



District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council confirms Sandra Mattavous-Frye as the District of Columbia Public Service Commission’s People’s Counsel
- Alcoholic Beverage Regulation Administration updates application requirements for new off-premises retailer’s licenses
- Department of Health Care Finance announces funding availability for the Community Resource Information Exchange Technical Solution Development Grant
- Department of Health establishes new standards for identifying public health nuisances and for enforcing remedies
- Department of Health announces funding availability for implementing perinatal health support services
- Department of Human Services announces funding availability for implementing a year-round comprehensive street outreach network program
- Office of the Deputy Mayor for Planning and Economic Development announces availability of the FY2019 Investor Engagement Grant

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

A RESOLUTION

23-140

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency, due to congressional review, with respect to the need to amend section 47-362 of the District of Columbia Official Code to require Council approval of capital reprogrammings made by the District Department of Transportation if certain conditions are not met.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Florida Avenue Multimodal Project Completion Congressional Review Emergency Declaration Resolution of 2019”.

Sec. 2. (a) On May 7, 2019, the Council approved the Florida Avenue Multimodal Project Completion Emergency Amendment Act of 2019, effective June 1, 2019 (D.C. Act 23-57; 66 DCR 6788) (“Emergency Act”), which will expire on August 30, 2019, while the Council is in recess. The legislation requires Council approval of capital reprogrammings made by the District Department of Transportation (“DDOT”) after September 30, 2019, if certain conditions are not met, and it requires DDOT to send to the Council monthly progress reports about the Florida Avenue Multimodal Transportation Project.

(b) On June 4, 2019, the Council passed on final reading the Florida Avenue Multimodal Project Completion Temporary Amendment Act of 2019, passed on 2nd reading on June 4, 2019 (Enrolled version of Bill 23-268) (“Temporary Act”), which has not yet been transmitted to Congress for review. It is unlikely that the Temporary Act will become effective before August 30, 2019.

(c) The Florida Avenue Multimodal Project Completion Congressional Review Emergency Act of 2019 is necessary to ensure that there is no gap in legal authority between the expiration of the Emergency Act and the effective date of the Temporary Act.

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 Florida Avenue Multimodal Project Completion Congressional Review Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-141

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Election Code of 1955 to require the Board of Elections to accept absentee ballots postmarked or otherwise proven to have been sent on or before the day of the election and received by the Board of Elections no later than the 7th day after the election, to move the primary election date in presidential election years to the first Tuesday in June, and to require the Board of Elections, at each early voting center, to allow persons to vote in person for not more than 12 days before election day.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Primary Date Alteration Congressional Review Emergency Declaration Resolution of 2019”.

Sec. 2. (a) On May 14, 2019, the Council passed the Primary Date Alteration Emergency Amendment Act of 2019, effective May 29, 2019 (D.C. Act 23-56; 66 DCR 6786). The emergency act expires on August 27, 2019, during the Council’s summer recess.

(b) On May 28, 2019, the Council passed the Primary Date Alteration Temporary Amendment Act of 2019, enacted on June 17, 2019 (D.C. Act 23-59; 66 DCR 7343), which is pending congressional review.

(c) This congressional review emergency legislation is necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary act.

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 Primary Date Alteration Congressional Review Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-142

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to approve Modification Nos. 7, 11, and 13 to Contract No. CW47376 with Metropolitan Educational Solutions, LLC, to provide permanent supportive housing services, and to authorize payment in the not-to-exceed amount of \$1,902,212 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. CW47376 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists a need to approve Modification Nos. 7, 11, and 13 to Contract No. CW47376 with Metropolitan Educational Solutions, LLC to provide permanent supportive housing services, and to authorize payment in the not-to-exceed amount of \$1,902,212 for the goods and services received and to be received under the modifications.

(b) By Modification No. 7, dated October 20, 2018, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Human Services, exercised option year 2 of Contract No. CW47376 to provide permanent supportive housing services for the period from October 20, 2018, through October 19, 2019, in the not-to-exceed amount of \$886,200.

(c) Modification Nos. 8, 9, 10, and 12 modified Contract No. CW47376 but did not increase the funding.

(d) By Modification No. 11, dated April 8, 2019, OCP increased the not-to-exceed amount of option year 2 of Contract No. CW47376 by \$107,922, to a total of \$994,122.

(e) Modification No. 13 is now necessary to increase the total not-to-exceed amount for option year 2 of Contract No. CW47376 to \$1,902,212.

(f) Because the modifications increase the value of Contract No. CW47376 by more than \$1 million during a 12-month period, Council approval is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, Metropolitan Educational Solutions, LLC, cannot be paid for the goods and services provided in excess of \$1 million for the period from October 20, 2018, through October 19, 2019.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. CW47376 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-143

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to approve Modification Nos. 10, 13, and 14 to Contract No. CW47432 with Community Connections, Inc., to provide permanent supportive housing services, and to authorize payment in the not-to-exceed amount of \$1,416,588 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. CW47432 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists a need to approve Modification Nos. 10, 13, and 14 to Contract No. CW47432 with Community Connections, Inc., to provide permanent supportive housing services, and to authorize payment in the not-to-exceed amount of \$1,416,588 for the goods and services received and to be received under the modifications.

(b) By Modification No. 10, dated October 21, 2018, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Human Services, exercised option year 2 of Contract No. CW47432 to provide permanent supportive housing services for the period from October 21, 2018, through October 20, 2019, in the not-to-exceed amount of \$559,980.

(c) Modification Nos. 11 and 12 modified Contract No. CW47376 but did not increase the funding.

(d) By Modification No. 13, dated April 10, 2019, OCP increased the not-to-exceed amount of option year 2 of Contract No. CW47376 by \$374,079, to a total of \$934,059.

(e) Modification No. 14 is now necessary to increase the total not-to-exceed amount for option year 2 of Contract No. CW47376 to \$1,416,588.

(f) Because the modifications increase the value of Contract No. CW47376 by more than \$1 million during a 12-month period, Council approval is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, Community Connections, Inc., cannot be paid for the goods and services provided in excess of \$1 million for the period from October 21, 2018, through October 20, 2019.

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. CW47432 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-144

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to approve Modification Nos. 6, 9, and 10 to Contract No. CW47840 with Change and Innovation Agency, LLC, for business process redesign and maintenance services, and to authorize payment in the not-to-exceed amount of \$1,454,704.08 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 CW47840 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists a need to approve Modification Nos. 6, 9, and 10 to Contract No. CW47840 with Change and Innovation Agency, LLC, for business process redesign and maintenance services, and to authorize payment in the not-to-exceed amount of \$1,454,704.08 for the goods and services received and to be received under the modifications.

(b) By Modification No. 6, dated October 30, 2018, the Office of Contracting and Procurement (“OCP”), on behalf of the Department of Human Services, exercised partial Option Year Two 2 of Contract No. CW47840 with Change and Innovation Agency, LLC, for the period from October 31, 2018, through April 30, 2019, in the not-to-exceed amount of \$395,252.04.

(c) Modification Nos. 7 and 8 of Contract No. CW47840 were administrative modifications that did not add any value to Contract No. CW47840.

(d) By Modification No. 9, dated April 30, 2019, OCP exercised the remainder of Option Year Two 2 of Contract No. CW47840 for the period from May 1, 2019, through October 30, 2019, in the not-to-exceed amount of \$558,452.04, increasing the total not-to-exceed amount for Option Year Two 222 of Contract No. CW47840 to \$953,704.08.

