.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Director of the Department of Small and Local Business Development Kristi C. Whitfield Confirmation Resolution of 2018”.

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

Ms. Kristi C. Whitfield  
1250 Linden Place, N.E.  
Washington, D.C. 20002  
(Ward 6)

as the Director of the Department of Small and Local Business Development, established by section 2311 of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.11), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-407

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification Nos. 17 and 18 to Contract No. DCFA-2015-C-2292-SS/CW37092 with PFC Associates, LLC to provide occupational and ancillary healthcare services at the Police and Fire Clinic, and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Contract No. DCFA-2015-C-2292-SS/CW37092 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification Nos. 17 and 18 to Contract No. DCFA-2015-C-2292-SS/CW37092 with PFC Associates, LLC to provide occupational and ancillary healthcare services at the Police and Fire Clinic, and to authorize payment for the goods and services received and to be received under the modifications.

(b) By Modification No. 17, the Office of Contracting and Procurement (“OCP”), on behalf of the Metropolitan Police Department, extended the contract for the period from February 1, 2018, through February 21, 2018, in the total estimated amount of \$941,573.67.

(c) Modification No. 18 is now necessary to extend the contract through April 30, 2018, and increase the total estimated amount for the period from February 1, 2018, through April 30, 2018, to \$3,680,215.

(d) Council approval is necessary because these modifications increase expenditures under the contract by more than \$1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, PFC Associates, LLC cannot be paid for the goods and services provided in excess of \$1 million for the contract period February 1, 2018, through April 30, 2018.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. DCFA-2015-C-2292-SS/CW37092 Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-408

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-2018-460 between the Not-for-Profit Hospital Corporation and Kaiser Foundation Health Plan of the Mid-Atlantic to provide employee health benefits services to the Not-for-Profit Hospital Corporation, and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-2018-460 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-2018-460 (“Contract”) between the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Kaiser Foundation Health Plan of the Mid-Atlantic (“Kaiser”), to provide employee health benefits services to the Hospital, and to authorize payment for the services received and to be received under the Contract.

(b) The Contract began on January 1, 2018, in the amount of \$5,332,090.

(c) Under the management of a new consultant, NFPHC continues to undergo operational and fiscal analysis to improve performance and efficiency. Frequently, this review process results in contracting and procurement adjustments.

(d) Additionally, the Hospital has experienced a series of transitions in personnel that, unfortunately, may have caused delays with respect to the negotiation, preparation, and transmittal of the Council contract package.

(e) Council approval is necessary because the Contract has an aggregate value that exceeds \$1 million in a 12-month period.

(f) Emergency approval of the Contract in the total amount of \$5,332,090 is necessary to avert an impact upon the provision of employee health benefits to the Hospital.

(g) Without Council approval, Kaiser cannot be paid for the critical services provided and to be provided to the Hospital in excess of \$1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the

**ENROLLED ORIGINAL**

Contract No. NFPHC-2018-460 Approval and Payment Authorization Emergency Act of 2018  
be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-410

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHC-207 between the Not-for-Profit Hospital Corporation and Ascot Underwriting Bermuda, LTD., to provide insurance coverage to the Not-for-Profit Hospital Corporation, and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHC-207 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHC-207 (“Contract”) between the Not-for-Profit Hospital Corporation (“NFPHC” or “Hospital”) and Ascot Underwriting Bermuda, LTD. (“Ascot”), to provide insurance coverage to the Hospital, and to authorize payment for the services received and to be received under the Contract.

(b) This one-year contract began on November 23, 2017, in the amount of \$1,647,623.

(c) Under the management of a new consultant, NFPHC continues to undergo operational and fiscal analysis to enhance performance and efficiency. Frequently, this review process results in contracting and procurement adjustments.

(d) Additionally, the Hospital has undergone a series of transitions in personnel that, unfortunately, may have caused delays with respect to the negotiation, preparation, and transmittal of the Council contract package.

(e) Council approval is necessary because the Contract has an aggregate value that exceeds \$1 million in a 12-month period.

(f) Emergency approval of this Contract in the total amount of \$1,647,623 is necessary to prevent an impact upon the provision of general liability, professional entity liability, professional physician liability, and excess insurance coverage to the Hospital.

(g) Without Council approval, Ascot cannot be paid for the services provided in excess of \$1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the

**ENROLLED ORIGINAL**

Contract No. NFPHC-207 Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

22-411

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification No. 2 to Contract No. CW55235 with Avid Systems, LLC, to provide temporary support services, and to authorize payment for the goods and services received and to be received under the modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification to Contract No. CW55235 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification No. 2 to Contract No. CW55235 with Avid Systems, LLC, to provide temporary support services, and to authorize payment in the not-to-exceed amount of \$10 million for the goods and services received and to be received under the modification.

(b) The Office of Contracting and Procurement awarded Contract No. CW55235 on October 19, 2017, for one year at a not-to-exceed amount of \$950,000.

(c) Modification No. 2 is now necessary to increase the total not-to-exceed for the base year to \$10 million.

(d) Council approval is necessary because this modification increases the contract by more than \$1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Avid Systems, LLC, cannot be paid for goods and services provided in excess of \$1 million for the contract period October 19, 2017, through October 18, 2018.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification to Contract No. CW55235 Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-412

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification No. 1 to Contract No. DCPL- 2018-C-0034A with Baker & Taylor, Inc. to provide books, materials, and selected services, and to authorize payment for goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification to Contract No. DCPL-2018-C-0034A with Baker & Taylor Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification No. 1 to Contract No. DCPL-2018-C-0034A with Baker & Taylor, Inc. to provide books, materials, and selected services, and to authorize payment for goods and services received and to be received under the contract in the not-to-exceed amount of \$1.3 million for the base period ending September 30, 2018.

(b) Council approval is necessary because this modification increases the total contract amount to more than \$1 million during a 12-month period.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification to Contract No. DCPL-2018-C-0034A with Baker & Taylor Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-413

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification No. 1 to Contract No. DCPL- 2018-C-0034C with Ingram Library Services, LLC to provide books, materials, and selected services, and to authorize payment for goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modification to Contract No. DCPL-2018-C-0034C with Ingram Library Services, LLC Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification No. 1 to Contract No. DCPL-2018-C-0034C with Ingram Library Services, LLC to provide books, materials, and selected services, and to authorize payment for the goods and services received and to be received under the contract in the not-to-exceed amount of \$1.3 million for the base period ending September 30, 2018.

(b) Council approval is necessary because this modification increases the total contract amount to more than \$1 million during a 12-month period.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification to Contract No. DCPL-2018-C-0034C with Ingram Library Services, LLC Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-414

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification Nos. 15, 16, and 17 to Contract No. CW20202 with Lucky Dog, LLC to provide solid waste hauling and disposal services, and to authorize payment for the services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Contract No. CW20202 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification Nos. 15, 16, and 17 to Contract No. CW20202 with Lucky Dog, LLC to provide solid waste and disposal services, and to authorize payment for the services received and to be received under the modifications.

(b) By Modification No. 13, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Public Works, exercised Option Year 2 of Contract No. CW20202 to provide solid waste and disposal services for the period from June 1, 2017, through May 31, 2018, in the estimated amount of \$3.24 million. The Council approved Modification No. 13.

(c) By Modification No. 15, dated September 22, 2017, OCP further modified Contract No. CW20202, increasing the estimated amount for Option Year 2 by \$660,000.

(d) By Modification No. 16, dated December 11, 2017, OCP further modified Contract No. CW20202, increasing the estimated amount for Option Year 2 by \$297,000.

(e) By Modification No. 17, dated January 24, 2018, OCP further modified Contract No. CW20202, increasing the estimated amount for Option Year 2 by \$1.703 million, bringing the total estimated amount for Modification Nos. 15, 16, and 17 to \$2.66 million.

(f) Council approval is necessary because the modifications increase the expenditures under the contract by more than \$1 million during a 12-month period.

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, Lucky Dog, LLC cannot be paid for services provided in excess of \$3.24 million for the contract period June 1, 2017, through May 31, 2018.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the

**ENROLLED ORIGINAL**

Modifications to Contract No. CW20202 Approval and Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-415

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To declare the existence of an emergency with respect to the need to approve Modification Nos. 3, 4, 5, 6, and 7 to Contract No. DCKA-2016-T-0046 with Motivate International, Inc. to operate, maintain, and expand the existing, regional Capital Bikeshare system, and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Contract No. DCKA-2016-T-0046 Approval and Payment Authorization Emergency Declaration Resolution of 2018”.

Sec. 2. (a) There exists a need to approve Modification Nos. Nos. 3, 4, 5, 6, and 7 to Contract No. DCKA-2016-T-0046 with Motivate International, Inc. to operate, maintain, and expand the existing, regional Capital Bikeshare system, and to authorize payment for the goods and services received and to be received under the modifications.

(b) By Modification No. 3, dated September 27, 2017, the Office of Contracting and Procurement (“OCP”), on behalf of the District Department of Transportation, exercised a partial option of Option Year One of Contract No. DCKA-2016-T-0046 for the period from October 1, 2017, through December 21, 2017, at no additional cost.

(c) Modification No. 4 was an administrative modification to correct a numbering error at no additional cost.

(d) On November 27, 2017, by Modification No. 6, OCP exercised another partial option of Option Year 1 for the period from December 22, 2017, through January 31, 2018, at no additional cost.

(e) On January 25, 2018, by Modification No. 7, OCP exercised another partial option of Option Year 1 for the period from February 1, 2018, through February 28, 2018, and modified Modification No. 3 to establishing \$998,000 as the ceiling for the partial option.

(f) Modification No. 5 is now necessary to exercise the remainder of option year one, and increase the total not-to-exceed amount for option year one to \$7,672,856.60.

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

**ENROLLED ORIGINAL**

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

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. Nos. 3, 4, 5, 6 and 7 to Contract No. DCKA-2016-T-0046 with Motivate International, Inc. Payment Authorization Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-416

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 6, 2018

To confirm the appointment of Dr. Sandra Jowers-Barber to the Historic Preservation Review Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Historic Preservation Review Board Sandra Jowers-Barber Confirmation Resolution of 2018”.

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

Dr. Sandra Jowers-Barber  
4618 4th Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as an historian member of the Historic Preservation Review Board, established by Mayor’s Order 83-119, issued May 6, 1983 (30 DCR 3031), in accordance with section 4 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Official Code § 6-1103), for a term to end July 21, 2020.

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

Sec. 4. This resolution shall take effect immediately.



**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](http://www.dccouncil.us).

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

**BILLS**

B22-698      District of Columbia Public Library Independent Lease Authority Amendment Act of 2018

Intro. 2-12-18 by Councilmember Grosso and referred to the Committee on Education with comments from the Committee on Transportation and the Environment

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B22-699      Pre-exposure Prophylaxis Insurance Discrimination Amendment Act of 2018

Intro. 2-20-18 by Councilmember Cheh and Chairman Mendelson and referred to the Committee on Business and Economic Development

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B22-700      Senior Citizen and Person with a Disability Real Property Tax Relief Amendment Act of 2018

Intro. 2-20-18 by Councilmembers Bonds, R. White, T. White, Nadeau, and Cheh and referred to the Committee on Finance and Revenue

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B22-701      Closing the Carried Interest Tax Loophole Act of 2018

Intro. 2-20-18 by Councilmembers Grosso, Bonds, and R. White and referred to the Committee on Finance and Revenue

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

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**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON  
THE COMMITTEE ON HEALTH**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0480, VULNERABLE POPULATION AND EMPLOYER PROTECTION  
AMENDMENT ACT OF 2017**

**BILL 22-0558, COMMUNITY HEALTH INVESTMENT AMENDMENT ACT OF 2017**

**BILL 22-0666, WOMEN, INFANTS, AND CHILDREN PROGRAM EXPANSION ACT OF  
2018**

**BILL 22-0687, ADVERSE CHILDHOOD EXPERIENCES TASK FORCE ACT OF 2018**

**BILL 22-0688, ATHLETIC TRAINERS CLARIFICATION AMENDMENT ACT OF 2018**

**WEDNESDAY, JULY 11, 2018  
10 A.M., ROOM 500, JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on Bill 22-0480, the “Vulnerable Population and Employer Protection Amendment Act of 2017”, Bill 22-0558, the “Community Health Investment Amendment Act of 2017”, Bill 22-0666, the “Women, Infants, and Children Program Expansion Act of 2018”, Bill 22-0687, the “Adverse Childhood Experiences Task Force Act of 2018”, Bill 22-0688, the “Athletic Trainers Clarification Amendment Act of 2018.” The hearing will be held on Wednesday, July 11, 2018, at 10 a.m., in Room 500 of the John A. Wilson Building.

Bill 22-0480, the “Vulnerable Population and Employer Protection Amendment Act of 2017”, authorizes a health occupations board to discipline a health professional who has financially exploited a patient, client or employer and provides for the summary suspension or restriction of the license, registration, or certification of a professional who financially exploits another without a hearing.

Bill 22-0558, the “Community Health Investment Amendment Act of 2017”, requires health care facilities to add community benefits - health improvement services and benefits that are provided without charge - as a prerequisite to obtaining or maintaining a certificate of need. The community benefits must be made specifically available to District residents.

Bill 22-0666, the “Women, Infants, and Children Program Expansion Act of 2018”, prohibits the Mayor from placing restrictions on the square footage, number of cashiers, or organic products for vendors of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) beyond what is required by federal law. Among other things it requires the Department of Health to convene a WIC Outreach Advisory Board to provide guidance on how to increase WIC participation.

Bill 22-0687, the “Adverse Childhood Experiences Task Force Act of 2018”, would establish an Adverse Childhood Experiences Health Task Force to identify evidence-based solutions to reduce children's exposure to adverse childhood experiences, recommend ways to address the impacts of those experiences, recommend investments in preventative health care and mental health and wellness interventions, make recommendations regarding specified matters pertaining to adverse childhood experiences, and report its findings and recommendations to the Mayor and the Council.

Bill 22-0688, the “Athletic Trainers Clarification Amendment Act of 2018”, would amend the District of Columbia Health Occupations Revision Act of 1985 to make technical amendments to provisions; amend section 47-2888.01 of the District of Columbia Official Code to enable athletic trainers to diagnosis physical disability for the purposes of athletic training; allow athletic trainers to rehabilitate injuries resulting from concussions; broaden the definition of athletic treatment to include those seeking treatment for athletic injuries; expand the scope of injuries that can be treated by athletic trainers; broaden the definition of treatment to include electricity, mechanical equipment and other therapeutic modalities; increase the membership of the Board of Physical Therapy from 7 to 10; and waive education requirements of audiology and speech language pathology licensure for one year after effective date of original bill for persons demonstrating 5 years of school-based speech language pathology experience.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Monday, July 9, 2018.

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

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

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**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON  
THE COMMITTEE ON HEALTH**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0689, OMNIBUS ASSISTED LIVING RESIDENCE IMPROVEMENT AND  
QUALITY LONG TERM CARE ACT OF 2018**

**BILL 22-0690, STUDY OF LONG-TERM CARE SERVICES AND SUPPORTS ACT OF  
2018**

**FRIDAY, JUNE 22, 2018  
10 A.M., ROOM 500, JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on B22-0689, the “Omnibus Assisted Living Residence Improvement and Quality Long Term Care Act of 2018” and Bill 22-0690, the “Study of Long-Term Care Services and Supports Act of 2018.” The hearing will be held on Friday, June 22, 2018, at 10 a.m., in Room 500 of the John A. Wilson Building.

Bill 22-0689, the “Omnibus Assisted Living Residence Improvement and Quality Long Term Care Act of 2018”, would amend the Assisted Living Residence Regulatory Act of 2000 by establishing standards for DOH inspection of resident files and resident agreements for compliance with the D.C. Code; establishing that inspection reports, investigative findings and other data be made available online; establishing a resident's right to civil action against an ALR for violations; requiring an ALR to develop policies related to medication administration and errors, resident falls, individual service plans, transfer and discharge, complaints and grievances, abuse and neglect, emergency and evacuation, lifeline response, use of surveillance and video recording, and resident visitation; ensuring resident (and resident representative) access to resident records, occupancy and staffing information, and an annual report of revenue and expenses for the ALR; requiring a photo directory of employees and contractors as well as a directory of current residents; requiring an ALR to facilitate access to care as needed, including assistance with making and keeping scheduled appointments and arranging transportation; establishing that a resident may use the pharmacy of one's choice and to self-administer medication if able to do so; requiring an ALR with capacity for more than 60 residents employ an independent licensed clinical social worker at least 20 hours per week (40 hours a week for ALR capacity of more than 120 residents); requiring a registered nurse to be onsite at all times and that the ALR maintain consistent staff to resident ratios for nurses, care managers and direct care staff for all shifts; provides that an ALR permit each resident to remain in the ALR, and not transfer or discharge

the resident unless the clinical or behavioral status of the resident endangers others; establishing that a resident has an absolute right to reside in and have access to one's living unit at all times; and stipulating that any effort to immediately restrict a resident from accessing one's living unit without required proper notice is considered an unlawful involuntary discharge and subjects the ALR to fines, penalties and expense reimbursement.

Bill 22-0690, the “Study of Long-Term Care Services and Supports Act of 2018”, would require the Department of Health to conduct a study to evaluate availability of affordable long-term care facilities, services and supports for residents of the District of Columbia to ensure that they can age in place.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Wednesday, June 20, 2018.

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

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**The Wilson Building**

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**NOTICE OF CONTRACT APPROVAL RESOLUTION**

The Council of the District of Columbia gives notice that the resolution listed below to approve CA 22-391, proposed contract between the Not-for-Profit Hospital Corporation and MazarsUSA LLP, in the amount of \$4,973,836 for the provision of hospital operator services was filed in the Office of the Secretary on February 6, 2018.

A copy of the approval resolution or the proposed contract is available in the Council's Legislative Services, Room 10, John A. Wilson Building. Telephone: 724-8050. Comments on the proposed contract can be addressed to the Secretary to the Council, Room 5.

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PR 22-756: MazarsUSA LLP Approval Resolution of 2018

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**Notice of Reprogramming Requests**

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.  
Telephone: 724-8050

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**Reprog. 22-109** Request to reprogram \$720,554 of Fiscal Year 2018 Local funds budget authority within the Department of Behavioral Health (DBH) was filed in the Office of the Secretary on February 20, 2018. This reprogramming ensures that DBH will be able to fund additional personal that will support the Neighborhood Engagement Achieves Results (NEAR) Act during daily and after-hour service times.

RECEIVED: 14 day review begins February 21, 2018

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 23, 2018  
Protest Petition Deadline: April 9, 2018  
Roll Call Hearing Date: April 23, 2019  
Protest Hearing Date: June 20, 2018

License No.: ABRA-109015  
Licensee: Ana Salvadorean & Mexican Food, LLC  
Trade Name: Ana Salvadorean & Mexican Food  
License Class: Retailer’s Class “C” Restaurant  
Address: 3211 Georgia Avenue, N.W.  
Contact: Ana De Leon: (202) 246-7601

WARD 1                      ANC 1A                      SMD 1A10

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 April 23, 2018 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 June 20, 2018 at 4:30 p.m.**

**NATURE OF OPERATION**

New Class “C” family-oriented restaurant that will serve Salvadorean & Mexican food. The restaurant will have 35 seats and a Total Occupancy Load of 40.

**PROPOSED HOURS OF OPERATION**

Sunday – Thursday, 8:00 am – 11:00 pm  
Friday – Saturday, 8:00 am – 1:00 am

**PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION**

Sunday – Thursday, 10:00 am – 11:00 pm  
Friday – Saturday, 10:00 am – 1:00 am



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 23, 2018
Protest Petition Deadline: April 9, 2018
Roll Call Hearing Date: April 23, 2018
Protest Hearing Date: June 20, 2018

License No.: ABRA-108861
Licensee: Arepa Zone LLC
Trade Name: Arepa Zone
License Class: Retailer's Class "C" Restaurant
Address: 1121 14th Street, N.W.
Contact: Sean T. Morris: 301-654-6570

WARD 2

ANC 2F

SMD 2F05

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 April 23, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on June 20, 2018 at 1:30 pm.

NATURE OF OPERATION

New Restaurant, serving arepas and other authentic Venezuelan, South American and Central American cuisine. Total Occupancy Load is 88 with seating for 45.

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

Sunday 9 am – 8 pm, Monday through Thursday 8 am – 10 pm, Friday 8am – 2 am, and Saturday 9 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*CORRECTION\*\***

Placard Posting Date: February 16, 2018  
 Protest Petition Deadline: April 2, 2018  
 Roll Call Hearing Date: April 17, 2018

License No.: ABRA-105977  
 Licensee: Yegna Resaturant and Lounge, Inc.  
 Trade Name: Asefu's Palace  
 License Class: Retailer's Class "C" Restaurant  
 Address: 1920 \*\*9<sup>th</sup> Street, N.W.  
 Contact: Asefu Alemayehu: (202) 421-5868

WARD 1                      ANC 1B                      SMD 1B02

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 17, 2018 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

**NATURE OF SUBSTANTIAL CHANGE**

Licensee is requesting to increase seating from 38 seats to 106 seats, and to increase Total Occupancy Load from 38 to 166 on the first and seconds floors of the Establishment.

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

Sunday – Thursday 10:00 am – 2:00 am  
 Friday – Saturday 10:00 am – 3:00 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

Sunday – Saturday 6:00 pm – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*RESCIND\*\***

Placard Posting Date: February 16, 2018  
Protest Petition Deadline: April 2, 2018  
Roll Call Hearing Date: April 17, 2018

License No.: ABRA-105977  
Licensee: Yegna Resaturant and Lounge, Inc.  
Trade Name: Asefu's Palace  
License Class: Retailer's Class "C" Restaurant  
Address: 1920 \*\*19<sup>th</sup> Street, N.W.  
Contact: Asefu Alemayehu: (202) 421-5868

WARD 1                      ANC 1B                      SMD 1B02

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on April 17, 2018 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

**NATURE OF SUBSTANTIAL CHANGE**

Licensee is requesting to increase seating from 38 seats to 106 seats, and to increase Total Occupancy Load from 38 to 166 on the first and seconds floors of the Establishment.

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

Sunday – Thursday 10:00 am – 2:00 am  
Friday – Saturday 10:00 am – 3:00 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

Sunday – Saturday 6:00 pm – 2:00 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 23, 2018  
 Protest Petition Deadline: April 9, 2018  
 Roll Call Hearing Date: April 23, 2018  
 Protest Hearing Date: June 20, 2018

License No: ABRA-108896  
 Licensee: Menkem, LLC  
 Trade Name: E Market & Restaurant  
 License Class: Retailer’s Class “B”  
 Address: 4202 Benning Road, N.E.  
 Contact: Eyob Zegeye: (240) 708-3591

WARD 7

ANC 7D

SMD 7D06

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 April 23, 2018 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **June 20, 2018 at 1:30 p.m.**

**NATURE OF OPERATION**

New Class B retailer, selling beer and wine.

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES**

Sunday – Saturday, 8:30 am – 9:00 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: February 23, 2018  
Protest Petition Deadline: April 9, 2018  
Roll Call Hearing Date: April 23, 2018  
Protest Hearing Date: June 20, 2018

License No.: ABRA-108928  
Licensee: Mission Group Dos, LLC  
Trade Name: Mission Dos  
License Class: Retailer’s Class “C” Tavern  
Address: 1221 Van Street, S.E.  
Contact: Camelia Mazard, Esq: (202) 589-1837

WARD 6                      ANC 6D                      SMD 6D02

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 April 23, 2018 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 June 20, 2018 at 4:30 p.m.**

**NATURE OF OPERATION**

New Class “C” Tavern, serving Mexican food with 260 seats and a Total Occupancy Load of 514. Licensee is requesting an Entertainment Endorsement with Dancing. Sidewalk Café Endorsement with 20 seats, and Summer Garden Endorsement on Rooftop with 24 seats.

**HOURS OF OPERATION/ ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INDOORS)**

Sunday – Thursday 9:00 am – 2:00 am and Friday – Saturday 9:00 am – 3:00 am

**HOURS OF OPERATION/ ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR OUTDOOR SIDEWALK CAFÉ AND ROOFTOP SUMMER GARDEN**

Monday – Thursday 9:00 am – 2:00 am and Friday – Saturday 9:00 am – 3:00 am

**HOURS OF LIVE ENTERTAINMENT (INDOORS)**

Sunday 2:00 pm – 2:00 am, Monday – Thursday 5:00 pm – 2:00 am

Friday – Saturday 2:00 pm – 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 23, 2018
Protest Petition Deadline: April 9, 2018
Roll Call Hearing Date: April 23, 2018
Protest Hearing Date: June 20, 2018

License No.: ABRA-109076
Licensee: Taqueria Local, LLC
Trade Name: Taqueria Local
License Class: Retailer's Class "C" Tavern
Address: 1627 K Street, N.W.
Contact: Danielle Balmelle, Agent: (202) 714-2976

WARD 2 ANC 2B SMD 2B05

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 April 23, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing date is scheduled on June 20, 2018 at 1:30 p.m.

NATURE OF OPERATION

New Class "C" Tavern, serving tacos with 60 seats and a Total Occupancy Load of 60. Licensee is requesting an Entertainment Endorsement and Sidewalk Café Endorsement with 30 seats.

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

Sunday – Thursday 8:00 am – 2:00 am and Friday – Saturday 8:00 am – 3:00 am

HOURS OF LIVE ENTERTAINMENT INDOORS AND FOR OUTDOOR SIDEWALK CAFE

Sunday – Saturday 3:00 pm – 12:00 am

**D.C. BOARD OF ELECTIONS****NOTICE OF PUBLIC HEARING  
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE**

The Board of Elections shall consider in a public hearing whether the proposed measure “DC Bike Life Access and Use of Non-Traditional Vehicles Act of 2018” is a proper subject matter for initiative at the Board’s regular meeting on Wednesday, April 4, 2018 at 10:30 a.m., at 1015 Half Street S.E., Suite 750, Washington DC 20003.

The Board requests that written memoranda be submitted for the record no later than 4:00 p.m., Thursday, March 29, 2018 to the Board of Elections, General Counsel’s Office, 1015 Half Street, S.E., Suite 750, Washington, D.C. 20003.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number and name of the organization represented (if any) by calling the General Counsel’s office at 727-2194 no later than Friday, March 30, 2018 at 4:00p.m.

The Short Title, Summary Statement and Legislative Text of the proposed initiative read as follows:

**SHORT TITLE**

DC Bike Life Access and Use of Non-Traditional Vehicles Act of 2018

**SUMMARY STATEMENT**

Ballot Initiative Measure No. \_\_\_ will ask District of Columbia voters if they would like to expand legal access to and use of All-Terrain Vehicles, Dirt Bikes and Multipurpose Off-Highway Utility Vehicles for limited use on public roads (without the right to public street parking).

**LEGISLATIVE TEXT**

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “DC Bike Life Access and Use of Non-Traditional Vehicles Act of 2018.”

Part A. Traffic Act, 1925.,  
(§ 50–2201.04b.) “All-terrain vehicles and dirt bikes” is amended as follows:

(a) Person(s) licensed to operate motor vehicles pursuant to §§ 50-1401.01 - 50-1401.05 shall be permitted to:

Section (1) is amended as follows:

(1) Operate at any time an all-terrain vehicle, dirt bike or UTV/MOHUV (multipurpose off-highway utility vehicle):

(a) On public roads with posted speed limits of 45 mph and lower.

(b) On the 'shoulder' lane when operated on highways in the District.

(c) Persons operating dirt bikes and ATVs at speeds lower than 45 mph shall not be required to possess an 'M' endorsement on their Driving Permit.

Section (2) shall be amended and renumbered as follows: (2) Park at any time an all-terrain vehicle or dirt bike on private property, including public garage parking

(a) Register their all-terrain vehicle, dirt bike or UTV/MOHUV (multipurpose off-highway utility vehicle) with the Department of Motor Vehicles in the District.

(b) A person operating a ATV, Dirt Bike or UTV in violation of section (a) of this section shall upon conviction be fined no more than \$100 as set forth in § 22-3571.01

(c) A person who is convicted of violating subsection (a)(1) or (b)(1), upon a second or subsequent conviction for violating subsection (a)(1) or (b)(1) shall have his or her driver's license, or privilege to operate a motor vehicle in the District, suspended for 6 months from the date of conviction.

(d) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute violations of this section, in the name of the District of Columbia.

(e) An all-terrain vehicle, dirt bike or UTV/MOHUV parked in violation of section (d) shall be subject to impoundment pursuant to the standards and procedures set forth by § 50-2421.07.

(3) This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Government Reorganization Act (Home Rule Act), approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)).



**DEPARTMENT OF HEALTH (DOH)**  
Community Health Administration (CHA) &  
Public Health Integrated Advisory Committee (PHIAC)  
Announce

**2018 Annual Preventive Health & Health Services Block Grant (PHHSBG) Public Hearing**

The DC Department of Health (DOH) and the PHIAC are conducting a public hearing to solicit testimonies and other community feedback on population health priorities for the DC for the PHHSBG.

**The Public Hearing will be held on Tuesday, February 27, 2018 at the Department of Health, 899 North Capitol Street, NE, Washington, DC 20002; Rm 306 from 4:00-7:30pm.**

- A. The PHIAC solicits comments related to the activities of the District of Columbia Preventive Health and Health Services Block Grant (PHHSBG). The PHHSBG is a flexible funding mechanism from the Centers for Disease Control and Prevention (CDC) to fund the District's critical health priorities. The key agenda items will include the following:
1. **Revision of the current DC PHHSBG work plan** -This public hearing is being held to ensure that all citizens have the opportunity to present their views concerning proposed changes in the activities in the FY 2017 PHHSBG Work Plan. In order to align with the DOH Strategic Priorities, the DOH proposes to remove the objective that focuses on Human Papillomavirus Education.
  2. **Recommendations for DC PHHSBG upcoming year focus areas and strategies to address priority health needs and funding gaps**-The PHHSBG has been used by the DOH to help address gaps in funding support for strategies to improve outcomes related to leading health indicators in the District. It is also part of the PHHSBG requirements that specific allocations be designated for sexual assault prevention efforts.
- B. Information gathered through the hearing process also will be used to inform the [DC Healthy People 2020 \(DC HP2020\) Framework](#) implementation and monitoring process. DC HP2020 is the DC DOH's state health improvement plan aimed to improve population health outcomes among DC residents by the year 2020. A multi-sector collaborative of stakeholders and community members, applying the results-based accountability methodology, developed the DC HP2020 Framework that 1) prioritizes and monitors 150 health outcome objectives, and 2) recommends 85 evidence-based strategies to achieve targeted population health impacts.
- C. Testimonies can be given in diverse formats to include specific strategy recommendations or general comments.
1. **Strategy recommendations in specific areas and/or targeting specific populations**- These specific recommendations require the use of health and other data (such as those found in DC HP2020) to characterize the problem and its severity and the use of evidence to support recommended strategies/interventions.
  2. **Overarching or general comments**-These overarching or general recommendations can be about community, family or individual needs you have observed or encountered in your neighborhood and close proximity. Specific data is not required to support the inclusion of these comments.

If potential witnesses need guidance to develop testimonies, additional information and resources are available upon request from DOH. Potential witnesses may testify in-person, by calling in on a telephone conference line or by submitting written testimony.

All witnesses who plan to present testimony are asked to submit written copies of their testimony by **Monday, February 26, 2018 at 12 Noon**. Email the DOH at [PHIAC.doh@dc.gov](mailto:PHIAC.doh@dc.gov) or contact Angela Carole at (202)442-8984 in order to 1) sign-up to testify in-person; sign-up to testify via phone and to receive the conference line dial-in information; and submit an electronic copy of written testimony. Please include name, address, email address, telephone number and organization name (when applicable) with testimonies. **Written testimonies should be single-spaced and no longer than two pages. All oral presentations are limited to five minutes.** Transportation/Parking Options: Parking is available under the building at a cost. There is limited neighborhood street parking. Check WMATA <http://www.wmata.com/> for other transportation options. The nearest Metro stations are Union Station and NoMa/Gallaudet U.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, APRIL 4, 2018  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**WARD EIGHT**

19709            **Application of Focus Works, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, ANC 8C            for a special exception under Subtitle D § 306.4 from the rear addition requirements of Subtitle D § 306.3, and pursuant to Subtitle X, Chapter 10, for a use variance from the nonconforming use requirements of Subtitle C § 204.1, to construct a rear addition to an existing four-unit apartment house in the R-3 at premises 411 Melon Street S.E. (Square 5996, Lot 52).

**WARD EIGHT**

19710            **Application of 404 Newcomb, LLC**, pursuant to 11 DCMR Subtitle X, Chapter ANC 8C            9, for a special exception under Subtitle D § 306.4 from the rear addition requirements of Subtitle D § 306.3, and pursuant to Subtitle X, Chapter 10, for a use variance from the nonconforming use requirements of Subtitle C § 204.3, to convert an existing community residence facility into a four-unit apartment house in the R-3 zone at premises 404 Newcomb Street S.E. (Square 5996, Lot 48).

**WARD ONE**

19712            **Application of Serhat Akin**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a ANC 1A            special exception under the residential conversion regulations of Subtitle U § 320.2, to allow a three-unit apartment house in the RF-1 Zone at premises 452 Newton Place, N.W. (Square 3036, Lot 89).

**WARD THREE**

19713            **Appeal of Isabelle Thabault**, pursuant to 11 DCMR Subtitle Y § 302, from the ANC 3G            decision made on January 16, 2018 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to refuse to revoke building permit B1712578, to construct a front addition to an existing one-family dwelling in the R-2 Zone at premises 3840 Legation Street N.W. (Square 1857, Lot 49).

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WARD TWO

19721            **Application of Zhenwei Qiang Trustees**, pursuant to 11 DCMR Subtitle X, ANC 2B            Chapter 10, for a variance from the lot occupancy requirements of Subtitle F § 604.1, to repair and expand an existing rear and side deck addition to an existing attached principal dwelling unit in the RA-8 Zone at premises 2131 N Street N.W. (Square 69, Lot 181).

WARD FIVE

19725            **Application of 1169 Neal Street, LLC**, pursuant to 11 DCMR Subtitle X, ANC 5D            Chapter 10, for an area variance from the side yard requirements of Subtitle E § 307.1, to construct a new flat in the RF-1 zone at premises 1169 Neal Street N.E. (Square 4065, Lot 801).

**PLEASE NOTE:**

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

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

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

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

**Do you need assistance to participate?**

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Amharic

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0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

[Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov)。这些是免费提供的服务。

French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

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

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

**FREDERICK L. HILL, CHAIRPERSON  
LESYLLEÉ M. WHITE, MEMBER  
CARLTON HART, VICE-CHAIRPERSON,  
NATIONAL CAPITAL PLANNING COMMISSION**

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**A PARTICIPATING MEMBER OF THE ZONING COMMISSION  
ONE BOARD SEAT VACANT**

**CLIFFORD W. MOY, SECRETARY TO THE BZA  
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

## ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

## NOTICE OF PUBLIC HEARING

**TIME AND PLACE:** Thursday, April 19, 2018, @ 6:30 p.m.  
Jerrily R. Kress Memorial Hearing Room  
441 4<sup>th</sup> Street, N.W., Suite 220-South  
Washington, D.C. 20001

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 17-23 (Text Amendment to Subtitles B, D, E, and F – Changes to Definitions and Rules of Measurement)**

**THIS CASE IS OF INTEREST TO ALL ANCs**

On December 1, 2017, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (“OP”) proposing a text amendment to the Zoning Regulations (11 DCMR) to eliminate the “common division wall” language that appeared in § 405.3 of the 1958 Regulations and in multiple sections in the 2016 Regulations and amend the definitions for detached, semi-detached, and attached buildings. The OP set down report served as its pre-hearing filing.

On December 11, 2017, the Zoning Commission voted to set down the petition for a public hearing. The Zoning Commission also encouraged OP to explore alternative approaches to the regulation of side yards beyond that which was set down. These alternative approaches will be identified in OP’s hearing report. That report is due 10 days prior to the hearing date and will become immediately available to the public upon its electronic filing in the Interactive Zoning Information System. The scope of this hearing will be expanded to include the approaches identified in the OP report.

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

*1. Changes to Subtitle B, Definitions*

Amend the text in Subtitle B §100.2 as follows:

Building, Attached: A building that ~~abuts or shares walls on both side lot lines with other buildings on adjoining lots~~ **has no side yards.**

Building, Detached: A freestanding building that ~~is does not abut any other building and where all sides of the building are surrounded by yards or open areas within the lot~~ **completely separated from all other buildings and has two (2) side yards.**

Building, Semi-detached: A building that ~~abuts or shares one (1) wall, on a side lot line, with another building on an adjoining lot and where the remaining sides of the building are surrounded by open areas or street lot lines~~ **has only one (1) side yard.**

2. *Changes to Subtitle B, Rules of Measurement*

Amend the text in Subtitle B § 320 as follows:

**CHAPTER 3 GENERAL RULES OF MEASUREMENT**

**320 RULES OF MEASUREMENT FOR SIDE YARDS**

320.1 A required side yard shall be parallel to a side lot line and apply to the entirety of principal buildings and structures. If a required side yard intersects with a required rear yard, the larger yard shall apply for the required distance of the larger yard.

~~320.2 An addition to an existing semi-detached or detached principal building must meet the side yard requirements for that type of building in the zone. An existing detached or semi-detached building may not be treated as an attached building through the construction of additions. **[DELETED]**.~~

3. *Changes to General Development Standards, Side Yard, and Accessory Building Regulations in Subtitle D, Residential House (R) Zones*

Amend Subtitle D, Residential House (R) Zones, §§ 202, 206, 307, 407, 507, 607, 707, 807, 907, 1007, 1204, 1207, 1307, and 5005 as follows:

**CHAPTER 2 GENERAL DEVELOPMENT STANDARDS (R)**

**202 LOT OCCUPANCY [DELETED]**

~~202.1 In the R zones, a detached or semi-detached building shall not be considered an attached unit for the purposes of lot occupancy through the use of building or structure additions that reduce an otherwise required or permitted side yard for a detached or semi-detached dwelling. **[DELETED]**~~

**206 SIDE YARD**

206.1 ~~Side yard requirements are as provided in each zone.~~ **Except in the R-8, R-9, R-10, R-19, and R-20 zones, the minimum side yard requirements are as provided in this section.**

~~206.2 Side yards in an R-1-A, R-1-B, R-6, R-7, R-11, R-12, R-14, R-15, R-16, or R-21 zone shall be a minimum of eight feet (8 ft.).~~

~~206.3 Side yards for detached buildings in the R-2, R-3, R-13, or R-17 zone shall be a minimum of eight feet (8 ft.).~~



206.4 Side yards for semi-detached buildings in the R-2 zone shall be a minimum of eight feet (8 ft.).

206.5 No side yards are required in an R-3, R-13, or R-17 zone; however, if a side yard is provided, it shall be a minimum of five feet (5 ft.).

206.6 In the R-3, R-13, and R-17 zones, side yards shall be maintained for detached or semi-detached buildings existing on or before the effective date of this title.

206.7 In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the side yard adjacent to the extension or addition shall be a minimum of five feet (5 ft.).

**CHAPTER 3 RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3**

...

**307 SIDE YARD [DELETED]**

~~307.1 A minimum side yard of eight feet (8 ft.) shall be provided in the R-1-A, R-1-B, and R-2 zones.~~

~~307.2 A detached single dwelling unit in the R-2 and R-3 zone shall be subject to the side yard requirements of an R-1-B zone.~~

~~307.3 No side yard shall be required for attached dwellings in the R-3 zone; however, if a side yard is provided, it shall be no less than five feet (5 ft.).~~

~~307.4 In the R-2 and R-3 zones, when a single dwelling unit, flat, or multiple dwelling unit development is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~

~~307.5 For a building subject to a side yard requirement but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

**CHAPTER 4 TREE AND SLOPE PROTECTION RESIDENTIAL HOUSE ZONES – R-6 AND R-7**

...

**407 SIDE YARD [DELETED]**

~~407.1 A minimum side yard of eight feet (8 ft.) shall be provided in the R-6 and R-7 zones.~~

~~407.2 For a building subject to a side yard requirement, but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

**CHAPTER 5 FOREST HILLS TREE AND SLOPE RESIDENTIAL HOUSE ZONES – R-8, R-9, AND R-10**

...

**507 SIDE YARD**

507.1 The minimum side yard requirement for all buildings, accessory buildings, or additions to buildings in the R-8, R-9, and R-10 zones shall be twenty-four feet (24 ft.) in the aggregate, with no single side yard having a width of less than eight feet (8 ft.).

~~507.2 In the R-10 zone when a single dwelling unit, flat, or multiple dwelling unit development is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free standing side. [DELETED].~~

**CHAPTER 6 NAVAL OBSERVATORY/TREE AND SLOPE RESIDENTIAL HOUSE ZONE – R-11**

...

**607 SIDE YARD [DELETED]**

~~607.1 A minimum side yard of eight feet (8 ft.) shall be provided in the R-11 zone.~~

~~607.2 For a building subject to a side yard requirement but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

**CHAPTER 7 NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13**

...

**707 SIDE YARD [DELETED]**

~~707.1 — A minimum side yard of eight feet (8 ft.) shall be provided in the R-12 zone.~~

~~707.2 — No side yard shall be required in the R-13 zone; however, if a side yard is provided, it shall be no less than five feet (5 ft.).~~

~~707.3 — For a building subject to a side yard requirement, but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

~~707.4 — In the R-13 zone, when a single dwelling unit, flat, or multiple dwelling unit development is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free standing side.~~

**CHAPTER 8 WESLEY HEIGHTS RESIDENTIAL HOUSE ZONES – R-14 AND R-15**

...

**807 SIDE YARD [DELETED]**

~~807.1 — A minimum side yard of eight feet (8 ft.) shall be provided in the R-14 and R-15 zones.~~

~~807.2 — For a building subject to a side yard requirement but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

**CHAPTER 9 SIXTEENTH STREET HEIGHTS RESIDENTIAL HOUSE ZONE – R-16**

...

**907 SIDE YARD [DELETED]**

~~907.1 — A minimum side yard of eight feet (8 ft.) shall be provided in the R-16 zone.~~

~~907.2 — For a building subject to a side yard requirement, but which has an existing side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

CHAPTER 10 FOGGY BOTTOM RESIDENTIAL HOUSE ZONES – R-17

...

1007 ~~SIDE YARD~~ **[DELETED]**

1007.1 ~~No side yard shall be required in the R-17 zone; however, if a side yard is provided, it shall be no less than five feet (5 ft.).~~

1007.2 ~~In the R-17 zone, when a single dwelling unit, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~

1007.3 ~~For a building with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).~~

CHAPTER 12 GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20

...

1204 LOT OCCUPANCY

1204.1 ...

1204.2 **In the R-20 zone, a detached or semi-detached building shall not be considered an attached building for the purposes of lot occupancy through the use of building or structure additions that reduce an otherwise required or permitted side yard for a detached or semi-detached building.**

1207 SIDE YARD

1207.1 ~~A minimum~~ **Side yards in the R-19 zone shall be a minimum** of eight feet (8 ft.) shall be provided in the R-19 zone.

1207.2 ~~No~~ **Side yards in the R-20 zone** shall be required for an attached building in the R-20 zone; however, if a side yard is provided, it shall be at least **a minimum of** five feet (5 ft.).

1207.3 ~~A minimum side yard of five feet (5 ft.) shall be provided for all buildings other than attached buildings in the R-20 zone. **[DELETED]**~~

1207.4**3** ~~In the R-19 and R-20 zones, a building with a side yard less than required may be extended or an addition may be made to the building, provided, that the width of the existing side yard shall not be decreased; and provided further, that the width~~

~~of the existing side yard~~ In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the side yard adjacent to the extension or addition shall be a minimum of five feet (5 ft.) in the R-19 zone and a minimum of three feet (3 ft.) in the R-20 zone.

~~1207.5 In the R 20 zone, when a single dwelling unit, flat, or multiple dwelling unit development is erected that does not share a common division wall with an existing building, or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side. [DELETED]~~

**CHAPTER 13 CHAIN BRIDGE ROAD/UNIVERSITY TERRACE RESIDENTIAL HOUSE ZONE – R-21**

...

**1307 SIDE YARD**

~~1307.1 A minimum side yard of eight feet (8 ft.) shall be provided in the R-21 zone.~~

~~1307.2 For a building with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.). [DELETED]~~

**CHAPTER 50 ACCESSORY BUILDING REGULATIONS FOR R ZONES**

...

**5005 SIDE YARD**

5005.1 An accessory building in an R zone may be located within a side yard or beside the ~~main~~ principal building; provided, if the accessory building is located beside the ~~main~~ principal building, it shall be removed from the side lot line a distance equal to the required side yard and from ~~all~~ the principal building ~~lines~~ a distance minimum of ~~not less than~~ ten feet (10 ft.).

**4. Changes to General Development Standards and Side Yard Regulations in Subtitle E, Residential Flat (RF) Zones**

Amend Subtitle E, Residential Flat (RF) Zones §§ 207, 307, 407, 507, and 607 as follows:

CHAPTER 2 GENERAL DEVELOPMENT STANDARDS (RF)

...

**207            SIDE YARD**

**207.1            No side yards are required; however, any side yard provided shall be at least a minimum of five feet (5 ft.).**

**207.2            In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the side yard adjacent to the extension or addition shall be a minimum of three feet (3 ft.).**

CHAPTER 3 RESIDENTIAL FLAT ZONE – RF-1

...

**307            SIDE YARD [DELETED]**

~~307.1            When a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~

~~307.2            A side yard shall not be required along a side street abutting a corner lot in an RF-1 zone.~~

~~307.3            No side yard is required for a principal building; however, any side yard provided on any portion of a principal building shall be at least five feet (5 ft.) except as provided in this section.~~

~~307.4            In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.).~~

CHAPTER 4 DUPONT CIRCLE RESIDENTIAL FLAT ZONE – RF-2

...

**407            SIDE YARD [DELETED]**

~~407.1            When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed~~

~~together with the new building, it shall have a side yard on each resulting free-standing side.~~

~~407.2 — A side yard shall not be required along a side street abutting a corner lot in an RF-2 zone.~~

~~407.3 — A side yard shall not be required for a principal building, however, any side yard provided on any portion of a principal building shall be at least five feet (5 ft.) except as provided in Subtitle E § 407.4.~~

~~407.4 — In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.).~~

**CHAPTER 5 CAPITOL PRECINCT RESIDENTIAL FLAT ZONE – RF-3**

...

**507 SIDE YARD [DELETED]**

~~507.1 — When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~

~~507.2 — A side yard shall not be required along a side street abutting a corner lot in an RF-3 zone.~~

~~507.3 — A side yard shall not be required for a principal building, however, any side yard provided for any portion of a principal building shall be at least five feet (5 ft.) except as provided in Subtitle E § 507.4.~~

~~507.4 — In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.)~~

**CHAPTER 6 RESIDENTIAL FLAT ZONE – RF-4 AND RF-5**

...

**607 SIDE YARD [DELETED]**

- 607.1 ~~When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~
- 607.2 ~~A side yard shall not be required along a side street abutting a corner lot in an RF-4 and RF-5 zone.~~
- 607.3 ~~A side yard shall not be required for a principal building, however, any side yard provided for any portion of a principal building shall be at least five feet (5 ft.) except as provided in Subtitle E § 607.4.~~
- 607.4 ~~In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.).~~

5. *Changes to General Development Standards and Side Yard Regulations in Subtitle F, Residential Apartment (RA) Zones*

Amend Subtitle F, Residential Apartment (RA) Zones §§ 306, 406, 506, and 606 as follows:

**CHAPTER 3 RESIDENTIAL APARTMENT ZONES – RA-1, RA-2, RA-3, RA-4, and RA-5**

...

**306 SIDE YARD**

306.1 ~~An eight foot (8 ft.) s~~ **Side yards shall be provided for a detached or semi-detached dwelling building containing one (1) or two (2) dwelling units shall be a minimum of eight feet (8 ft.).**

306.2 ~~For all other buildings~~ **Except as provided in Subtitle F § 306.1, the following side yard rules apply:**

- (a) In the RA-1 zone, one (1) side yard shall be provided unless the building contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.); and
- (b) In the RA-2, RA-3, RA-4, and RA-5 zones, no side yards **are** ~~shall be~~ required; however, if a side yard is provided, it shall be ~~no less than a~~ **minimum of** four feet (4 ft.).



- 306.3 ~~When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side. **[DELETED]**~~
- 306.4 A side yard shall not be required along a side street abutting a corner lot in an RA-1, RA-2, RA-3, RA-4, and RA-5 zone.
- 306.5 In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard **adjacent to the extension or addition** shall be a minimum of ~~two~~ **three** feet (~~23~~ ft.).

#### CHAPTER 4 NAVAL OBSERVATORY RESIDENTIAL APARTMENT ZONE

...

#### 406 SIDE YARD

- 406.1 ~~In the RA-6 zone, a minimum of~~ **A minimum of** one (1) side yard shall be provided for all ~~structures~~ **buildings** unless the ~~structure~~ **building** contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.).
- 406.2 ~~An eight foot (8 ft.) side yards shall be provided for a detached and or semi-detached dwelling.~~ **Side yards shall be provided for a detached and or semi-detached dwelling, building containing one (1) or two (2) dwelling units shall be a minimum of eight feet (8 ft.)** in the RA-6 zone.
- 406.3 ~~When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side. **[DELETED]**~~
- 406.4 A side yard shall not be required along a side street abutting a corner lot ~~in an RA-6 zone.~~
- 406.5 In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard **adjacent to the extension or addition** shall be a minimum of ~~two~~ **three** feet (~~23~~ ft.).

## CHAPTER 5 CAPITOL PRECINCT RESIDENTIAL APARTMENT ZONE - RA-7

...

**506 SIDE YARD**

- 506.1 ~~In the RA-7 zones, n~~No side yards **are** shall be required; however, if a side yard is provided, it shall be ~~no less than~~ a **minimum of** four feet (4 ft.).
- 506.2 ~~An eight-foot (8 ft.) s~~Side yards shall be provided for a detached ~~and~~ or semi-detached dwelling **building containing one (1) or two (2) dwelling units shall be a minimum of eight feet (8 ft.)** in the RA-7 zone.
- 506.3 ~~When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~ **[DELETED]**.
- 506.4 A side yard shall not be required along a side street abutting a corner lot ~~in an RA-7 zone.~~
- 506.5 In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard **adjacent to the extension or addition** shall be a minimum of ~~two~~ **three** feet (~~2~~ **3** ft.).

## CHAPTER 6 DUPONT CIRCLE RESIDENTIAL APARTMENT ZONES – RA-8, RA-9, and RA-10

...

**606 SIDE YARD**

- 606.1 No side yards **are** shall be required in the RA-8, RA-9, and RA-10 zones; however, if a side yard is provided, it shall be ~~no less than~~ a **minimum of** four feet (4 ft.).
- 606.2 ~~An eight-foot (8 ft.) s~~Side yards shall be provided for a detached ~~and~~ or semi-detached dwelling **building containing one (1) or two (2) dwelling units** in the RA-8, RA-9, and RA-10 zones **shall be a minimum of eight feet (8 ft.)**.
- 606.3 ~~When a new dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.~~ **[DELETED]**

606.4 A side yard shall not be required along a side street abutting a corner lot in the RA-8, RA-9, and RA-10 zones.

606.5 In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard **adjacent to the extension or addition** shall be a minimum of ~~two~~ **three** feet (~~2~~ **3** ft.).

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](mailto: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 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto:Zelalem.Hill@dc.gov) 这些是免费提供的服务。

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

**ለሙሳተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እንኳን አገልግሎቶች የሚሰጡት በነጻ ነው።

## DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF FINAL RULEMAKING

The Director of the Department of For-Hire Vehicles (“Department” or “DFHV”) pursuant to the authority set forth in Sections 8(c) (2), (3), and (19), and 14 of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97), as amended by the Transportation Reorganization Act of 2016, effective June 22, 2016 (D.C. Law 21-0124); D.C. Official Code §§ 50-301.07(c) (2) (3), and (19), and 50-301.13 (2014 Repl. & 2017 Supp.)) hereby gives notice of its intent to adopt amendments to Chapter 4 (Taxicab Payment Service Providers), Chapter 5 (Taxicab Companies, Associations, Fleets, and Independent Taxicabs), Chapter 6 (Taxicab Parts and Equipment), Chapter 8 (Operating Rules for Public Vehicles-For-Hire), Chapter 18 (Wheelchair Accessible Paratransit Taxicab Service), Chapter 20, (Fines and Civil Penalties), and Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking amends Chapters 4, 5, 6, 8, 18, 20, and 99, of the Department’s regulations promulgated consistent with the “Modernization of Taxicabs” section of the Establishment Act, added by the Taxicab Service Improvement Amendment Act of 2012, effective October 27, 2013 (D.C. Law 19-0184; D.C. Official Code § 50-301.26 (2014 Repl.)) and for related purposes, supersedes the second emergency and proposed rulemaking (“Second Notice”) that was published in the *D.C. Register* on November 17, 2017.<sup>1</sup> The Emergency and Proposed rulemaking published on September 1, 2017 (“First Notice”)<sup>2</sup> represented the first major overhaul of the regulations adopted to implement provisions of the Taxicab Service Improvement Act (the “modernization regulations”) since those regulations were promulgated. The Second Notice made changes in response to comments received during the comment period for the First Notice which expired October 16, 2017, including requiring digital taximeter systems (“DTSs”) to be PCI-compliant; requiring DTSs to be fully accessible to people who are blind and are low vision in accordance with Section 508 of the Federal Rehabilitation Act; and requiring DTSs to publish open Application Programming Interface (“APIs”). In addition to the above changes, the Second Notice modified the First Notice by: (1) extending the DTS transition period until December 31, 2017; (2) allowing any payment processor to register as an Option for Payment Technology (“OPT”); (3) creating an online registration for OPTs to be certified, at no charge, as capable of working with the digital meters of one or more approved DTS providers for the trip data and surcharge collection; (4) allowing each DTS provider to choose as many OPTs as they want; and (5) introducing a new business model under which independent owners can operate without using a DTS provider.

The Department received several comments during the second forty-five (45) day comment period that expired January 1, 2018. One commenter stated that she appreciated that the DTS system was accessible and easy to use by people who are blind and/or visually impaired.

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<sup>1</sup> 64 DCR at 011950

<sup>2</sup> 64 DCR at 008696

Another commenter who co-owns a large taxicab company expressed support of the lower payment processing fees and lower equipment requirements of the DTS system. Another commenter, a current DTS provider, stated that DTS has allowed for more transparency in processing payments and opined that “DTS is the most vital powerful tool that we as taxicab companies have ever had.” Another commenter, from a DFHV-licensed taxicab company, was in support of the Digital Taxi Solution rulemaking, however, expressed concerns with the one-year DTS contract limit, with an inability to charge per-trip fees, and that the \$35 per hour wait time fee is too high. Finally, one commenter, from a DFHV-licensed taxicab company, stated that the company “fully supports the transition to the digital taxicab meter” however, expressed concerns that DFHV’s digital meter inappropriately interjects DFHV into competition with private businesses. The commenter also requested fewer requirements for the new dome light, elimination of the uniform color scheme, and an increased age limit for taxicabs.

In response to the comments received, the Department first notes that it has lowered the wait time rate to \$25 per hour through a separate emergency. The Department will reevaluate the one-year limitations on the DTS licensing period prior to the August 2018 open season for DTS providers, but does not believe it is appropriate to change the time period of current licenses in the midst of the license period. This rulemaking places no limitations on fees that a DTS may charge to operators, including per-trip fees. DTS providers may charge any fees that are agreed to in advance in writing by the operator. The application process to become a dome light provider is open and applicants are free to apply at any time; the application is available on the Department’s website. The uniform color scheme is a statutory requirement and the Department does not have the authority or ability to waive it via regulation. *See* D.C. Official Code § 50-301.26(a)(3). The Department’s digital meter is but one option for the taxicab industry. DTS providers may elect to use another digital meter as part of it proposed solution as long as it meets or exceeds the DFHV meter’s capability and independent taxicab owners may use any digital meter that is part of an approved DTS. Finally, with regard to taxicab age limits, although they are outside the scope of these regulations, the Department notes that it recently went through the notice and comment process in setting the current taxicab age requirement and based on extensive public input, increased the proposed taxicab age limit of seven to eight model years and vastly simplified the previous system in place.

Based on the foregoing, the Department has not made any changes to the Second Notice other than to remove Section 803 on MTS receipts, which no longer has any legal effect now that the MTS/DTS transition date of January 1, 2018, has passed.

A Notice of Emergency and Proposed rulemaking was adopted on August 28, 2017 and was published to the *DC Register* on September 1, 2017 at 64 DCR 008696. That rulemaking was superseded by the Second Notice, adopted on October 27, 2017 and published to the *DC Register* on November 17, 2017 at 64 DCR at 011950, expiring on February 24, 2018. The Second Notice is hereby superseded by this Notice of Final Rulemaking which takes effect upon publication in the *DC Register*.

**Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**Section 401, GENERAL REQUIREMENTS, is amended as follows:**

**A new Subsection 401.7 is added as follows:**

401.7 Notwithstanding any other provision of this title, no PSP shall be approved by the Department to operate, or to market MTS units, after December 31, 2017.

**Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS, FLEETS, AND INDEPENDENT TAXICABS, is amended as follows:**

**Section 503, TAXICAB COLORINGS AND MARKINGS, is amended as follows:**

**Subsection 503.1 is amended to read as follows:**

503.1 Uniform color scheme. Each vehicle used as a taxicab shall be in compliance with the uniform color scheme in § 503.3 if:

- (a) It is entering service using a new taxicab vehicle license (and corresponding new “H tag” from DMV);
- (b) It is entering service using an existing vehicle license, as required by the vehicle retirement rules of Chapter 6 or based on the owner’s decision to replace a vehicle earlier than required by such rules; or
- (c) The owner chooses to repaint in whole or in part for any reason, including changes in association or affiliation.

**Subsection 503.3 is amended by adding a new subparagraph (h) to read as follows:**

- (h) The PVIN shall appear in one or more locations on the vehicle if the vehicle is equipped with a cruising light rather than a legacy dome light, as set forth in an administrative issuance.

**Subsection 503.4 is amended to read as follows:**

503.4 The Department may allow or require enhancements to or modifications of the uniform color scheme for a vehicle that participates in a pilot, grant, donation agreement, or other program, or that is equipped with a digital taxicab solution (“DTS”).

**Section 510, TAXICAB COMPANIES AND ASSOCIATIONS – OPERATING REQUIREMENTS, is amended as follows:**

**Subsections 510.5 and 510.6 are amended to read as follows:**

- 510.5 Beginning September 13, 2016, each taxicab company may operate a digital taxicab solution (“DTS”), and may equip its owned and/or associated vehicles, or any other licensed taxicab, with a DTS unit. Beginning January 1, 2018, each taxicab company shall operate a DTS and shall equip each of its owned and associated vehicles with a DTS unit. Each DTS shall be approved and operated pursuant to Chapter 6, other applicable provisions of this title, other applicable laws, and any applicable administrative issuance. Each DTS unit shall be installed and operated pursuant to a written agreement. Until a taxicab company operates an approved DTS, it shall continue to provide one or more safety devices for all of its owned and associated vehicles that conforms to the equipment requirements of § 603.8 (n) (3), as specified in an administrative issuance, including a device which provides for operator safety.
- 510.6 Each taxicab company shall maintain a website containing only current and accurate information about the company, including, if it operates a DTS:
- (a) If it uses dynamic street hail pricing: a prominent, clear, and complete disclosure of its current discount, if any, on the street hail rates and charges in Chapter 8, which shall be the same as the disclosure that appears on the passenger console of each DTS unit; and
  - (b) A general description of the DTS and its components, the most recent date on which the DTS was approved by the Department pursuant to Chapter 6, and a disclosure of the DTS contract terms including its pricing structure.

**Chapter 6, TAXICAB PARTS AND EQUIPMENT, is amended as follows:**

**Section 602, TAXIMETERS, is amended to read as follows:**

**602 TAXIMETERS AND DIGITAL TAXICAB SOLUTIONS**

- 602.1 Beginning September 13, 2016, no legacy (non-digital) taximeters shall be approved by the Department.
- 602.2 Beginning September 1, 2017, a taxicab may use either an MTS unit or a DTS unit.
- 602.3 Beginning January 1, 2018:
- (a) The Department shall approve only DTSs, each of which shall incorporate a digital taximeter;



- (b) The approval of each legacy taximeter shall terminate; and
- (c) No person shall participate in dispatching or otherwise providing taxicab service if the service is provided without an approved DTS or approved digital taximeter and registered OPT.

602.4 Each DTS shall be provided and maintained by a taxicab company, or by the D.C. Taxicab Industry Co-op (“Co-op”) (collectively for purposes of this section, “provider”). Each DTS shall comply with the technology and service requirements of this section. The Co-op shall seek approval of its DTS not later than six months following its registration as a DDS.

602.5 Each DTS shall have one digital taximeter and one or more OPT (payment processor) as selected by the DTS provider, provided however, that if the Department makes a digital taximeter available to the industry free of charge, then each DTS provider shall incorporate such digital taximeter into its DTS within ninety (90) days of its availability, or such longer period as set by administrative issuance, provided however, that each DTS provider may in lieu thereof incorporate any other digital taximeter that meets or exceeds the performance and features of the Department’s digital meter; and provided further that each OPT shall be registered with the Department.

602.6 The Department may issue an administrative issuance concerning DTSs, digital meters, and OPTs, in order to:

- (a) Establish requirements for when approval or renewal of approval is required, including establishing uniform approval periods of not less than twelve (12) months; establishing an annual DTS open season during which DTS providers approved for the next uniform approval period may compete for customers during such period; establishing an annual deadline by which DTSs must apply for approval or renewal in order to be approved for the next uniform approval period and to participate in the next DTS open season, or otherwise be considered only for approval during the uniform approval period starting one (1) year after the next uniform approval period; and establishing standards from when re-approval is required due to a material modification of a DTS during an approval period;
- (b) Interpret and provide guidance about DTS technology and service requirements;
- (c) Establish reasonable requirements related to surcharge bonds;
- (d) Establish reasonable requirements for the use, operation, configuration, placement, and installation of DTS units and their components, such as

requirements for accessibility and use by disabled passengers including visually-impaired and blind customers, which shall be in full compliance with federal law including but not limited to Section 508 of the Rehabilitation Act, 29 U.S.C. § 794 (d);

- (e) Establish reasonable requirements concerning the use of dynamic street hail pricing, including the placement of signs in and/or on vehicles to inform passengers about such pricing;
- (f) Establish reasonable requirements concerning the requirements for separate mechanisms for the operator and the passenger to discreetly summon assistance;
- (g) Interpret and provide guidance on the requirements for a digital taximeter to meet or exceed the performance and features of the Department's digital meter made available to the industry for free, if applicable.
- (h) Interpret and provide guidance on the requirements for a payment card processor that a DTS provider seeks to use to process payments;
- (i) Provide guidance on the technical and other reasonable requirements for the registration of an OPT;
- (j) Provide guidance for independent owners who choose to operate without affiliating with a DTS provider;
- (k) Establish other reasonable requirements for DTSs and DTS units related to safety, passenger privacy, consumer protection, compliance with any other applicable law, and other reasonable purposes within the jurisdiction of the Department; or
- (l) Take any action with respect to achieving PCI compliance, as measured or determined by the PCI Security Standards Council.

602.7 The legality or wisdom of any administrative issuance promulgated pursuant to this section may be challenged in any administrative proceeding where the Department seeks to rely on such administrative issuance.

602.8 The approval of a DTS may be suspended or revoked, and a renewed approval may be denied, in addition to other civil penalties under this title, if the DTS provider fails to comply with an applicable administrative issuance, provided that the DTS provider shall have the opportunity to challenge the legality or wisdom of any or all provisions of the relevant administrative issuance or issuances in an administrative hearing.

602.9 Each application for the approval of a DTS shall be executed by an individual

with authority to file the application, and shall contain the following information and documentation:

- (a) Contact information for the applicant, including name, telephone number, email, and website URL;
- (b) Information and documentation about each component of the DTS unit, including its digital meter, driver console, passenger console, and credit card processing device, and how it interacts with the vehicle's dome light or innovation cruising light, including a narrative, photographs, and screenshots for each component;
- (c) Information and documentation showing the DTS complies with all service and technology requirements of this section, other requirements of this title, the Establishment Act, and other applicable laws;
- (d) A certification that the applicant owns the rights to, or holds a license to use, all the intellectual property that comprises the DTS other than intellectual property required by this section to be used in connection with a digital meter, or an arrangement with a payment card processor, made available by the Department;
- (e) Information showing the applicant is in good standing with the Department and is in compliance with all applicable laws pertaining to its business, including without limitation the Clean Hands Act;
- (f) Information demonstrating that the applicant will collect from the passenger and pay to the District the taxicab passenger surcharge of twenty-five cents (\$0.25);
- (g) A sample of each agreement with owners and operators used by the applicant;
- (h) An explanation of the provider's pricing structure, and whether the provider expects to offer dynamic street hail pricing; and
- (i) A certification that the DTS is fully integrated with the DC TaxiApp, as required by this section, Chapter 16, and any applicable administrative issuance, and the names of any other apps with which the DTS is also integrated.

602.10 Each application shall be accompanied by a filing fee of two thousand five hundred dollars (\$2,500), regardless of whether: it is a new or renewal application; or it seeks re-approval of a DTS due to its material modification by its provider during an approval period.

- 602.11 Each application for the approval of a DTS shall be accompanied by a bond, naming the District as obligee, to secure the payment of the passenger surcharges owed to the District under this title and the Establishment Act during the current approval period. Such bond(s) shall:
- (a) Be in effect throughout the current approval period to which the approval applies and for one (1) year thereafter; and
  - (b) Be in the amount of one hundred fifty thousand dollars (\$150,000).
- 602.12 An application may be denied if it contains or was submitted with materially false information provided orally or in writing for the purpose of inducing approval.
- 602.13 An applicant seeking to renew the approval of a DTS shall meet all requirements for a new approval, or such portion thereof, as the Department may require by administrative issuance.
- 602.14 The Department shall issue all decisions to grant or deny the approval of a DTS within the period established in an administrative issuance.
- 602.15 Each approval of a DTS shall be for the duration of the uniform approval period set forth in an administrative issuance, or the remainder of the current period, whichever is less.
- 602.16 Each DTS provider shall execute contracts with operators that are no longer than the license period for which they are granted operating authority, and DTSs must allow operators to switch to another DTS provider during an annual DTS open season as that term is defined in an administrative issuance, without penalty.
- 602.17 Technology requirements for DTS units. Each DTS unit shall:
- (a) Operate in a manner which ensures the vehicle owner and operator, and the DTS provider, are able to comply with all requirements of this title and other applicable laws, and all applicable administrative issuances;
  - (b) Use open architecture, open application program interfaces, and a modular design, to ensure proper interaction among:
    - (1) A driver console incorporating a digital taximeter that—
      - (A) Is fully integrated with the DC TaxiApp and, at the option of the provider, the app of any other DDS registered and operated as required by this title and other applicable laws;
      - (B) Processes shared and group rides, calculates fares (including dynamic street hail prices, if offered by the

provider), and provides receipts as required by Chapter 8;

- (C) Provides the Department with real-time trip and location data when the operator is on duty, and such other information as reasonably required by an administrative issuance;
- (D) Is linked electronically, or via a DFHV network, API, integration hub, website, mobile app, URL, or hardware, to one or more registered digital dispatch services, including at a minimum, full integration with the DC TaxiApp, for the purpose of receiving ehails and allowing ehail passengers to choose in-vehicle or digital payments; and
- (E) Provides the operator and District enforcement officials with the ability to view the vehicle's electronic manifest as required by § 823 for the prior forty-eight (48) hours, and maintains all manifest records for at least two (2) years.

(2) A passenger console;

(3) A credit card processing device;

(4) Any other device the provider wishes to include that does not impair the required function and performance of the DTS; and

(5) Complies with all other applicable requirements of this title and other applicable laws, and any applicable administrative issuance;

(c) Interact with the vehicle's legacy dome light or cruising light to properly control its functions in the manner required by this chapter.

(d) Be integrated with two or more registered OPTs at the time of renewal of the DTS' operating authority.

(e) Bear the costs of integrating with any OPTs beyond the initial two with which it is integrated.

602.18 Service requirements for DTSs. Each DTS provider shall:

(a) Ensure that each of its DTS units is in compliance with the technology and other requirements of this title and other applicable laws, including proper operation and connectivity with a cruising light or legacy dome light;

(b) Comply with the following requirements for the taxicab passenger surcharge. It shall:

- (1) Collect the surcharge as an authorized additional charge under Chapter 8;
  - (2) Remit to the District, at the end of each month, a payment to the D.C. Treasurer reflecting all surcharges owed to the District for such period based on the number of trips during such period, regardless of whether or not the surcharge was actually collected from the passenger;
  - (3) Transmit to the Department a report certifying its payment to the District, and containing a basis for the amount of the payment and such other information reasonably related to the payment as may be required by an administrative issuance; and
  - (4) Cooperate with the Department to resolve any issue related to compliance with this subsection, including a discrepancy in the amount of a payment. If the issue remains unresolved to the satisfaction of the Department within thirty (30) days following notice of the issue to the payer, the Department shall have discretion to make a claim against the payer's surcharge bond, as necessary and appropriate to satisfy the amount of the discrepancy. A surcharge bond shall be returned to the payee within thirty (30) days following the expiration of the bond, or, upon written request of the payer, at an earlier date if the payer establishes to the satisfaction of the Department that the payer's obligations under this section have been fully discharged;
- (c) Pay each owner or operator with which it is associated the portion of its revenue to which such owner or operator is entitled within twenty-four (24) hours or one (1) business day of when such revenue is received, provided however, that such periods may be extended to not more than one (1) calendar week or five (5) business days if such terms are clearly and transparently disclosed in the contract; and
- (d) Pay all costs and fees related to the DTS, including without limitation, the costs for development, improvement, installation, maintenance, service, support, and legal compliance, provided however, that such costs may be allocated pursuant to a written agreement that clearly and transparently discloses each and every cost, and does not exceed the length of the approval period. No person other than the provider shall pay a cost or fee related to a DTS which has not been fully disclosed in the manner required by this subsection.

602.19

Each payment processor seeking to register with DFHV as a OPT provider shall submit a completed registration application which will be available online.

- 602.20 Each OPT shall be capable of working or operating with one or more approved digital meters for trip data and surcharge collection and OPT hardware shall be PCI compliant as determined by the PCI Security Standards Council.
- 602.21 Each OPT shall have an open API beginning January 1, 2018, which shall be published on its website.
- 602.22 The approval of a DTS may be suspended or revoked if its provider integrates with or uses the app of a DDS not registered or operated as required by this title and other applicable laws.
- 602.23 A taxicab equipped to provide taxicab service using a DTS unit shall use the DTS unit for each and every trip.
- 602.24 No taxicab shall be equipped with or use more than one taximeter (analog or digital), more than one DTS unit, or both an MTS unit and a DTS unit.
- 602.25 An operator shall not pick up or transport a passenger unless the taxicab and its DTS unit are functioning properly and the DTS unit is able to provide receipts.
- 602.26 Each approved DTS and each approved taximeter shall be listed on the Department's website.

**Section 603, MODERN TAXIMETER SYSTEMS, is amended as follows:**

**A new Subsection 603.11 is added as follows:**

- 603.11 Notwithstanding any other provision of this title, no MTS or MTS unit shall be operated or used after December 31, 2017.

**Section 605, DOME LIGHTS AND TAXI NUMBERING SYSTEM, is amended as follows:**

- 605.1 Each taxicab in service on September 13, 2016, and each vehicle introduced as a replacement vehicle under § 609, may continue to be equipped with an existing legacy dome light or may be equipped with a cruising light, at the option of the owner, subject to the requirements of this section. Each legacy dome light shall continue to be subject to the legacy dome light regulations to the extent such regulations do not conflict with this section, provided however, that each legacy dome light shall interact with a DTS and otherwise operate as required by this chapter and any applicable administrative issuance if a DTS is installed in the vehicle.
- 605.2 Beginning November 13, 2016, or such later date established by an administrative issuance, each vehicle placed into service other than as a replacement vehicle under § 609, shall be equipped only with a cruising light approved by the

Department pursuant to this section, which interacts with the MTS or DTS and otherwise operates as required by this title and any applicable administrative issuance.

605.3 Each approved DTS provider shall be responsible for ensuring the interconnectivity and proper functioning of a DTS unit and the legacy dome light or cruising light.

605.4 The Department may approve as a cruising light any light which—

- (a) Shall be constructed in a manner that meets or exceeds industry best practices;
- (b) Shall display the vehicle's PVIN;
- (c) Shall indicate whether the vehicle is available for booking by street hail;
- (d) Shall interact with the vehicle's legacy taximeter or DTS as required by this chapter;
- (e) May incorporate features to indicate that the taxicab is an autonomous or semi-autonomous vehicle; and
- (f) May incorporate features to indicate that the operator is engaged in delivering goods or performing services.

605.5 The Department may issue an administrative issuance which:

- (a) Approves one or more products meeting the requirements for a cruising light under this section;
- (b) Provides guidance to DTS providers for installing cruising lights and ensuring their proper operation with DTS units;
- (c) Provides guidance to affected stakeholders about the transition from the legacy dome light to the cruising light;
- (d) Provides guidance to owners about the transfer of legacy dome lights from vehicles already in service to replacement vehicles, and about the decommissioning of legacy dome lights, where required by this section; and
- (e) Establishes additional criteria for the appearance, functionality, connectivity, and installation of the cruising light, for safety, consumer protection, and other reasonable purposes within the jurisdiction of the Department.



- 605.6 A legacy dome light shall not be used on a vehicle placed into service unless the vehicle is replacing one already in service. An owner may elect to transfer a legacy dome light to a replacement vehicle at the owner's expense.
- 605.7 At the time a vehicle equipped with a legacy dome light is retired from service, if the light is not transferred to a replacement vehicle, it shall be decommissioned by the deadline and in the manner required by an administrative issuance; an owner that fails to comply with such administrative issuance shall be subject to the suspension of the owner's vehicle license and/or other civil penalties for the violation of such administrative issuance; provided that the DTS provider or owner shall have the opportunity to challenge the legality or wisdom of any or all provisions of the relevant administrative issuance or issuances in an administrative hearing.
- 605.8 No taxicab shall be operated without a properly functioning legacy dome light or cruising light. The operation of a taxicab without a properly functioning legacy dome light or cruising light, as required or permitted by this title, shall give rise to a rebuttable presumption that the operator knew the condition of the light and operated the taxicab with such knowledge.

**Chapter 8, OPERATING RULES FOR PUBLIC VEHICLES-FOR-HIRE, is amended as follows:**

**Section 801, PASSENGER RATES AND CHARGES, is amended as follows:**

**Subsection 801.1 is amended to read as follows:**

- 801.1 No person regulated by this title shall charge a rate, charge, or fare for taxicab service in the District in excess of the amounts established by this section. Notwithstanding any other provision of this title, a DTS provider may elect to offer dynamic street hail pricing based on a discount on the total amount of all rates and charges established by this section for rides booked by street hail or by telephone dispatch (if the provider is a taxicab company registered to provide telephone dispatch under Chapter 16), consistent with an applicable administrative issuance. A dynamic street hail discount may be in any amount up to one hundred percent (100%).

**Subsection 801.12 is amended to read as follows:**

- 801.12 Notwithstanding any other provision of this chapter, a person subject to licensing, registration, or regulation by the Department pursuant to this title or the Establishment Act, that participates in a pilot, grant, donation agreement, or other program, with the approval of the Department, or that engages in approved live field testing of an app pursuant to Chapter 16, shall use the rates and charges, if any, established or approved by the Department in connection with such pilot, grant, donation agreement, or other program, if any, in lieu of the rates and

charges otherwise applicable pursuant to this subsection.

**Section 802, TAXICAB OPERATOR SURCHARGE ACCOUNTS, is amended to read as follows:**

**802 DTS AND DIGITAL METER RECEIPTS**

802.1 Each taxicab providing service using a DTS unit or approved digital taximeter shall comply with this section.

802.2 At the end of the ride, the passenger shall be given a receipt as follows:

- (a) If the ride was booked by ehail, the receipt shall be sent through the app used to book the ride; and
- (b) If the ride was booked by street hail or telephone dispatch, the passenger shall be provided with a printed receipt.

802.3 Each receipt shall contain the following information:

- (a) The taxicab owner's name and telephone number;
- (b) The taxicab's PVIN number;
- (c) The operator's DFHV operator license (Face ID) number;
- (d) The trip number;
- (e) The date;
- (f) The starting and ending times;
- (g) The distance traveled;
- (h) The amount paid by the passenger, showing the total fare and the gratuity, if any, and, if a DTS unit was used to process the payment, an indication of whether dynamic street hail pricing was used by the DTS provider, and, if so, the applicable discount;
- (i) A depiction of the navigational path of the vehicle during the ride;
- (j) Contact information for the Department; and
- (k) Such other information about the ride that the Department may reasonably require through an administrative issuance.

802.4 The Department may issue an administrative issuance to allow or require operators to provide a DFHV ride code or other information to the passenger in lieu of or in combination with any of the requirements for receipts under this section, and to establish additional criteria for receipts for safety, consumer protection, and other reasonable purposes within the jurisdiction of the Department.

**Section 803, RECEIPTS FOR TAXICAB SERVICE, is REPEALED AND RESERVED.**

**Section 806, CARRYING AND MAKING CHANGE, is amended to read as follows:**

**806 SURCHARGE ACCOUNTS FOR INDEPENDENT OWNERS OPERATING WITHOUT A DTS**

806.1 Each independent owner may elect to provide service without a DTS if the owner:

- (a) Uses one (1) meter app that is part of an approved DTS;
- (b) Uses one (1) or more registered OPTs that are integrated with such app;
- (c) Maintains a surcharge account as provided in this Section, unless all the OPTs selected by the owner have transfer account capability to ensure the OPT pays all collected passenger surcharges directly to the District; and
- (d) Remains compliant with all other applicable regulations and laws.

806.2 Each owner who elects to provide service without a DTS is liable for all surcharges owed to the District.

806.3 Each surcharge account shall be administered as follows.

- (a) The minimum account balance is twenty dollars (\$20). DFHV shall deposit the minimum if the account is opened when the owner's operator license (face card) is issued. Otherwise, the owner shall pay the minimum to open the account.
- (b) If an account balance falls below the required minimum, DFHV shall promptly email a notice to the owner stating that:
  - (1) The owner must either: replenish the account; or close the account, pay all passenger surcharges owed, and obtain an approved DTS; and
  - (2) If the owner fails to comply within two (2) business days, the meter will be deactivated until the owner comes into compliance.

- (c) Each account shall accrue interest at one percent (1%) annually. The remaining balance with accrued interest shall be paid to the owner when an account is closed.
- (d) The burden shall at all times be on the owner to establish eligibility to operate under this Section, including by executing an application provided by the Department. Each application shall be granted or denied within two (2) business days.

806.4 The Department may post an administrative issuance concerning this Section.

**Section 816, STANDARDS OF CONDUCT; UNLAWFUL ACTIVITIES PROHIBITED, is amended as follows:**

**New Subsections 816.16 and 816.17 are added as follows:**

- 816.16 No person subject to regulation by the Department shall tamper with, damage, destroy, deface, vandalize, remove, modify, or in any way attempt to defeat or bypass equipment authorized or required by this title.
- 816.17 No person subject to regulation by the Department shall aid, abet, or be an accessory after the fact to a violation of § 816.16.

**Section 818, DISCRIMINATION PROHIBITED, is amended as follows:**

**Subsection 818.2 is amended to read as follows:**

- 818.2 Discriminatory conduct prohibited by this section includes, but is not limited to, the following:
- (a) Not picking up a passenger on the basis of any protected characteristic or trait, including not picking up a passenger with a service animal;
  - (b) Requesting that a passenger get out of a taxicab on the basis of a protected characteristic or trait;
  - (c) Using derogatory or harassing language on the basis of a protected characteristic or trait;
  - (d) Refusing a telephone or digital dispatch to a specific geographic area of the District; and
  - (e) Using dynamic street hail pricing in any manner that constitutes prohibited discrimination under this section or other applicable law.

**Section 823, MANIFEST RECORD, is amended as follows:**

**The title of Section 823, MANIFEST RECORD, is amended to read as follows:**

**823 MANIFESTS**

**Section 823, MANIFESTS, is amended to read as follows:**

- 823.1 Each operator of a taxicab equipped with an MTS unit, and each operator of a black car, shall comply with the requirements of this Section 823 in effect on January 9, 2017 (allowing the use of either a paper or electronic manifest pursuant to the requirements of that section).
- 823.2 The operator of a taxicab equipped with a DTS unit shall use only the electronic manifest incorporated in the DTS unit to permanently record all for-hire activity by the vehicle during the most recent forty-eight (48) hours. Paper manifests are not permitted.
- 823.3 Each DTS electronic manifest shall contain the information required by § 802.3 for DTS receipts, the information required by the DC TaxiApp and by any other app with which the DTS is integrated, and the following:
- (a) The date, time, and vehicle mileage each time the operator logs in or out; and
  - (b) The vehicle's PVIN and "H" tag number.
- 823.4 No person shall alter or attempt to alter an electronic manifest maintained by a DTS unit or the DTS provider.
- 823.5 Each operator and owner of a vehicle equipped with a DTS unit shall make the electronic manifest available for inspection upon demand by a District enforcement official.

**Chapter 18, WHEELCHAIR ACCESSIBLE PARATRANSIT TAXICAB SERVICE, is amended as follows:**

**Section 1806, TAXICAB COMPANIES AND OPERATORS — OPERATING REQUIREMENTS – is amended as follows:**

**Subsection 1806.9 (b) is amended to read as follows:**

- (1) Is in compliance with all applicable provisions of this title, including: vehicle licensing requirements; uniform color scheme requirements; and equipment requirements such as a modern taximeter system (MTS) unit until December 31, 2017, or a digital

taxicab solution (DTS) unit, and a legacy dome light or cruising light, as required for all taxicabs by § 602;

- (2) If it is a wheelchair accessible vehicle, is operated only by an operator trained to provide wheelchair service, as required by this chapter;
- (3) If it is a wheelchair accessible vehicle, other than a WMATA van or a wheelchair accessible vehicle that was associated with the company prior to its approval to participate in Transport DC: meets all applicable provisions of this chapter for use in Transport DC; and
- (4) Has an MTS or DTS unit which has been configured to report Transport DC trip data in the format directed by the Department, allowing the Department to identify Transport DC trips and such other information related to Transport DC as may reasonably be required by an administrative issuance.

**Chapter 20, FINES AND CIVIL PENALTIES, is amended as follows:**

**The title of Chapter 20 is amended to read as follows:**

**CHAPTER 20            CIVIL FINES**

**Section 2000, FINES AND CIVIL PENALTIES, is amended as follows:**

**Subsection 2000.8 is amended as follows:**

**A civil fine is added to Schedule 2, Fines for Entities and Owners, Maximum Fines Based on Circumstances, as follows:**

<b>DTS Providers</b>	\$2,500
Prohibited discrimination in violation of § 818	

**Chapter 99, DEFINITIONS, is amended as follows:**

**Section 9901, DEFINITIONS, is amended as follows:**

**Subsection 9901.1 is amended to add definitions as follows:**

**“Approved digital taximeter”** – the taximeter app component of any approved DTS, as defined in this chapter.

- “Autonomous vehicle”** – a vehicle in which operation occurs without direct operator input to control the steering, acceleration, and braking, and which is capable of monitoring road conditions and performing navigation for an entire trip without human conduction.
- “API” or “Application Programming Interface”** – a set of subroutine definitions, protocols, and tools for building application software.
- “Credit card processing device”** – a component of a DTS unit that allows passengers to make payments using credit cards and other methods of non-cash payment in the manner required by the Act and other applicable laws.
- “Digital taxicab solution” or “DTS”** – a technology solution for the operation of taxicabs that consists at a minimum of a digital taximeter running on a driver console, as defined in this chapter, a passenger console, and a credit card processing device, as such terms are defined in this chapter, and any optional components that the DTS provider may choose to include.
- “Driver console”** – a component of a DTS unit, as defined in this chapter, which: incorporates a digital meter and other DTS functions used by operators during taxicab rides; is safely-secured in the vehicle; and is accessible to District enforcement officials during traffic stops and compliance surveys.
- “DTS unit”** – an individual unit of a DTS, as defined in this chapter, that is installed in a vehicle.
- “Dynamic street hail pricing”** – a District-wide variable pricing structure for taxicab rides booked by street hail or telephone dispatch, which is established, maintained, and publicized by a DTS provider, as defined in this chapter.
- “Ehail”** – digital dispatch, as defined in this chapter. As used in this title, the terms “ehail” and “digital dispatch” are synonymous.
- “Legacy dome light”** – the patented and licensed dome light required for use on all taxicabs as of September 12, 2016.
- “Legacy dome light regulations”** – the regulations applicable to the legacy dome light, appearing in § 605.1 and in effect on September 12, 2016.
- “Option for payment technology” and “OPT”** - a payment processing service that meets the technical requirements of DFHV, including the reporting of trip data and the collection of passenger surcharges, the ability to work with one or more approved digital taximeters, with which it is integrated at its own expense, and that processes payments at a total cost at or below two and seventy-five one hundredths percent (2.75%) per swipe.