(e) Modification No. 10 is now necessary to increase the not-to-exceed amount of Option Year Two 2 of Contract No. CW47840 by \$501,000, bringing the total not-to-exceed amount of Contract No. CW47840 for the period from October 31, 2018, through October 30, 2019, to \$1,454,704.08.

(f) Because the modifications increase the value of Contract No. CW47840 by more than \$1 million during a 12-month period, Council approval is required by section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

ENROLLED ORIGINAL

(g) Approval is necessary to allow the continuation of these vital services. Without this approval, Change and Innovation Agency, LLC, cannot be paid for the goods and services provided in excess of \$1 million for the contract period from October 31, 2018, through October 30, 2019.

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. CW47840 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-145

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to approve Modification No. 03 to Contract No. DCAM-17-NC-0007 with Security Assurance Management, Inc., for security guard services, and to authorize payment for the 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 “Modifications to Contract No. DCAM-17-NC-0007 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists an immediate need to approve Modification No. 03 to Contract No. DCAM-17-NC-0007 with Security Assurance Management, Inc., for security guard services, and to authorize payment for the services received and to be received under the modification.

(b) On April 11, 2018, the Department of General Services (“Department”) executed the underlying Contract authorizing Security Assurance Management, Inc., to provide security guard services at various District of Columbia locations, in a maximum aggregate not-to-exceed (“NTE”) amount of \$25,736,931.48 for the Base Year. The Council approved the underlying contract as CA22-442. Subsequently, the Department issued Task Order Nos. 1 through 6 in the aggregate amount of \$24,679,229.02. On August 22, 2018, the Department issued Modification No. 01 at no cost; thus, Council approval was not required. On February 8, 2019, the Department issued Task Order No. 7 with a value of \$2,817,468.60 and Task Order No. 8 with a value of \$124,605.45. Task Order Nos. 7 and 8, with an aggregate value of \$2,942,074.05, increased the total amount of the Contract by \$2,942,074.05 to \$27,621,303.07, representing an increase of \$1,884,371.59 since Council’s approval of the initial NTE amount for the Base Year of the Contract. On March 14, 2019, the Department issued Task Order No. 9 with a value of \$2,036,560.27 and Task Order No. 10 with a value of \$89,046.18, increasing the total amount of the Contract by an additional \$2,125,606.45 to \$29,746,909.52. Therefore, proposed Modification No. 03 would increase the maximum aggregate NTE value of the Base Year by \$4,009,978.04, from \$25,736,931.48 to \$29,746,909.52, which is inclusive of the aggregate value of Task Order Nos. 7 through 10.

ENROLLED ORIGINAL

(c) Modification No. 03 will increase the total NTE value of the Base Year of the Contract by an amount in excess of \$1 million during a 12-month period; therefore, Council approval of Modification No. 03 is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

(d) Council approval of Modification No. 03 is necessary to compensate Security Assurance Management, Inc., for essential security guard services provided during the Base Year.

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. DCAM-17-NC-0007 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-146

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To confirm the reappointment of Ms. Sandra Mattavous-Frye as the People's Counsel.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "People's Counsel Sandra Mattavous-Frye Confirmation Resolution of 2019".

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

Ms. Sandra Mattavous-Frye
(Ward 5)

as the People's Counsel pursuant to section 1 of An Act to provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes, approved January 2, 1975 (88 Stat. 1975; D.C. Official Code § 34-804), for a term to end June 13, 2023.

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

23-147

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To approve an agreement to enter into a long-term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2018-LRSP-01A with 3500 East Cap Venture, LLC, for program units at The Solstice - Phase II, located at 3500 East Capitol Street, N.E.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2018-LRSP-01A Approval Resolution of 2019".

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

(b) In 2017, DCHA participated in a request for proposals issued by the District of Columbia Department of Housing and Community Development. Of the total proposals received, 7 developers were chosen to work with DCHA and other District agencies to develop affordable housing and permanent supportive housing units for extremely low-income families making zero to 30% of the area's median income, as well as the chronically homeless and individuals with mental or physical disabilities. Upon approval of the contract by the Council, DCHA will enter into an agreement to enter into a long-term subsidy contract ("ALTSC") with the selected housing providers under the LRSP for housing services.

(c) There exists an immediate need to approve the ALTSC with 3500 East Cap Venture, LLC, under the LRSP in order to provide long-term affordable housing units for extremely low-income households for units located at 3500 East Capitol Street, N.E.

ENROLLED ORIGINAL

(d) The legislation to approve the contract will authorize an ALTSC between the District of Columbia Housing Authority and 3500 East Cap Venture, LLC, with respect to the payment of a rental subsidy and allows the owner to lease the rehabilitated units at The Solstice - Phase II and house extremely low-income households with incomes at 30% or less of the area median income.

Sec. 3. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with 3500 East Cap Venture, LLC, to provide an operating subsidy in support of 5 affordable housing units in an initial amount not to exceed \$118,260 annually.

Sec. 4. Transmittal.

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

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-148

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to require the Mayor to establish a pilot program through which a close relative of a child may be eligible to receive subsidy payments for the care and custody of the child.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Close Relative Caregiver Subsidy Pilot Program Establishment Emergency Declaration Resolution of 2019”.

Sec. 2. (a) The Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*), created a program to provide financial support to families in which grandparents maintain custody of their grandchildren.

(b) Testimony provided during the performance oversight proceedings for the Child and Family Services Agency (“CFSA”) demonstrated that a broader population of kin caregivers exists in the District. Specifically, one study conducted in 2017 found that 9,000 District children under 18 years of age lived in households led by relative caregivers that were not grandparents.

(c) Further, witnesses also testified that many of these close relative caregivers require immediate financial assistance to ensure that youth are afforded stability and are not removed from a home with a close kinship relationship.

(d) The Fiscal Year 2020 Local Budget Act of 2019, passed on 2nd reading on May 28, 2019 (Enrolled version of Bill 23-208), establishes a close relative caregiver subsidy pilot program (“Pilot Program”). Funding for the Pilot Program will become available on October 1, 2019, the first day of Fiscal Year 2020.

(e) Emergency legislation is now necessary to ensure that CFSA is able to begin planning during the summer recess period for the administration of the Pilot Program by conducting preparatory activities for the hiring of one full-time employee, thus allowing the Pilot Program to become operational as soon as possible after the beginning of Fiscal Year 2020.

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 Close Relative Caregiver Subsidy Pilot Program Establishment Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-150

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to amend part B of the Department of Health Functions Clarification Amendment Act of 2001 to exempt the tobacco bar and retail store located at 1132 19th Street, N.W., from the revenue requirements needed to gain an exemption from the indoor smoking prohibition from the Department of Health.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Department of Health Functions Clarification Emergency Declaration Resolution of 2019”.

Sec. 2(a) Part B of the Department of Health Functions Clarification Amendment Act of 2001, effective April 4, 2006 (D.C. Law 16-90; D.C. Official Code § 7-741.01 *et seq.*) (“Act”), provides that a tobacco bar, as defined in the act, must “enerate “10% or more of its total annual revenue from the on-site sale of tobacco products” in order to qualify as a tobacco bar and be granted an exemption from the District’s indoor smoking prohibition.

(b) The Act further provides that a retail store seeking to sell tobacco products and accessories must generate “no greater than 25% of the total revenue of the establishment” from the sale of non-tobacco products or accessories.