**“Passenger console”** – a component of a DTS unit, as defined in this chapter, which provides passengers with: the operator’s license number; the vehicle’s navigational path; applicable rates and charges (including if the provider uses dynamic street hail pricing: a disclosure of its current discount, if any, which shall be the same as the disclosure that appears on the DTS provider’s website); advertising; any audiovisual content required by the Department; a statement about payment and receipt options.

**“PCI Compliant”** – Adherence to set of policies and procedures developed by the PCI Security Standards Council to protect credit, debit and cash card transactions and prevent the misuse of cardholders' personal information.

**“Semi-autonomous vehicle”** – a vehicle which has automation of at least two primary control functions designed to work in unison to relieve the operator of control of these functions, such as adaptive cruise control with lane centering.



**DEPARTMENT OF HEALTH CARE FINANCE****NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2016 Repl. & 2017 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2013 Repl.)), hereby gives notice of the intent to adopt an amendment to Chapter 95 (Medicaid Eligibility) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 9514 (Non-MAGI Eligibility Groups: Supplemental Security Income and Optional State Supplemental Payment).

DHCF is the single state agency responsible for the administration of the State Medicaid program under Title XIX of the Social Security Act (the Act) and Children's Health Insurance Program (CHIP) under Title XXI of the Act in the District. This proposed rule amends Chapter 95 of Title 29 of the DCMR by incorporating a new section that details the non-Modified Adjusted Gross Income non-MAGI Medicaid eligibility factors for the Supplemental Security Income (SSI) eligibility group pursuant to 42 C.F.R. § 435.120, and the Optional State Supplemental Payment (OSP) eligibility group pursuant to Section 1902(a)(10)(A)(ii)(IV) of the Act and 42 C.F.R. § 435.232. An individual shall be deemed categorically eligible for Medicaid under the SSI eligibility category when determined eligible for SSI by the U.S. Social Security Administration. An individual shall be deemed categorically eligible for Medicaid under the OSP eligibility category if found eligible to receive OSP, which is a monthly payment to assist individuals residing in an adult foster care setting with the cost of room and board.

The Director gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 95, MEDICAID ELIGIBILITY, of Title 29, PUBLIC WELFARE, of the DCMR is amended as follows:**

**A new Section 9514 is added to read as follows:**

**9514           NON-MAGI ELIGIBILITY GROUPS: SUPPLEMENTAL SECURITY INCOME AND OPTIONAL STATE SUPPLEMENTAL PAYMENT**

9514.1       This Section shall govern eligibility requirements for the following:

- (a)       The Supplemental Security Income (SSI) eligibility group pursuant to 42 C.F.R. § 435.120; and

- (b) The Optional State Supplemental Payment (OSP) eligibility group pursuant to § 1902(a)(10)(A)(ii)(IV) of the Social Security Act (the Act) and 42 C.F.R. § 435.232.
- 9514.2 Consistent with the requirements of 42 C.F.R. § 435.120, the SSI eligibility group shall include aged, blind, and disabled individuals or couples who are receiving or are deemed to be receiving SSI by the U.S. Social Security Administration (SSA), which includes individuals who are:
- (a) Receiving SSI pending a final determination of blindness or disability;
- (b) Receiving SSI under an agreement with SSA to dispose of resources that exceed the SSI dollar limits on resources; or
- (c) Receiving benefits under § 1619(a) of the Act or in § 1619(b) status (blind individuals or those with disabling impairments whose income equals or exceeds a specific Supplemental Security Income limit), and those qualified severely impaired individuals defined in § 1905(q) of the Act.
- 9514.3 Aged, blind, and disabled shall have the same meanings as set forth under § 1614 of the Act.
- 9514.4 In order to be eligible for Medicaid under the OSP eligibility group, individuals and couples shall meet the following requirements:
- (a) Be deemed eligible for SSI by SSA or meet SSI disability standards set forth by SSA, consistent with 20 C.F.R. §§ 416.2101 through 416.2176; and
- (b) Reside in an adult foster care setting, as described in 20 C.F.R. § 416.1143(a)(1), that is located in the District of Columbia.
- 9514.5 SSA shall be responsible for conducting renewals and redeterminations in accordance with SSA's requirements for beneficiaries' continued receipt of SSI and OSP payments from SSA. The Department shall continue to deem beneficiaries with continued eligibility for SSI and OSP payments eligible for Medicaid.
- 9514.6 The Department shall make eligibility for Medicaid for SSI and OSP applicants effective no later than the third month before the month of application if the following requirements are met:
- (a) The applicant received Medicaid services, at any time during that period, of a type covered under the District of Columbia's Medicaid State Plan; and

- (b) The applicant would have been eligible for Medicaid at the time the applicant received the services if the applicant had applied (or someone had applied for the applicant), regardless of whether the individual is alive when application for Medicaid is made.

9514.7 The earliest possible date for retroactive eligibility shall be the first day of the third month preceding the month of application.

9514.8 Eligibility for Medicaid shall include meeting all financial, non-financial, and medical factors (as applicable).

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, JD, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF PROPOSED RULEMAKING**

The Director of the District of Columbia Department of Human Resources, with the concurrence of the City Administrator, gives notice of her intent to adopt the following amendments to Chapter 4 (Suitability) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after publication of this notice in the *D.C. Register*. This rulemaking is authorized pursuant to title IV of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (“CMPA”) (D.C. Official Code §§ 1-604.01 through 1-604.08 (2016 Repl. and 2017 Supp.)); title VIII of the CMPA (D.C. Official Code §§ 1-608.01 (2016 Repl.)); title IX of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.09 (2016 Repl. and 2017 Supp.)); title X-A of the CMPA (D.C. Official Code §§ 1-610.51 through 1-610.65 (2016 Rep. and 2017 Supp.)); the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (CYSHA), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 4-1501.01 *et seq.* (2012 Repl.)); Mayor’s Order 2008-92, dated June 26, 2008, and Mayor’s Order 2012-84, dated June 18, 2012.

The purpose of the rulemaking is to: (1) amend Subsections 400.4 and 435.9 to clarify that an employee deemed unsuitable will be removed unless the employee is reassigned to a non-covered position in the same agency for which he or she is qualified and otherwise suitable; (2) add new language to Subsection 402.3 to clarify that general suitability screening may be conducted prior to the offer of employment letter; (3) amend Subsections 406.1(b), 409.3, and 415.3 to require employees occupying safety, protection, and security sensitive positions to undergo periodic criminal background checks, as outlined in Subsection 415.3; (4) amend Subsections 406.4 and 406.6 to notify incumbents whenever an existing position has been newly designated as covered under the enhanced suitability program, and make it discretionary to include a statement in the position description that the position is designated as covered under the enhanced suitability screening program; (5) amend Subsection 407.1 to require that a vacancy announcement and offer of employment letter for competitive recruitments state that the position is designated as enhanced suitability and is subject to the requirements of the program; (6) amend Subsection 409.2(b) to clarify that positions designated as protection sensitive include duties and responsibilities that involve caring for patients or other vulnerable persons; (7) amend Subsection 411.2 to delete the assessment, monitoring, or support of childcare activities as an example of protection sensitive duties and responsibilities; (8) amend Subsections 414.2 and 426.5 to clarify that volunteers are not subject to pre-appointment, or random drug and alcohol testing, unless required by federal law; (9) amend Subsections 417.1 and 417.2 to include language stating the general standard that will be used for when making a suitability determination; (10) add language to Subsection 417.1; (11) amend Subsection 417.5 to clarify that no individual may hold a position that has direct unsupervised contact with children or youth, if he or she has been charged with any sexual offense(s) involving minors; (12) amend Subsection 424.1 to allow individuals to provide responses to derogatory information revealed by a general or enhanced suitability screening through an in-person interview or written response; (13) amend Subsection 425.1 to require vendors to follow procedures stated in 49 CFR Part 40 and District government procedures for all drug and alcohol testing for applicants and

employees; (14) amend Subsection 428.1 to clarify that employees deemed unsuitable as a result of a positive drug or alcohol test, failure to submit to or otherwise cooperate with a drug or alcohol test, or failure to complete a counseling rehabilitation program shall be immediately subject to separation from employment; unless otherwise provided for by law; (15) make non-substantive amendment to Subsections 436.2(c) and 438.6; (16) amend Subsection 439.3 to require the personnel authority or employing agency to carry out the removal procedures when an employee is deemed unsuitable; (17) repeal Subsection 439.4 to add the language to 439.3; and (18) amend Section 499 (Definitions) to revise the language consistent with the other changes in this rulemaking.

**Chapter 4, SUITABILITY, of Title 6B DCMR, GOVERNMENT PERSONNEL, is amended as follows:**

**Section 400, EMPLOYEE SUITABILITY POLICY, Subsection 400.4 is amended to read as follows:**

400.4 Unless otherwise specified in this chapter, an employee deemed unsuitable pursuant to this chapter, will be subject to immediate removal. At the discretion of the agency, the employee may be reassigned within the same agency to a non-covered position for which he or she is qualified and otherwise suitable.

**Section 402, GENERAL SUITABILITY SCREENING, a new Subsection 402.3 is added to read as follows:**

402.3 Nothing in this section shall preclude the personnel authority from conducting a general suitability screening of an applicant prior to the issuance of an employment offer.

**Section 406, ENHANCED SUITABILITY SCREENING – GENERAL PROVISIONS, is amended as follows:**

**Subsection 406.1(b) is amended to read as follows:**

(b) Periodic criminal background checks;

**Subsections 406.4 and 406.6 are amended to read as follows:**

406.4 If an existing, filled position is newly designated as a covered position, the personnel authority shall notify the incumbent that he or she shall be subject to enhanced suitability screening under this chapter prior to conducting any such screening.

406.6 The position description for each position designated for an enhanced suitability screening may include a statement of such designation and a statement indicating that incumbents of the position shall be subject to enhanced suitability screening.

**Section 407, ENHANCED SUITABILITY SCREENING – RECRUITMENT REQUIREMENTS, Subsection 407.1 lead-in language is amended to read as follows:**

407.1 In the case of competitive recruitment for a position requiring an enhanced suitability screening, the vacancy announcement and subsequent offer letter to the appointee shall state that:

**Section 409, POSITIONS SUBJECT TO ENHANCED SUITABILITY SCREENING, Subsection 409.2 (b) and 409.3 are amended to read as follows:**

(b) Protection sensitive, which are positions that are not safety sensitive positions, but that include duties or responsibilities that involve caring for patients or other vulnerable persons; and

409.3 An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall affirmatively agree to an enhanced suitability screening to the position upon the effective date of the personnel action, and to periodic criminal background and traffic record checks, as appropriate, while detailed, temporarily promoted, or temporarily reassigned to the covered position.

**Section 411, PROTECTION SENSITIVE POSITIONS – GENERAL PROVISIONS, Subsection 411.2 is amended to read as follows:**

411.2 Examples of protection sensitive duties and responsibilities include, but are not limited to, positions that:

- (a) Coordinate, develop, or support recreational activities;
- (b) Manage, plan, direct, or coordinate educational activities; or
- (c) Perform tasks involving individual or group counseling.

**Section 414, VOLUNTEERS, Subsection 414.2 is amended to read as follows:**

414.2 Notwithstanding Sections 410 and 411, volunteers performing duties and responsibilities in a covered position shall be subject to enhanced suitability screening except for pre-appointment or random drug and alcohol testing, unless such testing is otherwise required by federal law.

**Section 415, CRIMINAL BACKGROUND CHECKS – GENERAL PROVISIONS, is amended as follows:**

**Subsection 415.3 is amended to read as follows:**

415.3 Criminal background checks for covered positions shall be conducted:

- (a) For appointees, within sixty (60) days following the acceptance of a conditional offer;
- (b) For safety and protection sensitive employees and volunteers, at least once every two (2) years; and
- (c) For security sensitive employees and volunteers, at least once every four (4) years.

**Section 417, ASSESSING CRIMINAL HISTORIES, is amended as follows:**

**Subsection 417.1 and 417.2 are amended to read as follows:**

- 417.1 Upon receipt, the program administrator shall review an individual's criminal history.
- 417.2 The program administrator shall assess any derogatory information within the criminal history and determine whether the individual, if serving in the position, would pose a present danger to children or youth, the public or other District employees; or would pose a threat to the integrity of District government operations.

**Subsection 417.5 is amended to read as follows**

- 417.5 Notwithstanding any other provision of this chapter, no individual may hold a position that has direct unsupervised contact with children or youth, if he or she has been charged with any sexual offense(s) involving minors, and for such offense(s):
- (a) Was convicted, pleaded guilty, pleaded *nolo contendere*, placed on probation before judgment, or otherwise placed on a stet docket; or
  - (b) Was found not guilty by reason of insanity.

**Section 424 CLARIFYING DEROGATORY INFORMATION is amended to read as follows:**

- 424.1 Whenever a general and enhanced suitability screening reveals derogatory information the program administrator shall:
- (a) Notify the individual as to the source, nature, and potential impact of the derogatory information; and

- (b) Allow the individual no less than ten (10) business days and no more than twenty-one (21) calendar days to provide a response, through an in-person interview or written response if not available for an interview, to the derogatory information. The personnel authority may authorize a shorter time period under extraordinary circumstances.

**Section 425 MANDATORY DRUG AND ALCOHOL TESTING – GENERAL PROVISIONS, Subsection 425.1 is amended to read as follows:**

- 425.1 Each program administrator with safety or protection sensitive positions shall contract with a professional testing vendor(s) to conduct required drug and alcohol testing. The vendor(s) shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing Notwithstanding 49 CFR §40.1, vendors shall follow all procedures stated in 49 CFR Part 40 and District government procedures, as applicable, for all drug and alcohol testing for applicants and employees.

**Section 426, MANDATORY DRUG AND ALCOHOL TESTING – NOTIFICATION REQUIREMENTS, Subsection 426.5 is added to read as follows:**

- 426.5 Volunteers are subject to reasonable suspicion, post-accident and post-incident drug and alcohol screenings. Volunteers are not subject to pre-appointment or random drug and alcohol testing, unless such testing is otherwise required by federal law.

**Section 428, MANDATORY DRUG AND ALCOHOL TESTING – POSITIVE DRUG OR ALCOHOL TESTS RESULTS, Subsection 428.1 is amended to read as follows:**

- 428.1 Unless otherwise required by law, and notwithstanding Section 400.4, an employee shall be deemed unsuitable and there shall be cause to separate an employee from a covered position as described in Subsections 435.9 and 439.3 for:
- (a) A positive drug or alcohol test result;
  - (b) A failure to submit to or otherwise cooperate with drug or alcohol testing; or
  - (c) In the case of an employee who acknowledged a drug or alcohol problem as specified in subsection 426.4, failure to complete a counseling or rehabilitation program(s), or a positive return-to-duty drug or alcohol test result.



**Section 435, SUITABILITY DETERMINATIONS, Subsection 435.9 is amended to read as follows:**

435.9 If an employee is deemed unsuitable, the personnel authority may terminate his or her employment pursuant to the appropriate adverse action procedure as specified in this subtitle or any applicable collective bargaining agreement. Instead of terminating the employee, the personnel authority may reassign the employee to a position for which he or she is qualified and suitable.

**Section 436, APPOINTEE, VOLUNTEER, AND EMPLOYEE RIGHTS, Subsection 436.2(c) is amended to read as follows:**

(c) Employees subject to the provisions of this chapter have a right to review records according to the procedures established in Chapters 4 and 31.

**Section 438, APPEALS BEFORE THE COMMISSION ON HUMAN RIGHTS, Subsection 438.6 is amended to read as follows:**

438.6 To initiate the review process, the petitioner shall file a Notice of Appeal, along with a copy of the suitability determination being appealed, with the Commission within thirty (30) days of the issuance of the agency decision being appealed.

**Section 439, PROGRAM MANAGEMENT, is amended as follows:**

**Subsection 439.3 is amended to read as follows:**

439.3 If the program administrator or employing agency determines that an existing employee is unsuitable to continue serving in a covered position, and that he or she should be separated from employment, the removal action shall be carried out by the personnel authority in accordance with the employee's type of appointment (*i.e.*, probationary, term or permanent, etc.) and service (*i.e.*, Career, Legal, Excepted, Management Supervisory Service, etc.), and the applicable legal and regulatory provisions governing adverse actions, including but not limited to chapter 16 and applicable collective bargaining agreement provisions.

**Subsection 439.4 is repealed.**

**Section 499, DEFINITIONS, is amended as follows:**

(a) **The definition of the term “Vulnerable adult” is amended to read as follows:**

**Vulnerable person** – an individual who has a physical or mental condition which impairs his or her ability to provide for his or her own care or protection, or a person age sixty-five (65) years or older.

(b) **The definition of the term “Elderly” is repealed.**

- (c) **The definition of the term “Protection sensitive position” is amended to read as follows:**

**Protection sensitive position** – a position with duties or responsibilities that involve caring for patients or other vulnerable persons, including but not limited to the positions listed in Subsection 411.2 of this chapter.

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of publication of this notice to Mr. Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 330S, Washington, D.C. 20001, or via email at [Justin.Zimmerman@dc.gov](mailto:Justin.Zimmerman@dc.gov). Additional copies of these proposed regulations are available at the above address.

## ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

**NOTICE OF PROPOSED RULEMAKING****Z.C. Case No. 14-13D****(Text Amendment – 11 DCMR)****Technical Corrections to Z.C. Order Nos. 14-13 and 08-06A**

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.), hereby gives notice of its intent to make technical corrections to Z.C. Order Nos. 14-13 and 08-06A and to amend Subtitle C (General Rules) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) to reflect those corrections. Z.C. Order No. 14-11 made amendments to Chapter 4 of Title 11 DCMR, which Z.C. Order No. 08-06A repealed and replaced with Chapter 15 of Subtitle C.

As part of Z.C. Case No. 14-13, the Commission significantly revised the regulations pertaining to roof structures, which it renamed “Penthouses.” The record of that case makes plain the Commission’s intent to eliminate the limitation on penthouse area to one-third (1/3) of the roof for all zones except zones with a story limitation of three (3) or less. The adopted rule did not expressly state that numeric limit, but required compliance for areas in “Zones where there is a limitation on the number of stories other than the C-3-B Zone District,” which had a story limit of six (6).

The Commission recognizes that by failing to explicitly apply the roof area limit to just those zones with a story limit of three (3) and then exempting a zone with a story limit of six (6), the rule could be misinterpreted as applying all zones with a story limit except C-3-B. Since Z.C. Order No. 08-06A repealed § 411.12, and replaced it with Subtitle Z § 1503.2, the only mechanism clarify the Commission’s intent is to amend § 1503.2(a) to apply the penthouse area limit to: “Zones **or portions of zones** where there is a limitation on the number of stories **of three (3) or less.**”

In addition, the Commission proposes to correct Z.C. Order No. 08-06A by further amending Subtitle Z § 1503.2 to strike its reference to the MU-8, MU-20, and NC-13 zones. These zones had been the C-3-B zone, but no longer have a story limit. Even if the zones still had a story limit of six (6), the proposed clarification eliminates the need to exempt them.

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 the Zoning Regulations of 2016 (Title 11 DCMR) are proposed (additions are shown in **bold underlined** text; deletions are shown in ~~striketrough~~ text):

**Title 11-C, GENERAL RULES, is amended as follows:**

**Chapter 15, PENTHOUSES is amended as follows:**

**Subsection 1503.2(a) of § 1503, PENTHOUSE AREA, is amended to read as follows:**

1503.2 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:

- (a) Zones **or portions of zones** where there is a limitation on the number of stories **of three (3) or less** ~~other than the MU 8, MU 20, or NC 13 zones;~~ and
- (b) Any property fronting directly onto Independence Avenue, S.W. between 12<sup>th</sup> Street, S.W. and 2<sup>nd</sup> Street, S.W.

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, 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx> or to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov). Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**

**NOTICE OF PROPOSED RULEMAKING**

**Z.C. Case No. 17-15**

**(Zoning Map Amendment @ Lot 85 in Square 3846 from PDR-2 to MU-6)**

The Zoning Commission for the District of Columbia (Zoning Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend the Zoning Map to rezone Square 3846, Lot 85 from the PDR-2 zone to the MU-6 zone.

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

The following rulemaking action is proposed:

The Zoning Map of the District of Columbia is amended as follows:

<b>SQUARE</b>	<b>LOT</b>	<b>Map Amendment</b>
3846	85	PDR-2 to MU-6

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 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to [zcsubmissions@dc.gov](mailto: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](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.



- 5006 MULTIYEAR CONTRACT SOLICITATIONS
- 5007 APPLICABILITY
- 5008 CHIEF CONTRACTING OFFICER
- 5009 DELEGATION OF AUTHORITY TO CONTRACTING OFFICERS
- 5010 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS
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- 5012 CONTRACTOR QUALIFICATION REQUIREMENTS
- 5013 RESPONSIBILITY
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DISQUALIFICATION
- 5016 PROCUREMENT PLANNING
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- 5019 PUBLICIZING PROCUREMENT OPPORTUNITIES
- 5020 INVITATION FOR BIDS
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- 5022 NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT
- 5023 NOTICE OF CONTRACT AWARDS OVER ONE HUNDRED  
THOUSAND DOLLARS (\$100,000)
- 5024 NOTICE OF EMERGENCY PROCUREMENTS
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- 5039 DISTRICT OF COLUMBIA SUPPLY SCHEDULE
- 5040 MANDATORY SET-ASIDES
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- 5042 THE CONTRACTING OFFICER’S RESPONSIBILITY FOR CONTRACT  
ADMINISTRATION
- 5043 PAYMENT REQUESTS
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<b>5045</b>	<b>CONTRACT MODIFICATIONS</b>
<b>5046</b>	<b>CONTRACT TERMINATION</b>
<b>5047</b>	<b>CONTRACT DOCUMENTATION</b>
<b>5048</b>	<b>TRANSFER OF CONTRACTS</b>
<b>5049</b>	<b>DISPUTES</b>
<b>5050</b>	<b>PROTESTS</b>
<b>5051</b>	<b>REQUESTS FOR RECORDS</b>
<b>5052</b>	<b>PRIVACY AND DISCLOSURE</b>
<b>5053</b>	<b>APPLICABLE LAWS</b>
<b>5054 to 5098</b>	<b>RESERVED</b>
<b>5099</b>	<b>DEFINITIONS</b>

**5001 GENERAL**

- 5001.1 This chapter sets forth the procurement rules of the Office of the Attorney General (OAG), pursuant to authority granted by Section 108b of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 15, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88b) (2016 Repl. & 2017 Supp.) (“Act”). The OAG is an independent agency of the District of Columbia government. Its general mission is to enforce the laws of the District in a manner that is in the public’s interest, to provide the District government with the highest level of legal advice and service, and to defend and protect the District’s interests in court. In accordance with the Act, the OAG is subject to the requirements of the District of Columbia Procurement Practices Reform Act of 2010 effective April 8, 2011, (“PPRA”)(D.C. Law 18-371; D.C. Official Code §§ 2-351.01, *et seq.*) (2016 Repl.), as amended, OAG has the authority to issue and implement its own procurement rules. These regulations supersede and replace any existing procurement regulations unless expressly reference or incorporated in these rules.
- 5001.2 Where any statute or regulation is referred to in this title, the reference shall be to the most recent version, and any amendments or revisions to the statute or regulation.
- 5001.3 The Attorney General is authorized to enter into contracts to assist the OAG to carry out its mission, and the Attorney General may delegate that authority in accordance with the Act and these rules.
- 5001.4 These procurement rules are for the benefit of the OAG, and are not intended to confer any rights or benefits on third parties. The principal purposes of these rules are to ensure that the OAG’s procurement activities:



- (a) Are carried out in a fair, efficient and objective manner that promotes public confidence in OAG’s integrity; and
- (b) Produce reasonable value and results for the OAG.

5001.5 These rules are intended to encourage participation by Certified Business Enterprises (CBEs), in accordance with the Small and Certified Business Enterprise Development and Assistance Act of 2005, (“SCBEDA Act”) effective October 20, 2005 (D.C. Law 16-133; D.C. Official Code § 2-218). The OAG’s goals include expanding the use of CBEs.

5001.6 The Attorney General may waive the applicability of any provisions in these rules that are not specifically required by statute if the Attorney General finds in writing that:

- (a) Such waiver is in the best interest of the OAG;
- (b) Such waiver is not inconsistent with fair, competitive, and transparent procurement practices; and
- (c) Such waiver would not alter the terms of a contract.

5001.7 Pursuant to authority described in “Part D-i. Attorney General for the District of Columbia” of the Fiscal Year 2013 Budget Support Act of 2012, effective September 20, 2012 (59 DCR 8025) and “Part A -Summary of Expenses” of the Fiscal Year 2017 Local Budget Act of 2016, effective July 29, 2016 (63 DCR 11133) and incorporated in the District of Columbia Appropriations Act, 2017, approved May 5, 2017, Pub. L. 115-31, and any substantially similar temporary or permanent authority, the Attorney General may enter into a contract to pay vendor fees, including legal fees 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;

**5002 COMPLIANCE WITH PROCUREMENT ACT AND REGULATIONS**

5002.1 Except as otherwise provided in the PPRA, the Act, or this chapter, a contract which is entered into in violation of the PPRA, the Act, or this chapter is void.

5002.2 Notwithstanding the provisions of § 5002.1, a contract shall not be void if a determination is made that good faith has been shown by all parties and the

violation of the provisions of the PPRA, the Act or this chapter are *de minimis*. The determination of good faith may be made by any of the following:

- (a) The Attorney General;
- (b) The Contract Appeals Board; or
- (c) A court of competent jurisdiction.

5002.3 The Attorney General's determination of good faith and that a violation of the provisions of the PPRA, the Act or this chapter are *de minimis* made pursuant to § 5002.2 (a) shall be in writing based upon a written request for review by the contractor or Contracting Officer. The request shall fully describe the contract, the status of performance, the reason why the contract is valid, and the grounds for the determination.

### **5003 CONTINGENT FEES**

5003.1 The Contracting Officer shall ensure that each solicitation, other than those for small purchases, contains language approved by the Attorney General giving notice to prospective contractors of the prohibition against contingent fee arrangements set forth in § 416 of the PPRA.

5003.2 The Contracting Officer shall ensure that the language required by § 416(b) of the PPRA is inserted into each contract.

5003.3 Except as permitted in § 416(b) of the PPRA the Contracting Officer shall not award any contract to a contractor that has made arrangements to pay a contingent fee or other consideration for soliciting or obtaining the contract.

5003.4 If the Contracting Officer has reason to believe that a prospective contractor or contractor is or has been involved in a contingent fee arrangement prohibited under § 416 of the PPRA, and not otherwise permitted by law, the Contracting Officer shall inform the Attorney General in writing, which shall include any evidence or documentation of the alleged prohibited arrangement.

5003.5 If the Attorney General determines that a prohibited contingent fee has been paid or that a contractor has entered into an arrangement to pay a prohibited contingent fee under an existing contract, the Attorney General shall have the right to terminate an existing contract or take any other remedial action authorized under § 416(b) of the PPRA.

5003.6 If the Attorney General determines that a prospective contractor has entered into an arrangement to pay a prohibited contingent fee, he or she shall direct the Contracting Officer to notify the prospective contractor that it is no longer eligible for contract award.

**5004 MULTIYEAR CONTRACTS**

5004.1 Except for contracts awarded pursuant to 5001.7 and unless prohibited by an appropriations act, a Contracting Officer may enter into a multiyear contract to obtain goods and services for any period of time deemed to be in the best interest of the District provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting and the contract is consistent with the requirement of § 5004.2 of this chapter. Payment and performance obligations for succeeding fiscal periods shall be subject to availability and appropriations of funds.

5004.2 Except for contracts awarded pursuant to 5001.7, a multiyear contract is authorized where the Contracting Officer determines that:

- (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- (b) The multiyear term would encourage effective competition, promote economies in District procurement, or otherwise be in the best interest of the District.

5004.3 Multiyear contracting may be used in procurement by competitive sealed bids or competitive sealed proposals or in sole source procurement.

5004.4 Except for contracts awarded pursuant to 5001.7, budget authority to fund a multiyear contract shall be obligated on an annual basis. The initial obligation of funds shall be for the period between the dates of contract award through the end of the fiscal year in which the contract award occurs. Thereafter, each subsequent obligation of funds shall be made one (1) fiscal year at a time and must cover the contract amount that will be incurred in the fiscal year in which the contract work will be performed. First fiscal year requirements of the contract, and funds for requirements in each subsequent contract term, shall be obligated one (1) fiscal year at a time.

**5005 CANCELLATION OF MULTIYEAR CONTRACTS**

- 5005.1 Except for contracts awarded pursuant to 5001.7, at the end of each fiscal year, a multiyear contract shall be canceled if sufficient budget authority is not available to fund the contract during a subsequent fiscal year.
- 5005.2 Except for contracts awarded pursuant to 5001.7, if a multiyear contract is canceled due to unavailability of funds, the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered and accepted or services delivered and accepted under the contract.
- 5005.3 Except for contracts awarded pursuant to 5001.7, if a multiyear contract is terminated for the convenience of the District, including items subject to cancellation, the District’s obligation shall not exceed the amount specified for contract performance plus the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods delivered or services performed under the contract.
- 5005.4 The costs of cancellation under § 5005.2 or termination under § 5005.3 may be paid from appropriations available for such purposes.
- 5005.5 For contracts awarded pursuant to the authority cited in 5001.7, the terms of the contract shall govern cancellation and payments, if any.

**5006 MULTIYEAR CONTRACT SOLICITATIONS**

- 5006.1 Except for solicitations for multiyear contracts pursuant to 5001.7, a solicitation for a multiyear contract shall include:
  - (a) The amount of supplies or services required or the proposed contract period;
  - (b) A unit price for each supply or service, which unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation or resulting contract).
  - (c) A clause stating that the multiyear contract will be cancelled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first and a statement that this clause does not affect either the District’s rights or the contractor’s rights under any termination clause in the contract; and

- (d) Whether bidders or offerors may submit prices for:
  - (1) The first fiscal period only;
  - (2) The entire time of performance only; or
  - (3) Both the first fiscal period and the entire time of performance.

**5007 APPLICABILITY**

5007.1 These rules apply to the procurement of goods or services, including construction services, by and for the OAG:

- (a) Whether through purchase or lease; and
- (b) Whether the goods or services are already in existence or must be developed.

5007.2 This chapter does not apply to any goods or services that the OAG may acquire as a gift, or on a pro bono basis.

5007.3 These rules shall not apply to:

- (a) The purchase or lease of real property by the OAG; and
- (b) The disposition of real or personal property by the OAG.

**5008 CHIEF CONTRACTING OFFICER**

5008.1 The Attorney General shall serve as the OAG’s Chief Contracting Officer (CCO). The CCO shall have plenary contracting authority and have responsibility for supervising the OAG’s procurement activities. The CCO shall prescribe the standard contract format and standard contract provisions to be included in the contracts, consistent with this chapter. The CCO may waive standard contract provisions and substitute contract provisions if the CCO determines that it is in the best interest of the OAG to do so.

**5009 DELEGATION OF AUTHORITY TO CONTRACTING OFFICERS**

5009.1 The Attorney General may delegate contracting authority to any qualified OAG employee.

- 5009.2 Each delegation of contracting authority under the Act shall be in writing and shall include clear instructions on the limitations of the contracting authority being delegated.
- 5009.3 The Attorney General shall use a form approved for each written delegation or modification of contracting authority. The executed form shall include the following:
- (a) The limitations on the scope of delegated authority to be exercised;
  - (b) The limitations on the authority set forth in applicable laws and regulations; and
  - (c) The signature of the Attorney General.
- 5009.4 In no instance shall the individual being delegated contracting authority presume any greater contracting authority than what has been given. Any individual delegated contracting authority shall not re-delegate that authority without approval of the Attorney General.
- 5009.5 Termination of a Contracting Officer's appointment shall be in writing unless the written delegation or modification of authority contains a provision for automatic termination or expiration. No termination shall operate retroactively.
- 5009.6 Subject to compliance with these rules, Contracting Officers shall have wide latitude to exercise business judgment in conducting procurements. Consequently, the ability to exercise that discretion wisely and responsibly is an important job qualification.
- 5009.7 The Attorney General shall ensure that Contracting Officers periodically receive training to strengthen and update their skills and knowledge concerning procurement matters.
- 5009.8 The Attorney General shall publish and regularly update on the OAG Internet an updated list of authorized Contracting Officers and their authority limits.

## **5010 AUTHORITY AND DUTIES OF CONTRACTING OFFICERS**

- 5010.1 The Contracting Officer shall be authorized to enter into, administer, and terminate contracts. However, the Contracting Officer may bind the District only to the extent of the contracting authority set forth in his or her delegation.
- 5010.2 The Contracting Officer shall:

- (a) Make all determinations and findings required by the Act, the PPRA, or this chapter for each solicitation or contract for which he or she is responsible;
- (b) Not enter into a contract unless he or she has ensured that all requirements of law, rules, and all other applicable procedures (including approvals) have been met;
- (c) Have wide latitude to exercise business judgment;
- (d) Ensure that contractors receive impartial, fair, and equitable treatment in accordance with the PPRA, the Act and this chapter;
- (e) Request and consider the advice of specialists in auditing, law, engineering, transportation, and other fields when necessary or appropriate to the exercise of the contracting officer's authority;
- (f) Ensure that sufficient unencumbered budget authority is available for obligation for each contract;
- (g) Not make any purchase or enter into any contract for an amount in excess of his or her specifically delegated contracting authority; and
- (h) Maintain the contract file, which serves as the repository for all required documentation concerning the procurement and any resulting contracts.

## **5011 CONDUCT OF CONTRACTING OFFICERS**

5011.1 The procurement business of the OAG shall be conducted in a manner above reproach and, except as authorized by law, with complete impartiality and with preferential treatment for none.

5011.2 The Attorney General shall ensure that each Contracting Officer is thoroughly familiar with the conflict of interest and other employee conduct provisions of Chapter 18 (Employee Conduct) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations, and the applicability of those regulations to Contracting Officers and the procurement process.

## **5012 CONTRACTOR QUALIFICATION REQUIREMENTS**

5012.1 A prospective contractor must:

- (a) Be responsible; and
- (b) Not be disqualified on the basis of conflicts of interest (either personal or organizational) or related ethical concerns.

5012.2 The issues of responsibility and conflicts of interests/disqualification are addressed in §§ 5013 and 5015 respectively.

**5013 RESPONSIBILITY**

5013.1 To receive a contract from the OAG, a contractor must be responsible. To be considered responsible, a contractor must:

- (a) Have or provide evidence that it can obtain the financial, technical, and organizational skills and resources, and the facilities and equipment, necessary to perform the contract in accordance with its terms;
- (b) Have a satisfactory performance record;
- (c) Have a satisfactory record of integrity and business ethics;
- (d) Not be suspended, debarred, or otherwise ineligible to receive contracts from the District Government or the Federal Government;
- (e) Meet any other qualification criteria that may be imposed by applicable laws or regulations;
- (f) Have the necessary licenses, permits, and certifications to perform the contract; and
- (g) Provide adequate evidence that it has paid all applicable District of Columbia and Federal taxes and filed District and Federal tax returns.

5013.2 The Contracting Officer shall make a written determination if the contractor is found to be non-responsible. Depending on the level of formality of the contract and at the Contracting Officer’s discretion, the Contracting Officer may make a written determination if the contractor is found to be responsible. Award of a contract shall be considered the Contracting Officer’s determination that the contractor is responsible.

5013.3 In evaluating a prospective contractor’s responsibility, a Contracting Officer may request information from the contractor and may also consider information



available from other sources. Where necessary, the Contracting Officer may also perform a pre-award survey involving interviews with contractor personnel or visits to the contractor’s facilities. Information on the capabilities and suitability of proposed subcontractors also may be considered in evaluating responsibility.

5013.4 For all contracts that exceed \$100,000, a potential contractor shall complete and submit with its bid or offer a certification developed by OAG to provide information needs to determine if a prospective contractor is responsible. The certification shall be signed under the penalty of perjury. The contractor shall update its responses in the certification during the term of the contract within 60 days of a material change in a response to its prior questionnaire and prior to the exercise of an option year contract.

**5014 PRICE REASONABLENESS**

5014.1 The contracting officer may determine whether a price is fair and reasonable for each contract.

**5015 ORGANIZATIONAL CONFLICTS OF INTEREST;  
DISQUALIFICATION**

5015.1 The OAG intends to avoid even the appearance of conflict of interest or impropriety in connection with its procurement activities. Thus, even if a prospective contractor is determined to be responsible, the CCO has the discretion to disqualify the contractor (or to take other appropriate measures) based on a conflict of interest, the appearance thereof, or other ethical considerations as further described in sections.

5015.2 If the Contracting Officer determines that there is a conflict of interest, the appearance of a conflict of interest, or another ethical consideration, the Contracting Officer may:

- (a) Disqualify a contractor at any point during procurement;
- (b) Rescind or terminate a contract subsequent to contract award; or
- (c) Take other appropriate corrective measures, such as canceling a pending solicitation and initiating a new procurement; provided, however, that prior to taking any such action, the Contracting Officer shall first obtain the approval of the CCO.

- 5015.3 A determination by the Contracting Officer and the CCO to take a corrective measure described in § 5015.4 below shall be made in writing and included in the contract file.
- 5015.4 The ethical consideration(s) that may authorize disqualification or another corrective measure go beyond a violation of the ethics and conflict of interest rules of the District of Columbia government and the prospective contractor, if any. The CCO may properly take corrective measures whenever necessary or prudent to avoid the appearance of impropriety or otherwise eliminate doubts about the integrity and fairness of procurement. For example, situations in which corrective measures might be warranted include (but are not limited to):
- (a) Cases where an employee of the OAG or the CCO have any interest, direct or indirect, as principal, surety, or otherwise in a contract, where the expense or consideration of the contract is payable from OAG funds.
  - (b) Cases where the Attorney General or an employee of the OAG involved in a procurement had a relationship with a contractor that fell outside the District of Columbia government ethics rules, but nonetheless raised questions about the procurement's integrity;
  - (c) Cases where a prospective contractor received preferential treatment in relation to its competitors;
  - (d) Cases where a prospective contractor hired a former employee of the OAG who was privy to non-public information about the procurement, and involved that individual in its proposal preparation efforts; or
  - (e) Cases where there is clear evidence suggesting collusive bidding or similar anti-competitive practices by prospective contractors.
- 5015.5 Organizational conflicts of interest also may warrant disqualification or other corrective measures. Organizational conflict of interest means a situation in which a contractor:
- (a) May be unable to render impartial and objective assistance or advice to the OAG; or
  - (b) May have an unfair advantage over potential competitors.
- 5015.6 Organizational conflicts of interests can arise in a variety of circumstances. For example, a contractor that develops the technical specifications for an item that will be the subject of a future procurement may have an incentive to develop

specifications favoring its own products unless it is barred from participating in the future procurement. Another example is a case where a contractor performs services for the OAG that require access to non-public information (for example, proprietary data of other companies) and could therefore gain an unfair advantage over competitors in future procurements.

5015.7 A number of measures may be appropriate for eliminating or mitigating organizational conflicts of interest, and the Contracting Officer has broad discretion to select the approach that is most suitable in any particular case. For example, a contract to assist the OAG in developing requirements for a future procurement ordinarily should include a clause prohibiting the contractor from participating in the future procurement. A contract in which the contractor gains access to proprietary information of other companies (or non-public information on the OAG's procurement plans) should include an appropriate clause that prevents the contractor from using such information in any manner that might give it an unfair advantage and prohibits the contractor from disclosing this proprietary information.

5015.8 In each case, the mechanism adopted to address an organizational conflict of interest should be designed to prevent:

- (a) The existence of conflicting roles that might bias a contractor's judgment; and
- (b) An unfair competitive advantage.

## **5016 PROCUREMENT PLANNING**

5016.1 OAG shall perform procurement planning and conduct market research to promote and provide for full and open competition with due regard to the nature of the goods and services to be acquired.

5016.2 When full and open competition is not required by law, the agency shall perform procurement planning and conduct market research to obtain competition to the maximum extent practicable.

5016.3 Procurement planning shall begin as soon as an agency need is identified and preferably well in advance of the fiscal year in which the contract award is necessary. In developing the plan, the planner may form a team consisting of all those who will be responsible for significant aspects of the procurement, such as contracting, fiscal, legal, and technical personnel and, when applicable, the Department of Small and Local Business Development.

**5017 MARKET RESEARCH**

- 5017.1 Before issuing a solicitation or making a purchase, the OAG shall:
- (a) Estimate the likely cost of the proposed procurement and assure that adequate funds are available; and
  - (b) Conduct appropriate market research and establish minimum needs.
- 5017.2 Market research is designed primarily to familiarize the OAG with the market for the goods or services it seeks to acquire in order to develop an appropriate strategy for conducting a prompt and efficient procurement that promotes full and open competition between qualified firms. The extent of market research will vary depending on factors such as urgency, the size and complexity of the proposed procurement, and the OAG's existing knowledge of the market based on its (or its key personnel's) past experience in procuring similar goods or services.
- 5017.3 Market research, to the extent it is relevant to the particular procurement and not already known to the OAG, generally should focus on obtaining information such as the following:
- (a) Customary practices in the relevant market;
  - (b) The prospective sources that may be able to supply the goods or services;
  - (c) The opportunities for participation by firms that qualify as CBEs;
  - (d) The benchmarks available to evaluate the likely cost of the procurement and the reasonableness of prices or costs proposed by prospective contractors; and
  - (e) The requirements of any laws or regulations unique to the procurement.
- 5017.4 In conducting market research, the OAG may solicit information from prospective sources on matters such as their interest in the potential procurement, the characteristics and costs of their products or services, their customary practices, and their knowledge of the industry generally. Such information may be solicited by requesting interested parties to submit written information (for example, by posting a notice on the Internet seeking information pertinent to the proposed procurement), through meetings or telephone contacts, by distributing and seeking comments on a draft solicitation, or through other prudent means.

5017.5 In addition to soliciting information from prospective contractors, the OAG may also obtain information from other sources. For example, price information that can assist in estimating the likely cost of the procurement and in evaluating price reasonableness is frequently available from sources such as catalogs, Internet sites, or records of past procurements.

## **5018 PREPARING SOLICITATIONS**

5018.1 Following the conduct of market research, the Contracting Officer shall make a determination as to which procurement method identified in these regulations is most beneficial to the OAG. The Contracting Officer will ordinarily prepare a solicitation requesting responses; however, the Contracting Officer may determine to purchase the required goods or services through its small purchase procedures or from a federal or District supply schedule contract, or any other method set forth in the PPRA or this chapter.

5018.2 When the Contracting Officer issues a solicitation, its length and contents will depend on factors such as the size of the procurement, the nature and complexity of the goods or services, the contracting procedure to be used, and the contract type. In general, however, a solicitation should clearly describe the OAG's needs (for example, by providing a statement of work outlining the type of services required or information specifying product characteristics or capabilities) and method of award.