(c) The Department of Health (“DOH”) has interpreted the Act to require that tobacco bars and retail stores must show one year of sales in order to be granted an exemption from the indoor smoking prohibition.

(d) DOH’s interpretation appears to be contrary to the Council’s intent when the pertinent language was added to the statute in 2006, as the committee report from D.C. Law 16-90 notes that “the [Committee on Health] recommends preserving a few of the exemptions in Bill 16-293 – namely cigar bars . . . [and] retail tobacco outlets. . . .”

(e) Such an interpretation of the law is now preventing a District business, J.R. Cigars, from moving to a new location at 1132 19th Street, N.W., and operating as the tobacco bar and retail store Casa de Montecristo Cigar Store and Lounge. DOH will not allow J.R. Cigar’s to use total annual revenue from its previous site at 1730 L Street, N.W., to qualify for the indoor smoking prohibition exemption.

ENROLLED ORIGINAL

(f) An emergency exists because the ambiguity in the existing statute and DOH's interpretation of it will not enable Case de Montecristo to allow indoor smoking in a lounge designed for the purpose of consuming cigars on-site.

(g) The emergency legislation will exempt Case de Montecristo from the revenue requirements of the Act needed to gain an exemption from the indoor smoking prohibition from DOH.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Department of Health Functions Clarification Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-151

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 25, 2019

To declare the existence of an emergency with respect to the need to amend the St. Elizabeths East Redevelopment Support Act of 2014 to clarify that it is not subject to An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, and to authorize the Mayor to dispose of a portion of the exchanged property for the redevelopment of St. Elizabeths East – Phase I.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “St. Elizabeths East Redevelopment Support Emergency Declaration of 2019”.

Sec. 2. (a) The Council approved the St. Elizabeths East Campus-Phase 1 Disposition Approval Resolution of 2016, effective March 1, 2016 (Res. 21-416; 63 DCR 9325), which authorized the disposition of real property known as the St. Elizabeths East Campus located between 1300 and 1100 Alabama Avenue, S.E. (“St. Elizabeths East Campus”) to Redbrick LMD, LLC, and Gragg-Cardona Partners (collectively, “Developer”), for the purpose of creating a mixed-use development project providing affordable housing, residential market-rate housing, retail, and ancillary uses (“St. Elizabeths East Redevelopment”).

(b) The Council approved the St. Elizabeths East Redevelopment Support Act of 2014, effective April 30, 2015 (D.C. Law 20-244; 62 DCR 1490) (“2014 act”), which approved a land swap between the District and the Washington Area Metro Transit Authority (“WMATA”) necessary for the St. Elizabeths East Redevelopment (“Land Swap”).

(c) The Land Swap will enable an extension of 13th Street, S.E., pursuant to the St. Elizabeths Master Plan and grant WMATA easements and fee title to the areas currently operated and maintained as part of the green line Metrorail system near the St. Elizabeths East Campus. Under the Land Swap, the District will receive 2 lots, Lots 17b and 107 (“Land Swap Lots”).

(d) The Mayor needs authority to dispose of the Land Swap Lots to the Developer to allow the St. Elizabeths East Redevelopment to move forward. Therefore, an amendment to the 2014 act is necessary to allow the St. Elizabeths East Redevelopment to move forward.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the St. Elizabeths East Redevelopment Support Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

B23-366 Zaire Kelly Park Designation Act of 2019

Intro. 6-25-19 by Councilmembers McDuffie and T. White and referred to the Committee of the Whole

PROPOSED RESOLUTION

PR23-405 Proposed Contract with between UDC and the Old Congress Heights School Redevelopment Company, LLC Approval Resolution of 2019

Intro. 6-26-19 by Chairman Mendelson and Councilmembers R. White and Cheh and Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM 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 GBM 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 the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 23-45: FY 2019 Grant Budget Modifications of June 17, 2019

RECEIVED: 14-day review begins June 27, 2019

GBM 23-46: FY 2019 Grant Budget Modifications of June 21, 2019

RECEIVED: 14-day review begins June 28, 2019

GBM 23-47: FY 2019 Grant Budget Modifications of June 25, 2019

RECEIVED: 14-day review begins June 28, 2019

GBM 23-48: FY 2019 Grant Budget Modifications of June 27, 2019

RECEIVED: 14-day review begins July 1, 2019

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 23-20: Request to reprogram \$800,000 of Fiscal Year 2019 Local funds budget authority from the Office of the State Superintendent of Education (OSSE) to Special Education Transportation (SET) was filed in the Office of the Secretary on June 26, 2019. This reprogramming will enable SET to cover the costs of resources needed to support personnel costs within terminal operations.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-21: Request to reprogram \$555,483 of Fiscal Year 2019 Local funds budget authority within the Office of Risk Management (ORM) was filed in the Office of the Secretary on June 27, 2019. This reprogramming is needed to cover the projected costs of non-personal services.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-22: Request to reprogram \$1,000,000 of Fiscal Year 2019 Local funds budget authority within the Department of Consumer and Regulatory Affairs (DCRA) was filed in the Office of the Secretary on June 27, 2019. This reprogramming is needed to support the cost of nuisance abatement services, Information Technology contractors, and maintenance fees.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-23: Request to reprogram \$2,527,269 of Fiscal Year 2019 Local funds budget authority from the District of Columbia Public Charter Schools (DCPCS) was filed in the Office of the Secretary on June 27, 2019. This reprogramming will enable Workforce Investments to cover the costs of collective bargaining agreements currently under negotiation.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-24: Request to reprogram \$5,841,661 of capital funds budget authority and allotment from the Department of Human Services (DHS), Department of Parks and Recreation (DPR), Office of the Attorney General (OAG), Office of the Chief Technology Officer (OCTO), Fire and Emergency Medical Services Department (FEMS), District Department of Transportation (DDOT), and Washington Metropolitan Area Transit Authority (WMATA) to DDOT was filed in the Office of the Secretary on June 27, 2019. This reprogramming is needed to continue to execute street and sidewalk projects citywide during FY 2019.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-25: Request to reprogram \$624,108 of Fiscal Year 2019 Local funds budget authority within the Department of General Services (DGS) was filed in the Office of the Secretary on June 27, 2019. This reprogramming is needed to cover the cost of work orders for District of Columbia Public Schools as part of Summer Readiness 2019.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-26: Request to reprogram \$4,700,000 of Capital funds budget authority and allotment from the Washington Metropolitan Area Transit Authority (WMATA) to the District Department of Transportation (DDOT) was filed in the Office of the Secretary on June 27, 2019. This reprogramming is needed to expedite the delivery of a reengineered K Street NW corridor.