5018.3 In preparing a solicitation, the Contracting Officer should seek to enhance competition by carefully scrutinizing and eliminating, to the extent possible, any unnecessary requirements that may restrict the number of prospective sources or the range of goods or services they can offer. Such provisions may include, for example, technical specifications that unnecessarily limit the competitive field, unnecessarily aggressive delivery schedules, or burdensome terms and conditions that might deter smaller companies from competing.

5018.4 The Contracting Officer may issue solicitations in paper form or electronically.

5018.5 The Contracting Officer with the approval of the CCO may cancel a solicitation or reject all bids or proposals received at any time before the contract award when the Contracting Officer determines in writing that the cancellation is in the OAG's best interests.

**5019 PUBLICIZING PROCUREMENT OPPORTUNITIES**

- 5019.1 The Attorney General shall maintain an OAG Internet site that provides the public with notice of opportunities to participate in OAG's procurement process, notice of contract awards and other relevant information about OAG procurements.
- 5019.1 The Contracting Officer may also use other methods to publicize procurement. The specific method or methods used should be tailored to the particular procurement, taking into account factors such as the size of the procurement, the type of goods or services sought, the urgency associated with the requirement, and the most efficient means of disseminating information in the relevant market. The methods available to publicize procurement opportunities may include print advertising, Internet notices, developing source lists of qualified firms known to supply particular categories of goods or services, soliciting specific sources through written notices or telephone contacts, and holding pre-bid or pre-proposal conferences.
- 5019.2 In addition to publication or other method of publicizing the procurement opportunity described in Section, unless otherwise specified in this chapter, the Contracting Officer shall also compile a list of at least three (3) vendors that the Contracting Officer reasonably believes are qualified to provide the services or goods specified in a solicitation and shall provide those vendors with a copy of the solicitation. If the Contracting Officer is unable to locate at least three (3) potential vendors, the Contracting Officer shall provide the solicitation to as many vendors as the Contracting Officer can reasonably identify.

**5020 INVITATION FOR BIDS**

- 5020.1 An Invitation for Bids (IFB) shall be advertised for at least fourteen (14) days before the date set for the receipt of bids, unless the Attorney General determines in writing that it is appropriate to shorten the notice period to not less than three (3) days. The Attorney General shall consider the following factors in determining whether it is appropriate to shorten a notice period:
- (a) The complexity of the procurement;
  - (b) Subcontracting requirements;
  - (c) The degree of urgency;
  - (d) The impact of a shortened notice period on competition; and
  - (e) Any other relevant factors.

**5021 REQUESTS FOR PROPOSALS**

5021.1 A Request for Proposals (RFP) shall be advertised for at least twenty-one (21) days before the date set for the receipt of proposals, unless the Attorney General determines in writing that it is appropriate to shorten the notice period to not less than fourteen (14) days. The Attorney General shall consider the following factors in determining whether it is appropriate to shorten the notice period:

- (a) The complexity of the procurement;
- (b) Subcontracting requirements;
- (a) The degree of urgency;
- (b) The impact of a shortened notice period on competition; and
- (c) Any other relevant factors.

**5022 NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT**

5022.1 A notice of intent to award a sole source contract shall be published on the OAG Internet for at least ten (10) days prior to contract award.

5022.2 A notice of intent to award a sole source contract shall include:

- (a) A copy of the proposed determination and findings required under § 404(b) of the PPRA;
- (b) A clear description of the item to be procured;
- (c) The intended sole source contractor.

5022.3 Sole source awards, regardless of dollar value, shall be published in accordance with the provisions in § 5023.1 of this chapter.

**5023 NOTICE OF CONTRACT AWARDS OVER ONE HUNDRED THOUSAND DOLLARS (\$100,000)**

5023.1 The following documents related to each contract award over one hundred thousand dollars (\$100,000) shall be published on the OAG Internet site within seven (7) days of award:

- (a) The solicitation and all amendments thereto;
- (b) The contract and all modifications thereto;
- (c) Determinations and findings; and
- (d) Change orders.

5023.2 All information published under this section shall be removed from the Internet site upon the expiration or termination of the contract, or after five (5) years of award, whichever is longer.

**5024 NOTICE OF EMERGENCY PROCUREMENTS**

5024.1 Emergency procurement awards, regardless of dollar value, shall be published in accordance with the provisions in § 5023.1 of this chapter.

**5025 CONTRACT TYPES**

5025.1 The type of contract awarded by the Contracting Officer will generally depend on factors such as the particular goods or services to be acquired, whether the costs of the goods or services can be estimated in advance with reasonable accuracy, and the degree to which the precise nature and extent of the contract work is known at the time of award.

5025.2 The Contracting Officer may use a variety of contract types, including but not limited to:

- (a) Fixed price contracts (fixed price contracts will generally be used in connection with the purchases of discrete and identifiable goods or assets, and for other appropriate purchases);
- (b) Cost reimbursement contracts;
- (c) Delivery order contracts;



- (d) Time-and-materials or labor-hours contracts; and
- (e) Indefinite Delivery, Indefinite Quantity contracts.

5025.3 The Contracting Officer may also award any alternative type of contract that will produce reasonable value in the context of a particular procurement. However, the Contracting Officer may not award cost-plus-percentage-of-cost contracts.

## **5026 FIXED-PRICE CONTRACTS**

5026.1 Fixed price contracts include several variants:

- (a) Firm, fixed price contracts;
- (b) Fixed price contracts with economic price adjustment; and
- (c) Fixed price incentive contracts.
- (d) Fixed Unit Price Contracts.

5026.2 Unlike cost reimbursement contracts, any type of fixed price contract obligates the contractor to complete the contractually-specified work for a fixed price.

5026.3 A firm fixed price contract provides for a price that is not subject to adjustment, except in the event of a change to the scope of work.

5026.4 A fixed price contract with economic price adjustment provides for an upward or downward adjustment in the stated contract price based on changes in certain benchmarks specifically identified in the contract (for example, catalog prices, the producer price index for a particular commodity, or a recognized index for the price of legal services), subject to a ceiling on upward adjustments.

5026.5 A fixed price incentive contract generally provides for establishing a final price by applying a formula based on the relationship between the total cost actually incurred by the contractor and a total target cost. A fixed price incentive contract results in the parties sharing in the cost savings or increases associated with differences between the actual and target cost. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

**5027 COST REIMBURSEMENT CONTRACTS**

- 5027.1 Cost reimbursement contracts provide for the contractor to recover the reimbursable costs it incurs in contract performance, plus a fee (that is, a profit).
- 5027.2 A reimbursable cost must be:
- (a) Reasonable in nature and amount;
  - (b) Properly allocable to the contract;
  - (c) Determined in accordance with generally accepted accounting principles; and
  - (d) Not identified as non-reimbursable pursuant to Chapter 33 of Title 2700 of the DCMR or under the terms of the particular contract.
- 5027.3 To ensure that the OAG's payment obligations are not open-ended, a cost reimbursement contract must specify a not-to-exceed cost that the contractor cannot exceed (the "not-to-exceed limit"), except at its own risk, without the Contracting Officer's written approval. Because the contractor can cease performance once it reaches the not-to-exceed cost (unless the Contracting Officer approves an increase), it is not obligated to complete the contract work unless it can do so within the not-to-exceed limit.
- 5027.4 Cost reimbursement contracts can take three (3) forms:
- (a) Cost-plus-fixed-fee;
  - (b) Cost-plus-incentive-fee; and
  - (c) Cost-plus-award-fee.
- 5027.5 The differences between the types of cost reimbursement contracts listed in Section relate to the manner in which the contractor's fee is determined.
- 5027.6 A cost-plus-fixed-fee contract provides for a fee that is fixed at the contract's inception and is not subject to adjustment unless the contract is modified to change the contract work.
- 5027.7 A cost-plus-incentive-fee contract provides for a fee that generally is determined by applying a formula based on the relationship between the contractor's total reimbursable cost and a total target cost, subject to a specified minimum and

maximum. These contracts also can include incentive formulas based on the contractor's schedule or technical performance.

- 5027.8 A cost-plus-award-fee contract provides for:
- (a) A base fee fixed at the contract's inception; and
  - (b) An award fee that the contractor may earn (in whole or in part) during performance, which is designed to motivate superior performance.
- 5027.9 The award fee in a cost-plus-award-fee contract is determined unilaterally by the Contracting Officer, based on the Contracting Officer's judgment and evaluation of how well the contractor has performed in relation to the award fee criteria identified in the contract. In no event shall the total award fee available to the contractor exceed ten percent (10%).
- 5027.10 In appropriate circumstances, the Contracting Officer may include a guaranteed maximum price (GMP) in a cost reimbursement contract. A GMP differs from a not-to-exceed amount in that a contractor is required to complete performance of the base scope of work required under the contract for an amount that does not exceed the GMP. Under such an approach, if the total cost exceeds the GMP, the contractor shall be required to complete performance of the base scope of work at its own cost and expense.

## 5028 SPECIAL METHODS OF CONTRACTING

- 5028.1 Notwithstanding any other provision of this chapter, a Contracting Officer may award contracts with other organizations, public or private, for goods and services that are in the OAG's best interest. As part of the procurement planning process, the Contracting Officer will determine the most appropriate method of contracting based on, among other considerations, the scope of work, delivery schedules, existing market conditions, and other relevant considerations. The selection of any Special Method of Contracting shall be considered a competitive procurement for the purposes of this chapter.
- (a) Cooperative Purchasing Agreements. The OAG shall be authorized and encouraged to participate in, sponsor, conduct, or administer Cooperative Purchasing Agreements and contracts with any other organization, public or private, including state, county, or municipal jurisdictions, for the purpose of procuring supplies and services, which shall include construction services or architectural and engineering services related to construction repairs, upgrades, restoration, alteration, and reconstruction

of existing buildings and facilities.

- (b) Cooperative Purchasing Agreements entered into by the OAG shall be in accordance with, to the extent practicable, all laws, statutes, and regulations applicable to the OAG with respect to contracting, and shall not be inconsistent with laws, statutes, and regulations of the United States government that apply specifically to the District.
- (c) Contracts with Federal Agencies - In the discretion of the CCO, the CCO may authorize Contracting Officers to place orders, if the CCO determines it to be in the best interest of the OAG, with any federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such federal agency may be in a position to supply or be equipped to render, by contract, supply schedule, or otherwise, and shall pay promptly by check to such federal agency, upon its written request, either in advance or upon furnishing or performance thereof, all or part of the estimated or actual costs thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual costs of the materials, supplies or equipment furnished or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.
- (d) Contracts with District Agencies - The CCO may authorize Contracting Officers to place orders with any department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that the requisitioned department, office, or agency may be in a position to supply or equipped to render. To the extent that the OAG places any such order, it shall either advance, subject to proper adjustment on the basis of actual cost, or reimburse, such department, office or agency the actual cost of materials, supplies, or equipment furnished or work or services performed as determined by such department, office, or agency as may be requisitioned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.
- (e) Letter Contracts - A letter contract may be used only after the Contracting Officer determines, in writing, that no other type of contract is suitable. A letter contract shall not commit the OAG to a definitive contract in excess of the funds available at the time the letter contract is executed. The

Contracting Officer may use a letter contract when the OAG's interests demand that the contractor be given a binding commitment so that work can start immediately and executing a definitive contract is not possible in sufficient time to meet the requirement. Each letter contract shall be as complete and definite as possible under the circumstances and shall include clauses approved and required by the CCO. When a letter contract is executed, the Contracting Officer shall include a price ceiling for the anticipated definitive contract. The price ceiling shall not be exceeded. Each letter contract shall also include a clause indicating the maximum liability of the OAG under the letter contract. The maximum liability to the OAG shall be the estimated amount necessary to cover the contractor's requirement for funds before execution of the definitive contract. However, the OAG's maximum liability shall not exceed fifty percent (50%) of the overall price ceiling for the term of the definitive contract. The Contracting Officer shall execute a definitive contract within one hundred and twenty (120) days after the date of execution of the letter contract or before completion of fifty percent (50%) of the work to be performed, whichever occurs first. The Contracting Officer may authorize an additional period to complete the definitive contract. Prior to execution of a letter contract, the Contracting Officer shall ensure that funds are encumbered for obligation in the amount of the maximum OAG liability for the term of the letter contract. For purposes of review and approval of letter contracts, and for purposes of contracting authority, the Contracting Officer shall use the estimated amount of the definitive contract for determining the type and level of review and approval required.

## **5029 BASIC ORDERING AGREEMENTS**

- 5029.1 Under basic ordering agreements (also known as task order contracts or term contracts), the contractor's performance obligations are triggered when the Contracting Officer subsequently issues task orders pursuant to the contract.
- 5029.2 Basic ordering agreements include:
- (a) Requirements contracts; and
  - (b) Indefinite quantities contracts.
- 5029.3 A requirement contract provides the mechanism for the Contracting Officer to order from the contractor all of its requirements for designated supplies or services during a specified period (subject to any maximum ordering limitation in the contract). This type of contract should only be used when the Contracting Officer determines that a requirement contract will provide superior economic

benefits to an indefinite quantity contract as it locks the Contracting Officer into one (1) source of supply for the goods or services required under the basic ordering agreement. A requirements contract must be approved by the CCO in addition to the Contracting Officer.

- 5029.4 An indefinite quantity contract provides for an indefinite quantity, within specified limits, of supplies or services to be furnished during a fixed period.
- 5029.5 An indefinite quantity contract:
- (a) Requires the OAG to order and the contractor to deliver at least the stated minimum quantity of supplies or services; and
  - (b) Requires the contractor to deliver any additional quantities the OAG may order during the contract period (subject to any maximum quantity limitations in the contract).
- 5029.6 The Contracting Officer may award a single indefinite quantity contract for particular goods or services, or may award multiple contracts and choose between the selected contractors in awarding subsequent delivery orders.
- 5029.7 If an indefinite quantity contract is used, the Contracting Officer shall establish, at the time the basic ordering agreements are awarded, a procedure by which work will be awarded under the basic ordering agreements (“award procedure”).
- 5029.8 Generally, one (1) of the following two (2) award procedures shall be used:
- (a) The rotating award procedure, where work is assigned on a rotation basis (that is, the first task order is given to Contractor A, the second task order to Contractor B, etc.); or
  - (b) The competitive award procedure, where the Contracting Officer requests task order proposals from two (2) or more contractors holding an indefinite delivery contract.
- 5029.9 The competitive award procedure is preferred.
- 5029.10 If the competitive award procedure is used, each task order request shall specify:
- (a) The specific goods or services required;
  - (b) A delivery date; and

(c) Such other information as the Contracting Officer may reasonably request.

**5030 TIME AND MATERIALS CONTRACTS AND LABOR HOURS CONTRACTS**

5030.1 Time-and-materials contracts provide for acquiring supplies or services on the basis of:

- (a) Direct labor hours charged at fixed hourly rates that are loaded rates that which include overhead, general and administrative expenses, and profit; and
- (b) Materials (which may be charged either at their actual cost or at fixed unit prices).

5030.2 A labor hours contract is a time-and-materials contract that does not involve materials.

5030.3 Both time-and-materials contracts and labor hours contracts should specify a ceiling price.

**5031 CONTRACTING PROCEDURES GENERALLY**

5031.1 In general, every procurement by the OAG should be conducted in accordance with competitive contracting procedures, suitable to the specific procurement, that produce reasonable value and reasonable results.

5031.2 The contracting procedures the Contracting Officer may include, but are not limited to, the procedures described in this chapter. In any procurement including change orders or supplemental agreements, the Contracting Officer may require the bidder, offeror or contractor to submit to the OAG factual information reasonably available to the bidder, offeror or contractor, in order to substantiate that the price or cost offered, or some portion of it, is reasonable.

**5032 SOLE SOURCE CONTRACTS**

5032.1 Procurement contracts may be awarded through noncompetitive negotiations when the CCO or the CCO designee determines in writing that there is only one (1) source for the required commodity, service, construction, litigation experts, §

5032.2 If the Contracting Officer makes a determination pursuant to § 5032.1 that a sole source procurement is necessary to meet an essential requirement of the OAG, the

Contracting Officer shall document such determination in writing and may procure goods, services, or construction without regard to the procedures set forth elsewhere in this chapter, provided that the Contracting Officer shall comply with the provisions of § 5022 of these rules regarding posting notice of intent to award a sole source procurement.

5032.3 A written determination by the Contracting Officer supporting a single available source procurement pursuant to Section shall include:

- (a) A description of the nature of the goods or services; and
- (b) An explanation of why the goods or services are only available from a single source.

5032.4 The Contracting Officer shall publicize the District’s intent to enter into a sole source contract in accordance with the provisions of § 5022.

5032.5 The Contracting Officer shall publicize all sole source contracts in accordance with the provisions of § 5022.

5032.6 If a grant or law requires a specific vendor to provide certain goods or services for a requirement, the Contracting Officer does not have to publicize the notice of intent to enter into a sole source contract.

5032.7 A sole source contract shall not be justified on the basis of:

- (a) The lack of adequate advance planning for the procurement of the required goods or services;
- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

**5033 EMERGENCY PROCUREMENTS**

5033.1 The Contracting Officer may award a contract on an emergency basis when there is an imminent threat to the public health, welfare, property, or safety, or to prevent or minimize serious disruption in District services.

5033.2 The Contracting Officer shall prepare a D&F that sets forth the justification for the emergency procurement. The D&F shall include:



- (a) Identification of the agency and specific identification of the document as an emergency D&F;
- (b) A statement that emergency procurement procedures will be used for the procurement;
- (c) A description of the requirement;
- (d) A description of the emergency;
- (e) A description of steps taken to solicit bids or proposals from as many potential competitors as possible under the emergency condition;
- (f) A determination that the anticipated costs to the District will be fair and reasonable in light of the emergency;
- (g) A specific citation to Section 405 of the PPRA (D.C. Official Code § 2-354.05) and the applicable provisions of this chapter that provide legal authority for the emergency procurement; and
- (h) Any other pertinent facts that support the emergency justification.

5033.3 An emergency contract shall not be justified on the basis of:

- (a) The lack of adequate advance planning for the procurement of the required goods or services;
- (b) Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or
- (c) Pending expiration of budget authority.

5033.4 Emergency procurements shall be limited to those goods or services necessary to meet the emergency.

5033.5 Emergency procurements shall be made with as much competition as is practicable under the circumstances, based on the judgment and determination of the Contracting Officer.

5033.6 The Contracting Officer shall have the authority to issue oral orders or notices to proceed to contractors to provide goods or services to the District, provided the directive is reduced to writing within three (3) business days after issuance and

the funding for the goods or services provided is certified by the appropriate fiscal official.

5033.7 Emergency procurement procedures shall not be used for contracts exceeding ninety (90) days; provided that if the development time for the goods or services exceeds ninety (90) days, the contract shall not exceed one hundred twenty (120) days.

5033.8 A contract procured on an emergency basis shall not be modified to expand the scope or extend the time of the procurement unless a limited number of additional goods or services are needed to fill an on-going emergency requirement until regular procurement action procedures can be completed.

5033.9 Notice of all emergency procurements, including D&Fs, shall be publicized in accordance with the provisions of § 5022.

#### **5034 SEALED BIDDING**

5034.1 The solicitation used to initiate a procurement conducted by sealed bidding is known as an Invitation for Bids (IFB).

5034.2 The evaluation factors used in sealed bid procurements are limited to price and price-related factors (including price evaluation preferences for CBEs).

5034.3 The IFB shall specify:

- (a) Any information necessary to explain how the Contracting Officer will evaluate price (for example, whether option prices will be evaluated);
- (b) Any price-related factors that will be evaluated and their relative importance in the overall evaluation scheme;
- (c) A description of the goods or services sought (including quantity requirements);
- (d) The contract delivery schedule;
- (e) A description of any special qualification requirements the contractor must satisfy;
- (f) Instructions for submitting bids (including the deadline for bid submission, the method(s) for submitting bids, any representations or certifications bidders must submit, and any requirements for the submission of items

such as bid samples, subcontracting plans, or payment or performance bonds);

(g) The period during which bids must remain open for acceptance; and

(h) The contract's terms and conditions.

5034.4 Any changes in the information set forth in an IFB must be made by an amendment to the IFB.

5034.5 Bids shall be submitted by a method specifically permitted by the IFB (for example, hand delivery, mailing, electronic transmission, or fax).

5034.6 A bid may be withdrawn or modified at any time before bid opening by any of the methods permitted for submitting bids.

5034.7 A late bid (or late modification or withdrawal) shall not be considered, unless such delay is caused by the OAG.

5034.8 The Contracting Officer shall prepare and maintain in the contract file an abstract listing the bid prices.

5034.9 The contract shall be awarded to the qualified bidder whose bid is responsive to the IFB and is most advantageous to the OAG considering only price and the price-related evaluation factors identified in the IFB and the Contracting Officer determines that the bidder is responsible.

5034.10 To be considered responsive, a bid must comply in all material respects with the IFB. Responsiveness involves matters that relate to the bid itself as opposed to the responsibility or other qualifications of the bidder. In determining whether a bid is responsive, the Contracting Officer has the discretion to permit correction of minor informalities or irregularities.

5034.11 The Contracting Officer shall endeavor to include with every IFB solicitation the form of the contract that the contractor will be required to enter into. To the greatest extent possible, the Contracting Officer should endeavor to provide clear and concise contract documents. Contracts which consist of the solicitation, the bid, and other documents attached together but not integrated into a single contract document are discouraged.

**5035 COMPETITIVE NEGOTIATION**

- 5035.1 The solicitation used to initiate a procurement conducted by competitive negotiation is known as a Request for Proposals (RFP).
- 5035.2 If the Contracting Officer issues an RFP, the Contracting Officer shall establish a deadline for offerors' submission of initial proposals consistent with the requirements of § 5019.
- 5035.3 The evaluation criteria used in procurements conducted by competitive negotiation include price or cost (including, but not limited to, hourly rates for services and fixed fees for cost reimbursement contracts) along with any other factors appropriate to the particular procurement (for example, the offeror's technical approach, past performance, or status as a CBE or plans for subcontracting with CBEs).
- 5035.4 The RFP may, if the Contracting Officer deems it advisable, contain either an estimate that generally describes the price range contemplated by the Contracting Officer or a funding limitation for the procurement.
- 5035.5 The RFP shall specify all evaluation factors and their relative importance. The RFP should also include:
- (a) A description of the goods, services, or scope of construction work sought (including quantity or estimated quantity);
  - (b) The contract delivery schedule (including any permitted variations in the delivery schedule);
  - (c) A description of any special qualification requirements the contractor must satisfy;
  - (d) Instructions for submitting proposals including: the deadline for proposal submission, the method(s) for submitting proposals, the information to be provided in the proposal (including any requirements for past performance information or for subcontracting plans), and any representations or certifications the offeror must submit;
  - (e) The period during which proposals must remain open for acceptance; and
  - (f) The anticipated contract terms and conditions and the extent to which they are negotiable.

- 5035.6 Any changes in the information set forth in an RFP must be made by an amendment to the RFP. Amendments shall be made no less than three (3) business days before the proposal submission date specified by the RFP.
- 5035.7 Proposals shall be submitted by a method specifically permitted by the RFP.
- 5035.8 The Contracting Officer shall evaluate proposals based solely on the evaluation criteria specified in the RFP. In evaluating past performance the Contracting Officer is not limited to considering only the information from references listed by the offeror.
- 5035.9 After initial proposals have been evaluated, the Contracting Officer may:
- (a) Make an award based on initial proposals; or
  - (b) Establish a competitive range consisting of those proposals that remain under consideration, which shall include all proposals that, in the Contracting Officer's judgment (erring on the side of the offeror), could be awarded the procurement.
- 5035.10 The Contracting Officer may begin discussions with only the top three ranked offerors in the competitive range. Discussions with the offerors may be written (including electronic) or oral. The primary objective of discussions is to maximize the OAG's ability to obtain the best value based on the evaluation factors set forth in the RFP. The scope and extent of discussions are a matter of Contracting Officer judgment.
- 5035.11 At the conclusion of discussions, the Contracting Officer shall request that the offerors submit best and final offers by a common cut-off date. If the Contracting Officer is unable to award a contract after best and final offers have been evaluated and negotiated, the Contracting Officer may proceed to negotiate with the next three highest ranked offerors. The Contracting Officer may proceed to select a contractor by the method set forth in this subchapter until a contract is awarded or the solicitation cancelled.
- 5035.12 The contract shall be awarded to the qualified offeror whose offer is most advantageous to the OAG under the RFP's evaluation criteria and this subchapter.
- 5035.13 The Contracting Officer shall prepare documentation explaining the basis for the contract award decision which shall be maintained in the contract file.
- 5035.14 The Contracting Officer shall endeavor to include with every RFP solicitation the form of the contract that the contractor will be required to enter into. To the

greatest extent possible, the Contracting Officer should endeavor to provide clear, concise contract documents. Contracts which consist of the solicitation, the proposal, and other documents attached together but not integrated into a single contract document are discouraged

## **5036 SIMPLIFIED CONTRACTING PROCEDURES**

- 5036.1 The basic purposes of simplified contracting procedures are to:
- (a) Promote economy, efficiency, and innovation in contracting;
  - (b) Reduce administrative costs to the OAG; and
  - (c) Avoid unnecessary burdens or complexities that could reduce competition, such as by deterring smaller contractors from participating in a procurement.
- 5036.2 Simplified contracting procedures may be used only with contracts that have an estimated value equal to or less than one hundred thousand dollars (\$100,000).
- 5036.3 Requirements procured under this chapter shall not be parceled, split, divided, or purchased over a period of time in order not to exceed the small purchase limit.
- 5036.4 The Contracting Officer shall conduct simplified procurements in the manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. As appropriate, the Contracting Officer may elect to use or adapt procedures that are part of the sealed bidding or competitive negotiation process.
- 5036.5 On a simplified procurement, the Contracting Officer shall:
- (a) Promote competition to the extent practicable and efficient;
  - (b) Establish reasonable deadlines for the submission of responses to solicitations; and
  - (c) Evaluate quotations or offers in an impartial manner on the basis established in the solicitation.
- 5036.6 If a contract that has an estimated value of more than ten thousand dollars (\$10,000) is procured through the simplified contracting procedures, the Contracting Officer shall obtain written quotes from at least two (2) potential suppliers.

- 5036.7 The Contracting Officer may solicit quotations orally in appropriate cases when doing so is practical and economical. When soliciting quotations orally, the Contracting Officer shall instruct suppliers to respond in writing.
- 5036.8 An oral solicitation shall provide a clear description of the OAG's requirements (for example the type of goods or services sought, quantities, and schedule) and the basis on which the award will be made.
- 5036.9 Written solicitations shall provide a complete statement of relevant information without being unnecessarily lengthy. A written solicitation should include the same information required in an oral solicitation, plus the following:
- (a) Anticipated contract terms and conditions (and the extent to which they are negotiable);
  - (b) Applicable certifications or representations; and
  - (c) Instructions for submitting responses.
- 5036.10 The basis for award may be price or cost alone or price/cost and other factors. Solicitations are not required to state the relative importance assigned to each evaluation factor.
- 5036.11 The price/cost and other terms of the award shall be set forth in a written contract or purchase order. The Contracting Officer shall include a statement in the contract file briefly explaining the basis for the award decision.

## **5037 COMPETITION EXEMPTIONS**

- 5037.1 The procurements that are exempt from competition cited in Section 413 of the PPRA (D.C. Official Code § 2-354.13) are not subject to the requirements of §§ 5034 and 5035.
- 5037.2 The exemption from competition when procuring legal services or negotiation services in connection with proceedings before administrative agencies or state or federal courts, including experts, attorneys, and mediators, cited in Section 413(3) of the PPRA, includes services in connection with present or anticipated proceedings or services procured to provide advice or to prevent litigation.
- 5037.3 The exemption from competition when procuring entertainers, cited in Section 413(6) of the PPRA, includes entertainers and speakers.

5037.4 The exemption from competition when procuring job-related seminars and training for District employees, cited in Section 413(7) of the PPRA, applies to job-related seminars and training that are intended to enhance District employees' knowledge, skill and ability to perform the duties of their position.

5037.5 The exemption from competition when procuring goods or services provided by another public entity, agency, or authority, cited in Section 413(10) of the PPRA, includes goods and services provided by another governmental entity, public entity, agency, or authority, or an organization consisting of such entities, agencies, or authorities.

### **5038 BLANKET PURCHASE AGREEMENTS**

5038.1 A blanket purchase agreement (BPA) is not a contract and may be established without a purchase requisition or the obligation of funds.

5038.2 The Contracting Officer may use a BPA as a simplified contracting procedures to fill anticipated repetitive needs for goods or services by establishing charge accounts with sources of supply if at least one (1) of the following criteria apply:

- (a) There is a wide variety of items in a broad class of goods or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably; or
- (b) The administrative cost of writing numerous purchase orders can be avoided through the use of this procedure.

5038.3 The Contracting Officer shall not use a BPA to:

- (a) Procure goods or services for which a requirements type contract has been issued by the District; or
- (b) Avoid the simplified contracting procedures limitation.

5038.4 The Contracting Officer shall include the following information in each BPA:

- (a) A statement that the supplier will furnish goods or services, described in general terms, if and when requested by the contracting officer during a specified period and within a stipulated total amount not to exceed \$100,000;
- (b) A statement that the District is obligated only to the extent that authorized purchases are actually made under the BPA;



- (c) A statement that the prices to the District shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment;
- (d) A statement that specifies the dollar limitation for purchases under the BPA (not to exceed the simplified contracting procedures ); and
- (e) A requirement that all deliveries or shipments under the BPA shall be accompanied by delivery tickets or sales slips which contain the following minimum information:
  - (1) The name of the supplier;
  - (2) The BPA number;
  - (3) The date of purchase;
  - (4) The purchase order number;
  - (5) An itemized list of goods or services furnished;
  - (6) The quantity, unit price, and extension of each item, less applicable discounts; and
  - (7i) The date of delivery or shipment.

5038.5 To the extent practicable, BPAs for items of the same type shall be placed concurrently with more than one (1) supplier. All competitive sources shall be given an equal opportunity to furnish goods, services, or other items under a BPA.

5038.6 When there are an insufficient number of vendors with BPAs to ensure maximum practicable competition for a particular purchase, the Contracting Officer shall:

- (a) Solicit quotations from other sources and make the purchase as appropriate; and
- (b) Establish additional BPA's to facilitate future purchases when recurring requirements for the same or similar items or services seem likely, when qualified sources are willing to accept a BPA, or when it is otherwise practical to do so.

5038.7 A BPA shall be considered terminated when the procurements under it are equal

to its total dollar limitation or when the stated time period expires.

### **5039 DISTRICT OF COLUMBIA SUPPLY SCHEDULES**

5039.1 The Contracting Officer shall award contracts of \$250,000 or less to a qualified Small Business Enterprise (SBE) as that term is defined in the SCBEDA Act, on the District of Columbia Supply Schedule (DCSS).

5039.2 If the Contracting Officer determines in writing that there are not at least two (2) qualified SBEs on the DCSS that can provide the goods or services, the Contracting Officer may use a qualified CBE on the DCSS that can provide the goods or services.

5039.3 If the Contracting Officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the Contracting Officer may decline to award a contract under this section, and may issue the solicitation in the set-aside market under § 5040.

5039.4 A copy of each determination made under this section shall be submitted promptly to the Director of the Department of Small and Local Business Development (DSLBD).

### **5040 MANDATORY SET-ASIDES**

5040.1 The Contracting Officer shall award contracts of \$250,000 or less to a qualified SBE.

5040.2 If the Contracting Officer determines in writing that there are not at least two (2) qualified SBEs that can provide the goods or services, the Contracting Officer may use a qualified CBE that can provide the goods or services.

5040.3 If the Contracting Officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the Contracting Officer may decline to award a contract under this section, and issue the solicitation in the open market.

5040.4 A copy of each determination made under this section shall be submitted promptly to the Director of the DSLBD.

### **5041 FEDERAL SCHEDULES**

5041.1 The Contracting Officer may utilize federal schedules that offer supplies and services to the District following the applicable schedule procedures.

5041.2 Except as otherwise provided in a federal schedule, all schedule contract terms and conditions apply to contracts between the schedule contractor and the District.

**5042 THE CONTRACTING OFFICER'S RESPONSIBILITY FOR CONTRACT ADMINISTRATION**

5042.1 The Contracting Officer has overall responsibility for the contract's administration. Among other things, this requires the Contracting Officer:

- (a) To monitor whether goods or services are delivered or completed on schedule and conform to contract requirements;
- (b) To ensure that any contractually required inspection or acceptance procedures are followed;
- (c) To monitor the contractor's compliance with any subcontracting requirements contained in the contract; and
- (d) To identify and attempt to resolve issues or problems that arises during contract performance.

5042.2 The Contracting Officer has the authority to take the following actions:

- (a) Authorize contract payments after delivery and acceptance;
- (b) Exercise contract options;
- (c) Terminate the contract; and
- (d) Modify the contract.

5042.3 Prior to terminating a contract, the Contracting Officer shall first obtain the approval of the CCO.

5042.4 No representative of the OAG, including a Contracting Officer, shall:

- (a) Act in a manner that misleads a contractor regarding the limits of his or her authority; or
- (b) Direct or encourage a contractor to perform work that has not been properly authorized.

**5043 PAYMENT REQUESTS**

5043.1 Requests for payment must be submitted in writing by the contractor together with a valid written contract.

5043.2 Contractor payment requests shall:

- (a) Certify that the contractor is entitled to payment in the requested amount; and
- (b) Include or attach any information necessary to demonstrate entitlement to the requested payment under the contract's terms.

5043.3 Depending on the contract's payment provisions, a payment request may consist of, for example, a statement that specified work has been completed in a satisfactory manner, documentation showing that contract deliverables have been accepted by the OAG, or information detailing the reimbursable costs incurred by the contractor.

5043.4 Payment shall not be made unless authorized by the Contracting Officer. A Contracting Officer's payment authorization shall not preclude the OAG from seeking repayment (or pursuing other remedies) if it subsequently concludes that the contractor was overpaid or otherwise misled the OAG.

5043.5 In addition to the Contracting Officer's payment authorization, all payment requests must be certified and approved by the District's Chief Financial Officer (or his or her designee) prior to making any payment.

5043.6 No OAG employee shall authorize payment for the value of supplies and services received without a valid written contract. Any vendor who enters into an oral agreement with an OAG employee to provide supplies or services to the OAG without a valid written contract shall not be paid. This subsection shall not apply to a payment required by court order, a final decision District of Columbia Contract Appeals Board.

**5044 EXERCISING OF OPTIONS**

5044.1 To exercise an option over one hundred thousand dollars (\$100,000) the Contracting Officer must first obtain the approval of the CCO.

5044.2 In addition to the approval of the CCO (if applicable), prior to exercising any option, certification of the OAG's Chief Financial Officer shall be obtained as to whether funds are available for the exercise of the option.

5044.3 When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

## **5045 CONTRACT MODIFICATIONS**

5045.1 The Contracting Officer may modify a contract subject to the provisions of this section.

5045.2 A modification must be within the general scope of the original contract. Any requirement for extra work that goes beyond the contract's general scope shall be the subject of a new procurement.

5045.3 A contract modification in excess of one hundred thousand dollars (\$100,000) shall be approved by the CCO.

5045.4 A contract modification may be effected:

- (a) By a bilateral agreement executed by the Contracting Officer and an authorized representative of the contractor; or
- (b) By the Contracting Officer's issuance of a written change order, when the contract includes a changes clause permitting the Contracting Officer to make unilateral changes in the contract work. Under such a clause, the contractor is obligated to perform in accordance with a change order issued by the Contracting Officer, and the contract price is adjusted to reflect the increase or decrease in costs caused by the change.

## **5046 CONTRACT TERMINATION**

5046.1 All contracts awarded by the Contracting Officer shall include "Termination for Default" and "Termination for Convenience" clauses specifically defining the OAG's termination rights.

5046.2 When exercising the OAG's rights under a termination clause in the contract, the Contracting Officer shall provide the contractor with a written notice specifying:

- (a) Whether the termination is for default or for convenience;
- (b) The effective date of the termination;
- (c) The extent of the termination if the termination is partial; and

- (d) Any special instructions that apply to the termination (for example, instructions concerning the disposition of contract inventory).

5046.3 After terminating a contract for convenience, the Contracting Officer shall request a settlement proposal from the contractor and shall attempt to negotiate a settlement that resolves all of the parties' rights and liabilities (except those arising from any portion of the contract still in effect). If the parties negotiate a settlement, the Contracting Officer shall prepare a memorandum describing the principal elements of the settlement and shall include the memorandum in the contract file. If the parties fail to negotiate a settlement within one year from the effective date of termination, the contracting officer shall make a final determination of settlement.

#### **5047 CONTRACT DOCUMENTATION**

5047.1 The Contracting Officer is responsible for maintaining documentation regarding the contract and the procurement.

5047.2 The contract file shall include:

- (a) The solicitation and any amendments;
- (b) The contract and any modifications;
- (c) Any type of documentation that is specifically required to be maintained in the contract file by other sections of this chapter; and
- (d) Any other documentation that may be necessary to memorialize important decisions or events relating to the procurement or the contract.

#### **5048 TRANSFER OF CONTRACTS**

5048.1 Contracts or pending procurements related to the OAG may be transferred by the OAG to any agency or instrumentality of the District in accordance with the provisions of this section.

5048.2 The CCO shall review the proposed procurement or contract and determine whether it is in the best interest of the OAG to transfer the procurement or contract.

5048.3 If the CCO determines it is in the OAG's best interest to transfer a contract or procurement, the Contracting Officer shall have the authority to transfer the contract.

5048.4 Transfer of a contract or procurement shall not operate to transfer funds to support the assigned contract or procurement. Funds shall be transferred pursuant to an intra-District memorandum of understanding, reprogramming, or other appropriate process.

#### **5049 DISPUTES**

5049.1 Each contract entered into by the Contracting Officer shall include a disputes clause that sets forth the procedures by which disputes shall be resolved.

#### **5050 PROTESTS**

5050.1 All protests to the award of a contract by the Contracting Officer shall be resolved in accordance with Section 1003 of the PPRA (D.C. Official Code §-2-360.03).

#### **5051 REQUESTS FOR RECORDS**

5051.1 A request for a record of OAG shall be made to OAG's designated Freedom of Information Officer.

5051.2 OAG's response to a request for a record shall be made in accordance with the provisions of the D.C. Freedom of Information Act (Title II of the District of Columbia Administrative Procedure Act, effective March 29, 1977, as amended, (D.C. Law 1-96; D.C. Official Code §§ 2-531 *et seq.* (2012 Repl.)) ("FOIA Act"), and Title I, Chapter 4 of the D.C. Municipal Regulations.

#### **5052 PRIVACY AND DISCLOSURE**

5052.1 The Contracting Officer shall include in every solicitation and contract the following provisions:

- (a) If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract which document, record, or information may be exempt from disclosure under the FOIA Act, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent;

- (b) If a contractor collects, retains, or has in its possession any document, record, or other information obtained in the performance of a District contract the disclosure of which is prohibited by any District or federal law or regulation, the contractor shall not disclose the document, record, or other information to any person other than an authorized District employee or agent; and
- (c) If a contractor is not sure whether a document, record, or other information may be disclosed, the contractor shall refer the matter to the contracting officer.

**5053****APPLICABLE LAWS**

5053.1 The OAG shall comply with the requirements related to:

- (a) Council review of multiyear contracts and contracts in excess of one million dollars (\$1,000,000) - as set forth in Section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.51); and Council review of multiyear contracts and contracts in excess of one million dollars (\$1,000,000) as set forth in Section 105a of the PPRA.
- (b) Anti-Deficiency Act - The OAG's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii) D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act.
- (c) Other Contracting Laws Applicable to the OAG – District of Columbia Quick Payment Act of 1984, as amended, D.C. Official Code sec. 2-221.01; Living Wage Act of 2006, as amended, D.C. Official Code sec. 2-220.01; SCBEDA Act; as amended, D.C. Official Code sec. 2-218.01 and 2-218.50; First Source Employment Agreement Act of 1984, as amended, D.C. Official Code sec. 2-219.01; Service Contract Act, 41 USC 351(a); Health Insurance Portability and Accountability Act of 1996, P.L. 104-191; the Privacy and Security Rules codified at 45 C.F.R. Parts 160 and 164.



**5054 to 5098 RESERVED****5099 DEFINITIONS**

5099 .1 When used in this chapter, the following terms have the meanings ascribed:

**Accepted or Acceptance** - the act of an authorized representative of the District by which the District, for itself or as agent of another, assumes ownership of existing identified goods tendered or approves specific services rendered or construction completed as partial or complete performance of the contract.

**Actual costs** - amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

**Adequate evidence** - information sufficient to support the reasonable belief that a particular act or omission has occurred.

**Amendment** - any change to a solicitation issued by the contracting officer.

**Attorney General** – the agency head of the Office of the Attorney General (OAG) for the District of Columbia.

**Change order** - a written order signed by the contracting officer directing the contractor to make a change that the contracting officer is authorized to order without the contractor's consent pursuant to the contract.

**Claim** - a written demand or written assertion by the District or a contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

**Contingent fee** - any commission, percentage, brokerage, or other fee that is dependent upon or tied to the success that a person or concern has in securing a District contract.

**Contract** - a mutually binding agreement between the District and a contractor, which must be in writing unless otherwise authorized by the Act, including agreements in which a party other than the District is obligated to pay the contractor.

**Contract modification** - any written change in the terms of a contract.

**Cost** - the amount paid or charged for something. Cost does not include the contractor's profit.

**Cost contract** - a cost-reimbursement contract in which the contractor receives no fee.

**Cost-plus-award-fee contract** - a cost-reimbursement type contract that provides for a fee consisting of an amount fixed at the beginning of the contract and potential award of additional fee amounts based upon a judgmental evaluation by the contracting officer, sufficient to provide motivation for excellence in contract performance.

**Cost-plus-fixed-fee contract** - a cost-reimbursement type contract which provides for the payment of a fixed fee to the contractor. The fixed fee, once negotiated, does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

**Cost-plus-incentive-fee contract** - a cost-reimbursement type contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. After performance of the contract, the fee payable to the contractor is determined in accordance with a negotiated formula.

**Cost-reimbursement contract** - a contract which provides for payment of allowable costs incurred in the performance of a contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligating funds, and establishes a ceiling which the contractor may not exceed (except at its own risk) without prior approval of, or subsequent ratification by, the contracting officer.

**Definitive contract** - the contract executed pursuant to letter contract commitment.

**District of Columbia Supply Schedule** - indefinite quantity contracts made with more than one (1) CBE supplier for comparable goods and services at varying prices.