RECEIVED: 14-day review begins June 28, 2019

Reprog. 23-27: Request to reprogram \$390,599 of Fiscal Year 2019 Local funds budget authority within the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to support funding commitments with Metropolitan Police Department for security and traffic control services at the Saint Elizabeths Entertainment and Sports Arena, and to reconcile Purchase Cards expenditures.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-28: Request to reprogram \$280,000 of Fiscal Year 2019 Local funds budget authority from the Office of the Deputy Mayor for Planning and Economic Development (DMPED) to the Office of the City Administrator (OCA) and the Office of Neighborhood Safety and Engagement (ONSE) was filed in the Office of the Secretary on June 28, 2019. This reprogramming ensures that operational activities are fully funded within OCA and ONSE.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-29: Request to reprogram \$915,840 of Fiscal Year 2019 Local funds budget authority within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to ensure that DOEE can: 1) support personal services costs associated with the GreenReady internship program in the Green Economy program, 2) support the implementation of Lead Registry and Lead Filter Replacement programs, 3) support the implementation of essential improvements to the agency's Aquatic Resources Education Center, and 4) properly align the budget within the Natural Resources division with projected expenditures.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-30: Request to reprogram \$6,447,476 of Fiscal Year 2019 Special Purpose Revenue funds budget authority from the Office of the Chief Financial Officer (OCFO) to the University of the District of Columbia (UDC) was filed in the Office of the Secretary on June 28, 2019. This reprogramming ensures that UDC will be able to lease swing space at 4250 Connecticut Avenue and support increased operating expenses.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-31: Request to reprogram \$1,000,000 of Fiscal Year 2019 Local funds budget authority within the Department of General Services (DGS) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to cover the cost of auto fuel waste management services.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-32: Request to reprogram \$1,800,000 of Capital funds budget authority and allotment within the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is necessary to implement a change in scope for the football field from natural grass to artificial turf for the Edgewood Recreation Center capital project

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-33: Request to reprogram \$1,062,000 Capital funds budget authority and allotment within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to cover the cost of Life SAFETY WORK FOR THE District of Columbia Public Schools capital projects.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-34: Request to reprogram \$826,152 of Fiscal Year 2019 Local funds budget authority from the Office of State Superintendent of Education (OSSE) to Special Education Transportation (SET) was filed in the Office of the Secretary on June 28, 2019. This reprogramming will enable SET to cover projected auto fuel costs.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-35: Request to reprogram \$2,087,200 of Fiscal Year 2019 Local funds budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to cover the costs associated with the new healthcare contract and food services.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-36: Request to reprogram \$306,000 of Fiscal Year 2019 Local funds budget authority from the Department of Motor Vehicles (DMV) to the Department of Consumer and Regulatory Affairs (DCRA) was filed in the Office of the Secretary on June 28, 2019. This reprogramming ensures that the DCRA will be able to support various Information Technology services.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-37: Request to reprogram \$900,000 of Capital funds budget authority and allotment from the Washington Metropolitan Area Transit Authority (WMATA) to the Department of Public Works (DPW) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to cover the additional costs not realized in the initial estimate of replacing the Fort Totten Transfer Station tipping floor.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-38: Request to reprogram \$270,000 of Fiscal Year 2019 Local funds budget authority from the Department of Youth Rehabilitation Services (DYRS) to the Executive Office of the Mayor (EOM) was filed in the Office of the Secretary on June 28, 2019. This reprogramming supports program operations and community outreach within EOM and operational activities within OCA.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-39: Request to reprogram \$11,496,029 of Fiscal Year 2019 Local funds budget authority within the Department of Health Care Finance (DHCF) was filed in the Office of the Secretary on June 28, 2019. This reprogramming ensures that DHCF will be able to support the approved DCAS Advance Planning Document.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-40: Request to reprogram \$273,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the Department of Human Services (DHS) to the Department of General Services' (DGS) operating budget was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to fund Daly Building rehabilitation costs.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-41: Request to reprogram \$4,000,002 of Fiscal Year 2019 Local funds budget authority from the Department of Health Care Finance (DHCF) to the Department of General Services (DGS) was filed in the Office of the Secretary on June 28, 2019. This reprogramming is needed to cover the cost of work orders for District of Columbia Public Schools as part of Summer Readiness 2019.

RECEIVED: 14-day review begins July 1, 2019

Reprog. 23-42: Request to reprogram \$1,337,000 of Fiscal Year 2019 Local funds budget authority from the Office of the State Superintendent of Education (OSSE) to the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on June 28, 2019. This reprogramming will enable DCPS to hire staff and support agency initiatives.

RECEIVED: 14-day review begins July 1, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: June 28, 2019
 Protest Petition Deadline: August 12, 2019
 Roll Call Hearing Date: August 26, 2019
 Protest Hearing Date: October 23, 2019

License No.: ABRA-114149
 Licensee: Riggs F&B LLC
 Trade Name: Riggs Washington DC
 License Class: Retailer's Class "C" Hotel
 Address: 900 F Street, N.W.
 Contact: Michael D. Fonseca, Esq.: (202) 625-7700

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 26, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **October 23, 2019 at 4:30 p.m.**

NATURE OF OPERATION

A new Retailer's Class C Hotel with 181 hotel rooms. Summer Garden with 132 seats and Sidewalk Café with 48 seats. Licensee is requesting an Entertainment Endorsement to include Dancing. ****Live Entertainment will occur both indoors and outdoors, but Dancing will occur in the interior of the premises only.**

HOURS OF OPERATION FOR INSIDE PREMISES

Sunday through Saturday 12am – 12am (24-hour operations)

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

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

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR OUTSIDE IN SUMMER GARDEN & SIDEWALK CAFÉ

Sunday through Saturday 8am – 12am

HOURS OF LIVE ENTERTAINMENT FOR SUMMER GARDEN

Sunday through Saturday 8am – 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: June 28, 2019
 Protest Petition Deadline: August 12, 2019
 Roll Call Hearing Date: August 26, 2019
 Protest Hearing Date: October 23, 2019

License No.: ABRA-114149
 Licensee: Riggs F&B LLC
 Trade Name: Riggs Washington DC
 License Class: Retailer's Class "C" Hotel
 Address: 900 F Street, N.W.
 Contact: Michael D. Fonseca, Esq.: (202) 625-7700

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 26, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **October 23, 2019 at 4:30 p.m.**

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HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR OUTSIDE IN SUMMER GARDEN & SIDEWALK CAFÉ

Sunday through Saturday 8am – 12am

HOURS OF LIVE ENTERTAINMENT FOR SUMMER GARDEN

Sunday through Saturday 8am – 11pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PUBLIC HEARING

10:00 A.M., WEDNESDAY, JULY 24, 2019

**FRANK D. REEVES MUNICIPAL CENTER
ALCOHOLIC BEVERAGE CONTROL BOARD HEARING ROOM
2000 14TH STREET, N.W., SUITE 400 SOUTH, 4TH FLOOR
WASHINGTON, D.C. 20009**

The Alcoholic Beverage Control Board (Board) will hold a hearing to receive public comment concerning the West Dupont Circle Moratorium Zone (23 DCMR § 307). The last time the Board updated the West Dupont Circle Moratorium was in 2016. Specifically, on September 28, 2016, the Board adopted the *West Dupont Circle Moratorium Zone Notice of Final Rulemaking*. The rulemaking (1) maintained the then-current limit on on-premises retailer's licenses, classes CN and DN, at zero and (2) removed the restrictions on the other class alcohol licenses within six hundred feet (600 ft.) in all directions from the intersection of 21st and P Streets, N.W.

The moratorium is set to expire on October 27, 2019. On or about, June 19, 2019, Advisory Neighborhood Commission (ANC) 2B provided the Board with a resolution requesting that the Board extend the moratorium for an additional three (3) years as it currently exists but with an exemption for the "Dupont Underground", a District-owned former streetcar station located below Square 114E Lot 0800 and below the right of way of Dupont Circle, N.W., and Connecticut Avenue, N.W.

In recognition of ANC 2B's request, and to afford the public an opportunity to opine on the future of the West Dupont Moratorium Zone, the Board has scheduled a public hearing from July 24, 2019, at 10:00 a.m.