**Expert** - a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose knowledge and mastery of the principles, practices, problems, methods, and techniques of his or her field or activity, or of a specialized area in the field, are clearly

superior to those usually possessed by ordinarily competent persons in that activity, and whose attainment is such that he or she usually is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession, occupation, or activity.

**Firm-fixed-price contract** - a fixed-price contract that provides for a price that is not subject to any adjustment of the basis of the contractor's cost experience in performing the contract. This type of contract places maximum risk and full responsibility for all costs and resulting profit or loss upon the contractor, and provides maximum incentive for the contractor to control cost and perform effectively.

**Fixed-price contract with economic price adjustment** - a fixed-price contract that provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies that are specifically defined in the contract.

**Incentive contract** - a fixed-price or cost-reimbursement type contract which provides for relating the amount of profit or fee payable under the contract with the contractor's performance in order to obtain specific procurement objectives.

**Indefinite-quantity contract** - a contract that provides for an indefinite quantity, within written stated limits, of specific goods or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. The contract requires the District to order and the contractor to furnish at least a stated minimum of goods or services.

**Inspection** - examining and testing goods, services, or construction to determine whether they conform to contract requirements. This includes, when appropriate, examination and testing of raw materials, components, and intermediate assemblies.

**Labor-hour contract** - a contract that is a variant of the time-and-materials type contract differing only in that materials are not supplied by the contractor.

**Legal services** - Work performed by an attorney or experts or legal support personnel under the supervision of an attorney on behalf of a client, involving law-related matters including, but not limited to: 1) issuing advice or opinions in general or to prepare for or prevent litigation; 2) filing, pleading, and defending present or anticipated administrative, civil, or criminal claims; or 3) mediating, arbitrating, or any other pre or post trial negotiating or alternative dispute resolutions.

**Letter contract** - a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing or delivering goods or performing services. A letter contract is always associated with a definitive contract, and a letter contract by itself cannot be the sole document used for a complete procurement.

**Market survey** - a testing of the marketplace to ascertain whether other qualified sources capable of satisfying the District's requirement exist. It may range from written or telephone contacts with knowledgeable experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (such as technical or scientific journals, or the Commerce Business Daily) or solicitations for information or planning purposes.

**Maximum liability** - the amount, not to exceed fifty percent (50%) of the overall contract price ceiling, obligated by the letter contract over which the District cannot be liable if the letter contract is terminated.

**Multiyear contract** - as used in this chapter, a contract for a period longer than twelve (12) months that is funded by annual appropriations.

**Nonrecurring costs** - those production costs which are generally incurred on a one-time basis and include costs such as plant or equipment relocation, plant rearrangement, pre-production engineering, initial spoilage and rework, and specialized work force training.

**Option** - a unilateral right in a contract under which, for a specified time, the District may elect to extend the term of a contract.

**Person** - any business entity, individual, union, committee, club, or other organization or group of individuals.

**Pre-solicitation** - prior to the transmittal by the District of any proposed contract documents to the proposed contractor before the issuance of a solicitation or in a proposed sole source procurement.

**Price** - the amount the District anticipates it will pay the contractor for full performance under the terms of a contract, including costs and profit.

**Price ceiling** - an amount established during negotiations or at the discretion of the contracting officer which constitutes the maximum that may be paid to the contractor for performance of a contract.

**Procurement planning** - the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling agency needs in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

**Recurring costs** - the production costs that vary with the quantity being produced, such as labor and materials.

**Requirements contract**- a contract that provides for the filling of all actual purchase requirements of designated District agencies for specific goods or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor as required.

**Settlement proposal** - a proposal for effecting settlement of a contract terminated, in whole or in part, submitted by a contractor or subcontractor.

**Subcontractor** - any supplier, distributor, vendor, or firm who furnishes goods, services, or construction to or for a prime contractor or another subcontractor.

**Supplemental agreement** - a bilateral contract modification.

**Term contract** - a requirements contract or an indefinite-quantity contract.

**Termination for default** - the exercise of the District's contractual right to terminate, completely or partially, a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

**Testing** - the element of inspection that determines the properties or elements, including functional operation of goods or their components, by the application of established scientific principles and procedures.

**Time-and-materials contract** - a type of contract that provides for the procurement of goods or services on the basis of direct labor hours at specified fixed hourly rates (which include wages, overhead, general and administrative expenses, and profit) and material at cost.

Persons desiring to comment on these proposed rules should submit comments in writing to Tarifah Coaxum, Chief Administrative Officer, Office of the Attorney General, 441, 4<sup>th</sup> Street, NW, Suite 1100S, Washington, DC 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 a.m. and 5:00 p.m. at the address stated above.

**DISTRICT DEPARTMENT OF ENERGY AND ENVIRONMENT****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING****Permissible Disclosures of Lab Reports**

The Director of the District Department of Energy and Environment (“the Department” or “DOEE”), pursuant to the authority set forth in Section 2006 of the District of Columbia Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190; D.C. Official Code § 7-871.06 (2013 Repl. and 2016 Supp.)); Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2013 Repl. and 2017 Supp.)); and the Transfer of Lead Poison Prevention Program to the District Department of the Environment Amendment Act of 2008, effective August 16, 2008 (D.C. Law 17-219; 55 DCR 7602 (July 18, 2008)), hereby gives notice of the intent to adopt an emergency amendment to Section 7303 (Reporting) of Chapter 73 (Childhood Lead Poisoning Prevention), Title 22-B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

The Director also gives notice of intent to take final rulemaking action to adopt the amendments following a thirty (30) day public comment period.

**Emergency Rulemaking**

This emergency rulemaking action is necessary for the immediate preservation of the public health and welfare of District residents. The rulemaking clarifies that the Childhood Lead Poisoning Prevention Program (CLPPP) is able to share health data necessary to provide services to individuals susceptible to lead-poisoning in the District as well as to enforce violations of the District’s requirements for lead-based paint hazards.

This emergency rulemaking action was adopted on February 23, 2018, and became effective on that date. This emergency rule will expire one-hundred twenty (120) days from that date, on June 23, 2018, or upon the publication of the final rulemaking action, whichever occurs first.

**Proposed Amendments**

The Department is proposing to amend the District’s regulation controlling reporting of blood lead levels in children (22-B DCMR § 7303) to clarify the purposes for which the Department may disclose information contained in laboratory reports prepared pursuant to that section to District and federal agencies and their authorized representatives. Currently, Subsection 7303.7 of the regulations prohibits disclosure of any information contained in a laboratory report to any entity, except as provided elsewhere in Section 7303, without the express consent of a child’s parent or guardian. Section 7303.9 currently allows the Department to disclose the address of a lead-poisoned child, but not the name of the child or any other information contained in the laboratory report, to the Department of Housing and Community Development, the Department of Consumer and Regulatory Affairs, the Housing Authority, and the Water and Sewer

Authority. The inability to share more detailed information regarding lead poisoning in the District with these and other agencies inhibits the Department's ability to coordinate with partners to ensure vulnerable children receive the services to which they are entitled under the Childhood Lead Poisoning Screening and Reporting Act of 2002, effective October 1, 2002 (D.C. Law 14-190; D.C. Official Code § 7-871.01 *et seq.* (2013 Repl. and 2016 Supp.)) and to implement programs to prevent lead poisoning. The Department is proposing this change in order to protect District children from harm or injury resulting from lead exposure.

**Chapter 73, CHILDHOOD LEAD POISONING PREVENTION, Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended to read as follows:**

**Section 7303, REPORTING, is amended as follows:**

- 7303.1 Each time a health care provider or health care facility draws blood or orders a blood draw for a BLL test for a child residing in the District of Columbia, the health care provider or health care facility shall collect and record the information listed in § 7303.3. The provider or facility shall transmit the information to the laboratory performing the BLL analysis at the same time the provider or facility transmits the blood specimen to the laboratory.
- 7303.2 Each laboratory that analyzes a blood sample taken from a child residing in the District of Columbia shall, within a week after completion of the analysis, submit a report that meets the requirements in § 7303.3, as follows:
- (a) The laboratory shall submit a written report to the health care provider or the health care facility where the sample was taken;
  - (b) The laboratory shall submit a report to the Childhood Lead Poisoning Prevention Program (Program), through the Program's electronic reporting system; and
  - (c) The laboratory shall immediately notify the health care provider or the health care facility and the Program of the results by telephone or fax if the child's BLL equals or exceeds ten micrograms of lead per deciliter (10 µg/dL).
- 7303.3 The laboratory reports for BLL tests shall include the following information:
- (a) Full name, date of birth, gender, and race of the child;
  - (b) Medicaid Identification Number of the child, if applicable;
  - (c) Complete home address of the child at the time the blood sample was drawn, including the house or apartment number, street, and zip code;



- (d) Full name, address, and telephone number of the parent or guardian;
- (e) Name, address, and telephone number of the health care provider or health care facility, including the name and telephone number of the physician ordering the test;
- (f) Type of specimen (venous or capillary), and date on which the specimen was drawn;
- (g) Draw site name, address, and telephone number, if different from the health care provider or health care facility;
- (h) Clinical Laboratory Improvement Act (CLIA) number, name, address, and telephone number;
- (i) Blood lead level, in micrograms per deciliter ( $\mu\text{g}/\text{dL}$ );
- (j) Name, address, and telephone number of any insurance company that may provide coverage for the child, and the group number and member identification number of the primary insured; and
- (k) Any other information that may be required in any reporting forms or instructions that the Program may issue.

7303.4 Immediately upon receipt of a laboratory report indicating an elevated BLL in a child, the health care provider or health care facility shall inform the child's parent or guardian of the results and the measures recommended for follow-up treatment and care. Upon request, the provider or facility shall furnish the parent or guardian with a copy of the laboratory report free of charge.

7303.5 Each health care provider or health care facility shall report a lead-poisoned child to the Program as follows:

- (a) Report a lead-poisoned child by telephone within seventy-two (72) hours after receiving information of a lead-poisoned child from a laboratory or another health care provider or health care facility;
- (b) Supply the child's name and address; and
- (c) Supply the name and telephone number of the child's parent or guardian.

7303.6 The health care provider or health care facility shall, upon a parent's or guardian's request, provide to the child's parent or guardian, a certificate of testing for lead poisoning that includes the date of the test, and the test results.

7303.7 Except as provided in this section, each health care provider, health care facility,

laboratory, and the Program shall keep confidential the laboratory report prepared pursuant to this section and the underlying transmittal information from the health care provider or health care facility to the laboratory.

7303.8 An employee or agent of the District Government may disclose the following information concerning a child with an elevated BLL to the owner of the affected property and to the owner's attorney:

- (a) The name of the child;
- (b) The child's home address;
- (c) The name and telephone number of the child's parent or guardian; and
- (d) Any other information contained in a laboratory report prepared pursuant to this section, except that the child's Social Security Number, if provided to the Program, shall not be disclosed to the owner of the affected property or the owner's attorney.

7303.9 An employee or agent of the District Government may disclose the address of an affected property, but not the name of a child who may have become lead-poisoned at the affected property, or any other information contained in a laboratory report prepared pursuant to this section concerning that child, to an individual or business entity retained to conduct lead-based paint activities at the affected property, provided the individual or business entity is certified pursuant to the Lead Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01 *et seq.*).

7303.10 An employee or agent of the District Government may, in a manner that is consistent with federal law and to the extent consistent with other provisions of District law, disclose information contained in a laboratory report prepared pursuant to this section to an agency or authority of the District or United States government, or a person or entity acting under a grant of authority from or contract with such authority or agency, if the disclosure is:

- (a) Required by District or federal law;
- (b) To a public health authority authorized by law to receive the information for the purpose of preventing or controlling disease, injury, or disability;
- (c) Required or authorized by statute or regulation relating to the reporting of abuse, neglect, or domestic violence, if the conditions for disclosure under 45 C.F.R. § 164.512(c)(1) are met;
- (d) To a health oversight agency for oversight activities authorized by law;

- (e) For judicial and administrative proceedings, in response to an order of a court or administrative tribunal, and includes only the information expressly authorized by such order;
- (f) For law enforcement purposes, if the conditions for disclosure under 45 C.F.R. § 164.512(f) are met;
- (g) For research purposes, if the conditions for disclosure under 45 C.F.R. § 164.512(i) are met;
- (h) To prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- (i) For any other purpose for which an entity subject to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d *et seq.*), would be authorized to disclose health information without consent of the individual.

7303.11 Except as provided in this section, no person other than an employee or agent of the Department may disclose the name of the child or any other information contained in a laboratory report prepared pursuant to this section, to any other person without the express consent of the parent or guardian.

Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to [Lead.Regulations@dc.gov](mailto:Lead.Regulations@dc.gov), District Department of Energy and Environment, Lead-Safe and Healthy Housing Division, 1200 First Street, NE, 5<sup>th</sup> Floor, Washington, D.C. 20002 or sent electronically to [Lead.Regulations@dc.gov](mailto:Lead.Regulations@dc.gov). Copies of the proposed rule are available for public review during normal business hours at the offices of the District Department of Energy and Environment or on-line at <http://doee.dc.gov>.

The Department’s policy is that public comments, whether mailed, delivered, submitted electronically on computer disks or in paper, will be made available for public viewing without change on its website as the Department addresses them, unless the comment contains copyrighted material, confidential business information, or other information whose disclosure is restricted by statute. When the Department identifies a comment containing copyrighted material, it will provide a reference to that material on the website. The copyrighted material will be available in hard copy to the public.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2017 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Section 910, entitled “Medicaid-Reimbursable Telemedicine Services,” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Telemedicine services are designed to improve access to healthcare services, improve patient compliance with treatment plans, improve health outcomes through timely disease detection and treatment options; and increase capacity and choice for treatment in the District of Columbia’s Medicaid program. These rules establish standards for governing eligibility for Medicaid beneficiaries receiving health services via telemedicine under the Medicaid fee-for-service program, and establish conditions of participation and reimbursement policies for providers who deliver healthcare services to Medicaid beneficiaries via telemedicine.

In accordance with the Telehealth Reimbursement Act of 2013, effective October 17, 2013 (D.C. Law 20-26; D.C. Official Code § 31-3861 (2013 Repl.)), Medicaid will cover and reimburse healthcare services appropriately delivered through telemedicine if the same services would be covered when delivered in person. These rules establish: (1) eligibility criteria for the receipt of telemedicine services; and (2) conditions of participation for providers who deliver telemedicine services as part of the District of Columbia’s Medicaid program.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who face barriers to accessing Medicaid services. Beneficiaries may be unable to access traditional in-person Medicaid services because they face unique health challenges that make travelling to receive healthcare services difficult, or because a specialty provider is not located in their community or healthcare services area. Telemedicine provides a new service delivery pathway to enable these beneficiaries to receive ongoing Medicaid services via telecommunications. These services will be essential to ensure that beneficiaries will have continued access to health care. Therefore, to ensure that the beneficiary’s health, safety and welfare are not threatened by the lapse in access to ongoing healthcare services provided by qualified providers, it is necessary that these rules be published on an emergency basis.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 8, 2016 at 63 DCR 009435. Four (4) sets of comments were received from the D.C. Department of Behavioral Health, American Speech-Language Hearing Association, Children’s Law Center, and Unity Health Care. DHCF made substantive changes to the rule in response. After a Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 5, 2017 at 64 DCR 004249, one (1) set of comments was received from the District of Columbia

Hospital Association (DCHA). In addition, the D.C. Department of Health (DOH) amended its regulations governing telemedicine services, Chapter 46 of Title 17 of the DCMR. Telemedicine services reimbursed by DHCF must comport with DOH rules. This Third Notice of Emergency and Proposed Rulemaking, accordingly, addresses the following:

1. DCHA recommended that the term “designee” for the originating site provider in Subsection 910.16 be defined. DHCF has added a definition of “designee” to Subsection 910.99;
2. DCHA requested that the Department issue guidance and confirm that the originating site provider does not add the “GT” modifier to their billing codes. On May 16, 2017, DHCF issued Medicaid Update: Transmittal 17-14, that stated “the originating provider does not add the “GT” modifier to their billing codes.” Therefore, no changes to the rule were made;
3. DHCA stated that Subsection 910.16 did not substantiate whether the originating provider will still be able to bill for healthcare services when the originating site provider or designee is not in attendance with the patient, either because it was not determined as clinically indicated or the patient preferred to be unaccompanied. The originating provider cannot submit a claim for reimbursement if they have not rendered a healthcare service or if they are not in attendance as a healthcare service is delivered via telemedicine. As stated in Subsection 910.21, a provider shall not be reimbursed by Medicaid for healthcare services delivered via telemedicine when: a provider is only assisting the beneficiary with technology and not delivering a healthcare service; or the healthcare service is incomplete. Therefore, no changes to the rule were made; and
4. DOH eliminated its requirement that a provider be licensed in the District if the patient is outside of the District. A provider is now required only to be licensed in accordance with the requirements of the jurisdiction in which the patient is located. DHCF amended Subsections 910.6 and 910.9 to reflect the change.

This Third Emergency and Proposed rulemaking was adopted on February 12, 2018 and became effective immediately. The emergency rules will remain in effect for one hundred and twenty (120) days or until, June 12, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *DC Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**A new Section 910, MEDICAID-REIMBURSABLE TELEMEDICINE SERVICES, is added to read as follows:**

**910 MEDICAID-REIMBURSABLE TELEMEDICINE SERVICES**

- 910.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing eligibility for Medicaid beneficiaries receiving healthcare services via telemedicine under the Medicaid fee-for-service program, and to establish conditions of participation for providers who deliver healthcare services to Medicaid beneficiaries via telemedicine.
- 910.2 Telemedicine is a service delivery model that delivers healthcare services as set forth in Subsections 910.10 and 910.11 through a two-way, real time interactive video-audio communication for the purpose of evaluation, diagnosis, consultation, or treatment.
- 910.3 The originating site shall be the place where an eligible Medicaid beneficiary is located at the time the healthcare services furnished for payment via a telecommunications system occurs.
- 910.4 The distant site shall be the place where the eligible Medicaid provider, who furnishes and receives payment for the covered service(s) via a telecommunication system, is located.
- 910.5 To be eligible for Medicaid reimbursement of telemedicine services under these rules, a Medicaid beneficiary shall meet the following criteria:
- (a) Be enrolled in the District of Columbia Medicaid program pursuant to Chapter 95 of Title 29 of the District of Columbia Municipal Regulations;
  - (b) Be physically present at the originating site at the time the telemedicine service is rendered; and
  - (c) Provide written consent to receive telemedicine services in lieu of in-person healthcare services, consistent with all applicable District laws.
- 910.6 A telemedicine provider shall meet the following program requirements:
- (a) Be enrolled as a Medicaid Provider and comply with all the requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR including having a completed, signed, Medicaid Provider Agreement;
  - (b) Comply with all technical, programmatic and reporting requirements as set forth in this section;
  - (c) Be licensed in accordance with Subsection 910.9; and

- (d) Comply with any applicable consent requirements under District laws, including but not limited to Section 3026 of Title 5-E of the District of Columbia Municipal Regulations if providing telemedicine services at a District of Columbia Public School (DCPS) or District of Columbia Public Charter School (DCPCS).

910.7 An originating site provider shall consist of the following provider types:

- (a) Hospital;
- (b) Nursing Facility;
- (c) Federally Qualified Health Center (FQHC);
- (d) Clinic;
- (e) Physician Group/Office;
- (f) Nurse Practitioner Group/Office;
- (g) DCPS;
- (h) DCPCS; and
- (i) Core Service Agency (CSA).

910.8 A distant site provider shall consist of the following provider types:

- (a) Hospital;
- (b) Nursing Facility;
- (c) FQHC;
- (d) Clinic;
- (e) Physician Group/office;
- (f) Nurse Practitioner Group/Office;
- (g) DCPS;
- (h) DCPCS; and
- (i) CSA.

- 910.9 When the provider and patient receiving healthcare services are located in the District of Columbia, all individual practitioners shall be licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl. & 2017 Supp.)). For healthcare services rendered outside of the District, the provider of the services shall meet any licensure requirements of the jurisdiction in which the patient is physically located.
- 910.10 Medicaid reimbursement of healthcare services rendered at the originating site shall include only those healthcare services which are covered under the Medicaid State Plan and implementing regulations.
- 910.11 Medicaid reimbursement of healthcare services rendered at the distant site shall include only the following healthcare services:
- (a) Evaluation and management;
  - (b) Consultation of an evaluation and management of a specific healthcare problem requested by an originating site provider;
  - (c) Behavioral healthcare services including, but not limited to, psychiatric evaluation and treatment, psychotherapies, and counseling; and
  - (d) Speech therapy.
- 910.12 To be eligible for Medicaid reimbursement, a telemedicine provider shall utilize the reimbursement codes designated for telemedicine available at [www.dhcf.dc.gov](http://www.dhcf.dc.gov).
- 910.13 A telemedicine provider shall comply with the following technology requirements:
- (a) Use a camera that has the ability to, either manually or by remote control, provide multiple views of a patient and has the capability of altering the camera's resolution, and focus as needed during the consultation;
  - (b) Use audio equipment that ensures clear communication and includes echo cancellation;
  - (c) Ensure internet bandwidth speeds sufficient to provide quality video to meet or exceed fifteen (15) frames per second;
  - (d) Use a display monitor size sufficient to support diagnostic needs used in the telemedicine services; and
  - (e) Use video and audio transmission equipment with less than a three hundred (300) millisecond delay.



- 910.14 Effective January 1, 2017, DHCF shall send a Telemedicine Program Evaluation survey to providers, no more than every three (3) months, via email or regular US mail. A provider shall have thirty (30) calendar days to respond to the survey via email or regular US mail.
- 910.15 A telemedicine provider shall develop a confidentiality compliance plan in accordance with Health Insurance, Portability, and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191, 110 Stat. 1936) (HIPAA) administrative simplification guidance from the Department of Health and Human Services, Office of Civil Rights, available at: <http://www.hhs.gov/sites/default/files/hipaa-simplification-201303.pdf> to incorporate appropriate administrative, physical, and technical safeguards around data encryption (both for data in transit and at rest) and to protect the privacy of telemedicine participants and ensure compliance with the HIPAA and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5, §§ 13001-424, 123 Stat. 226).
- 910.16 When clinically indicated, an originating site provider or its designee shall be in attendance during the patient's medical encounter with the distant site professional. An originating site provider shall not be required to be in attendance when the beneficiary prefers to be unaccompanied because the beneficiary feels the subject is sensitive. Sensitive topics may include counselling related to abuse, or other psychiatric matters. An originating site provider shall note their attendance status in the patient's medical record.
- 910.17 When DCPS or DCPCS is the originating site provider, a primary support professional shall be in attendance during the patient's medical encounter, consistent with Subsection 910.16.
- 910.18 A primary support professional is an individual designated by the school to provide supervisory services for school-based healthcare services. A primary support professional includes a paraprofessional, classroom teacher, resource room staff, library media specialist, and any other certified or classified school staff member.
- 910.19 Each telemedicine provider shall maintain complete and accurate beneficiary records of services provided (not to include videos) for each beneficiary that document the specific healthcare services provided to each beneficiary for a period of ten (10) years or until all audits are completed, whichever is longer.
- 910.20 All beneficiary, personnel and telemedicine program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable, upon request, for inspection and review or audit by DHCF, the federal Centers for

Medicare and Medicaid Services, and other authorized government officials or their agents.

- 910.21 A provider shall not be reimbursed by Medicaid for healthcare services delivered via telemedicine when:
- (a) A provider is only assisting the beneficiary with technology and not delivering a healthcare service; or
  - (b) The healthcare service is incomplete.
- 910.22 Reimbursement shall be prohibited for an incomplete healthcare service when the service is not fully rendered due to technical interruptions or other service interruptions resulting in the partial delivery of care.
- 910.23 Telemedicine providers shall be subject to the standard billing practices that are in place for the healthcare services provided in accordance with the relevant regulations, policies, or transmittals issued by the DHCF.
- 910.24 Where a FQHC provides any of the allowable healthcare services described within this Section at the originating or distant site, the FQHC shall be reimbursed at the applicable rate, prospective payment system (PPS), alternative payment methodology (APM), or fee-for-service rate, consistent with Chapter 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 DCMR and Subsection 910.27.
- 910.25 If an FQHC is both the originating and distant site provider, and both sites deliver the same healthcare service as outlined in Subsection 910.24, only the distant site will be eligible for reimbursement.
- 910.26 In accordance with the DCPS/DCPCS Medicaid payment methodology, when DCPS or DCPCS provides any of the allowable healthcare services at the originating or distant site, the provider shall only be reimbursed for distant site healthcare services that are Medicaid eligible and are to be delivered in a licensed education agency.
- 910.27 In accordance with the Mental Health Rehabilitation Services Medicaid payment regulations under Chapter 54 of Title 29 DCMR, and consistent with Chapter 34 of Title 22-A DCMR, when an originating site and a distant site are CSAs, and the same provider identification number is used for a serviced delivered via telemedicine, only the distant site provider shall be eligible for reimbursement of the allowable healthcare services described within this section.
- 910.28 Telemedicine providers shall not be reimbursed for a telemedicine transaction fee and/or facility fee.

910.29 Telemedicine providers shall not be reimbursed for store and forward and remote patient monitoring.

**910.99 DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed below:

**Bandwidth** - A measure of the amount of data that can be transmitted at one time through a communication conduit

**Core Service Agency** - A Department of Behavioral Health (DBH) certified community-based mental health provider that has entered into a Human Care Agreement with DBH to provide specified mental health rehabilitation services.

**Data Encryption** - The conversion of electronic data into another form which cannot be easily understood by anyone except authorized parties.

**Designee** - A person designated by the provider based on the person's clinical or administrative qualification to facilitate the delivery of health services by way of telemedicine at the originating site.

**Echo Cancellation** - A process which removes unwanted echoes from the signal on an audio and video telecommunications system.

**Facility Fee** - An add-on payment to a provider for the use of their facility for telemedicine.

**Fee-For-Service Program** - A healthcare payment system that provides Medicaid reimbursement to providers in accordance with a fee schedule, rather than through a Managed Care Organization.

**Incomplete Service** - A healthcare service that is not fully rendered for reasons to include any technical interruptions or other service interruptions that result in the partial delivery of care.

**Medical Encounter** - A healthcare service delivered through a through a two-way, real time, interactive video-audio communication system.

**Remote Patient Monitoring** - A digital technology that collects medical and/or health data from individuals in one location and electronically transmits that information securely to health care providers in a different location for assessment and recommendations.

**Store and Forward** - A technology that allows for the electronic transmission of medical information, such as digital images, documents, and pre-recorded videos through secure email transmission.

**Supervisory Services** – The oversight of services delivered via telemedicine by a primary support professional at the originating site.

**Transaction Fee** - An add-on payment to a provider for delivering a healthcare service via telemedicine.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, N.W., Suite 900, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-020  
February 16, 2018

**SUBJECT:** Appointment – Interim Deputy Mayor for Education

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 202 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 § 38-191 (2012 Repl. and 2017 Supp.), it is hereby **ORDERED** that:

1. **AHNNA SMITH** is appointed Interim Deputy Mayor for Education, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-084, dated March 16, 2015.
3. **EFFECTIVE DATE:** This Order shall be effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

## ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-021  
February 20, 2018

**SUBJECT:** Appointment - Director, Department of Small and Local Business Development

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 2312 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005, D.C. Law 16-33, D.C. Official Code § 2-218.12 (2016 Repl.), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl. and 2017 Supp.), and pursuant to the Director of the Department of Small and Local Business Development Kristi C. Whitfield Confirmation Resolution of 2017, effective February 6, 2018, R22-0406, it is hereby **ORDERED** that:

1. **KRISTI C. WHITFIELD** is appointed Director, Department of Small and Local Business Development, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2017-294, dated November 8, 2017.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to February 6, 2018.

  
MURIEL BOWSER  
MAYOR

ATTEST:

  
LAUREN C. VAUGHAN

SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2018-022  
February 21, 2018

**SUBJECT:** Delegation – Authority of the Chancellor of the District of Columbia Public Schools

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2), (3), and (4) of the District of Columbia Home Rule Act, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22(2), (3), and (4) (2016 Repl.), and section 103 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 § 38-172 (2012 Repl.), it is hereby **ORDERED** that:

1. **AMANDA ALEXANDER, Ph.D.**, Chief of Elementary Schools for the District of Columbia Public Schools (“**DCPS**”), is delegated the powers and duties of the Chancellor of DCPS (“**Chancellor**”) and shall exercise those powers and duties during any absence of the Chancellor.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.
3. **SUNSET:** The delegation of authority under this Order shall expire on March 7, 2018.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES****NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet on March 1, 2018, at 11:00 a.m. at the D.C. Rental Housing Commission, 441 4<sup>th</sup> Street, NW Suite 1140B North, Washington, DC in order to consider the reappointments of one Administrative Law Judge. The members will vote to close a portion of the meeting pursuant to D.C. Code § 2-575(b)(10), which permits closed meetings in order to “discuss the appointment, employment, assignment, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.” The agenda below will be posted on the OAH website at [www.oah.dc.gov](http://www.oah.dc.gov) and the Office of Open Government/BEGA website at [www.open-dc.gov](http://www.open-dc.gov).

For further information, please contact Nikki Steele at [Nikki.Steele@dc.gov](mailto:Nikki.Steele@dc.gov) or 202-741-5303.

**AGENDA**

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Executive Session (non-public). Vote to enter closed session to discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(10).**
  - a) Discussion regarding reappointment of Administrative Law Judge:**
    - a. Audrey Jenkins**
- V. Resumption of Public Meeting**
- VI. Discussion of Next Meeting**
- VII. Adjournment (Board Chair)**



**DISTRICT OF COLUMBIA  
OFFICE OF THE MAYOR  
OFFICE ON AGING**

**NOTICE OF FUNDING AVAILABILITY**

**Fiscal Year 2019 Senior Transportation  
Program Grant**

The Government of the District of Columbia, Office on Aging (DCOA) is soliciting applications from qualified applicants to operate the DC Office on Aging Senior Transportation Programs. DCOA transportation programs provide quality transportation services for District residents 60 years and older to 1) essential medical and life-sustaining appointments, 2) adult daycare centers, wellness centers, group trips and special events, 3) administration and operation of the Debit Card program and 4) the delivery of Home Delivered Meals (HDM). The Request for Application (RFA) seeks an organization(s) with strong capacity and a track record of excellent customer service. An existing fleet to operate the programs is preferred.

Federal and District of Columbia appropriated funds up to \$6,000,000 are available for a single or collaborative applicant organization to operate one or up to four transportation services. There is no match requirement. However, applicants must demonstrate tangible resources to sustain at minimum three months operations cost. The successful applicant must put participant contributions back into the program to serve more participants.

The successful applicant(s) will design services to meet a variety of evolving needs of the city's diverse elderly population, especially older individuals with the greatest economic and social needs, and other underserved populations. The successful applicant(s) will manage its fleet and implement services that remove transportation barriers for seniors with disabilities, while linking them to affordable, on demand and gap-filling transportation that enhance their physical, social and emotional well-being through connectivity to sites and activities in and around the city, medical appointments, and HDM delivery.

**Service Areas**

Applicants responding to this RFA shall be responsible for delivering transportation services to the target population in four service areas:

- ❖ *Service Component One: Essential Medical Transportation;*
- ❖ *Service Component Two: Transportation to DCOA Funded Sites and Activities;*
- ❖ *Service Component Three: Debit Card Transportation Services; and*
- ❖ *Service Component Four: Transportation of Home Delivered Meal Service*

## Priority Services

Applicant's responsibilities include but are not limited to:

- ensuring safe and reliable transportation operation in all weather conditions with few black-out dates;
- providing daily essential medical and life-sustaining transportation daily for a minimum of 4,898 participants through the year;
- transporting, at minimum, 75 enrolled participants daily to three (3) adult day centers and transporting enrolled seniors at 47-weekday community dining sites located in eight wards including seniors who are hearing and visually impaired to sites and activities;
- transporting approximately 60 seniors to a city-wide weekend community dining site in Ward 7;
- coordinating with local transportation providers to fund debit card transport services requiring no reservations for approximately 318 seniors annually;
- coordinating and implementing weekday and weekend meal delivery services for approximately 463 homebound seniors;
- developing senior-friendly service enhancements and innovations that provide access and ease of using transportation;
- establishing an ongoing process to keep seniors informed and aware of transportation options, as well as, rider subsidy programs; and
- track service data in the DCOA database and submit complete, accurate and timely reports as required.

Non-profit organizations with places of business within the physical boundaries of the District of Columbia are eligible to apply. For-profit organizations with places of business within the physical boundaries of the District of Columbia are also eligible to apply, but must not include profit-making that accrues back to their organization in their grant application.

The RFA will be released February 28, 2018. The application submission deadline is April 9, 2018, at 2:30 PM EST. A Pre-Application Workshop is scheduled for 10:30 AM EST on March 5, 2018, at 500 K Street, NE, Washington, DC 20002, First-floor conference room. The RFA will also be available in the Office on Aging's website, [www.dcoa.dc.gov](http://www.dcoa.dc.gov) and the Office of Partnerships and Grants Development's website, [www.opgd.dc.gov](http://www.opgd.dc.gov), no later than March 2, 2018, after publication in the DC Register.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, FEBRUARY 28, 2018  
2000 14<sup>TH</sup> 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-00005;** Bar Illusion, LLC, t/a TLT, 5213 Georgia Ave NW  
License #108315, Retailer CT, ANC 4D  
**Application for a New License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 18-PRO-00004;** ANB with Double H, LLC, t/a French 75, 1400 14th  
Street NW, License #108192, Retailer CT, ANC 2F  
**Application for a New License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 18-PRO-00003;** BANPH, LLC, t/a Players Club, 1400 14th Street NW  
License #108190, Retailer CT, ANC 2F  
**Application for a New License**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 17-CMP-00683;** Kiss, LLC, t/a Kiss Tavern, 637 T Street NW, License  
#104710, Retailer CT, ANC 1B  
**Violation of Settlement Agreement**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 17-CMP-00682;** Mimi & D, t/a Vita Restaurant and Lounge/Penthouse  
Nine, 1318 9th Street NW, License #86037, Retailer CT, ANC 2F  
**Failed to Comply with Board Order**

Board's Calendar  
February 28, 2018

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

**Case # 17-CMP-00459;** Green Island Heaven and Hell, Inc., t/a Green Island Café/Heaven & Hell, 2327 18th Street NW, License #74503, Retailer CT, ANC 1C

**Violation of Settlement Agreement**

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

**Case # 17-CMP-00680;** Debebe Addis, t/a Mesobe Restaurant and Deli Market 1853 7th Street NW, License #81030, Retailer CR, ANC 1B

**Operating after Hours**

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

**Case # 17-CMP-00659;** Jun King Provisions, Inc., t/a Full Kee Restaurant 509 H Street NW, License #73951, Retailer CR, ANC 2C

**Failed to File Quarterly Statement**

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

512 Rhode Island Ave, LLC, t/a Grapes n' Hopes Market, 512 Rhode Island Ave NW, License #77268, Retailer B, ANC 6E

**Request to place license in Safekeeping**

**Show Cause Hearing\* 11:00 AM**

**Case # 17-CMP-00494;** Big Chair, LLC, t/a Cheers @ The Big Chair, 2122 Martin Luther King, Jr Ave SE, License #85903, Retailer CR, ANC 8A

**No ABC Manager on Duty**

**BOARD RECESS AT 12:00 PM**

**ADMINISTRATIVE AGENDA**

**1:00 PM**

**Show Cause Hearing\* 1:30 PM**

**Case # 16-AUD-00086;** Skenco, Inc., t/a Zorba's Café, 1612 20th Street NW License #7428, Retailer DR, ANC 2B

**Failed to Maintain on Premises Three Years of Adequate Books and Records Showing All Sales**

**Protest Hearing\* 2:30 PM**

**Case # 17-PRO-00071;** Giant of Maryland, LLC, t/a Giant #2381, 300 H Street NE, License #91952, Retailer B, ANC 6C

**Application to Renew the License**

**Protest Hearing 4:30 PM**

**Case # 17-PRO-00080;** Sun Rising, Inc., t/a 7 Food Store, 1830 Benning Road NE, License #93817, Retailer B, ANC 5D

**Application to Renew the License**

Board's Calendar  
February 28, 2018

**Protest Hearing**

**4:30 PM**

**Case # 17-PRO-00073**, YD Progress, LLC, t/a Lucky Corner Store, 5433  
Georgia Ave NW, License #93115, Retailer B, ANC 4D

**Application to Renew the License**

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
CANCELLATION AGENDA

WEDNESDAY, FEBRUARY 28, 2018  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-076074 – **Circa at Dupont** – Retail – C – Restaurant – 1601 Connecticut Avenue NW  
[Licensee requested cancellation.]

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ABRA-089763– **Merlot’s Masterpiece** – Retail – D – Multipurpose – 1512 U Street NW  
[Licensee requested cancellation.]

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ABRA-025526 – **Café Ole** – Retail – C – Restaurant – 4000 Wisconsin Avenue NW  
[Licensee agreed to surrender the license for cancellation during a Board hearing. See Board Order No. 2018-042.]

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ABRA-082376– **Lena Market** – Retail – B – 1206 Underwood Street NW  
[The Board dismissed the Licensee’s renewal application in December, 2017, and the Licensee did not seek reinstatement.]

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, FEBRUARY 28, 2018  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On Wednesday, February 28, 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# 17-CMP-00726, Capital Hilton Hotel (The), 1001 16<sup>th</sup> Street N.W., Retailer CH,  
License # ABRA-088499

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2. Case# 17-CC-00142, 7-Eleven, 1101 South Capitol Street S.W., Retailer B, License # ABRA-026520

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3. Case# 17-CMP-00727, Le Pain Quotidien, 800 17<sup>th</sup> Street N.W., Retailer DR, License # ABRA-087083

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4. Case# 17-CC-00107, DC Mini Supermarket, 1828 1<sup>st</sup> Street N.W., Retailer B, License # ABRA-094430

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5. Unlicensed Establishment, Ana’s Restaurant, 3217 Georgia Avenue N.W.

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6. Case# 17-251-00250, Ambassador Restaurant, 1907 9<sup>th</sup> Street N.W., Retailer CR, License # ABRA-090422

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7. Case# 17-CC-00123, Charles Corner, 2600 Wade Road S.E., Retailer B, License # ABRA-094783

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8. Case# 17-CC-00135, Washington DC Marriott Wardman Park Hotel, 2600 Woodley Road N.W., Retailer CH, License # ABRA-073292

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9. Case# 17-CMP-00728, The Elroy, 1423 H Street N.E., Retailer CT, License # ABRA-096771

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10. Case# 17-251-00251, El Rey, 919 U Street N.W., Retailer CT, License # ABRA-086604

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11. Case# 17-CMP-00720, Eleven Market, 1936 11<sup>th</sup> Street N.W., Retailer B, License # ABRA-060236

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12. Case# 18-CMP-00015, 1618 Liquor and Grocery Cold Beer and Wine, 1618 8<sup>th</sup> Street N.W., Retailer A, License # ABRA-084582

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13. Case# 17-CC-00143, Montana Liquors, 1801 Montana Avenue N.E., Retailer A, License # ABRA-097473

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14. Case# 17-CC-00146, DC Food Market, 2200 16<sup>th</sup> Street S.E., Retailer B, License # ABRA-106962

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15. Case# 17-CMP-00701, Bravo Lounge, 2917 Georgia Avenue N.W., Retailer CT, License # ABRA-092059

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, FEBRUARY 28, 2018 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 6C. SMD 6C05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Micho's*, 500 H Street NE, Retailer CR, License No. 094784.

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2. Review Application for Safekeeping of License – Original Request. ANC 5E. SMD 5E07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Han's Market*, 1942 1st Street NW, Retailer B Grocery, License No. 103200.

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3. Review Application for Safekeeping of License – Original Request. ANC 1C. SMD 1C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Zenebech Restaurant*, 2420-2422 18<sup>th</sup> Street NW, Retailer CR, License No. 106670.

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4. Review Application for Safekeeping of License – Original Request. ANC 2A. SMD 2A02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Bayou*, 2519 Pennsylvania Avenue NW, Retailer CT, License No. 078057.

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5. Review Request for Change of Hours of alcoholic beverage sales. *Approved Hours of Operation*: Sunday-Saturday 7am to 12am. *Approved Hours of Alcoholic Beverage Sales*: Sunday-Saturday 9am to 10pm. *Proposed Hours of Alcoholic Beverage Sales*: Sunday-Saturday 9am to 12am. ANC 1C. SMD 1C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Rioja Market*, 1824 Columbia Road NW, Retailer B, License No. 103124.

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6. Review Request for Change of Hours of Sidewalk Café operation and alcoholic beverage service. *Approved Hours of Operation for Sidewalk Café:* Sunday-Thursday 8am to 11pm, Friday-Saturday 8am to 12am. *Approved Hours of Alcoholic Beverage Sales and Consumption for Sidewalk Café:* Sunday-Thursday 10am to 11pm, Friday-Saturday 10am to 12am. *Proposed Hours of Operation for Sidewalk Café:* Sunday-Thursday 8am to 12am, Friday-Saturday 8am to 1am. *Proposed Hours of Operation for Sidewalk Café:* Sunday-Thursday 10am to 12am, Friday-Saturday 10am to 1am. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Duke's Grocery*, 1513 17<sup>th</sup> Street NW, Retailer CR, License No. 092298.
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7. Review Request for Entertainment Endorsement to provide Live Entertainment with Dancing inside the premises only. *Proposed Hours of Live Entertainment:* Sunday-Wednesday 11am to 12am, Thursday-Saturday 11am to 1am. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *The Darcy Hotel*, 1515 Rhode Island Avenue NW, Retailer CH, License No. 102437.
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8. Review Request to expand operations to the second floor of the licensed premises, increasing seating from 15 to 28, and increasing Total Occupancy Load from 15 to 29. ANC 1D. SMD 1D04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Suns Cinema*, 3107 Mount Pleasant Street NW, Retailer CT, License No. 098888.
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9. Review Request to increase Total Occupancy Load of the licensed premises from 44 to 89 patrons. ANC 4A. SMD 4A02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Champion Kitchen*, 7730 Georgia Avenue NW, Retailer CR, License No. 103055.
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**\*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.**

## DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE

The Director of the Department of Behavioral Health (DBH), pursuant to the authority set forth in sections 5113, 5115, 5117, 5118 and 5119 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06, 7-1141.07 and 7-1141.08)(2013 Supp.), hereby gives notice that effective upon publication of this Notice, DBH will accept new applications for Mental Health Community Residence Facilities. The Department is seeking applicants for up to twelve (12) Transitional Supportive Residence (TSR) beds and eight (8) Supportive Rehabilitative Residence (SRR) beds. Applicants shall apply in accordance with Title 22-B, D.C. Municipal Regulation, Chapter 38. Successful applicants must meet all contract requirements as determined by the Department's Office of Contracting and Procurement prior to receiving a Human Care Agreement and per diem payments in accordance with Title 22-A, D.C. Municipal Regulation, Chapter 57. Award of a Human Care Agreement is subject to availability of funds.

In evaluating applicants, the Department shall consider the following: (a) the ability of the applicant to meet the requirements of Title 22-B, D.C. Municipal Regulation, Chapter 38; (b) the quality and handicap accessibility of an applicant's facility; (c) the quality of an applicant's programming; (d) an applicant's record of compliance with Chapter 38 in regards to other licensed facilities; and (e) the facility's proximity to metro transit and community-based activities that are conducive to a healthy and independent lifestyle.

All prior moratoriums on granting new MHCRF licenses are hereby rescinded.

If you have any questions or would like to request an application, you may contact Sheila Kelly, Director of Licensure, District of Columbia Department of Behavioral Health, 64 New York Ave., NE, 3rd Floor, Washington, D.C. 20002 – 4347, (202) 673-3516, [Sheila.kelly@dc.gov](mailto:Sheila.kelly@dc.gov).

**CENTER CITY PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS**

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

Center City PCS would like to engage one contractor to build a playground at the Petworth Campus.

To obtain copies of full RFP's, please visit our website: [www.centercitypcs.org](http://www.centercitypcs.org). The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

Contact person:

Natasha Harrison  
nharrison@centercitypcs.org

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

**SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS**

**March 2018**

<b>CONTACT PERSON</b>	<b>BOARDS AND COMMISSIONS</b>	<b>DATE</b>	<b>TIME/ LOCATION</b>
Grace Yeboah Ofori	Board of Accountancy	2	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	21	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	16	8:30 am-1:00 pm
Andrew Jackson	Board of Barber and Cosmetology	5	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	15	7:00-pm-8:30 pm
Brittani Strozier	Board of Funeral Directors	1	12:00pm-4:00 pm
Avis Pearson	Board of Professional Engineering	22	9:00 am-1:30 pm
Patrice Richardson	Real Estate Commission	13	8:30 am-1:00 pm
Jennifer Champagne	Board of Industrial Trades	20	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4<sup>th</sup> St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**Board of Architecture and Interior Design  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 16, 2018  
9:30 AM**

1. Call to Order – 9:30 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, January 26, 2018
7. Executive Session (Closed to the Public) The Board entered into an executive session at 10:06 am (closed to the public) pursuant to D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-575(b)(13) to deliberate upon a decision in an adjudication action or proceeding and to discuss:
  - a. Applications
  - b. Complaints
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 20, 2018 at 9:30 a.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**Board of Real Estate Appraisers  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 21, 2018  
10:00 AM**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, February 21, 2018
7. Executive Session (Closed to the Public) The Board entered into an executive session at 10:06 am (closed to the public) pursuant to D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-575(b)(13) to deliberate upon a decision in an adjudication action or proceeding and to discuss:
  - a. Applications
  - b. Complaints
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 18, 2018 at 10:00 a.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**DC Board of Accountancy  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**Friday, March 2, 2018  
9:00 AM**

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session - Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 2, 2018 - Recess



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**DC Board of Barber and Cosmetology  
1100 4<sup>th</sup> Street SW, 3rd floor conference room  
Washington, DC 20024**

**Meeting Agenda  
Monday, March 5, 2018  
10:00 a.m.**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Applications for Licensure
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn

Next Scheduled Board Meeting – April 2, 2018

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**D.C. Board of Funeral Directors  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**Thursday, March 01, 2018  
1:00 PM.**

1. Call to Order – 1:00 p.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. 2/1/2018 Meeting Minutes
6. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b) (4) (A); D.C. Official Code § 2-575(b) (9) (13) (14) to discuss complaints/legal matters, applications and legal counsel report.
  - A. Applications
  - B. Complaints/Investigation
7. Old Business
8. New Business
9. Adjourn
10. Next Scheduled Board Meeting –April 5, 2018 at 1:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**District of Columbia Board of Industrial Trades  
1100 4<sup>th</sup> Street, S.W., Room 300  
Washington, D.C. 20024**

**AGENDA  
March 20, 2018**

1. Call to Order – 1:00 p.m.
2. Minutes - Draft, February 20, 2018
3. Comments from the Public
4. Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code §2-575(b)(4)(A); D.C. Official Code 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
5. Recommendations
6. Old Business
7. New Business
8. Adjourn

Next Scheduled Regular Board Meeting, April 17, 2018  
1100 4<sup>th</sup> Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**District of Columbia Board of Professional Engineers  
1100 4<sup>th</sup> Street SW, Room 380  
Washington, DC 20024**

**AGENDA**

**March 22, 2018 ~ Room 300  
10:00 A.M. (Application Review by Board Members)**

**11:00 A.M.**

- 1) Call to Order – 11:00 a.m.
- 2) Attendance
- 3) Executive Session - Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session – Closed to the Public
  - Deliberation over applications for licensure
  - Review complaints and investigations
- 4) Comments from the Public
- 5) Review of Minutes
- 6) Recommendations
  - Applications for Licensure
  - Legal Committee Report
- 7) Old Business
- 8) New Business
- 9) Adjourn

**Next scheduled meeting – April 26, 2018**

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**D.C. Boxing and Wrestling Commission  
1100 4<sup>th</sup> Street SW, Room E200  
Washington, DC 20024**

**MEETING AGENDA**

**March 15, 2018  
7:00 PM.**

1. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
2. Call to Order – 7:00 p.m.
3. Members Present
4. Staff Present
5. Comments from the Public
6. Review of Correspondence
7. Approval of Minutes
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – April 19, 2017 at 7:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

**NOTICE OF PUBLIC MEETING**

**Real Estate Commission  
1100 4<sup>th</sup> Street SW, Room E300  
Washington, DC 20024**

**MEETING AGENDA**

**March 13, 2018  
10:00 AM**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, February 13, 2018
7. Executive Session (Closed to the Public) pursuant to the authority of D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-775(b)(13) to deliberate upon a decision in an adjudication action or proceeding
  - A. Legal Committee Recommendations
  - B. Review – Applications for Licensure
8. Old Business
9. New Business
10. Adjourn

Next Scheduled Board Meeting – April 10, 2018 at 10:00 a.m.

## OFFICE OF THE DEPUTY MAYOR FOR EDUCATION

NOTICE OF PUBLIC MEETING  
COMMISSION ON OUT OF SCHOOL TIME GRANTS AND YOUTH  
OUTCOMES

The Commission on Out of School Time Grants and Youth Outcomes will hold the inaugural public meeting on Monday, February 26, 2018 from 6:00 pm to 7:30 pm in the Old Council Chamber located at One Judiciary Square, 441 4<sup>th</sup> Street, First Floor. The OST Commission will discuss the bylaws for the OST Commission, nomination of officers, hear from the DC Policy Center on the Needs Assessment and discuss the steps for the strategic plan. The Needs Assessment can be accessed on the D.C. Policy Center's website and reviewed at <https://www.dcpolicycenter.org/wp-content/uploads/2017/10/FINAL-OST-NEEDS-ASSESSMENT.OCTOBER2017-1.pdf>

Individuals and representatives of organizations who wish to comment at a public meeting are asked to notify the OST Office in advance by phone at (202) 481-3932 or by email at [learn24@dc.gov](mailto:learn24@dc.gov). Individuals should furnish their names, addresses, telephone numbers, and organizational affiliation, if any, and if available, submit one electronic copy of their testimony by the close of business on Wednesday, February 21 at 5:00 pm.

Below is the draft agenda for the meeting.

- I. Call to Order
- II. Public Comment
- III. Announcement of a Quorum
- IV. Introduction of Commissioners
- V. Approval of the Agenda
- VI. Comments from the Executive Director, Office of Out of School Time Grants and Youth Outcomes
- VII. Draft Bylaws
- VIII. Nomination of Officers
- IX. Annual Schedule
- X. D.C. Policy Center Needs Assessment presentation
- XI. Strategic Plan Process
- XII. Adjournment

The Office of Out of School Time Grants and Youth Outcomes (OST Office) and the Commission on Out of School Time Grants and Youth Outcomes (OST Commission) support the equitable distribution of high-quality, out-of-school-time programs to District of Columbia youth through coordination among government agencies, grant-making, data collection and evaluation, and the provision of technical assistance to service providers. The OST Commission's purpose is to develop a District-wide strategy for equitable access to out-of-school-time programs and to facilitate interagency planning and coordination for out-of-school time programs and funding.

**Date:** February 26, 2018

**Time:** 6:00 p.m. – 7:30 p.m.

**Location:** One Judiciary Square  
Old Council Chamber (First Floor)  
441 4<sup>th</sup> Street, NW  
Washington, DC 20001

**Contact:** Debra Eichenbaum  
Grants Management Specialist  
Office of Out of School Time Grants and Youth Outcomes  
Office of the Deputy Mayor for Education  
(202) 478-5913  
Debra.eichenbaum@dc.gov



## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

## DISTRICT OF COLUMBIA HIGHER EDUCATION LICENSURE COMMISSION

## NOTICE OF 2018 PUBLIC MEETINGS AND WORKING SESSIONS

Pursuant to the Higher Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; 23 D.C. Reg. 8734; D.C. Official Code § 38-1301 *et seq.*), and the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.*), the Higher Education Licensure Commission (“Commission”) hereby announces the public meetings and working sessions for 2018. All public meetings and working sessions will take place at 1050 1<sup>st</sup> Street, NE Washington DC 20002:

Date	Day	Time	Type	Location
March 1, 2018	Thursday	9:30 am – 4pm	Executive/Public	Room: Eleanor Holmes Norton I (108)
April 12, 2018	Thursday	10am – 2pm	Work	Room: Bloomingdale (623)
May 3, 2018	Thursday	9:30 am – 4pm	Executive/Public	Room: Eleanor Holmes Norton I (108)
June 7, 2018	Thursday	10am – 2pm	Work	Room: Deanwood (524)
July 12, 2018	Thursday	9:30 am – 4pm	Executive/Public	Room: Eleanor Holmes Norton I (108)
AUGUST	RECESS		NO MEETING	
September 13, 2018	Thursday	9:30 am – 4pm	Executive/Public	Room: TBD
October 4, 2018	Thursday	10am – 2pm	Work	Room: TBD
November 1, 2018	Thursday	9:30 am – 4pm	Executive/Public	Room: TBD
December 6, 2018	Thursday	10am – 2pm	Work	Room: TBD

Additionally, the 2018-New Applicant Workshops will take place on the following dates:

Date	Day	Time	Location
February 15, 2018	Thursday	10am – 12 noon	Room: Nannie Helen Burroughs (523)
March 15, 2018	Thursday	10am – 12 noon	Room: Mary Church Terrell (324) and Kenilworth (325)
May 17, 2018	Thursday	10am – 12 noon	Room: Nannie Helen Burroughs (523)
July 26, 2018	Thursday	10am – 12 noon	Room: Nannie Helen Burroughs (523)
September 20, 2018	Thursday	10am – 12 noon	Room: TBD
November 15, 2018	Thursday	10am – 12 noon	Room: TBD

For additional information, please contact: the Executive Director of the Education Licensure Commission, Angela Lee at (202) 724-2095 or at [Angela.Lee@dc.gov](mailto:Angela.Lee@dc.gov).

**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC, intends to issue an air quality permit (No. 7189) to the United States Government Publishing Office (GPO) to operate a Ryobi 928PF non-heatset UV-LED sheet-fed offset lithographic printing press in Building C of the GPO complex at 732 North Capitol Street NW, Washington DC 20401. The contact person for the applicant is Lonny E. Beal, CSP, Safety and Occupational Health Manager, at (202) 512-0537.

The proposed overall emission limits for the equipment are as follows:

- a. No visible emissions shall be emitted from this equipment. [20 DCMR 201 and 20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

It should be noted that emissions are primarily minimized from this type of equipment by operational limitations and procedures set forth in the permit, rather than from explicit emission limits.

Maximum potential emissions from the unit is expected to be as follows:

<b>Pollutant</b>	<b>Estimated Maximum Annual Emissions (tons/yr)</b>
Volatile Organic Compounds (VOC)	3.460
Total Hazardous Air Pollutants (HAP)	0.246

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the draft permit and any request for a public hearing should be addressed to:

Stephen S. Ours  
Chief, Permitting Branch  
Air Quality Division  
Department of Energy and Environment  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No comments or hearing requests submitted after March 26, 2018 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**  
Lobbyist Registration for Filing Year 2018 as of February 12, 2018

Registrations may be viewed at:  
<https://efiling.bega-dc.gov/efs/LobbyistRegistrationSearch.aspx>

Registered User	Registrant Name	Client Name	Address
AARP	AARP		601 E Street NW Washington District of Columbia 20049
ABC of Metro Washington	ABC of Metro Washington		6901 Muirkirk Meadows Drive, Suite F Beltsville Maryland 20705
Accenture LLP	Accenture LLP		800 Connecticut Avenue NW Washington District of Columbia 20006
Ace Cash Express	Ace Cash Express, Inc.		1231 Greenway Drive, Suite 600 Irving
Airbnb, Inc.	Airbnb, Inc.		999 Brannan Street San Francisco California 94103
Albers & Company	Albers & Company	Greenwich Biosciences, Inc.	1655 N. Fort Myer Drive, Suite 700 Arlington Virginia 22209
Albers & Company	Albers & Company	Intuit	1655 N. Fort Myer Dr., Suite 700 Arlington Virginia 22209
Albers & Company	Albers & Company	Benevis, LLC for Kool Smiles	1655 N. Fort Myer Dr., Suite 700 Arlington Virginia 22209
Albers & Company	Albers & Company	Fresenius Medical Care	1655 N. Fort Myer Dr., Suite 700 Arlington Virginia 22209
Albers & Company	Albers & Company	Eli Lilly and Company	1655 N. Fort Myer Dr., Suite 700 Arlington Virginia 22209
Alexander & Cleaver, P.A.	Alexander & Cleaver, P.A.	American Wind Energy Association DC	54 State Circle Annapolis Maryland 21401
Alexander & Cleaver, P.A.	Alexander & Cleaver, P.A.	Wawa	54 State Circle Annapolis Maryland 21401
Alkermes, Inc.	Alkermes, Inc.		852 Winter Street Waltham Massachusetts 02451
Alliance for Construction Excellence	Alliance for Construction Excellence		2901 V St.NE Washington District of Columbia 20018

Allstate Insurance	Allstate Insurance Company		2775 Sanders Road Northbrook Illinois 60062
Altria Client Services Inc., and its Affiliates	Altria Client Services LLC	Altria Client Services, LLC	6601 West Broad Street Richmond Virginia 23230
Alzheimer's Association National Capital Area Chapter	Alzheimer's Association National Capital Area Chapter		8180 Greensboro Drive, Suite 400 McLean Virginia 22102
Amalgamated Transit Union International	Amalgamated Transit Union International		10000 New Hampshire Avenue Silver Spring Maryland 20903
America's Health insurance Plans	America's Health Insurance Plans		601 Pennsylvania Ave., NW, South Bld., Ste 500 Washington District of Columbia 20004
American Beverage Assoc.	American Beverage Association	American Beverage Association	c/o 2350 Kerner Blvd., Ste. 250 San Rafael California 94901
American Council of Life Insurers	American Council of Life Insurers		101 Constitution Ave NW Suite 700 Washington District of Columbia 20001
American Heart Association	American Heart Association		4601 N. Fairfax Dr., Suite 700 Arlington Virginia 22203
American Insurance Association	American Insurance Association		555 12th St. NW Suite 550 Washington District of Columbia 20004
American International Group	American International Group, Inc.		2919 Allen Parkway, L4-01 Houston Texas 77019
American Management Corporation	American Management Corporation	Wal-Mart Stores, Inc.	1455 Pennsylvania Ave NW, Suite 400 Washington District of Columbia 20004
American Management Corporation	American Management Corporation	AmeriHealth Caritas	1455 Pennsylvania Ave NW, Suite 400 Washington District of Columbia 20004
American Management Corporation	American Management Corporation	Property Casualty Insurers	1455 Pennsylvania Ave NW, Suite 400 Washington District of Columbia 20004
American Management Corporation	American Management Corporation	Childrens National Health System	1455 Pennsylvania Avenue NW, Suite 400 Washington District of Columbia

			20004
American Management Corporation	American Management Corporation	American Beverage Association	1455 Pennsylvania Ave NW, Suite 400 Washington District of Columbia 20004
American Management Corporation	American Management Corporation	CareFirst BlueCross BlueShield	1455 Pennsylvania Avenue NW, Suite 400 Washington District of Columbia 20004
American Management Corporation	American Management Corporation	Enhanced Capital Partners	1455 Pennsylvania Avenue NW, Suite 400 Washington District of Columbia 20004
American Petroleum Institute	American Petroleum Institute		1220 L St NW Washington District of Columbia 20005
American University	American University		4400 Massachusetts Ave., NW Washington District of Columbia 20016
Amerihealth District of Columbia	AmeriHealth Caritas Family of Companies		200 Stevens Drive, Building 100 Philadelphia Pennsylvania 19113
Amgen	Amgen	Amgen	601 13th St NW, 12th Floor Washington District of Columbia 20005
Anheuser-Busch Companies	Anheuser-Busch Companies		1401 I Street, NW, Suite 200 Washington District of Columbia 20005
Anthem, Ink and Affiliates (Amerigroup of the District of Columbia)	Anthem, Inc. and Its Affiliates (Including Amerigroup)		1001 Pennsylvania Ave. NW, Suite 710 Washington District of Columbia 20004
Apartment & Office Building Assoc. of Metropolitan Washington	Apartment & Office Building Associatio of Metropolitan Washington		1025 Connecticut Ave., NW, Suite 1005 Washington District of Columbia 20036
Apple, Inc	Apple Inc.		c/o Politicom Law LLP, 28 Liberty Ship Way, Suite 2815 Sausalito California 94965
Archdiocese of Washington	Archdiocese of Washington		5001 Eastern Avenue Hyattsville Maryland 20782

Arent Fox, LLP	Arent Fox LLP	BREOF Holdings, LLC (f/k/a Brookfield Real Estate Opportunity Fund)	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	DC United	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Shakespeare Theatre	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Washington Drama Society, Inc., d/b/a Arena Stage	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Uber Technologies, Inc.	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Sunstone Hotels Investors Inc.	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Beacon Capital Partners, LLC	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Spanish Education and Development Center	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	ofo US	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Terrell Place Property LLC	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Food & Friends	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	WeWork	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Saxon Collaborative Construction	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Population Services International	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	Provident Resources Group, Inc.	1717 K Street, NW Washington District of Columbia 20006
Arent Fox, LLP	Arent Fox LLP	KIPP D.C. Public Charter Schools	1717 K Street, NW Washington District of Columbia 20006
AT&T	AT&T		1120 20th Street NW Suite 800 Washington

			District of Columbia 20036
Bank of America Corporation	Bank of America Corporation		1100 North King Street DE5-001-02-07 Wilmington Delaware 19884
Beacon Capital Partners, LLC	Beacon Capital Partners, LLC		200 State Street Boston Massachusetts 02109
Branded Cities Network LLC	Branded Cities Network, LLC		2850 E. Camelback Road Phoenix Arizona 85258
BREOF Holdings LLC (f/k/a Brookfield Real Estate Opportunity Fund)	BREOF Holdings, LLC (f/k/a Brookfield Real Estate Opportunity Fund)		181 Bay Street Toronto Ontario M5J2T3
Capital Fringe	Capital Fringe		1358 Florida Ave NE Washington District of Columbia 20002
Capitol Outdoor Inc.	Capitol Outdoor, Inc., Attn: John Polis	Capitol Outdoor, Inc. ATTN: John Polis	3286 M Street NW Washington District of Columbia 20007
Capitol Petroleum	Capitol Petroleum Group		6820-B Commercial Drive Springfield Virginia 22151
Carefirst Bluecross BlueShield	CareFirst BlueCross BlueShield		840 First Street, NE Washington District of Columbia 20065
Carmen Group Inc.	Carmen Group, Inc.	Douglas Development Corporation	901 F Street, NW Washington District of Columbia 20004
Carmen Group Inc.	Carmen Group, Inc.	Branded Cities Network, LLC	901 F Street, NW Washington District of Columbia 20004
Carpet Cushion Council	Carpet Cushion Council		5103 Brandywine Drive Eagleville Pennsylvania 19403
Casey Trees	Casey Trees		3030 12th St NE Washington District of Columbia 20017
Center for Science in the Public Interest	Center for Science in the Public Interest		1220 L St NW Suite 300 Washington District of Columbia 20005
Christina Figueras	Christina Figueras	Trial Lawyers Association of Metropolitan DC	1100 Conn. Ave, NW, Suite 800 Washington District of Columbia 20036
Citigroup Washington, Inc.	Citigroup Washington, Inc.		1101 Pennsylvania Ave. NW, Suite 1000 Washington District of Columbia 20004



Claudia L. McKoin	Claudia McKoin		1610 Tamarack St., NW Washington District of Columbia 20012
Comcast of the District	Comcast Corporation and Affiliated Entities		One Comcast Center, 49th Floor Philadelphia Pennsylvania 19103
Conduent, Inc. and its Affiliates	Conduent, Inc. and its Affiliates		750 1st Street, N.E., Suite 1020 Washington District of Columbia 20002
Consortium of Universities of the Washington Metropolitan Area	Consortium of Universities of the Washington Metropolitan Area		1020 19th Street, NW, Suite 500 Washington District of Columbia 20005
Consumer Electronics Association	Consumer Technology Association		191 S Eads St Arlington Virginia 22202
Corrections Corporation of America	CoreCivic (formerly Corrections Corp of America)		601 Pennsylvania Avenue, NW, Suite 210 South Bldg Washington District of Columbia 20004
Covanta Energy LLC	Covanta Energy LLC	Covanta Energy LLC	445 South Street Morristown New Jersey 07960
Crown Castle NG Atlantic LLC	Crown Castle NG Atlantic LLC		Masha Blankenship, 1220 Augusta Drive, Suite 600 Houston Texas 77057
CSX Corporation	CSX Corporation		500 Water St 15th Floor Jacksonville Florida 32202
CVS Caremark	CVS Health	CVS Health	1275 Pennsylvania Ave, NW, Suite 700 Washington District of Columbia 20004
David Wilmot	David W. Wilmot	PhRMA	1455 Penn. Ave. NW Suite 400 Washington District of Columbia 20004
David Wilmot	David W. Wilmot	Anheuser Busch Companies	1455 Penn. Ave. NW Suite 400 Washington District of Columbia 20004
David Wilmot	David W. Wilmot	Hotel Association of Washington	1455 Penn. Ave. NW Suite 400 Washington District of Columbia 20012
David Wilmot	David W. Wilmot	AT&T	1455 Penn. Ave. NW Suite 400 Washington District of Columbia

			20004
David Wilmot	David W. Wilmot	District of Columbia Association of Health Plans	1455 Penn. Ave. NW Suite 400 Washington District of Columbia 20004
David Wilmot	David Wilmot	Citigroup Washington, Inc.	1455 Penn. Ave. NW Suite 400 Washington District of Columbia 20004
DC Appleseed Inc	DC Appleseed Inc.		1111 14th ST NW Suite 510 Washington District of Columbia 20005
DC Chamber of Commerce	DC Chamber of Commerce		1133 21st Street NW, M200 Washington District of Columbia 20036
DC Hospital Association	DC Hospital Association		1152 15th St NW Suite 900 Washington District of Columbia 20005
DC United	DC United		RFK Stadium, 2400 E. Capitol St., SE Washington District of Columbia 20003
DC Working Families Organization	DC Working Families Organization		1730 M St NW, 11th floor Washington District of Columbia 20036
DC09	DC09		55 M Street SE Washington District of Columbia 20003
District Distilling Company	District Distilling Company		1414 U St. NW Washington District of Columbia 20009
District of Columbia Athletic Trainer Association	District of Columbia Athletic Trainer Association		PO Box 90215 Washington District of Columbia 20090
District of Columbia Building Industry Association	District of Columbia Building Industry Association		455 Massachusetts Ave NW Suite 400 Washington District of Columbia 20001
District of Columbia Insurance Federation	District of Columbia Insurance Federation	Insurance Industry at Large	1455 Pennsylvania Avenue, NW Suite 400 Washington District of Columbia 20004
Douglas Development Corporation	Douglas Development Corporation		702 H Street NW Washington District of Columbia 20001
Ellen Valentino-	Ellen Valentino-Benitez	American Petroleum	30 Pinkney St

Benitez		Institute	Annapolis Maryland 21401
Ellen Valentino-Benitez	Ellen Valentino-Benitez	MD-DE-DC Beverage Assn.	30 Pinkney St Annapolis Maryland 21401
Enhanced Capitol Partners	Enhanced Capital Partners		201 St. Charles Ave. Suite 3700 New Orleans Louisiana 70170
Entertainment Software Association	Entertainment Software Association		601 Mass Ave NW suite 300 Washington District of Columbia 20001
Expedia, Inc.	Joseph Montano	Expedia, Inc.	1120 G. Street NW, Suite 410 Washington District of Columbia 20005
Express Scripts Holding Co.	Express Scripts Holding Co.		300 New Jersey Ave NW, #600 WASHINGTON District of Columbia 20001
Fair Fund, Inc.	FAIR Fund, Inc.		2100 M Street NW, Suite#170-254 Washington District of Columbia 20037
Food & Friends	Food & Friends		219 Riggs Road, NE Washington District of Columbia 20011
Frank Boston III	Frank D. Boston, III	Altria Client Services LLC and its Affiliates	2002 Clipper Park Roas, Suite 108 Baltimore Maryland 21211
Frank Boston III	Frank D. Boston, III	MillerCoors, LLC	2002 Clipper Park Road Suite 108 Baltimore Maryland 21211
Frank Boston III	Frank D. Boston, III	Grant David Gillham, Inc.	2002 Clipper Park Road Suite 108 Baltimore Maryland 21211
Frank Boston III	Frank D. Boston, III	Grant David Gillham, Inc.	2002 Clipper Park Road Suite 108 Baltimore Maryland 21211
Fresenius Medical Care	Fresenius Medical Care		250 E. Day Road, Suite 300 Mishawaka Indiana 46545
Friends of Choice in Urban Schools	Friends of Choice in Urban Schools		1436 U Street, NW Suite 204 Washington District of Columbia 20002
GCS, Inc.	GCS, Inc.		1800 M Street, NW, Suite 1050S

			Washington District of Columbia 20036
Genentech, Inc. A member of the Roche Group	Genentech, Inc., A Member of the Roche Group	Genentech, Inc., A Member of the Roche Group	2350 Kerner Blvd Suite 250 San Rafael California 94901
General Motors LLC	General Motors LLC	General Motors LLC	25 Massachusetts Avenue, NW, Suite 400 Washington District of Columbia 20001
George Washington University Hospital	George Washington University Hospital		900 23rd Street NW Washington District of Columbia 20037
Georgetown University	Georgetown University		3700 O Street, NW Washington District of Columbia 20057
Global Government and Industry Partners, LLC	Global Government and Industry Partners	Pepco Holdings	1515 Lawrence Street, NE Washington District of Columbia 20017
Global Government and Industry Partners, LLC	Global Government and Industry Partners, LLC	Mid City Financial Corporation	1515 Lawrence Street, NE Washington District of Columbia 20017
Global Government and Industry Partners, LLC	Global Government and Industry Partners, LLC	Anthem, Inc. and its Affiliates (including Amerigroup)	1515 Lawrence Street, NE Washington District of Columbia 20017
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	Capital Fringe	1625 K ST NW Ste 700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	Carpet Cushion Council	1625 K Street NW Suite 700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	MidCity Development	1625 K Street NW Suite 700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	District of Columbia Building Industry Association	1625 K St NW #700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	CSX Corporation	1625 K St NW Suite 700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	George Washington University Hospital	1625 K St NW Ste 700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	Airbnb, Inc.	1625 K Street NW Suite 700 Washington District of Columbia 20006
Goldblatt, Martin,	Goldblatt Martin Pozen	Google LLC and its	1625 K St NW Suite

Pozen LLP	LLP	Affiliates	700 Washington District of Columbia 20006
Goldblatt, Martin, Pozen LLP	Goldblatt Martin Pozen LLP	Wells Fargo & Company	1625 K Street NW - Suite 700 Washington District of Columbia 20006
Gonzalez Saggio & Harlan LLP	Goldstein & McClintock, LLLP	Accenture LLP	111 W Washington St, Suite 1221 Chicago Illinois 60602
Google Inc	Google LLC and its Affiliates	Google LLC and its Affiliates	c/o 28 Liberty Ship Way, Suite 2815 Sausalito California 94965
Greenstein Delorme &Luchs ,P.C.	Greenstein DeLorme & Luchs, P.C.	Apartment and Office Building Association of Metropolitan Washington	1620 L Street, N.W., Suite 900 Washington District of Columbia 20036
Greenstein Delorme &Luchs ,P.C.	Greenstein DeLorme & Luchs, PC	District Distilling Company, Inc.	1620 L Street, NW #900 Washington District of Columbia 20036
Greenwich Biosciences, Inc.	Greenwich Biosciences, Inc.		c/o 28 Liberty Ship Way, Suite 2815 Sausalito California 94965
Group 360 LLC	Group360, LLC/Max Brown	Lyft	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Group360, LLC/Max Brown	Public Consulting Group	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Group360, LLC/Max Brown	Entertainment Software Association	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Group360, LLC/Max Brown	Core Civic	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Group360, LLC/Max Brown	MTM	475 h street NW Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360, LLC	Medstar Health	475 H Street, NW Unit 2 Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360, LLC	Zipcar	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360, LLC	Consumer Technology Association	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360,	WGL Holding	475 H Street, NW

	LLC		Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360, LLC	Mylan Pharma	475 H Street, NW Washington District of Columbia 20001
Group 360 LLC	Max Brown/Group360, LLC	Conduent Inc. and their affiliates	475 H Street, NW Washington District of Columbia 20001
GS Proctor and Associates Inc.	G S Proctor and Associates, Inc	International Association of Firefighters, Local 36	14408 Old Mill Road, Ste 201 Upper Marlboro Maryland 20772
Hit2	Health IT 2 Business Solutions, LLC, dba CODICE		1711 North Capitol Street, NE Washington District of Columbia 20002
HNTB Corporation	HNTB Corporation	HNTB Corporation	c/o Politicom Law LLP, 28 Liberty Ship Way, Suite 2815 Sausalito California 94965
Hogan Lovells	Hogan Lovells US LLP		555 13th Street, N.W. Washington District of Columbia 20004
Holland & Knight LLP	Holland & Knight	Capitol Petroleum Group, LLC	800 17th Street, NW Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight	Archdiocese of Washington	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	CVS Health	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	GCS, Inc	800 17th Street, NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	800 17th Street, NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Kimberly Clark Corporation	800 17th Street, NW Suite 1100 Washington, DC District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Stay Alfred Vacation Rentals	800 17th Street NW, Suite 1100 Washington District of Columbia 20006

Holland & Knight LLP	Holland & Knight LLP	T-Mobile	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Vesta Corporaiton	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Jonathan Klein	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Miller & Long Concrete Construction Company	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Miller & Long - DC	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Portfolio Recovery Associates	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Power Design Inc.	800 17th Street NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	ACE Cash Express	800 17th Street, NW, Suite 1100 Washington District of Columbia 20006
Holland & Knight LLP	Holland & Knight LLP	Target Corporation	800 17th Street, NW Suite 1100 Washington, DC District of Columbia 20006
Hotel Association of Washington DC	Hotel Association of Washington DC	Members of the Hotel Association of Washington, D.C., Inc.	1225 New York Ave NW Suite 250 Washington District of Columbia 20005
Humanities DC	Humanities DC		925 U Street, NW Washington District of Columbia 20772
Institute for Justice	Institute for Justice		901 N. Glebe Road, Suite 900 Arlington Virginia 22203
International Association of Firefighters, Local 36	International Association of Firefighters, Local 36		2120 Bladensburg Rd., Suite 210 Washington District of Columbia 20018

Intuit	Intuit		601 Pennsylvania Ave NW - North, Ste. 520 Washington District of Columbia 20004
Invidior PLC	Indivior Inc.		10710 Midlothian Turnpike, Suite 430 Richmond Virginia 23235
James Nathanson	James E. Nathanson	Trial Lawyers Association of Metropolitan Washington DC	1625 16th St. NW, #501 Washington District of Columbia 20009
Jaskson and Campbell, P.C.	Jackson & Campbell, P.C.		1120 20th St NW Washington District of Columbia 20036
JBG Companies	JBG Companies	Not Applicable	4445 Willard Avenue, Suite 400 Chevy Chase Maryland 20815
Johnson and Johnson	Johnson and Johnson Services, Inc.		PO Box 5734 Columbia South Carolina 29250
Jonathan Klein	Jonathan Klein		5416 Edgemoor Lane Bethesda Maryland 20814
Julyan&Julyan	Julyan & Julyan	Washington Parking Association	1100 G Street NW Washington District of Columbia 20005
Julyan&Julyan	Julyan & Julyan		1100 G Street NW Washington District of Columbia 20005
Julyan&Julyan	Julyan and Julyan	Terrell Place Properties	1100 G St NW Washington District of Columbia 20005
Julyan&Julyan	Julyan&Julyan	Conduent, Inc.	1100 G Street, NW #655 Washington District of Columbia 20005
JUMP Bikes	Nelle Pierson	JUMP Bikes	2614 28th St NE Washington District of Columbia 20018
JUMP Mobility	Colin Hughes		135 Mead Ave. Plymouth Wisconsin 53073
Kaiser Foundation Health Plan of the Mid- Atlantic States, Inc.	Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.		2101 E Jefferson St Rockville Maryland 20852
Kate Sullivan Hare	Kate Sullivan Hare	Long Term Care Quality Alliance	2242 Hall Place NW Washington District of Columbia 20007
Kimberly-Clark Corporation	Kimberly-Clark		801 Pennsylvania Avenue NW, Suite 230 Washington District of Columbia



			20004
KIPP DC Inc	KIPP D.C. Public Charter Schools		2600 Virginia Avenue, NW Washington District of Columbia 20037
Kool Smiles	Benevis, LLC for Kool Smiles		1090 Northchase Parkway SE, Suite 150 Marietta Georgia 30067
Lawrence H. Mirel	Lawrence H. Mirel	State Farm (Catherine Rankin)	8120 West Beach Drive, NW Washington District of Columbia 20012
Lilly USA Inc.	Eli Lilly and Company		555 12th Street NW, Suite 650 Washington District of Columbia 20004
lyft Inc.	Lyft, Inc.	Lyft, Inc.	185 Berry Street, Suite 5000 San Francisco California 94107
Manatt,Phelps&Phillips LLP	Manatt, Phelps & Phillips	Capitol Petroleum Group	1050 Connecticut Avenue, NW, Suite 600 Washington District of Columbia 20036
Manatt,Phelps&Phillips LLP	Manatt, Phelps & Phillips LLP	Willco Construction Co., Inc.	1050 Connecticut Avenue, NW, Suite 600 Washington District of Columbia 20036
Manatt,Phelps&Phillips LLP	Manatt, Phelps & Phillips LLP	Supreme Council 33	1050 Connecticut Avenue, NW, Suite 600 Washington District of Columbia 20036
Manatt,Phelps&Phillips LLP	Manatt, Phelps & Phillips LLP	Perseus Realty LLC	1050 Connecticut Avenue, NW, Suite 600 Washington District of Columbia 20036
March of Dimes	Christine Keppel		300 West Pratt Street Baltimore Maryland 21201
Marijuana Policy Project	Marijuana Policy Project		2370 Champlain St. NW, Suite 12 Washington District of Columbia 20009
Marriott International Inc.	Marriott International Inc		10400 Fernwood Road Bethesda Maryland 20817
MaryEvaCandon	MaryEvaCandon	Altria Client Services	2122 California St NW

		LLC and its Affiliates	Washington District of Columbia 20008
MaryEvaCandon	MaryEvaCandon	MultiState Associates	2122 California St NW Washington District of Columbia 20008
McGuire Woods LLP	McGuire Woods Consulting LLC	Covanta Energy	800 East Canal Street Richmond Virginia 23219
McGuire Woods LLP	McGuireWoods Consulting, LLC	Alkermes	800 E. Canal Street Richmond Virginia 23219
MD DC Credit Union Association	Thomas Riddleberger Jr.		68 Songbird Lane Dover Delaware 19904
MD-DE-DC Beverage Association	MD-DE-DC Beverage Association		3 Church Circle #201 Annapolis Maryland 21401
MDDC Press Association	MDDC Press Association		P.O. Box 26214 Baltimore Maryland 21210
MDDC Press Association	Rebecca Snyder		500 Hawthorn Road Baltimore Maryland 21210
Medical Society of DC	Medical Society of DC		1250 23rd Street, NW #270 Washington District of Columbia 20037
MedStar Health	MedStar Health		10980 Grantchester Way, 5th Floor Columbia Maryland 21044
Merck Sharp & Dohme Corp.	Merck Sharp & Dohme Corp.	Merck Sharp & Dohme Corp.	c/o Nielsen Merksamer, et al., 2350 Kerner Blvd., Suite 250 San Rafael California 94901
Metropolitan Washington Airports Authority	Michael Cooper	Metropolitan Washington Airports Authority	1 Aviation Circle Washington District of Columbia 20001
Mid-City Financial Corporation	Mid-City Financial Corporation		7200 Wisconsin Avenue, Suite 903 Bethesda Maryland 20814
Miller & Long Construction Company	Miller & Long Concrete Construction Company		7101 Wisconsin Avenue, Suite 800 Bethesda Maryland 20814
Miller & Long-- DC	Miller & Long - DC		5151 Wisconsin Avenue NW, Suite 307 Washington District of Columbia 20016
MillerCoors LLC	MillerCoors LLC		6 Concourse Parkway

			Atlanta Georgia 30328
Monumental Sports and Entertainment	Monumental Sports & Entertainment, Attn: Randal J. Boe	Monumental Sports & Entertainment, ATTN: Randall J. Boe	601 F Street NW Washington District of Columbia 20004
MTM Inc	MTM, Inc.		16 Hawk Ridge Dr Lake St Louis Missouri 63367
Mylan Inc.	Mylan Inc.		700 6th Street NW, Suite 525 Washington District of Columbia 20001
N William Jarvis	N William Jarvis	National Community Reinvestment Coalition	1701 K Street NW, Suite 1201 Washington District of Columbia 20006
N William Jarvis	N William Jarvis	DC09	1701 K Street NW, Suite 1201 Washington District of Columbia 20006
N William Jarvis	N William Jarvis	Washington Nationals Baseball Club	1701 K Street NW, Suite 1201 Washington District of Columbia 20006
N William Jarvis	Washington Nationals Baseball Club		1500 South Capitol Street SE Washington District of Columbia 20003
National Community Reinvestment Coalition	National Community Reinvestment Coalition		740 15th Street, NW, Suite 400 Washington District of Columbia 20005
National Restaurant Association	National Restaurant Association		2055 L Street NW Washington District of Columbia 20036
National Structured Settlements Trade Association	National Structured Settlements Trade Association		1100 New York Avenue, NW, Suite 750 West Washington District of Columbia 20005
Nationwide Mutual Insurance	Nationwide Mutual Insurance Company		One Nationwide Plaza, P.O. Box 182171 Columbus Ohio 43215
Natural Resources Defense Council	Natural Resources Defense Council		40 West 20th St New York New York 10011
Nelson Mullins Riley And Scarborough	Nelson Mullins Riley and Scarborough	Mobike	101 Constitution Avenue, NW, Suite 900 Washington District of Columbia 20001
Nelson Mullins Riley And	Nelson Mullins Riley and Scarborough	JBG Companies	101 Constitution Avenue, NW, Suite 900

Scarborough			Washington District of Columbia 20001
Nelson Mullins Riley And Scarborough	Nelson Mullins Riley and Scarborough	SAS Institute, Inc.	101 Constitution Avenue, NW, Suite 900 Washington District of Columbia 20001
Novartis Pharmaceuticals Corp.	Novartis Services, Inc.	Novartis Services, Inc.	701 Pennsylvania Ave. N.W., Suite 725 Washington District of Columbia 20004
of US	of US		1875 Connecticut Avenue, NW, Suite 12184 Washington District of Columbia 20009
Orexo US, Inc.	Orexo US, Inc.		150 Headquarters Plaza, East Tower, 5th Floor Morristown New Jersey 07960
Otsuka America Pharmaceuticals Inc.	Otsuka America Pharmaceuticals Inc.	Otsuka America Pharmaceuticals Inc.	2440 Research Blvd. Rockville Maryland 20850
Perseus Realty, LLC	Perseus Realty, LLC		1850 M Street N.W. Suite 820 Washington District of Columbia 20036
Pfizer Inc.	Pfizer Inc.		c/o Politicom Law LLP, 28 Liberty Ship Way, Suite 2815 Sausalito California 94965
Pharmaceutical Research and Manufacturers of America	Pharmaceutical Research and Manufacturers of America (PhRMA)	Pharmaceutical Research and Manufacturers of America (PhRMA)	950 F St. NW, Suite 300 Washington District of Columbia 20004
Piedmont Environmental Council	Piedmont Environmental Council		45 Horner Street Warrenton Virginia 20186
Population Services International	Population Services International		1120 19th Street, N.W., #600 Washington District of Columbia 20036
Portfolio Recovery Associates	Portfolio Recovery Associates		120 Corporate Boulevard, Suite 100 Norfolk Virginia 23502
Potomac Electric Power Company	Potomac Electric Power Company	Potomac Electric Power Company	701 Ninth Street, NW Washington District of Columbia 20068
Power Design	Power Design		11600 Ninth Street North St. Petersburg

			Florida 33716
Property Casualty Insurers Assoc. of American (PCI)	Property Casualty Insurers Association of America		8700 West Bryn Mawr Avenue, Suite 1200S Chicago Illinois 60631
Provident Group-Howard Properties LLC	Provident Resources Group, Inc.		5565 Bankers Avenue Baton Rouge Louisiana 70808
Public Consulting Group Inc.	Public Consulting Group		148 State Street Boston Massachusetts 02109
Pulse Advocacy LLC	Kevin Wrege, Pulse Advocacy LLC	America's Health Insurance Plans	4410 MASSACHUSETTS AVE., NW, #150 WASHINGTON District of Columbia 20016
Pulse Advocacy LLC	Pulse Advocacy LLC	Service Contract Industry Council	4410 Massachusetts Ave., NW, #150 Washington District of Columbia 20016
Robert Willis	Robert M. Willis, Esquire	American International Group, Inc.	1200 G Street, NW, Suite 800 Washington District of Columbia 20005
Robert Willis	Robert M. Willis, Esquire	AFLAC	1200 G Street, NW, Suite 800 Washington District of Columbia 20005
Roetzel & Andress	Donald Dinan	DC Athletic Trainer's Association	221 9th Street, SE Washington District of Columbia 20003
Roetzel & Andress	Donald R. Dinan	DC Athletic Trainers Association	221 9th Street, SE Washington District of Columbia 20003
Sanofi-Aventis	Sanofi US	Sanofi US	1455 Pennsylvania Avenue, NW, Suite 500 Washington District of Columbia 20004
<b>SAS Institute Inc.</b>	<b>SAS Institute Inc.</b>		100 SAS Campus Drive Cary North Carolina 27513
Secular Coalition for America	Sarah Levin		1012 14th St, NW, Suite 205 Washington District of Columbia 20005
SEIU Local 32BJ	SEIU Local 32BJ		25 West 18th Street, 5th Floor New York New York 10011
Service Contract Industry Council	Service Contract Industry Council		P.O. Box 11247 Tallahassee Florida

			32302
Service Contract Industry Council	Service Contract Industry Council		P.O. Box 11247 Tallahassee Florida 32302
Shakespeare Theatre	Shakespeare Theatre		516 8th Street, SE Washington District of Columbia 20003
Spanish Education and Development Center	Spanish Education and Development Center		4110 Kansas Ave., NE Washington District of Columbia 20011
State Farm Mutual Automobile Insurance Company	State Farm Mutual Automobile Insurance Company	Lawrence H. Mirel	6 Hillman Drive, Ste 200 Chadds Ford Pennsylvania 19317
Stay Alfred Vacation Rentals	Stay Alfred Vacation Rentals		1221 1st Avenue Seattle Washington 98101
Sunrun Inc.	Sunrun Inc.		595 Market Street. Floor 29 San Francisco California 94105
Sunstone Hotels Investors Inc	Sunstone Hotels Investors Inc.		120 Vantis #350 Aliso Viejo California 92656
Supreme Council, 33	Supreme Council 33		1733 16th Street, NW Washington District of Columbia 20009
T-Mobile	T-Mobile		2001 Butterfield Road, Suite 1900 Downers Grove Illinois 60515
Target Corporation	Target Corporation	Target Corporation	1000 Nicollet Mall, TPN-842 Minneapolis Minnesota 55403
Terrell Place Property LLC	Terrell Place Property LLC		1300 Wilson Blvd. #910 Arlington Virginia 22209
The College Board	The College Board		1919 M street NW, Suite 300 washington District of Columbia 20036
The George Washington University	The George Washington University		2121 Eye St., NW Washington District of Columbia 20902
The Humane Society of the United States	The Humane Society of the United States		1255 23rd Street, NW, Suite 450 Washington District of Columbia 20037
The Washington Post	The Washington Post		1301 K Street, N.W. Washington District of Columbia 20071
Uber Technologies	Uber Technologies, Inc.		1455 Market St 4th Floor San Francisco California 94103

UFCW Local 400	UFCW Local 400		8400 Corporate Drive Suite 200 Landover Maryland 20785
USAA	USAA		One Constitution Ave., NE, Ste 200 Washington District of Columbia 20002
Venable LLP	Venable LLP, Attn: Claude E. Bailey	Monumental Sports & Entertainment, Attn: Randal J. Boe	600 Massachusetts Avenue, NW Washington District of Columbia 20001
Venable LLP	Venable LLP, Attn: Claude E. Bailey	Capitol Outdoor, Inc. ATTN: John Polis	600 Massachusetts Avenue, NW Washington District of Columbia 20001
Venable LLP	Venable LLP, Attn: Claude E. Bailey	Metropolitan Washington Airports Authority	600 Massachusetts Avenue, NW Washington District of Columbia 20001
Vesta Corporation	Vesta Corporation	Vesta Corporation	175 Powder Forest Drive Weatogue Connecticut 06089
Wal-Mart Stores Inc.	Walmart Inc.	Walmart Inc.	708 SW 8th Street Bentonville Arkansas 72716
Warner Session,ESQ	Warner H. Session, Esq.	Alliance for Construction Excellence (Contact: Mr. Andrew Porter)	1200 New Hampshire Avenue, NW, Suite 600 Washington District of Columbia 20036
Washington Area New Automobile Dealers Association	Washington Area New Automobile Dealers Association		5301 Wisconsin Avenue NW, Suite 210 Washington District of Columbia 20015
Washington D.C. Assoc. of Realtors	Washington D.C. Assoc. of Realtors		1615 New Hampshire Ave, NW, Suite 4 Washington District of Columbia 20009
Washington Drama Society. Inc. d/b/a Arena Stage	Washington Drama Society, Inc., d/b/a Arena Stage		1101 6th St, SW Washington District of Columbia 20024
Washington Gas	Washington Gas		101 Constitution Avenue, NW Washington District of Columbia 20080
Washington Parking Association	Washington Parking Association		4200 Wisconsin Avenue NW Suite 550 Washington District of Columbia 20016
Washington Psychiatric	Joanne E. Dunne	Washington Psychiatric	1030 15th Street, NW,

Society		Society	#233B Washington District of Columbia 20005
Washington Psychiatric Society	Washington Psychiatric Society		1030 15th Street, NW, #233B Washington District of Columbia 20005
Wells Fargo & Company	Wells Fargo & Company		90 S. 7th Street, MAC N9305-16C Minneapolis Minnesota 55402
WEM Assoc.	WEM Associates, LLC	District of Columbia Insurance Federation (DCIF)	3413 Stoneybrae Drive Falls Church Virginia 22044
WeWork	WeWork		115 W. 18th Street, 4th Floor New York New York 10011
Willco Construction Co., Inc.	Willco Construction Co., Inc.		7811 Montrose Road, Suite 200 potomac Maryland 20854
Zipcar	Zipcar		403 8th Street, NW Washington District of Columbia 20001



**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Audiology and Speech-Language Pathology (“Board”) hereby gives notice of its regular meetings for the calendar year 2018, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b))(2016 Repl.)).