HEARING INFORMATION

WHEN: 10:00 a.m. on Wednesday, July 24, 2019

WHERE: Alcoholic Beverage Control Board Hearing Room, 2000 14th Street, N.W., Suite 400 South, 4th Floor, Washington, D.C. 20009

Individuals and representatives of organizations that want to testify should contact ABRA General Counsel Martha Jenkins by **Friday, July 19, 2019**:

- Call - (202) 442-4456
- Email – abra.legal@dc.gov
(include full name, title, and organization, if applicable, of the person(s) testifying in the email)

Witnesses should bring seven (7) copies of their written testimony to the Board. Testimony may be limited to five minutes in order to permit each person an opportunity to be heard.

Members of the public that are unable to testify in person are encouraged to provide written comments, which will be made a part of the Board's official record. Copies of written statements should be submitted to ABRA General Counsel Martha Jenkins no later than **4 p.m. on Friday, August 2, 2019**, at ABRA's mailing address or e-mail address stated above.

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD****Draft FY 2020 Clean Water Construction Project Priority Lists**

The Department of Energy and Environment (DOEE) invites the public to comment on the Draft Fiscal Year (FY) 2020 Project Priority Lists (PPLs) for the District of Columbia's Clean Water Construction Grants Program. The PPLs identify and rank projects eligible to receive federal funds to construct or improve green infrastructure, wastewater treatment facilities, and other related infrastructure in FY 2020 and in future years.

The draft PPLs can be downloaded from the links below. A hard copy may also be obtained from the DOEE offices at 1200 First Street NE, Washington, DC 20002, 5th floor. Please email keren.murphy@dc.gov to arrange for pick-up.

Public Hearing: Monday, July 29, 2019

| | |
|----------------------|---|
| HEARING DATE: | July 29, 2019 |
| TIME: | 6:00 PM – 7:00 PM |
| PLACE: | Department of Energy and Environment 1200 First Street NE, 5th Floor Washington, DC 20002 NOMA Gallaudet (Red Line) Metro Stop |

Comments clearly marked "PPL Public Hearing 2020" may also be hand delivered or mailed to the DOEE offices at the address listed above. Persons may also submit written testimony by email, with a subject line of "PPL Public Hearing 2020," to the attention of Keren O'Brien Murphy at keren.murphy@dc.gov. All comments should be received no later than the conclusion of the public hearing on Monday, July 29, 2019.

Persons present at the hearing who wish to be heard may testify. All presentations shall be limited to five minutes. Presenters are urged to submit written statements. DOEE will consider all comments received in its final PPL.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED¹ PUBLIC HEARING**

TIME AND PLACE: Monday, September 16, 2019, @ 6:30 p.m.
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 19-01 (Wesley Hawaii LLC – Consolidated PUD and Related Map Amendment @ Parcel 124/77 [1 Hawaii Avenue, N.E.]

THIS CASE IS OF INTEREST TO ANCs 5A AND 4D

On January 4, 2019, the Office of Zoning received an application from Wesley Hawaii LLC (the “Applicant”), the owner of property located at 1 Hawaii Avenue, N.E. (Parcel 124/77) (the “Property”), for approval of a consolidated planned unit development (“PUD”) and a related Zoning Map amendment from the RA-1 zone to the RA-2 zone. The Property consists of approximately 26,400 square feet of land area and is a triangular-shaped lot surrounded by Hawaii Avenue, N.E., Rock Creek Church Road, N.W., and Allison Street, N.W.

The RA-1 and RA-2 zones are intended to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts and to permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones.

The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments and allows a maximum height of 40 feet (and three stories), a maximum lot occupancy of 40%, and a maximum density of 0.90 floor area ratio (“FAR”).

The RA-2 zone provides for areas developed with predominantly moderate-density residential uses, and allows a maximum height of 50 feet (no limit on number of stories), a maximum lot occupancy of 60%, and a maximum density of 1.8 FAR.

The Office of Planning submitted its report to the Office of Zoning on March 15, 2019 and the application was set down for a public hearing by the Zoning Commission on March 25, 2019. The Applicant filed its prehearing submission with the Zoning Commission on May 21, 2019.

¹ This case was previously scheduled for hearing on July 18, 2019.

The Applicant proposes to redevelop the Property with 78 residential units (the “Project”). The Project will have a building height of 58’6”, a lot occupancy of 53%, and a gross floor area of approximately 68,238 square feet for a density of 2.58 FAR. The Project will incorporate a multipurpose amenity room on the ground level as well as an outdoor patio area facing Rock Creek Church Road, N.W. There will be 12 parking spaces within the building. Of the residential units, 34 units will be reserved for households with incomes not exceeding 60% of the median family income (“MFI”). The remaining 44 units are proposed to be reserved at affordability levels in accordance with guidelines from the Department of Housing and Community Development.

This public hearing will be conducted in accordance with the contested case provisions of the Administrative Regulations, 11-Z DCMR, Chapter 4.

How to participate as a witness.

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

How to participate as a party.

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

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

Except for an 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 Commission, not less than 14 days prior to the date set for the hearing, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning’s website at: <https://app.dcoz.dc.gov/help/forms.html>.** This form may also be obtained from the Office of Zoning at the address stated below.

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information

that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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 trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl. & 2018 Supp.)), and delegated in Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice to adopt amendments to Chapter 5 (License Applications) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

Rulemaking Summary

In 2013, the Council of the District of Columbia (Council) passed the Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (D.C. Law 19-310; D.C. Official Code § 25-112(a-1)(2)(A) (2018 Supp.)), which, among other things, required the Board to promulgate rules defining the term, "full-service grocery store". The Board fulfilled this requirement in July 2013 when it adopted the *Full-Service Grocery Store Definition Notice of Final Rulemaking* on August 9, 2013 at 60 DCR 11574.

Further clarification is necessary to eliminate confusion regarding the layout of the grocery stores and the percentage of the stores, aisles, and shelves that are to be dedicated to food and non-food items. The Board finds that the submission of architectural drawings by an applicant seeking to qualify as a full-service grocery store benefits both the Board and the applicants by addressing many concerns the Board may initially have when reviewing the applications; thereby, reducing the amount of time needed to review the applications.

This proposed rulemaking seeks to amend Chapter 5 (License Applications) by adding a new Section 505 which would require applicants for a new off-premises retailer's license, class B, to submit an architectural drawing of their floor plan at the time their application is submitted to the Board. Additionally, the proposed rulemaking would create a methodology for calculating whether an applicant's floor plan satisfies the necessary criteria for qualifying as a full-service grocery store as defined by 23 DCMR § 199.

Comments

The Board did not receive any comments to the proposed rulemaking during the comment period.

Rulemaking History

On September 26, 2018, the Alcoholic Beverage Control Board (Board) adopted the *Full-service Grocery Store Notice of Proposed Rulemaking*, seven (7) to zero (0). The proposed rulemaking was then published in the *D.C. Register* for public comment on December 14, 2018, at 65 DCR

13539. The Board did not receive any comments concerning the rulemaking during the comment period.

The comment period expired on January 13, 2019. On January 16, 2019, the Board voted six (6) to zero (0) to send the proposed rulemaking to the Council of the District of Columbia (Council) for the mandatory ninety (90)-day period of review. Thus, on February 19, 2019, the proposed rulemaking was transmitted to the Council review. See Full-service Grocery Store Resolution of 2019 (PR23-125), at <http://lims.dccouncil.us/Legislation/PR23-0125?FromSearchResults=true>. On May 28, 2019, the Council voted unanimously to approve the proposed rules.