The Board will continue to hold its meeting on a quarterly basis in 2018. The first meeting of the year will be held on Monday, March 19, 2018 from 9:00 AM to 12:00 PM and will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b)), the meeting will be closed from 9:30 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

Subsequent meetings of the calendar year will be held at the same time on the following dates:

Monday, June 18, 2018  
Monday, September 17, 2018  
Monday, December 17, 2018

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

**DEPARTMENT OF HEALTH**  
**HEALTH REGULATION LICENSING ADMINISTRATION**  
**NOTICE OF MEETING**

Board of Chiropractic

March 13, 2018

On March 13, 2018 at 1:30 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed at 2:30 pm to consult with the attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements pursuant to 2-575(b)(4)(a); Preparation, administration, or grading of scholastic, licensing, or qualifying examinations pursuant to section 2-575(b)(6); To discuss disciplinary matters pursuant section 2-575(b)(9); To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of the law or regulations, if disclosure to the public would harm the investigation pursuant to section 2-575(b)(14).

The meeting will be open to the public at 1:30 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations at 2:30 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website [www.doh.dc.gov/boc](http://www.doh.dc.gov/boc) and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board of Chiropractic – Frank Meyers, JD - (202) 724-8755.

**DEPARTMENT OF HEALTH  
HEALTH REGULATION & LICENSING ADMINISTRATION**

**NOTICE OF MEETINGS**

Board of Nursing  
March 14, 2018 and July 18, 2018

The Board of Nursing will not hold its regularly scheduled meeting on March 7, 2018. Instead it will meet on March 14, 2018. In addition, the Board of Nursing will hold its July meeting on July 18, 2018 instead of July 4<sup>th</sup> - which is a holiday.

The meetings will be open to the public at 9:00 a.m. to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session at 11:00 a.m. to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2<sup>nd</sup> Floor, Washington, DC 20002.

Executive Director for the Board of Nursing – Karen Scipio-Skinner, RN, MSN

**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Optometry (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the third Thursday of every other month starting on January 18, 2018. The meetings will held from 9:30 AM to 11:30 AM and will be open to the public from 9:30 AM until 10:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 10:30 AM until 11:30 AM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twelve-month period will be as follows:

April 19, 2018  
July 19, 2018  
October 18, 2018  
January 17, 2019

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Respiratory Care (“Board”) hereby gives notice of its regular meetings for the calendar year 2017, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board will continue to hold its regular meetings on a bi-monthly basis on the second Monday every two (2) months from 9:00 AM – 11:00 AM and will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 9:30 AM to 11:00 AM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The Board’s meetings in 2018 calendar year will be held at the same time on the following dates:

Monday, April 9, 2018

Monday, June 11, 2018

Monday, August 13, 2018

Monday, October 15, 2018 (rescheduled due to Columbus Day on October 8, 2018)

Monday, December 10, 2018

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

## DEPARTMENT OF HEALTH

## STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b) (4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the application of D.C. Home Health Holdings, LLC to Acquire VMT Home Health Agency - Certificate of Need Registration No. 18-6-2. The hearing will be held on Monday, March 5, 2018, at 10:00 a.m., at 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Room 6002, Washington, D.C. 20002.

The hearing shall include a presentation by the Applicant, describing its plans and addressing the certifications required pursuant to D.C. Official Code § 44-406(b) (1). The hearing includes an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA at (202) 442-5875 before 4:45 p.m. on Friday, March 2, 2018. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency  
899 North Capitol Street, N.E.  
Sixth Floor  
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Monday, March 12, 2018. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

**KIPP DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Real Estate Advisory & Legal Services**

KIPP DC is soliciting proposals from qualified vendors for Real Estate Advisory & Legal Services. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on March 6, 2018. Questions can be addressed to [joseph.hassine@kippdc.org](mailto:joseph.hassine@kippdc.org).

**Gym Flooring Restoration & Gym Floor Covers**

KIPP DC is soliciting proposals from qualified vendors for Gym Flooring Restoration & Gym Flooring Restoration. These 2 RFPs can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on March 16, 2018. Questions can be addressed to [denocencia.wade@kippdc.org](mailto:denocencia.wade@kippdc.org).

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL  
("LAMB")**

**REQUEST FOR PROPOSALS**

**Academic Executive Search Firm**

LAMB PCS, a local non-profit based in the District of Columbia, is seeking proposals from qualified firms to conduct a search to identify the Chief Executive Officer for its multi-site dual-language immersion Montessori public charter school. Please send an email to [kendall.ladd@lambpcs.org](mailto:kendall.ladd@lambpcs.org) to receive the full RFP. No phone calls will be accepted. Proposals are due no later than 5pm on Friday, March 9, 2018.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-1**

October 16, 2017

VIA ELECTRONIC MAIL

Benjamin Douglas

RE: FOIA Appeal 2018-001

Dear Mr. Douglas:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") improperly denied your September 6, 2017 request for certain records.

This Office contacted MPD on October 3, 2017, and notified the agency of your appeal. MPD responded on October 10, 2017, advising us that it had not denied your request; rather, MPD indicated to you on October 2, 2017, that it was in the process of conducting a search for responsive records.<sup>1</sup> On October 13, 2017, MPD informed us that it expects to provide you with a substantive response to your request this week.

MPD's October 2, 2017 correspondence to you is confusing in that it although it indicates that MPD "anticipate[s] the need for at least one ten working-day extension," it also informs you that "you have the right to appeal this letter" to the Mayor. We believe you construed this appeals language as indicating that MPD denied your request.

When an agency improperly withholds public records, the Mayor may order the agency to disclose the record. D.C. Official Code § 2-537. Here, MPD has represented to this Office that a search is underway for records that are responsive to your request, and that it expects to respond to you this week. As a result, we consider your appeal to be moot; provided, that MPD responds to your request by October, 20, 2017.

Your appeal is hereby dismissed, however, the dismissal shall be without prejudice. If you do not receive a response from MPD by October 20, 2017, you may request that we compel MPD to respond. If you receive a response from MPD by October 20, 2017, and you wish to challenge any aspect of this response, you may do so by separate appeal to this Office.

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<sup>1</sup> A copy of MPD's response is attached.

Mr. Benjamin Douglas  
Freedom of Information Act Appeals 2018-1  
October 16, 2017  
Page 2

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

Respectfully,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-2**

October 12, 2017

VIA ELECTRONIC MAIL

Mr. Corey S. Mishler, Esq.

RE: FOIA Appeal 2018-002

Dear Mr. Mishler:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("FOIA"), on the grounds that the Department of Health ("DOH") failed to respond to your request for certain records.

After you filed your appeal, DOH provided you with all responsive records in its possession. As a result, you indicated to this Office an email today that you are withdrawing your appeal.

We acknowledge that your appeal has been withdrawn and will not be issuing a substantive decision in this matter.

Sincerely,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-3**

October 5, 2017

VIA ELECTRONIC MAIL

Corey S. Mishler

RE: FOIA Appeal 2018-003

Dear Mr. Mishler:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Office of Contracting and Procurement ("OCP") failed to respond to your August 28, 2017 request for a particular contract.

This Office contacted OCP on October 3, 2017, and notified the agency of your appeal. OCP responded on October 4, 2017, advising us that it provided you with the requested contract by mail on September 28, 2017, and again via email on October 3, 2017, upon being notified of your appeal.<sup>1</sup>

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

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

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

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<sup>1</sup> A copy of OCP's response is attached.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-4**

October 12, 2017

VIA ELECTRONIC MAIL

Ms. Natasha Rodriguez

RE: FOIA Appeal 2018-004

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Health ("DOH") failed to provide you with a specific list that the Humane Rescue Alliance ("HRA") is contractually required to provide to DOH on a quarterly basis.

Background

On July 10, 2017, you submitted a request to DOH for the "[q]uarterly report deliverable of contract CW42474 C.5.10.4 Known Managed Feral Cat Colony List." DOH responded to your request via email on August 7, 2017. In its email, DOH indicated that it does not have information responsive to your request; rather, the only list of known feral cat colonies in DOH's possession is from 2007, which DOH provided you. You responded to DOH's email by advising DOH that the list is a "contractually required report" and by asking whether DOH is able to require the contractor to remit the data for the last 5 years. DOH replied that it had provided you with all responsive information in the agency's possession in compliance with DC FOIA, and the issue of contract performance is under the purview of the contract administrator for the subject contract.

You appealed to this Office on October 4, 2017, on the grounds that DOH was unable to produce contractually required deliverables. You state in your appeal, "I am asking that DOH please request the contract deliverables as of October 2017, and redact the name and phone number of anyone person [sic] on the Known Managed Feral Cat Colony List." This Office notified DOH of your appeal, and DOH responded on October 11, 2017.<sup>1</sup>

DOH maintains on appeal that it is in full compliance with DC FOIA, having conducted a thorough search for information that would be relevant to your request and provided all such information to you. DOH explained that as part of its search, the Animal Services Program

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<sup>1</sup> A copy of DOH's response is attached.

Ms. Natasha Rodriguez  
Freedom of Information Act Appeals 2018-4  
October 12, 2017  
Page 2

contacted HRA, which indicated that it has not been preparing such a report, despite the contractual requirement.

### Discussion

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

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

In your appeal you do not appear to be challenging the adequacy of DOH’s search for the list you requested;<sup>2</sup> rather, you are asking DOH to enforce the terms of its contract and request from HRA the cat colony list as of October 2017.

It is well established that an agency is not obliged by FOIA to disclose documents it does not possess at the time of the request. *United States DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989) (“the agency must be in control of the requested materials at the time the FOIA request is made.”). Here, DOH has made clear that it has provided you with all responsive information in its possession. This representation is substantiated by HRA’s admission to DOH that it has not been preparing the reports. Under DC FOIA, if the Mayor determines that a public record is being withheld, she may order the public body to disclose the record immediately. D.C. Official Code § 2-537(a)(2). We accept DOH’s representation that it is not withholding any records from you. Therefore the only administrative remedy available under DC FOIA is not applicable here, as this matter is an issue of contractual compliance, not improper withholding.

### Conclusion

Based on the foregoing, we affirm DOH’s response and dismiss your appeal. This constitutes the final decision of this Office.

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

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<sup>2</sup> We will not engage in a lengthy analysis of the adequacy of the search because you are not contesting it, other than to note that DOH conducted an adequate search under the applicable case law.

Ms. Natasha Rodriguez  
Freedom of Information Act Appeals 2018-4  
October 12, 2017  
Page 3

Respectfully,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-5**

October 20, 2017

VIA ELECTRONIC MAIL

Natasha Rodriguez

RE: FOIA Appeal 2018-005

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Health ("DOH") failed to respond to your August 21, 2017 request for records and correspondence exchanged with the Humane Rescue Alliance.

This Office contacted DOH on October 6, 2017, and notified the agency of your appeal. DOH responded on October 11, 2017, advising us that it was still waiting on the results of its email search from the Office of the Chief Technology Officer.<sup>1</sup> DOH asserted further that once it received responsive records it would review and disclose the records in accordance with the rules of DC FOIA.

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

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

Respectfully,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

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<sup>1</sup> A copy of DOH's response is attached.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-6**

October 20, 2017

VIA ELECTRONIC MAIL

Natasha Rodriguez

RE: FOIA Appeal 2018-006

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Office of Contracting and Procurement ("OCP") failed to adequately respond to your August 2, 2017 request for records pertaining to a contract with the Humane Rescue Alliance.

This Office contacted OCP on October 6, 2017, and notified the agency of your appeal. OCP responded on October 11, 2017, advising us that it provided you with responsive records on September 26, 2017.<sup>1</sup> Your appeal and OCP's response both note that OCP's initial disclosure did not contain a signed copy of the contract sought. OCP asserts that it sent you a letter on October 10, 2017, informing you that, despite additional searching, a signed copy of the contract was not found.

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

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

Respectfully,

Mayor's Office of Legal Counsel

cc: Ryan Koslosky, Associate General Counsel, OCP (via email)

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<sup>1</sup> A copy of OCP's response is attached.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-7**

October 25, 2017

VIA ELECTRONIC MAIL

Alicia Hunt

RE: FOIA Appeal 2018-007

Dear Ms. Hunt:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Department of Consumer and Regulatory Affairs (“DCRA”) improperly redacted records it disclosed to you pursuant to your request under the DC FOIA.

Background

On August 9, 2017, you submitted a request to the DCRA for all applications and permits issued to a particular address. DCRA responded on October 3, 2017, providing you with 67 responsive documents. DCRA’s production contained one redaction made to an email address pursuant to D.C. Official Code § 2-534(a)(2) (“Exemption 2”).<sup>1</sup>

You appealed DCRA’s denial, arguing that the redacted email address belongs to a business; therefore, the email address involves no personal privacy interest. This Office notified DCRA of your appeal on October 12, 2017. DCRA responded to this Office on October 13, 2017, reaffirming its position that the email address should be redacted pursuant to Exemption 2.<sup>2</sup> DCRA’s response asserts that the redacted email address was an individual’s personal email address. DCRA further argues that the fact that the personal email address was submitted as a form of business contact does not eliminate the privacy interest associated with it. Finally, DCRA asserts that there is no public interest in disclosing the individual’s email address.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public

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<sup>1</sup> Exemption 2 prevents disclosure of “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

<sup>2</sup> A copy of DCRA’s response is attached.

Ms. Alicia Hunt  
Freedom of Information Act Appeals 2018-7  
October 25, 2017  
Page 2

body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

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

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Courts have consistently held that personal email addresses involve a sufficient privacy interest to warrant protection. *See Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence*, 639 F.3d 876, 888 (9th Cir. 2010) (finding that lobbyists' email addresses should be protected from disclosure unless they are the only way to identify the individuals in question); *see also Pinson v. Lappin*, 806 F. Supp. 2d 230, 234 (D.D.C. 2011), *Amnesty Int'l USA v. CIA*, 728 F. Supp. 2d 479, 523 (S.D.N.Y. 2010) (holding that work email addresses of low level government employees were properly withheld).

Here, we accept DCRA's representation that the email address at issue is a personal email address. The fact that it was submitted to DCRA on a business form and may be used occasionally for business purposes does not strip the personal privacy interest associated with the email address. Accordingly, there is a *de minimis* privacy interest associated with the private email address, justifying its protection pursuant to Exemption 2. *See Skinner*, 806 F. Supp. 2d at 113. Further, the documents that DCRA disclosed to you included the work address and phone number for the contractor at issue. *See Elec. Frontier Found.*, 639 F.3d at 888 (supporting the redaction of an email address when alternative methods of identification exist).

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of “public interest” if it would shed light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

This statutory purpose is furthered by disclosure of official information that “sheds light on an agency's performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency's own conduct” does not further the

Ms. Alicia Hunt  
Freedom of Information Act Appeals 2018-7  
October 25, 2017  
Page 3

statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

*Id.* at 1492-93.

Aside from arguing that no personal privacy interest is associated with the email address you seek, you have not articulated a public interest in favor of disclosure that is relevant to DC FOIA. It is unclear to this Office how the release of a contractor's personal email address would shed light on DCRA's performance of its statutory duties. In the absence of a relevant countervailing public interest, we find that the email address is protected from disclosure pursuant to Exemption 2.

#### Conclusion

Based on the foregoing, we affirm DCRA's decision. This constitutes the final decision of this Office.

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

Sincerely,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-8**

October 24, 2017

VIA ELECTRONIC MAIL

Benjamin Douglas

RE: FOIA Appeal 2018-008

Dear Mr. Douglas:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") failed to respond to your request for records pertaining to certain MPD policies.<sup>1</sup>

This Office contacted MPD on October 10, 2017, and notified the agency of your appeal. MPD responded on October 19, 2017, advising us that it responded to your request on October 12, 2017.<sup>2</sup>

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

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

Respectfully,

Mayor's Office of Legal Counsel

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

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<sup>1</sup> The request is docketed as 2017-FOIA-05896 on FOIAXpress.

<sup>2</sup> A copy of MPD's response is attached.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-9, 2018-12**

October 24, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-9 & 2018-12

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), challenging the response provided by the Department of Motor Vehicles ("DMV") to your request.

Background

On September 14, 2017, you submitted a FOIA request that states:

Under the FOIA I'm seeking to know the status of the MOTION TO VACATE FILED WITH TOYA MILLER @ DMV regarding [a specific case.] IM SEEKING TO KNOW IF THE REASONABLE ACCOMMODATION REQUEST DATED 9/13/17 WAS GRANTED OR DENIED UNDER THE ADA REGARDING THE MOTION TO VACATE and the hearing regarding [a tag number]. I HEARING WAS HELD BUT NO DECISION IS CLEAR REGARDING THE REQUEST. IM ALSO SEEKING ONE FREE COPY OF THE TRANSCRIPT FOR REVIEW PROCESS. ADA request was for the two tickets that got the car booted. In addition I'm seeking the decision of hearing record [of a specific case] regarding the reasonable accommodation of the two outstanding boot eligible ticket. All others was not the matter just the motion to VACATE

On October 3, 2017, DMV denied your request. DMV advised you that it was not obligated by DC FOIA to answer questions for you. Nevertheless, DMV answered some of the questions posed in your request, and informed you that a copy of the transcript that you sought was available for a payment of \$50, pursuant to 18 DCMR 3017.3,<sup>1</sup> or that you could receive a diskette recording of the hearing for free.

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<sup>1</sup> 18 DCMR § 3017.3 states, "Transcripts may be ordered upon payment of a deposit of fifty dollars (\$50). This fee shall be refunded to any appellant who is successful in an appeal."

Mr. Shuntay Brown  
Freedom of Information Act Appeals 2018-9, 2018-12  
October 24, 2017  
Page 2

On October 10, 2017, you appealed DMV's denial twice.<sup>2</sup> In your first appeal, you stated, "DMV HAS FAIL [sic] TO PROVIDE THE PERSON WITH THE INFORMATION REGARDING THE TIMELINE OF THE MOTION TO VACATE REGARDING THE TWO OUTSTANDING TICKET FOR A HEARING WITHIN A YEAR OF ADMISSISON AND WITHIN 60 DAYS OF THE BOOT." In your second appeal, you stated "I'm seekimng [sic] all trancripts [sic] regarding the hearing in the requested FOIA."

This Office notified DMV of your appeal. On October 24, 2017, DMV responded.<sup>3</sup> DMV's response reiterates that in accordance with regulations, a transcript is available to you for a \$50 deposit. DMV explains that it does not already maintain a copy of the transcript and is not obligated to create one for you for free. Further, DMV reiterates its offer to provide to you a "diskette of the hearing" for free. Additionally, DMV's response asserts that the substance of your appeal differs from what you originally requested – primarily your original request did not seek a timeline of the motion to vacate as articulated in your appeal. Regardless, DMV explains that it is not obligated by DC FOIA to answer questions. Lastly, DMV's response provides an explanation of the administrative procedure regarding the tickets and hearing referred to in your request.

### Discussion

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

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

The primary issue raised in your appeal is whether DMV is obligated to create a record for you that it does not already maintain. An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) ("FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters..."); *Frank v. DOJ*, 941 F. Supp. 4, 5 (D.D.C. 1996) (an agency is not required to "dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff's questions").

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<sup>2</sup> This decision will address both appeals.

<sup>3</sup> A copy of DMV's response is attached.

Mr. Shuntay Brown  
Freedom of Information Act Appeals 2018-9, 2018-12  
October 24, 2017  
Page 3

Here, DMV has represented that it does not have a copy of the transcript that you seek. Such a transcript may be created, pursuant to 18 DCMR § 3017, for a \$50 deposit. DMV has an audio recording of the hearing, which it has offered to provide to you on a diskette for free. DMV has not transcribed this recording, therefore a transcript does not exist. Furthermore, DMV is not obligated to create this record for you.

Additionally, the rest of your request and appeal closely resembles an interrogatory – e.g. “IM SEEKING TO KNOW IF THE REASONABLE ACCOMMODATION REQUEST DATED 9/13/17 WAS GRANTED OR DENIED.” DMV is not obligated to answer your questions concerning administrative processes. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

#### Conclusion

Based on the foregoing, we affirm DMV’s decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: David Glasser, General Counsel, DMV (via email)



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-10**

October 24, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2018-10

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), challenging the response provided by the Department of Motor Vehicles ("DMV") to your request.

Background

On September 12, 2017, you submitted a FOIA request that states:

I'm seeking the regulation or code that governs the timeframe of a motion to vacate under the DMV. What is the timeframe for a good cause hearing regarding late filing under title 50-2303.05(f)(SSsdSdSSdSSdssssdsSddsdsdSSDsDSS2) [sic] 50- 2303.05(d)(1) and 50-2303.11(f) please see attached document regarding the motion to vacate judgement and the status of limitations under the regulation that governs such motion to vacate.

On October 3, 2017, DMV responded to your request. DMV advised you that it was not obligated by DC FOIA to answer your questions. As a courtesy, DMV's response explained the inapplicability of sections of the DC Code cited by your request and explained that a motion to vacate must be filed "within 60 calendar days of the date of the admission."

On October 10, 2017, you appealed DMV's response to your request. Your appeal states in its entirety, "I m seeking the information regarding the timeframe for a good cause hearing regarding car being booted by dmv[.]"

This Office notified DMV of you appeal. On October 24, 2017, DMV responded.<sup>1</sup> DMV's response asserts that the substance of your appeal differs from what you originally requested; primarily that your original request cited to specific portions of the DC Code, whereas on appeal you describe the request as "regarding being booted and towed." Regardless, DMV reiterates that it is not obligated by DC FOIA to answer questions.

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<sup>1</sup> A copy of DMV's response is attached.

Mr. Shuntay Brown  
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### Discussion

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

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

The primary issue raised by your appeal is whether DMV is obligated to perform legal research for you. An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) (“FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters...”); *Frank v. DOJ*, 941 F. Supp. 4, 5 (D.D.C. 1996) (an agency is not required to “dig out all the information that might exist, in whatever form or place it might be found, and to create a document that answers plaintiff’s questions”).

Here, your request amounts to a request that DMV look up statutes and regulations and explain them to you – e.g. “I’m seeking the regulation or code that governs . . . .” Your request does not reasonably describe a record, as required by 1 DCMR § 402. DMV is not obligated by DC FOIA to educate you about administrative processes. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36; FOIA Appeal 2017-95. “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

### Conclusion

Based on the foregoing, we affirm DMV’s decision. This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: David Glasser, General Counsel, DMV (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-11**

October 24, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Antonio Brown

RE: FOIA Appeal 2018-11

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Department of Health (“DOH”) failed to adequately respond to your request for certain records.

Background

On November 27, 2016, you submitted a request to DOH seeking medical records related to yourself. On December 12, 2016, DOH informed you that it did not have any records responsive to your request.

You appealed DOH’s response based on your belief that records should exist. This Office notified DOH of your appeal, and it responded on October 11, 2017.<sup>1</sup> In its response, DOH describes its process of searching for responsive records, which it started on November 28, 2016. DOH’s response also asserts that its relevant program, which would have your records if the records existed, contacted you in December 2016, verified that it did not have responsive records, and instructed you to seek the records from your physician.

Discussion

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

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<sup>1</sup> A copy of DOH’s response is attached for your reference.

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

The crux of your appeal is your belief that DOH should possess records responsive to your request, despite DOH's assertion that it does not possess the records. You do not offer any explanation for why you believe DOH should possess the records. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, DOH described the search it conducted in response to your request. In specific, the agency identified the program which would maintain the medical records responsive to your request if they existed, and then the program staff conducted multiple searches for your records. DOH further advised us that after determining that it did not possess records responsive to your request, DOH staff encouraged you to obtain the records from your physician. As a result, we find here that DOH made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for responsive records in its possession.

Conclusion

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Based on the foregoing, we affirm DOH' response to your request, insofar as the searches it conducted were adequate.

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

Respectfully,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-14**

October 27, 2017

VIA E-MAIL

Mr. Paul Wagner

RE: FOIA Appeal 2018-14

Dear Mr. Wagner:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld record you requested pertaining to a named police officer.

Background

You submitted a FOIA request to the MPD for records related to an investigation of a named officer who was involved in a police shooting incident that occurred on September 11, 2016.

MPD denied your request, stating that disclosure of the record would constitute an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(2) (“Exemption 2”) and D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3(C)”). MPD’s response noted that your request had not attached authorization from the officer named in your request.

On appeal, you challenge MPD’s response, asserting that “[t]he public has the right to know what kind of officers are patrolling their streets.” Additionally, you rhetorically ask: “Since adverse action Trial Boards are open to the public why wouldn’t the public also have the right to see the evidence against [the named officer]?” Lastly, you request that a redacted copy of the investigatory report be made available to you.

MPD sent this Office a response to your appeal on October 20, 2017,<sup>1</sup> reaffirming its earlier position that under Exemption 3(C) the record is exempt in its entirety because disclosure would constitute an unwarranted invasion of privacy. Finally, MPD argues that you have not asserted wrongdoing on the part of the department, and that release of the investigative report would not shed light on the department’s actions in carrying out its responsibilities. As a result, MPD argues that the public interest applicable under DC FOIA is not present to balance against the privacy interests of the individual involved in the record sought.

Discussion

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<sup>1</sup> A copy of the MPD’s response is attached.

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It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Information Already Made Public*

Your appeal rhetorically asks: “Since adverse action Trial Boards are open to the public why wouldn’t the public also have the right to see the evidence against [the named officer]?” Under the applicable case law, your argument that the public nature of an adverse action necessitates the release of related documents is not persuasive. *Long v. United States DOJ*, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) (“the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government.”); *See also* FOIA Appeal 2017-53 (finding that media coverage of an incident that took place in a pizza parlor does not void the privacy interests of individuals involved.). As a result, the fact that an adverse action is a public proceeding is not dispositive of the privacy interest analysis here.

### *Exemptions 2 and 3(C)*

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exemption 3(C) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” While Exemption 2 requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD are subject to Exemption 3(C) if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep’t of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption “applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.”). Since the record you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

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Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

[I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)<sup>2</sup>. “The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.”

*Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that there is a sufficient privacy interest associated with the named police officer investigated. “[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under [(3)(C)].” *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for the wrongdoing, because the agency's purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast*, 665 F.2d at 1254.

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated with alleged criminal activity and that protection of this privacy interest is a primary purpose of the investigatory records exemption. *Stern*, 737 F.2d at 91-92. We find that the same interest is present with respect to disciplinary sanctions that could be imposed on police officers. Even if records consist of mere allegations of wrongdoing, disclosure of the record could have a stigmatizing effect regardless of accuracy.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the individual privacy interest here is outweighed by the public interest, therefore warranting disclosure. On appeal, you assert that “The public has the right to know what kind of officers are patrolling their streets.” The public interest in the disclosure of a public employee's disciplinary files was addressed by the court in *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

The public's interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of “the citizens' right to be informed about what their government is up to.” *Reporters Committee*, 489 U.S. at 773 (internal quotation marks omitted); *see also Ray*, 112 S. Ct. at 549; *Rose*, 425 U.S. at 361. This statutory purpose is furthered by disclosure of official information that “sheds

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<sup>2</sup> Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.



Mr. Paul Wagner  
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light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

*Id.* at 1492-93.

In the instant matter, disclosing the investigatory file you are seeking would not shed light on MPD's performance of its statutory duties and would constitute an invasion of the individual police officer's privacy interests under Exemptions 3(C) and (2) of the DC FOIA.

### *Segregability*

The last issue to be considered is whether MPD can redact the withheld record to protect personal privacy interests. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, courts have held that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See e.g., Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

MPD asserts that redaction would not protect privacy interests here because your request identifies the officer who is the subject of the investigatory report. As a result, no amount of redaction made to the investigatory file would sufficiently protect the officer's identity. We agree with MPD and find that it was justified in withholding the responsive record in its entirety.

### Conclusion

Based on the forgoing, we affirm the MPD's decision and dismiss your appeal.

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

Respectfully,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-15**

October 30, 2017

VIA ELECTRONIC MAIL

Allison Purmort

RE: FOIA Appeal 2018-015

Dear Ms. Purmort:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of Contracting and Procurement (“OCP”) improperly withheld records you requested under the DC FOIA.

Background

On September 22, 2017, OCP received your request for records relating to a solicitation for community dining and home-delivered meals.<sup>1</sup> Your request sought six categories of records:

- (1) all proposals submitted by vendors in conjunction with the RFP;
- (2) all pricing pages, attachments, exhibits or additional documents submitted by any vendor relating to the RFP;
- (3) any internal or external correspondence or documentation relating to the RFP that was created or received by any individual employed by or working on behalf of the District of Columbia;
- (4) any scoring sheet or criteria evaluation related to the RFP;
- (5) any protests submitted by any other vendor in conjunction with the RFP; and
- (6) the previous contract and the contract entered into as a result of the RFP.

On October 10, 2017, OCP informed you that portions of your request were denied pursuant to the deliberative process privilege of D.C. Official Code § 2-534(a)(4) (“Exemption 4”).

On October 16, 2017, you appealed OCP’s denial. On appeal you assert that the deliberative process privilege of Exemption 4 is inapplicable to most of the records you seek because the records were submitted to OCP by vendors. Further, you claim that the vendors cannot qualify for the consultant corollary exception to Exemption 4, because they are competing for a contract and representing their own interests. Therefore, you claim that the documents cannot be withheld

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<sup>1</sup> You initially filed you request with the DC Office on Aging, and OCP’s receipt of your request was delayed by complications from transferring the request.

Ms. Allison Purmort  
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pursuant to the deliberative process privilege of Exemption 4 because they do not meet the threshold requirement of inter-agency or intra-agency documents.

This Office notified OCP of your appeal on the same day it was received. On October 23, 2017, OCP provided you with a supplemental response to your request. On October 24, 2017, OCP provided this Office with a response to your appeal.<sup>2</sup> In its response, OCP included a chart describing the status of each category of your request. OCP Response at 2.<sup>3</sup> OCP clarified that some of the records you seek have been provided to you or will be provided pending payment of fees. OCP reasserted its position that some of the records were withheld pursuant to Exemption 4.<sup>4</sup> OCP further asserted that some of the responsive records were also withheld pursuant to D.C. Official Code § 2-534(a)(1) (“Exemption 1”). OCP also cited District regulations which prohibit the disclosure of certain categories of bidding information prior to the award of a contract. Finally, OCP indicated that it does not maintain documents responsive to the fifth category of your request, as those documents would be maintained by the Contract Appeals Board.<sup>5</sup>

### Discussion

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

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

### *Exemption 4*

Exemption 4 vests public bodies with discretion to withhold “inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]” This exemption has been construed to “exempt those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). As a result, Exemption 4 encompasses multiple

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<sup>2</sup> OCP’s response is attached.

<sup>3</sup> We accept OCP’s representation that only the first four categories of your request remain at issue on appeal.

<sup>4</sup> OCP mistakenly cites case law construing federal FOIA’s Exemption 4 in support of DC FOIA’s Exemption 4. *See* OCP Response at 4-5. However, federal FOIA’s Exemption 4 is analogous to DC FOIA’s Exemption 1, so the case law remains relevant.

<sup>5</sup> Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

privileges. Here, the two relevant privileges are the deliberative process privilege<sup>6</sup> and the commercial information privilege.<sup>7</sup>

OCP has invoked the deliberative process privilege of Exemption 4 for the third and fourth categories of your request. The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it “reflects the give-and-take of the consultative process.” *Id.*

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

*Id.*

Here, the third category of your request seeks any internal correspondence discussing the bidding process. This information is clearly predecisional because the correspondence occurred before the contract award. Any correspondence evaluating the competing bids would also be deliberative, reflecting the opinions of OCP's employees in an effort to reach a decision on the contract award. Similarly, the fourth category of your request seeking OCP's scoring and evaluations before the contract award are both predecisional and deliberative as premature disclosure would risk inaccurately reflecting the views of the agency.

The fourth category of records is also likely protected by the commercial information privilege of Exemption 4. The Supreme Court has held that there is a limited privilege for confidential commercial information for an agency *before it completes the process of awarding a contract* to avoid placing an agency at a competitive disadvantage or endanger consummation of a contract. *See Federal Open Market Committee*, 443 U.S. at 357-60.

Disclosure of information regarding OCP's scoring and evaluations before the contract award would risk placing the District at a competitive disadvantage in the contract bidding process, because a competitor could modify their bid to exploit the District's position. As a result, we find that OCP properly withheld records responsive to the third and fourth categories pursuant to Exemption 4.

Similarly, disclosure of the information responsive to the first and second categories of your request pertaining to proposals, pricing, and documents submitted by vendors could place the

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<sup>6</sup> *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

<sup>7</sup> *See Federal Open Market Committee v. Merrill*, 443 U.S. 340, 359-60 (1979).

Ms. Allison Purmort  
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District at a competitive disadvantage and interfere with the integrity of the still ongoing contracting process. Further, the information responsive to the first and second categories of your request appears to fall squarely within the protection of Exemption 1.

### *Exemption 1*

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

Exemption 1 has been “interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.” *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, “actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply.” *Essex Electro Eng’rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep’t of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption “does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would ‘likely’ do so. [citations omitted]”).

Here, the first and second categories of your request seek competitive bidding information from vendors. As a result, commercial competition clearly exists. Further, disclosure of the information could harm the vendors by informing competitors of their strengths and weaknesses, allowing for selective pricing, and unfairly influence bidding negotiations. *See People for Ethical Treatment of Animals v. U.S. Dep’t of Agric.*, 2005 U.S. Dist. Lexis 10586, at \*7 (D.D.C. May 24, 2005) (“insights into the company’s operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations”). Therefore, records responsive to the first and second categories of your request were properly withheld pursuant to Exemption 1.

### Conclusion

Based on the foregoing, we affirm OCP’s decision, and your appeal is hereby dismissed. This constitutes the final decision of this Office.

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

Ms. Allison Purmort  
Freedom of Information Act Appeals 2018-15  
October 30, 2017  
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Respectfully,

Mayor's Office of Legal Counsel

cc: Ryan Koslosky, Associate General Counsel, OCP (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-16**

November 1, 2017

VIA E-MAIL

Mr. Terrell Roberts

RE: FOIA Appeal 2018-16

Dear Mr. Roberts:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested on behalf of your client.

Background

You submitted a FOIA request to the MPD for certain body-worn camera footage, use of force reports, public incident reports (PD-251) and citation violations (PD-61).

MPD granted your request in part, by providing the PD-251<sup>1</sup>, and denied your request in part, stating that some of your requested records were being withheld under D.C. Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”), claiming that disclosure of the records would interfere with pending civil and criminal enforcement proceedings.

On appeal, you challenge MPD’s response, asserting that MPD had not adequately explained how disclosure of the withheld records would interfere with a law enforcement proceeding. You argue without citation that “[i]n recent times, episodes of police use of force (which primarily motivates the request) are normally divulged to the public.”

MPD sent this Office a response to your appeal on October 24, 2017,<sup>2</sup> reaffirming its earlier position that under Exemption 3(A)(i) the records are exempt in their entirety because disclosure would interfere with an ongoing enforcement proceeding. MPD argues that the video footage could “inform any suspects or witnesses on how to tailor their statements so as to avoid culpability.” MPD concedes that the PD-61<sup>3</sup> describing the incident in question should be released, and has represented to this Office that a copy will be provided to you.<sup>4</sup> Further, MPD

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<sup>1</sup> A PD-251 is a public incident report.

<sup>2</sup> A copy of the MPD’s response is attached.

<sup>3</sup> A PD-61 is a citation that is issued in lieu of taking someone into custody.

<sup>4</sup> We accept MPD’s representation that it will provide the PD-61 to you, and find that portion of your appeal to be moot.

Mr. Terrell Roberts  
Freedom of Information Act Appeals 2018-16  
November 1, 2017  
Page 2

explains that the use of force report could interfere with the ongoing investigation by having an effect on witnesses and participants' recollections of what transpired, which could affect criminal or civil proceedings.

### Discussion

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

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

Exemption 3(A)(i) exempts from disclosure investigatory records that: (1) were compiled for law enforcement purposes; and (2) whose disclosure would interfere with enforcement proceedings. D.C. Official Code § 2-534(a)(3)(A)(i). "To invoke this exemption, an agency must show that the records were compiled for a law enforcement purpose and that their disclosure '(1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'" *Manning v. DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (citing *Mapother v. U.S. Dep't of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993)).

The purpose of Exemption 3(A)(i) is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 224, 232 (1978). "So long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, the investigatory record exemption applies." *E.g. Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted).

Conversely, "where an agency fails to demonstrate that the documents sought relate to any ongoing investigation or would jeopardize any future law enforcement proceedings, the investigatory records exemption would not provide protection to the agency's decision." *Id.* An agency must sustain its burden "by identifying a pending or potential law enforcement proceeding or providing sufficient facts from which the likelihood of such a proceeding may reasonably be inferred." *Durrani v. DOJ*, 607 F.Supp.2d 77, 90 (D.D.C. 2009).