In light of the Council having approved the proposed rules, the Board, on June 5, 2019, voted, four (4) to zero (0), to adopt the rules as final. No changes have been made to the rules since they were published as proposed in the *D.C. Register* on December 14, 2018.

The final rules shall not take effect until five (5) days after they are published in the *D.C. Register* in accordance with D.C. Official Code § 25-211(d)(1).

A new Section 505, ARCHITECTURAL DRAWING, is added to Chapter 5, LICENSE APPLICATIONS of Title 23 DCMR, ALCOHOLIC BEVERAGES, to read as follows:

505 ARCHITECTURAL DRAWING

505.1 An applicant for a new off-premises retailer’s license, class B, that meets the definition of a full-service grocery store (hereinafter referred to as a “full-service grocery store”) shall submit with their application an architectural drawing of their floorplan that satisfies the full-service grocery store requirements set forth in 23 DCMR § 199 and includes, at a minimum, the dimensions (*i.e.*, length and width measurements) and total square footage of the establishment’s:

- (a) Entire leased or operated area;
- (b) Non-selling area;
- (c) Selling area;
- (d) Food-selling area; and
- (e) Non-food selling area.

505.2 For purposes of this section, the following terms shall have the meanings ascribed:

- (a) **Entire leased or operated area-** the portion of the building where the retail establishment is located and is under the applicant’s control.
- (b) **Food category –** includes the following products:

- (1) Fresh fruits and vegetables;
 - (2) Fresh and uncooked meats, poultry, and seafood;
 - (3) Dairy products;
 - (4) Canned foods;
 - (5) Frozen foods;
 - (6) Dry groceries and baked goods; and
 - (7) Non-alcoholic beverages.
- (c) **Food-selling area** – the portion of the retail establishment that is dedicated to the sale of the seven (7) food categories as defined in paragraph (b) of this subsection.
- (d) **Non-food selling area** – the portion of the retail establishment that is dedicated to selling of items other than the seven (7) food categories as defined in paragraph (b) of this subsection.
- (e) **Non-selling Area** – the portion of the retail establishment that is not open to the public (*e.g.*, storage areas, preparation areas, and administrative offices) and the establishment’s restrooms.
- (f) **Selling area** – the area in the retail establishment that is open to the public and does not include storage areas, preparation areas or restrooms.

505.3 An applicant for a full-service grocery store license must establish that either:

- (a) A minimum of fifty percent (50%) of the store’s square feet of selling area is dedicated to the sale of the seven (7) food categories; or
- (b) A minimum of six thousand square feet (6,000 sq. ft.) of the store’s selling area is dedicated to the sale of the seven (7) food categories.

505.4 The architectural drawing for an establishment whose selling area is dedicated to the sale of the seven (7) food categories or is equal to or greater than six thousand square feet (6,000 sq. ft.) shall identify the portion of the store that is being sought to qualify under the full-service grocery store definition.

505.5 The architectural drawing shall include the dimensions (*i.e.*, length and width measurements) for each of the establishment’s shelving or display cases and flooring used for displaying items identified in the seven (7) food categories. The

architectural drawing shall also include the dimensions of the publicly accessible areas, including but not limited to the publicly accessible store aisles.

505.6 The architectural drawing shall include the following:

- (a) The display area dedicated to each of the seven (7) food categories which shall, themselves, be identified and color-coded on the applicant's proposed floor plan;
- (b) A listing of the total square footage of the selling area dedicated to each of the seven (7) food categories; and
- (c) The square footage of each individual display area if one food category is divided between two (2) or more unconnected display areas separated by an area not associated with the food category (*i.e.*, non-food selling area, non-selling area or different food category).

505.7 For purposes of this section, the following shall apply:

- (a) The **square footage of the "selling area" dedicated to a food category** shall be calculated by adding up to three feet (3 ft.) of available aisle space in all directions to the length and width of the dimensions of the display area containing the items of the food category;
- (b) The **square footage of an applicant's non-selling area** shall be calculated by adding together the square footage of each area of the retail establishment that is not open to the public (*e.g.*, storage and food preparation areas) and the establishment's restrooms;
- (c) The **total selling area** shall be calculated by subtracting the establishment's non-selling area from the total square footage of the establishment's entire leased or operated area;
- (d) The **non-food selling area** shall be calculated by adding together the square footage of each selling area dedicated to items other than the seven (7) food categories (*i.e.*, non-food items). The square footage of a selling area dedicated to non-food items shall be calculated by adding up to three (3) feet of available aisle space in all directions to the length and width of the dimensions of the display area holding the non-food items;
- (e) The **food selling area** shall be calculated by subtracting the establishment's non-food selling area from the establishment's selling area; and
- (f) The **amount of a store's square footage of selling area dedicated to the sale of each of the seven (7) food categories** shall be calculated by

dividing the establishment's food selling area (numerator) by the establishment's total selling area (denominator).

- 505.8 The indoor seating area shall also be measured as part of an establishment's non-food selling area, whereas the establishment's outdoor seating area shall not be measured as part of the establishment's selling area or non-food selling area.
- 505.9 An applicant for a full-service grocery store class B retailer's license must dedicate a minimum of five percent (5%) of the store's food selling area to at least six (6) of the seven (7) food categories. The amount of the store's food selling area dedicated to each food category shall be calculated by dividing the total square footage of the selling area dedicated to that particular food category (numerator) by the square footage of the establishment's total food selling area (denominator).

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia 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. & 2018 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) (2018 Repl.)), hereby gives notice of the adoption of an amendment to Chapter 8 (Free Standing Mental Health Clinics) and the addition of a new chapter, Chapter 69 (Medicaid Reimbursement for Health Home Services), to Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

The purpose of Chapter 69 is to establish requirements for Medicaid reimbursement for Health Home services. A Health Home service is a service delivery model that focuses on providing comprehensive care coordination centered on improving the management of chronic behavioral and physical health conditions. Health Homes develop and organize person-centered care plans that facilitate access to physical health services, behavioral health care, community-based services and supports for persons determined eligible for Health Home services by the Department of Behavioral Health (DBH). Care coordination is provided through a team-based approach and involves all relevant and necessary health care practitioners, family members, and other social support networks identified by the beneficiary. The Health Home is required to provide all Health Home services needed by its beneficiaries. The goal of the Health Home service delivery model is to reduce avoidable health care costs, specifically preventable hospital admissions, readmissions, and avoidable emergency room visits for the enrolled Health Home population.

Health Home services are Medicaid reimbursable at a per member per month rate. These rules establish the reimbursement rate and requirements for reimbursement for the provision of Health Home services. As a result of the changes, Medicaid expenditures for Health Home services are expected to decrease by \$4,866,408 in fiscal year (FY) 2019 and decrease by \$ 5,928,942 in FY 2020. Medicaid expenditures on Mental Health Rehabilitation Services (MHRS) are expected to increase by \$6,240,236 in FY 2019 and increase by \$6,903,345 in FY 2020.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on January 8, 2016 at 63 DCR 000456. No comments were received. A Notice of Second Emergency and Proposed Rulemaking was published on April 29, 2016 at 63 DCR 006684. No comments were received but DHCF made substantive changes to the Health Home program based on feedback from providers and best practices learned during the first two (2) years of implementation. A Notice of Third Emergency and Proposed Rulemaking was published on January 4, 2019 at 66 DCR 000107. DHCF received no comments and made no changes to the rulemaking.

These rules correspond to a related State Plan amendment, which was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services on February 21, 2019 with an effective date of February 1, 2019.

The Director adopted these rules as final on June 7, 2019 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 8, FREE STANDING MENTAL HEALTH CLINICS, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 800.4, 800.5, and 800.6 of Section 800, GENERAL PROVISIONS, are amended as follows:

- 800.4 To obtain certification as a FSMHC, a FSMHC shall meet the requirements set forth in §§ 801 through 808 of this chapter.
- 800.5 Entities certified as a FSMHC in accordance with the requirements set forth in this chapter are eligible to apply for certification as a Health Home in accordance with the requirements set forth in 22-A DCMR §§ 2500, *et seq.*
- 800.6 A FSMHC that is certified as a Health Homes is eligible to receive reimbursement for the provision of Health Home services in accordance with the requirements set forth in 29 DCMR §§ 6900, *et seq.*

Subsection 802.3 of Section 802, CERTIFICATION REQUIREMENTS: GENERAL, is amended as follows:

- 802.3 The FSMHC shall agree that FSMHC services, as set forth in § 808.9, shall be provided under the direction of a physician, as required by § 440.90 of Title 42 of the Code of Federal Regulations. Health Home services provided by a FSMHC shall be provided in accordance with requirements set forth in 29 DCMR §§ 6900, *et seq.* and 22-A DCMR §§ 2500, *et seq.*

Subsections 808.5, 808.6, and 808.8 of Section 808, REIMBURSEMENT, are amended as follows:

- 808.5 The Department shall establish fees and reimburse for only those FSMHC services, as set forth in § 808.9, provided face-to-face by or under the direct supervision of a physician. Health Home services provided by a FSMHC shall be provided in accordance with the requirements set forth in 29 DCMR §§ 6900, *et seq.* and 22-A DCMR §§ 2500, *et seq.*
- 808.6 Treatment-related services, such as information and referral services, charting, staffing of patients, co-therapy phone crisis intervention, case management, person and agency conferences, and similar services are not reimbursable under the FSMHC benefit. FSMHCs certified as a Health Home shall be reimbursed for

the provision of Health Home services in accordance with the requirements set forth in 29 DCMR §§ 6900, *et seq.* and 22-A DCMR §§ 2500, *et seq.*

- 808.8 Excluding Health Home services provided in accordance with requirements set forth in 29 DCMR §§ 6900, *et seq.* and 22-A DCMR §§ 2500, *et seq.*, Medicaid shall reimburse a participating FSMHC for only one (1) type of service for a Medicaid patient on a given day; provided, that if a full prescription visit, or medication assessment visit is indicated in addition to a therapy visit, and is accomplished on the same day, both services may be billed as long as no more than one (1) billing of this type occurs in a single month. Any additional billings of this type, shall be authorized by the Department prior to the FSMHC submitting a claim for payment.

A new Chapter 69, MEDICAID REIMBURSEMENT FOR HEALTH HOME SERVICES, is added to read as follows:

CHAPTER 69 MEDICAID REIMBURSEMENT FOR HEALTH HOME SERVICES

6900 GENERAL PROVISIONS

6901 PROGRAM SERVICES

6902 REIMBURSEMENT

6903 HEALTH HOME RECORD RETENTION, PROTECTION AND ACCESS

6904 AUDITS AND REVIEWS

6905 [RESERVED]

6999 DEFINITIONS

6900 GENERAL PROVISIONS

- 6900.1 The purpose of this chapter is to establish standards governing Medicaid reimbursement for Health Home services provided by Core Services Agencies (CSA) and Free Standing Mental Health Clinics (FSMHCs) certified as Health Homes by the Department of Behavioral Health (DBH).
- 6900.2 Effective February 1, 2019, FSMHCs shall be eligible to be certified as Health Homes by DBH and be reimbursed by DHCF for the provision of Health Home services to District Medicaid beneficiaries.
- 6900.3 A Health Home serves as the service coordinating entity for services offered to a beneficiary with a serious and persistent mental illness.
- 6900.4 Each Health Home shall comply with the certification standards set forth in 22-A DCMR § 2501.
- 6900.5 Each Health Home shall comply with all applicable provisions of District and federal law and rules pertaining to Title XIX of the Social Security Act, and all

District and federal law and rules applicable to the service or activity provided pursuant to these rules.

6900.6 In accordance with § 1902(a)(23) of the Social Security Act, DBH shall ensure that each beneficiary has free choice of qualified providers.

6901 PROGRAM SERVICES

6901.1 Beneficiaries eligible to receive Health Home services shall be Medicaid beneficiaries who meet the requirements set forth in 22-A DCMR § 2504.

6901.2 Health Home services include the following services, as set forth in 22-A DCMR § 2505, and further defined in 22-A DCMR §§ 2506 – 2511:

- (a) Comprehensive Care Management;
- (b) Care Coordination;
- (c) Comprehensive Transitional Care;
- (d) Health Promotion;
- (e) Individual and Family Support Services; and
- (f) Referral to Community and Social Support Services.

6901.3 Effective February 1, 2019, each Health Home provider shall provide at least one (1) Health Home service of any kind, as described in 22-A DCMR §§ 2506 - 2511 to the Health Home beneficiary, each month, in order to claim the per member per month payment set forth in § 6902.6.

6901.4 All services provided as described in § 6901 of this chapter, and in 22-A DCMR §§ 2500, *et seq.*, shall meet quality standards or guidelines that adhere to applicable National Committee for Quality Assurance (NCQA) standards, as well as Centers for Medicare and Medicaid Services (CMS) and Department of Health Care Finance (DHCF) guidance related to quality improvement activities.

6902 REIMBURSEMENT

6902.1 Medicaid reimbursement for Health Home services is on a per member per month (PMPM) reimbursement schedule. The month time period shall begin on the first (1st) of the month and end on the last day of the month.

6902.2 Health Homes are required to provide services in accordance with § 6901.4, and document the delivery of these services in DBH's approved electronic record system, in order to receive the PMPM reimbursement rate.

- 6902.3 In order to qualify for the monthly rate, Health Homes shall document Health Home services provided as set forth in 22-A DCMR § 2515.3 and §§ 2516.3 – 4.
- 6902.4 Health Homes shall not bill the beneficiary or any member of the beneficiary’s family for Health Home services. Health Homes shall bill all known third-party payors prior to billing the Medicaid Program.
- 6902.5 Medicaid reimbursement for Health Home services for dates of service prior to February 1, 2019 shall be determined as follows:

| SERVICE | CODE | BILLABLE UNIT OF SERVICE | RATE EFFECTIVE JAN. 1, 2016 |
|-----------------------------------|---------|--------------------------|-----------------------------|
| Health Home Services: High-Acuity | S0281U1 | Month | \$481.00 |
| Health Home Services: Low-Acuity | S0281U2 | Month | \$349.00 |

- 6902.6 Effective February 1, 2019, Medicaid reimbursement for Health Home services shall be determined as follows:

| SERVICE | CODE | BILLABLE UNIT OF SERVICE | RATE EFFECTIVE FEBRUARY 1, 2019 |
|----------------------|---------|--------------------------|---------------------------------|
| Health Home Services | S0281U4 | Month | \$125.75 |

- 6902.7 DBH shall be responsible for payment of the District’s share or the local match for Health Home services. DHCF shall claim the federal share of financial participation for Health Home services.