Here, MPD asserts that the withheld responsive records are part of "an investigation of the incident in question [which] is presently active." Consequently, this Office accepts MPD's representation that the records you seek were compiled for law enforcement purposes. In order to



Mr. Terrell Roberts  
Freedom of Information Act Appeals 2018-16  
November 1, 2017  
Page 3

withhold an investigatory record, however, MPD must also indicate how disclosure would foreseeably harm enforcement proceedings. *Crooker v. ATF*, 789 F.2d 64, 65-67 (D.C. Cir. 1986) (finding that agency failed to demonstrate that disclosure would interfere with enforcement proceedings). We accept MPD's representation that the release of the video footage and the use of force report could interfere with an ongoing enforcement proceeding, because the footage and report could inform witnesses and suspects of how to tailor their statements. As a result, we find that the footage you requested was properly withheld.

#### Conclusion

Based on the forgoing, we affirm the MPD's decision and dismiss your appeal.

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

Respectfully,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-17**

October 31, 2017

VIA ELECTRONIC MAIL

Mr. Christopher LaFon

RE: FOIA Appeal 2018-017

Dear Mr. LaFon:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your May 25, 2017 request for records concerning a specified property.

This Office contacted DCRA on October 17, 2017, and notified the agency of your appeal. DCRA responded on October 24, 2017, advising us that while an earlier search had been conducted, through an error, the results had not been provided to you.<sup>1</sup> DCRA's response indicated that it was now sending to you the responsive documents that the earlier search had found. However, DCRA's response states that DCRA's new FOIA Officer did not consider the search that had been conducted to be adequate, and that the FOIA Officer planned to complete a more rigorous search in order to provide you with all responsive documents, in accordance with DC FOIA.

Normally, since your appeal was based on DCRA's failure to respond to your request, and the agency has since provided you with a response, we would consider your appeal to be moot. However, DCRA's response admits that it has not conducted an adequate search yet. DCRA's response explains the steps its FOIA Officer intends to take to complete an adequate search and provide to you all responsive documents. This Office accepts DCRA's representation that it has not yet completed its search.

As a result, DCRA shall continue to complete the search that it is conducting, review responsive documents, and provide to you all non-exempt portions within 15 days of this decision. You are free to assert any challenge, by separate appeal to this Office, to the subsequent substantive response DCRA sends you.

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

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<sup>1</sup> A copy of DCRA's response is attached.

Mr. Christopher LaFon  
Freedom of Information Act Appeals 2018-17  
October 31, 2017  
Page 2

Respectfully,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-18**

November 1, 2017

VIA U.S. MAIL

Mr. Hakeem Blaize

RE: FOIA Appeal 2018-18

Dear Mr. Blaize:

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

Background

On October 17, 2017, you submitted to MPD a request for footage from a camera near 1133 Capitol Street NW from September 20, 2017. Your request indicated that there was an accident at around 2 p.m. that day, which you believe might have been captured by the camera and could assist you in an insurance claim.

On October 18, 2017, MPD responded to your request by informing you that it did not possess the records which you requested. MPD's denial explained that the "retention period for the requested video footage has expired and the footage [was] automatically overwritten." Such footage, MPD's denial explains, is generally only maintained for "ten (10) calendar days (Saturday, Sundays, and holidays included)." Footage is usually preserved longer if it is evidence of a traffic violation.

Upon receiving MPD's response, you submitted an appeal to this Office. Your appeal states, in total, "We did not know the correct information or how to go about getting the right information or at the right time. The insurance company is trying to deny my claim unless we get the proper information."

MPD provided this Office with a response to your appeal on October 25, 2017.<sup>1</sup> In its response, MPD reasserted its position that footage you seek was overwritten in accordance with MPD's retention schedule. MPD's response points out that your appeal does not assert that there were any traffic violations that might have caused the footage to be maintained. MPD argues that

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<sup>1</sup> A copy of MPD's response is attached for your reference.

Mr. Hakeem Blaize  
Freedom of Information Act Appeals 2018-18  
November 1, 2017  
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because no video has been retained, no records are being withheld such that this appeal should be dismissed.

### Discussion

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

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

The primary issue in this appeal is your apparent belief that responsive records exist; therefore, we consider whether or not MPD conducted an adequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot

Mr. Hakeem Blaize  
Freedom of Information Act Appeals 2018-18  
November 1, 2017  
Page 3

suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

MPD asserts here that the retention period for the September 20, 2017 footage you seek would have ended on September 30, 2017, in accordance with MPD's 10-day retention schedule for neighborhood cameras. You submitted your request on October 17, 2017, by which time the responsive records had already been overwritten in accordance with MPD's retention schedule. Your appeal has not stated facts which would cause us to believe that the footage should have been maintained (i.e., you have not alleged that a traffic citation was issued which would have caused the footage to have been maintained as evidence). Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18). We accept MPD's representation that responsive records no longer exist based on MPD's stated adherence to its retention policy.

### Conclusion

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

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

Respectfully,

Mayor's Office of Legal Counsel

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-19**

October 31, 2017

VIA ELECTRONIC MAIL

William Matzelevich

RE: FOIA Appeal 2018-019

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), on the grounds that the Department of General Services (“DGS”) should not be able to invoke a 10-day extension pursuant to D.C. Official Code § 2-532(d) to respond to your September 27, 2017 request seeking one email and one email attachment.

This Office contacted DGS on October 19, 2017, and notified the agency of your appeal. DGS responded on the same day, providing you with a final response to your request and the two records you sought. DGS’s response asserted that portions of its disclosure were redacted pursuant to D.C. Official Code § 2-534 (“Exemption 4”).

Exemption 4 vests public bodies with discretion to withhold “inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]” This exemption has been construed to “exempt those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 4 encompasses the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it “reflects the give-and-take of the consultative process.” *Id.*

Here, DGS redacted portions of the email attachment you requested on the grounds that these portions are protected by Exemption 4. From the context of the corresponding email dated August 8, 2016,<sup>1</sup> we glean that the redacted language constitutes draft responses to questions regarding the Hearst pool project. The email dated August 11, 2016, that DGS disclosed in response to your FOIA request contains the final responses to the same questions. As a result, the withheld preliminary draft answers are both predecisional and deliberative, and disclosure would

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<sup>1</sup> Your request incorrectly references this email as dated August 9, 2016.

Mr. William Matzelevich  
Freedom of Information Act Appeals 2018-19  
October 31, 2017  
Page 2

risk inaccurately reflecting the views of the agency. Accordingly, the redactions DGS made to the document it disclosed to you on October 19, 2017 are justifiable under Exemption 4 of DC FOIA.

Your appeal was based on DGS's failure to timely respond to your request, and the agency has now responded. Moreover, we have reviewed the redactions DGS made to the documents it provided to you, and we find that these redactions are proper under DC FOIA.

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

Respectfully,

Mayor's Office of Legal Counsel

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



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeals: 2018-20**

November 2, 2017

VIA U.S. MAIL

Kenneth Schnaubelt

RE: FOIA Appeal 2018-20

Dear Mr. Schnaubelt:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of Risk Management ("ORM") did not adequately respond to your request for records under the DC FOIA.

Background

On April 13, 2017, you mailed a FOIA request to ORM seeking four categories of records related to a prior complaint you filed with ORM. On September 1, 2017, ORM mailed you a response to your request. ORM's response asserted that it disclosed all responsive records related to your complaint; however, ORM acknowledged that its search did not find certain phone records associated with your complaint.

On October 19, 2017, this Office received your FOIA appeal. Your appeal challenges the delay of ORM's response to your request and asserts that ORM did not adequately respond to portions of your request. Specifically, you assert that ORM's response only addressed one of two complaints involved in your FOIA request.<sup>1</sup>

On the day your appeal was received, this Office notified ORM of you appeal. ORM responded to your appeal on October 20, 2017.<sup>2</sup> ORM's response included a letter dated August 14, 2017, acknowledging receipt of your FOIA request and apologizing for the delay of its processing due to an administrative error.<sup>3</sup> ORM's response reasserted that all responsive documents associated with the claim initiated by your complaint were provided to you. Further, ORM explained that it searched its phone records using your two known telephone numbers; however, its search did not

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<sup>1</sup> After reviewing your FOIA request, the request only makes reference to a singular complaint and claim number. As a result, your assertion that ORM failed to respond to your request for a second complaint will not be addressed further.

<sup>2</sup> A copy of ORM's email is enclosed.

<sup>3</sup> A copy of ORM's acknowledgement letter is enclosed.

Mr. Kenneth Schnaubelt  
Freedom of Information Act Appeals 2018-20  
November 2, 2017  
Page 2

recover additional records. Additionally, ORM claimed that it cannot determine if other calls it received are related to your complaint.

### Discussion

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

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

The two main issues raised in your appeal concern the timing and thoroughness of ORM’s response to your appeal. Regarding the delay of ORM’s response, this Office’s jurisdiction is limited to “review[ing] the public record to determine whether [a record] may be withheld from public inspection.” D.C. Official Code § 2-537(a). Since ORM has provided you with a response, the delay of ORM’s response is now moot in terms of this Office’s jurisdiction.<sup>4</sup> We note that your appeal asserts that ORM did not include an explanation or apology for its delay in its response to your request; however, ORM did mail a separate letter dated August 14, 2017, which offered an explanation and apology.

Regarding your assertion that ORM did not respond adequately to portions of your request, we note that aspects of your request more closely resemble questions and interrogatories rather than requests for existing records. Under FOIA, an agency is not obligated to create new records or to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency “has no duty either to answer questions unrelated to document requests or to create documents.”). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). “FOIA creates only a right of access to records, not a right to personal services.” *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Items 2 and 3 of your request are only seeking existing records. Items 1 and 4, while framed as requests for records, are also seeking an answer to your question of why ORM failed to investigate your complaint to your satisfaction. Under DC FOIA, ORM is required to produce documents in its possession; it is not obligated to answer questions. ORM asserts that it disclosed

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<sup>4</sup> You could have filed an appeal with this Office for constructive denial prior to ORM’s response based on the delay of ORM’s response.

Mr. Kenneth Schnaubelt  
Freedom of Information Act Appeals 2018-20  
November 2, 2017  
Page 3

all of the relevant records it maintained in response to your complaint. ORM is not required to answer questions regarding your complaint or its investigations; therefore, ORM's response to your request was adequate.

Conclusion

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

Respectfully,

Mayor's Office of Legal Counsel

cc: Robert Preston, FOIA Officer, ORM (via email)

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION  
BOARD OF DIRECTORS  
NOTICE OF PUBLIC MEETING**

**LARUBY Z. MAY, BOARD CHAIR**

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at **9:00 a.m. on Wednesday, February 28, 2018**. The meeting will be held at the United Medical Center, 1310 Southern Ave., SE, Washington, DC 20032 in the Conference Room. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website ([www.united-medicalcenter.com](http://www.united-medicalcenter.com)).

**DRAFT AGENDA**

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**  
January 26, 2018
- V. CONSENT AGENDA**
  - A. Dr. Eric Li, Interim Chief Medical Officer
  - B. Dr. Mina Yacoub, Medical Chief of Staff
- VII. EXECUTIVE MANAGEMENT REPORT**  
Luis Hernandez, Chief Executive Officer
- VIII. COMMITTEE REPORTS**
  - Patient Safety and Quality Committee
  - Finance Committee
- IX. PUBLIC COMMENT**
- X. OTHER BUSINESS**
  - A. Old Business
  - B. New Business
- XI. ANNOUNCEMENTS**

***NOTICE OF INTENT TO CLOSE.*** The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

**OFFICE OF THE DEPUTY MAYOR FOR  
PLANNING AND ECONOMIC DEVELOPMENT**

**NOTICE OF PUBLIC MEETING REGARDING  
SURPLUS RESOLUTION PURSUANT TO D.C. OFFICIAL CODE §10-801**

The Office of the Deputy Mayor for Planning and Economic Development will conduct a public meeting to receive public comments on the proposed surplus of the District of Columbia owned property identified below.

**Property:**

<u>Square/Lot</u>	<u>Premise Address</u>
5260/0856	Dix St, SE
5260/0855	Dix St, SE
5260/0854	Dix St, SE
5260/0853	Dix St, SE
5260/0852	Dix St, SE
5260/0851	Dix St, SE
5260/0850	Dix St, SE
5260/0849	Dix St, SE
5260/0848	Dix St, SE
5260/0847	Dix St, SE
5260/0846	Dix St, SE
5260/0845	Dix St, SE
5260/0844	Dix St, SE
5260/0843	Dix St, SE
5260/0842	Dix St, SE
5260/0841	Dix St, SE
5260/0840	Dix St, SE

The public meeting will be held at the date, time, and location as follows:

**Date:** Thursday, March 15, 2018

**Time:** 6:30-8:30 p.m.

**Location:** Beulah Baptist of Deanwood  
5820 Dix Street, NE  
Washington, D.C. 20019

**Contact:** Dion Townley, [dion.townley@dc.gov](mailto:dion.townley@dc.gov)  
(202) 531-2272

**Please note that written comments will be accepted by U.S. Mail or email until Friday, March 23, 2018, at:**

The Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attention: Dion Townley, Project Manager  
Dion.townley@dc.gov

**OFFICE OF THE DEPUTY MAYOR FOR  
PLANNING AND ECONOMIC DEVELOPMENT**

**NOTICE OF PUBLIC MEETING REGARDING  
SURPLUS RESOLUTION PURSUANT TO D.C. OFFICIAL CODE §10-801**

The Office of the Deputy Mayor for Planning and Economic Development will conduct a public meeting to receive public comments on the proposed surplus of the District of Columbia owned property identified below.

**Property:**

<u>Square/Lot</u>	<u>Premise Address</u>
5860/0948	1004 Howard Road, SE
5860/0906	1006 Howard Road, SE
5860/1035	1010 Howard Road, SE
5860/0839	--Howard Road SE
5860/1034	1014 Howard Road, SE
5860/0952	1018 Howard Road, SE
5860/0897	--Shannon Place, SE
5860/0908	--Howard Road, SE

The public meeting will be held at the date, time, and location as follows:

**Date:** Tuesday, March 20, 2018

**Time:** 6:30 p.m.

**Location:** DHCD Housing Resource Center  
1800 Martin Luther King Jr. Avenue, SE  
Washington, D.C. 20020

**Contact:** Mark Corneal, mark.corneal@dc.gov  
(202) 724-8940

**Please note that written comments will be accepted by U.S. Mail or email until Friday, March 30, 2018, at:**

The Office of the Deputy Mayor for Planning and Economic Development  
1350 Pennsylvania Avenue, NW, Suite 317  
Washington, DC 20004  
Attention: Mark Corneal, Senior Project Manager  
Mark.corneal@dc.gov

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF FINAL TARIFF

**TT00-5, IN THE MATTER OF VERIZON WASHINGTON DC, INC.'S PUBLIC OCCUPANCY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201**

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,<sup>1</sup> of its final action taken in the above-captioned proceeding.

2. On August 9, 2017, Verizon Washington, DC, Inc. (Verizon) filed its Right-of-Way (ROW) Compliance Filing for 2017, in accordance with D.C. Code § 10-1141.06.<sup>2</sup> The ROW Compliance Filing describes the process Verizon uses to recover from its customers the District of Columbia Public ROW fees it pays to the District of Columbia Government. Moreover, Verizon's ROW Compliance Filing contains the most recent calculations and updated rates for the Verizon's ROW surcharges, in accordance with the following tariff page:<sup>3</sup>

**GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201****Section 1A****2<sup>nd</sup> Revised Page 2**

3. In the ROW Compliance Filing, Verizon compares the current ROW surcharge rates and the updated ROW surcharge rates for the ROW Surcharge Rider.<sup>4</sup> Specifically, the ROW Compliance Filing indicates that the monthly customer ROW Surcharge Rider rate will increase by \$2.64, from \$5.66 to the updated rate of \$8.30, for Non-Centrex lines and increase by \$0.33, from \$0.71 to the updated rate of \$1.04 for Centrex lines.<sup>5</sup> According to Verizon, the increases are the result of: 1) a net under recovery of payments to D.C. Department of Transportation (DDOT) during the period from August 2015 to July 2017;<sup>6</sup> and 2) the forecasted under recovery of payments to DDOT from August to December 2017.<sup>7</sup> Also, the projected recovery of the increase in

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<sup>1</sup> D.C. Code § 2-505 (2001 Ed.) and D.C. Code § 34-802 (2001 Ed.).

<sup>2</sup> See D.C. Code, § 10-1141.06 (2001 Ed.).

<sup>3</sup> TT00-5, ROW Compliance Filing at 2.

<sup>4</sup> TT00-5, ROW Compliance Filing at 2.

<sup>5</sup> TT00-5, ROW Compliance Filing at 2.

<sup>6</sup> TT00-5, ROW Compliance Filing at 2.

<sup>7</sup> TT00-5, ROW Compliance Filing at 2.



the ROW Surcharge Rider is based on the customer line loss experienced between the quarters ending March 2017 and June 2017.<sup>8</sup> Verizon requests that the Commission approve the filing so Verizon can implement the new ROW Surcharge Rider rate on January 1, 2018.<sup>9</sup>

4. The Commission issued a Notice of Proposed Tariff (NOPT) that was published in the *D.C. Register* on December 29, 2017, inviting comment on Verizon's ROW Compliance Filing.<sup>10</sup> In the NOPT, the Commission states that Verizon has a statutory right to implement its filed ROW Surcharge rate revisions, but if the Commission discovers any inaccuracies in the calculation of the proposed surcharge rates, Verizon could be subject to a reconciliation of the surcharge rates. No Comments were filed in response to the NOPT and the Commission is satisfied that the ROW Surcharge Rider rates proposed by Verizon in the ROW Compliance Filing comply with D.C. Code §10-1141.06.

5. The Commission at its regularly scheduled Open Meeting held on February 14, 2018, took final action approving Verizon's ROW Compliance Filing. Verizon's ROW Compliance Filing shall become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

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<sup>8</sup> *TT00-5*, ROW Compliance Filing at 2. Currently, D.C. Code § 10-1141.06 permits recovery of the ROW fees only from customers receiving regulated switched-circuit wireline local exchange services (which excludes unregulated services such as FiOS broadband internet and digital voice). Consequently, the entire ROW Surcharge Rider will be assessed to a shrinking number of regulated switched-circuit wireline local exchange service customers that will result in an increase in the monthly ROW Surcharge Rider rate to individual local exchange service customers.

<sup>9</sup> *TT00-5*, ROW Compliance Filing at 2.

<sup>10</sup> 64 *D.C. Reg.* 013679-013680 (2017).

## DISTRICT OF COLUMBIA SENTENCING COMMISSION

## NOTICE OF PUBLIC MEETING

The Commission meeting will be held on Tuesday, February 20, 2018 at 5:00 p.m. The meeting will be held at 441 4<sup>th</sup> Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

For additional information, please contact: Mia Hebb, Staff Assistant, at (202) 727-8822 or email [mia.hebb@dc.gov](mailto:mia.hebb@dc.gov)

**Meeting Agenda**

1. Welcome New Member – Frederick Cooke and the Reappointment of William “Billy” Martin – Judge Weisberg.
2. Review and Approval of the Minutes from the December 12, 2017 Meeting - Action Item, Judge Weisberg.
3. Status Update on the Sentencing Guideline Survey/Focus Group Project – Informational Item, Barb Tombs-Souvey and Taylor Tarnalicki
  - a. Survey Distributed February 12, 2018
  - b. Survey Response Deadline March 23, 2018
  - c. Analysis Completed April 30, 2018
  - d. Begin Focus Group Process May 1, 2018
  - e. Conduct Focus Groups June & July 2018
  - f. Report Finalized Mid-September 2018
4. Proposed Annual Report Review Schedule – Informational, Barb Tombs-Souvey
5. Discussion of Criminal History Issues Identified at Retreat and Double Counting Memo – Participatory - Judge Weisberg and Barb Tombs-Souvey.
  - a. Key Criminal History Points/Takeaways from Retreat
  - b. Summary of Research Questions Raised by Members
  - c. Double Counting Offenses Memo
6. Schedule Next Meeting - March 20, 2018
7. Adjourn.

**TWO RIVERS PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Interactive Boards**

Two Rivers Public Charter School is soliciting proposals from qualified firms to replace classroom interactive boards. Proposals solicited for equipment (price quotes) and/or installation services. For a copy of the RFP, please email Sarah Richardson at [procurement@tworiverspcs.org](mailto:procurement@tworiverspcs.org).

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**NOTICE OF PUBLIC MEETING**

**Governance Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, March 7, 2018 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> 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](http://www.dcwater.com).

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

**DRAFT AGENDA**

- |  |                       |
|--|-----------------------|
| 1. Call to Order                         | Committee Chairperson |
| 2. Emerging Issues                       | Committee Chairperson |
| 3. Agenda for Upcoming Committee Meeting | Committee Chairperson |
| 4. Executive Session                     | Committee Chairperson |
| 5. Adjournment                           | Committee Chairperson |

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**NOTICE OF PUBLIC MEETING**

**Human Resources and Labor Relations Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, March 7, 2018 at 11:00 a.m. The meeting will be held in the Board Room (4<sup>th</sup> 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.dewater.com](http://www.dewater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [لمانley@dewater.com](mailto:لمانley@dewater.com).

**DRAFT AGENDA**

- |                      |                       |
|----------------------|-----------------------|
| 1. Call to Order     | Committee Chairperson |
| 2. Other Business    | Committee Chairperson |
| 3. Executive Session | Committee Chairperson |
| 4. Adjournment       | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19646 of Claude and Kira Vol**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 307.1, and from the non-conforming structure requirements of Subtitle C § 202.2, to construct a third-story rear addition to an existing one family dwelling in the R-1-B Zone at premises 1729 Upshur Street, N.W. (Square 2644, Lot 67).

**HEARING DATES:** January 31, 2018 and February 7, 2018<sup>1</sup>  
**DECISION DATE:** February 7, 2018

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum, dated October 6, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 3.)

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") 4A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4A, which is automatically a party to this application. The ANC submitted a report dated January 4, 2018, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 2, 2018, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report dated January 19, 2018 recommending approval of the application. (Exhibit 30.)

The District Department of Transportation ("DDOT") submitted a timely report dated January 17, 2018 indicating that it had no objection to the grant of the application. (Exhibit 29.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 307.1, and from the non-conforming structure requirements of Subtitle C § 202.2, to construct a third-story rear addition to an existing one family dwelling in the R-1-B Zone. The

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<sup>1</sup> The hearing was originally scheduled for January 31, 2018 and postponed to February 7, 2018.

only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle D §§ 5201 and 307.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS & ELEVATIONS.**

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

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 8, 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

BZA APPLICATION NO. 19646

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§ 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. 19651 of House of Ruth, Inc.**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 203.1(g), to replace an existing child development center with a new facility and increase the number of children from 76 to 88 and the number of staff from 21 to 25 in the R-1-B and R-3 Zones at premises 2910 and 2916 Pennsylvania Avenue S.E. (Square 5546, Lots 800, 5, 6, 7, and 8).

**HEARING DATES:** December 20, 2017 and February 7, 2018<sup>1</sup>  
**DECISION DATE:** February 7, 2018

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 7.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7B, which is automatically a party to this application. The ANC submitted a report dated November 15, 2017 recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting, at which a quorum was present, the ANC voted 4-0 to support the application. (Exhibit 39.) The ANC report discussed design feedback given to the Applicant, as well as a request for the Applicant to consider offering several community benefits. The Applicant testified at the public hearing on February 7, 2018 that it has agreed with the requests made by the ANC and intends to have a continued working relationship with the ANC.

The Office of Planning ("OP") submitted a timely report recommending approval of the application with two conditions. (Exhibit 38.) The District Department of Transportation

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<sup>1</sup> The hearing for this application was originally scheduled for December 20, 2017, and was postponed to February 7, 2018 at the Applicant's request.

(“DDOT”) submitted a timely report indicating that it had no objection to the application with two conditions. (Exhibit 37.) The Applicant testified that it accepts the four proposed conditions, but noted that DDOT’s condition regarding long-term bicycle parking spaces is already a requirement of the Zoning Regulations. The Board declined to adopt the long-term bicycle parking condition for that reason, but adopted the other conditions proposed by DDOT and OP.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proof pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 203.1(g), to replace an existing child development center with a new facility and increase the number of children from 76 to 88 and the number of staff from 21 to 25 in the R-1-B and R-3 Zones. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 203.1(g), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 36A1-36A2 AND WITH THE FOLLOWING CONDITIONS:**

1. The number of students and facility shall be determined by the Office of the State Superintendent of Education (“OSSE”) up to a maximum of 88 children and 25 faculty/staff.
2. The hours of operation shall be between 7:00 a.m. and 6:00 p.m., Monday through Friday.
3. The Applicant shall establish a pick-up and drop-off plan on P Street that includes an extension of the sidewalk from its current terminus eastward, subject to DDOT approval.

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

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 8, 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,

**BZA APPLICATION NO. 19651**

**PAGE NO. 3**

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. 19671 of Patrick's Pet Care on behalf of Catherine Hottel Van Sickler**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the animal care use requirements of Subtitle U § 513.1(m), to permit an animal care and boarding facility in the MU-4 zone at premises 3509 12th Street N.E. (Square 3928, Lot 45).

**HEARING DATE:** January 24, 2018 and February 7, 2018<sup>1</sup>

**DECISION DATE:** February 7, 2018

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by memoranda, dated June 16, 2017, and January 4, 2018<sup>2</sup>, from the Zoning Administrator, certifying the required relief. (Exhibits 6 (Original) and 30 (Revised).)

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") 5B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 28, 2017, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 37.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(m) to permit an animal care and boarding facility in the MU-4 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11

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<sup>1</sup> The hearing for this application was originally scheduled for January 24, 2018, and was postponed to February 7, 2018 at the Applicant's request.

<sup>2</sup> The initial memorandum was revised to indicate that the Applicant qualified for special exception as opposed to use variance relief, as originally cited.

DCMR Subtitle X § 901.2, and Subtitle U § 513.1(m), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 5.**

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

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 9, 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

BZA APPLICATION NO. 19671

PAGE NO. 2

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. 19682 of Tom Henneberg and Lisa Hayes**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 307.1 and the non-conforming structure requirements of Subtitle C § 202.2(b), to construct a two-story rear addition to an existing one-family dwelling in the R-1-B Zone at premises 2608 36th Street N.W. (Square 1935, Lot 24).

**HEARING DATE:** February 7, 2018

**DECISION DATE:** February 7, 2018

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at their regularly scheduled public meeting on January 16, 2018, at which the application was placed on its consent calendar, the ANC adopted a unanimous motion of no objection to the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated January 26, 2018, in support of the application. (Exhibit 32.) The District Department of Transportation ("DDOT") submitted a timely report, dated January 24, 2018, expressing no objection to the approval of the application. (Exhibit 30.)

There are 12 signatures from neighbors in support of the application. (Exhibit 16.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 307.1 and the non-conforming structure requirements of Subtitle C § 202.2(b), to construct a



two-story rear addition to an existing one-family dwelling in the R-1-B Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle D §§ 5201 and 307.1, and Subtitle C § 202.2(b), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

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

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 9, 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

**BZA APPLICATION NO. 19682**

**PAGE NO. 2**

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  
Public Employee Relations Board

<hr/>		)
In the Matter of:		)
		)
Metropolitan Police Department		)
		)
	Petitioner	)
		)
	and	)
		)
Fraternal Order of Police/		)
Metropolitan Police Department		)
Labor Committee (Devonnie Gregory)		)
		)
	Respondent	)
<hr/>		)

PERB Case No. 17-A-10  
Opinion No. 1645

**DECISION AND ORDER**

**I. Introduction**

On August 29, 2017, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act of 1979 (“CMPA”), D.C. Official Code § 1-605.02(6), seeking review of an Arbitrator’s Opinion and Award (“Award”) that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) on behalf of Devonnie Gregory (“Grievant”). The Arbitrator’s Award reversed the Grievant’s termination and reinstated the Grievant with back pay and benefits.<sup>1</sup> MPD asserts that the Arbitrator exceeded his jurisdiction.<sup>2</sup>

In accordance with section 1-605.02(6) of the D.C. Official Code, the Board is permitted to modify or set aside an arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and

<sup>1</sup> Award at 26.

<sup>2</sup> Request at 2. In its initial Arbitration Review Request, MPD also alleged that the Arbitrator’s Award is contrary to law and public policy, but did not provide any support for this contention in its Request or supporting Memorandum.

Decision and Order  
PERB Case No. 17-A-10  
Page 2

public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>3</sup> Having reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, the Board concludes that the Arbitrator did not exceed his jurisdiction. Therefore, the Board denies the Request.

## II. Arbitrator's Award

The Grievant was a 21-year veteran police officer with MPD in November 2010.<sup>4</sup> As the result of an off-duty domestic incident involving a former domestic partner on November 13, 2010, MPD issued a Notice of Proposed Adverse Action ("Notice") to the Grievant on March 22, 2011.<sup>5</sup> The Notice contained two charges.<sup>6</sup> Charge 1 provided, in pertinent part, that the Grievant was "deemed to have been involved in the commission of [an] act that would constitute a crime. . . ."<sup>7</sup> Charge 2 stated, in pertinent part, that the Grievant was engaged in "[c]onduct unbecoming an officer including acts detrimental to good discipline . . . or violations of any law . . . of the District of Columbia."<sup>8</sup> An internal hearing before an Adverse Action Panel ("Panel") was held on June 21, 2011.<sup>9</sup> The Panel sustained both Charges, recommending termination with respect to Charge 1, and a 30-day suspension with respect to Charge 2.<sup>10</sup> The Panel's recommendations were upheld by MPD's Human Resources Management Division on August 9, 2011.<sup>11</sup> The Grievant unsuccessfully appealed to Chief of Police Cathy Lanier and the parties proceeded to arbitration.<sup>12</sup>

In an Arbitration Award issued on August 3, 2017, the Arbitrator found that the factors cited by the Panel in Charge 1 did not meet the preponderance of the evidence standard.<sup>13</sup> For instance, the Arbitrator determined that the Panel was dismissive of evidence provided by the Grievant that undermined the former partner's version of events.<sup>14</sup> The Arbitrator noted that two judges denied the former partner's request for a protective order and the State's Attorney's office decided not to prosecute the criminal summons.<sup>15</sup> Additionally, the Arbitrator determined that the medical records and photographs did not show injuries on the former partner consistent with the physical assault alleged.<sup>16</sup> As to Charge 2, the Arbitrator found that MPD proved by substantial evidence that the Grievant participated in a physical confrontation instead of diffusing the

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<sup>3</sup> D.C. Official Code § 1-605.02(6).

<sup>4</sup> Award at 4.

<sup>5</sup> Award at 4.

<sup>6</sup> Award at 4.

<sup>7</sup> Award at 4.

<sup>8</sup> Award at 5.

<sup>9</sup> Award at 5.

<sup>10</sup> Award at 6.

<sup>11</sup> Award at 6.

<sup>12</sup> Award at 6.

<sup>13</sup> Award at 18.

<sup>14</sup> Award at 15.

<sup>15</sup> Award at 15-16.

<sup>16</sup> Award at 17.

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Page 3

situation as she was trained.<sup>17</sup> However, since the Arbitrator concluded that there was insufficient evidence to support the physical assault alleged, the Arbitrator only sustained part of Charge 2.<sup>18</sup> Therefore, based on the Arbitrator's finding that MPD did not prove Charge 1, the Arbitrator determined that termination was not the appropriate penalty.<sup>19</sup> Since the Arbitrator only sustained Charge 2 in part, the Arbitrator reduced the Grievant's suspension on this Charge to 21 days.<sup>20</sup> The Arbitrator ordered that the Grievant be reinstated with back pay and benefits, minus the 21-day suspension.<sup>21</sup>

On August 29, 2017, MPD filed the present Request, seeking review of the Arbitrator's Award as well as a request for additional time to file a memorandum in support of its Request.<sup>22</sup> On September 5, 2017, MPD submitted its Petitioner's Memorandum in Support of its Arbitration Review Request and on September 20, 2017, the Union submitted FOP's Opposition to Arbitration Review Request.

### III. Discussion

MPD contends that the Board should overturn the Arbitrator's decision that the Panel's findings are not supported by the record, because the Arbitrator's decisions on Charges 1 and 2 are in conflict.<sup>23</sup> Specifically, MPD maintains that the Arbitrator's determination that the Grievant engaged in a verbal altercation and physical assault is inconsistent with his finding that the Panel did not prove Charge 1 by a preponderance of the evidence.<sup>24</sup> Further, MPD contends that the Arbitrator exceeded the scope of his authority when he "re-weighed the evidence" and substituted his judgment for that of the Panel and MPD Chief Lanier.<sup>25</sup> Accordingly, MPD claims that the Award should be reversed.<sup>26</sup>

An arbitrator derives his or her jurisdiction from the consent of the parties, as expressed through their collective bargaining agreement.<sup>27</sup> To determine if an arbitrator has exceeded his or her jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."<sup>28</sup> The Board looks to

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<sup>17</sup> Award at 19-20

<sup>18</sup> Award at 19-20.

<sup>19</sup> Award at 21.

<sup>20</sup> Award at 23.

<sup>21</sup> Award at 26.

<sup>22</sup> Request at 7, 34.

<sup>23</sup> Request at 6.

<sup>24</sup> Request at 8.

<sup>25</sup> Request at 6.

<sup>26</sup> Request at 12.

<sup>27</sup> *Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers v. D.C. Pub. Sch.*, 77 A.3d 441, 446 (D.C. 2013).

<sup>28</sup> *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (on behalf of Jacobs)*, 60 D.C. Reg. 3060, Slip Op. 1366 at 5-6, PERB Case No. 12-A-04 (2013).

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PERB Case No. 17-A-10  
Page 4

whether the arbitrator resolves a dispute not committed to arbitration, commits fraud, has a conflict of interest, or is arguably construing or applying the contract.<sup>29</sup>

Contrary to MPD's challenge to the Award on the grounds that the arbitrator exceeded his authority by re-weighing the evidence, the Board has held since 1988 that the arbitrator's authority is derived from the parties' collective bargaining agreement.<sup>30</sup> In this case, Article 12, Section 8 of the parties' collective bargaining agreement states, in pertinent part, that an employee may appeal to arbitration and when doing so, the arbitrator has the authority to review the evidentiary ruling of the Panel.<sup>31</sup> Moreover, at the arbitration hearing, the parties requested the Arbitrator to evaluate: (1) whether the evidence presented by MPD was sufficient to support the charges; and (2) whether termination is an appropriate remedy.<sup>32</sup> This required the Arbitrator to evaluate the evidence first reviewed by the Panel including witness testimony, the Grievant's employment records, medical records, criminal records, and similar MPD misconduct cases. After weighing this evidence, the Arbitrator determined the Panel did not meet its burden of proof to sustain Charge 1 and part of Charge 2. In so doing, the Arbitrator did not exercise any authority outside of the parties' collective bargaining agreement; and he ruled in accordance with the parties' instructions to him. Accordingly, the Request offers no plausible reason for the Board to find that the Arbitrator exceeded his jurisdiction.

The entire focus of MPD's Request is on the reasoning and the evidentiary conclusions of the Arbitrator rather than the scope of the Arbitrator's authority. The Board consistently has held that by agreeing to submit the resolution of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, which the parties have bargained for.<sup>33</sup> "[T]he parties agree to be bound by the Arbitrator's interpretation of the parties' collective bargaining agreement . . . as well as his evidentiary findings and conclusions . . . ."<sup>34</sup> The Board has stated that "resolution of disputes over credibility determinations and assessing what weight and significance such evidence should be afforded is within the jurisdictional authority of the arbitrator."<sup>35</sup> The Board has specifically held that it "will not substitute its own interpretation or that of the Agency's for that of the duly designated arbitrator."<sup>36</sup> Accordingly, MPD's disagreement with the Arbitrator's findings and conclusions does not constitute grounds for the Boards' review. Therefore, there is no basis upon which to modify, set aside, or remand the Award.

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<sup>29</sup> See *id.* at 6 (quoting *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

<sup>30</sup> *D.C. Dep't of Pub. Works v. AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988).

<sup>31</sup> Award at 3.

<sup>32</sup> Award at 2.

<sup>33</sup> See *Univ. of D.C. v. Univ. of D.C. Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320 at 2, PERB Case No. 92-A-04 (1992).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Dep't of Corrs. v. Int'l Bhd. Of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. No. 157 at 3, PERB Case No. 87-A-02 (1987).

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PERB Case No. 17-A-10  
Page 5

#### **IV. Conclusion**

Based on the foregoing, the Board finds that the Arbitrator did not exceed his jurisdiction. Accordingly, MPD's Request is denied and the matter is dismissed in its entirety with prejudice.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559.1, this Decision and Order shall become final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By the unanimous vote of Board Chairperson Charles Murphy, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

November 30, 2017

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 17-A-10, Op. No. 1645 was sent by File and ServeXpress to the following parties on this the 27<sup>th</sup> day of December, 2017.

Andrea G. Comentale, Esq.  
Office of the Attorney General  
441 4<sup>th</sup> Street, NW, Suite 1180 North  
Washington, DC 20001

Marc Wilhite, Esq.  
Pressler, Senftle & Wilhite, P.C.  
1432 K Street, N.W., Twelfth Floor  
Washington, DC 20005

/s/ Sheryl Harrington  
PERB



Government of the District of Columbia  
Public Employee Relations Board

_____	)	
In the Matter of:	)	
	)	
American Federation of Government	)	
Employees, Local 2741	)	
	)	PERB Case No. 16-U-19
Complainant	)	
	)	
and	)	Opinion No. 1646
	)	
Department of General Services	)	
	)	
Respondent	)	
_____	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On May 18, 2016, American Federation of Government Employees, Local 2741 (“Union”), filed an unfair labor practice complaint against the Department of General Services (“DGS”). The Union alleged that DGS violated D.C. Official Code §§ 1-617.04(a)(1) and (5), by failing to provide responses to a request for information.<sup>1</sup> The Union requests that the Board order DGS to desist from violations of the CMPA in the manner alleged, provide the Union with all requested bargaining information, post a notice to all employees, award costs, and award additional relief that the Board deems appropriate.<sup>2</sup>

For reasons stated herein, the Board finds that DGS’ delay in submitting the requested information was not unreasonable. Therefore, the Board finds that DGS has not violated D.C. Official Code §§ 1-617.04(a)(1) and (5) and dismisses the Complaint.

**II. Background**

<sup>1</sup> Complaint at 2.

<sup>2</sup> Complaint at 3.

Decision and Order  
PERB Case No. 16-U-19  
Page 2

On April 25, 2016, pursuant to the parties' collective bargaining agreement, the Union submitted an information request seeking the following information: (1) a list of all bargaining unit employees placed on absent without leave ("AWOL") starting January 1st, 2016 until April 25th, 2016, including each employee's name, grade, series, position, service computation date, and annual salary; and (2) any forms used to execute AWOL.<sup>3</sup> DGS did not respond to the Union's request for information. The Union filed the instant Complaint on May 18, 2016.

In an Answer filed on June 6, 2016, DGS admitted that it had not supplied the information requested by the Union.<sup>4</sup> Nonetheless, DGS claimed that it had not violated D.C. Official Code §§ 1-617.04(a)(1) and (5).<sup>5</sup> As an affirmative defense, DGS stated it had not been given ample time to respond to the request.<sup>6</sup> DGS noted that the request for information was made on April 25, 2016, only 18 working days before the Union filed the instant Complaint.<sup>7</sup> Further, DGS stated that it had substantially complied with the Union's request by attaching Exhibit A to the Answer and would supply any remaining information as soon as it was made available.<sup>8</sup> In a Supplemental Answer filed on July 14, 2016, DGS contended that it had fully complied with the Union's request for information by attaching Exhibits A, B, and C to the Supplemental Answer and therefore, the Complaint was now moot.<sup>9</sup> DGS requested that the Board dismiss the Complaint with prejudice.<sup>10</sup>

The parties proceeded to mediation on September 27, 2016. No settlement was reached.

### III. Discussion

The Board has repeatedly held that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in collective bargaining.<sup>11</sup> When an agency has failed and refused to produce the information without a viable defense, the agency has failed to meet its statutory duty to bargain in good faith in violation of D.C. Official Code § 1-617.04(a)(5), and derivatively, interfered with the employees' statutory rights to organize and to bargain collectively, a violation of D.C. Official Code § 1-617.04(a)(1).<sup>12</sup> Further, an agency's

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<sup>3</sup> Complaint at 2.

<sup>4</sup> Answer at 2.

<sup>5</sup> Answer at 2.

<sup>6</sup> Answer at 2.

<sup>7</sup> Answer at 3.

<sup>8</sup> Answer at 3. Answer, Exhibit A includes D.C. Standard Form—1199 as well as a list of AWOL employees including their names, grade, series, salary, and service dates.

<sup>9</sup> Supplemental Answer at 3. Supplemental Answer, Exhibit A includes seven AWOL notices; Exhibit B is four forms titled "Sign In/Out Sheet" signed by employees; and Exhibit C is a list of AWOL employees including their names, grade, series, salary, and service dates.

<sup>10</sup> Supplemental Answer at 4.

<sup>11</sup> *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 6781, Slip Op. No. 1131, PERB No. 09-U-59 at p.4 (2011).

<sup>12</sup> *Am. Fed'n of State, Cty. and Mun. Emp., Local 2776 v. Dep't of Fin. and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245 at 2, PERB Case No.89-U-02 (1990).

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PERB Case No. 16-U-19  
Page 3

failure to timely furnish the requested information constitutes a violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).<sup>13</sup>

In this case, the material facts are undisputed by the parties. Specifically, DGS acknowledged that the Union submitted a request for information on April 25, 2016, and that it has not supplied the information requested.<sup>14</sup> As a result, the Board finds that the alleged violations do not turn on disputed material issues of fact, but rather on a question of law, and can be appropriately decided on the pleadings pursuant to Board Rule 520.10.

After reviewing the evidence, the Board finds that DGS provided most of the information requested by the Union on June 6, 2016, and supplied the remaining information and documents on July 14, 2016. The Board finds persuasive DGS' response that it had not been given enough time to respond to the Union's April 25, 2016, request and did so as soon as the information was available. The Board also finds that DGS responded with all requested documents in approximately two and one half months; a delay that is not unreasonable under the circumstances of this case. Therefore, DGS has met its statutory duty of good faith bargaining and has not violated D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly the Complaint is dismissed.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Union's complaint in PERB Case No. 16-U-19 is dismissed with prejudice;
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### **BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By the unanimous vote of Board Chairperson Charles Murphy, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

December 21, 2017

Washington, D.C.

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<sup>13</sup> *Doctor's Council of D.C. v. Dep't of Youth Rehab. Servs.*, 64 D.C. Reg. 3705, Slip Op. No. 1613 at 3, PERB Case No. 11-U-22 (2016).

<sup>14</sup> Answer at 3; Supplemental Answer at 4.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-U-19, Op. No. 1646 was sent by File and ServeXpress to the following parties on this the 27<sup>th</sup> day of December, 2017.

Brenda C. Zwack  
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/s/ Sheryl Harrington  
PERB

**District of Columbia REGISTER – February 23, 2018 – Vol. 65 - No. 8 001805 – 002101**