- 6902.8 Medicaid reimbursement for Health Home services is not available for:
 - (a) Room and board costs;
 - (b) Inpatient services (including hospital, nursing facility services, Intermediate Care Facilities for Individuals with Intellectual Disabilities, and Institutions for Mental Diseases services);

- (c) Transportation services;
- (d) Vocational services;
- (e) School and educational services;
- (f) Socialization services;
- (g) Services which are not provided and documented in accordance with DBH-established Health Home service-specific standards;
- (h) A person who is receiving Assertive Community Treatment (ACT) services;
- (i) Medicaid beneficiaries enrolled in the Home and Community-Based Services (HCBS) Waiver for the Elderly and Individuals with Physical Disabilities, as described in Chapter 42 of Title 29 of the DCMR;
- (j) Medicaid beneficiaries enrolled in the HCBS Waiver for Persons with Intellectual and Developmental Disabilities, as described in Chapter 19 of Title 29 of the DCMR; and
- (k) Medicaid beneficiaries enrolled in the *My Health GPS* program, as described in Chapter 102 of Title 29 of the DCMR.

6902.9 Only one Health Home will receive payment for delivering Health Home services to a beneficiary in a particular month.

6902.10 Effective February 1, 2018, an entity enrolled as Health Home may bill Medicaid separately for the provision of MHRS Community Support services provided to a beneficiary enrolled in a Health Home.

6902.11 DHCF shall not reimburse other Medicaid claims submitted by Health Homes that duplicate Health Home services, as described in 22-A DCMR §§ 2506 - 2511.

6903 HEALTH HOME RECORD RETENTION, PROTECTION AND ACCESS

6903.1 Health Home records shall contain sufficient information which readily identifies and supports Medicaid billing. As set forth in 22-A DCMR § 2516.3, Health Homes shall document each Health Home service and activity in the beneficiary's record in DBH's approved electronic record system. Any claim for Health Home services shall be supported by written documentation which clearly identifies the following:

- (a) The specific service type rendered;

- (b) The date, duration, and actual time, a.m. or p.m., including the beginning and ending time, during which the services were rendered;
- (c) The name, title, and credentials of the person who provided the services;
- (d) The setting in which the services were rendered;
- (e) A confirmation that the services delivered are contained in the beneficiary's comprehensive care plan;
- (f) Identification of any further actions required for the beneficiary's well-being raised as a result of the service provided;
- (g) A description of each encounter or service by the Health Home team member which is sufficient to document that the service was provided in accordance with this chapter; and
- (h) Dated and authenticated entries, with their authors identified, which are legible and concise, including the printed name and the signature of the person rendering the service, diagnosis and clinical impression recorded in the terminology of the International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10 CM) or its subsequent revision, and the service provided.

- 6903.2 Each Health Home shall establish procedures for safeguarding beneficiary information pursuant to 42 CFR § 431.305, and shall ensure, that except as otherwise provided by federal or District law or rules, the use or disclosure of beneficiary information shall be restricted to purposes related to the administration of the Medicaid Program, as set forth in 42 CFR § 431.302.
- 6903.3 Each Health Home shall allow appropriate DHCF personnel and other authorized agents of the District of Columbia government and the federal government full access to Health Home records.
- 6903.4 Each Health Home shall maintain all records, including, but not limited to, financial records, medical and treatment records, and other documentation pertaining to costs, billings, payments received and made, and services provided, for ten (10) years or until all audits are completed, whichever is longer.
- 6903.5 In addition to the Health Home service documentation standards listed in § 6903.1, a Health Home that is a public entity shall also maintain all documentation pertaining to costs necessary to perform cost reconciliation in accordance with Office of Management and Budget Circular A-87.

6904 AUDITS AND REVIEWS

- 6904.1 This section sets forth the requirements for audits and reviews of Health Home services. DHCF shall perform regular audits of Health Home providers to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted at least annually and when necessary to investigate and maintain program integrity.
- 6904.2 DHCF shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of Health Home services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.
- 6904.3 If DHCF determines that claims were improperly reimbursed, DHCF shall recoup those monies erroneously paid to a Health Home for denied claims, following the period of Administrative Review as set forth in this rule.
- 6904.4 DHCF shall issue a Proposed Notice of Medicaid Overpayment Recovery (PNR) to the Health Home, which sets forth the reasons for the recoupment, the amount to be recouped, and the procedures and timeframes for requesting an Administrative Review of the PNR.
- 6904.5 The Health Home will have thirty (30) calendar days from the date of the PNR to request an Administrative Review. The provider shall submit documentary evidence and/or written argument against the proposed action to DHCF in the request for an Administrative Review. If the provider fails to respond within thirty (30) calendar days, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNR), which shall include the procedures and timeframes for requesting an appeal.
- 6904.6 DHCF shall review the documentary evidence and/or written argument submitted by the Health Home against the proposed action described in the PNR. After this review, DHCF may cancel its proposed action, amend the reasons for the proposed recoupment and/or adjust the amount to be recouped. DHCF shall issue a FNR, which shall include the procedures and timeframes for requesting an appeal.
- 6904.7 Within fifteen (15) calendar days from date of the FNR, the Health Home may appeal the FNR by filing a written notice of appeal from the determination of recoupment with the Office of Administrative Hearings. The written notice requesting an appeal shall include a copy of the FNR, description of the item to be reviewed, the reason for review of the item, the relief requested, and any documentation in support of the relief requested.

- 6904.8 In lieu of the off-set of future Medicaid payments, the Health Home may choose to send a certified check made payable to the District of Columbia Treasurer in the amount of the funds to be recouped.
- 6904.9 Filing an appeal shall not stay any action to recover any overpayment.
- 6904.10 Each Health Home shall allow access during an onsite audit or review to DHCF, its designee, DBH, other authorized District of Columbia government officials, CMS, and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.
- 6904.11 Each Health Home shall facilitate audits and reviews by maintaining the required records and by cooperating with the authorized personnel assigned to perform audits and reviews.

6905 [RESERVED]

6999 DEFINITIONS

- 6999.1 When used in this chapter, the following words shall have the meanings ascribed:

Behavioral Health Care – care that promotes the well-being of individuals by intervening and preventing incidents of mental illness, substance abuse, or other health concerns.

Comprehensive Care Plan – an individualized plan to provide health home services to address a beneficiary’s behavioral and physical chronic conditions, based on assessment of health risks and the beneficiary’s input and goals for improvement.

Beneficiary – a Medicaid recipient who has been determined to be eligible for the Health Home benefit, and/or who is enrolled in a Health Home.

Core Services Agency – a community-based provider that has entered into a Human Care Agreement with the Department of Behavioral Health to provide specific Mental Health Rehabilitation Services in accordance with the requirements of Chapter 34 of Title 22-A DCMR.

Department of Behavioral Health – the District of Columbia agency that regulates the District’s mental health and substance abuse treatment system for adults, children, and youth.

Free Standing Mental Health Clinic – an entity certified in accordance with Chapter 8 of Title 29 DCMR.

Health Home – an entity that is certified by the District of Columbia Department of Behavioral Health as having systems in place to deliver person-centered services that coordinate a beneficiary’s behavioral, primary, acute or other specialty medical health care services.

Mental Health Rehabilitation Services – behavioral health services provided by a Department of Behavioral Health-certified community mental health provider to beneficiaries in accordance with the District of Columbia Medicaid State Plan, the Department of Health Care Finance (DHCF)/ Department of Behavioral Health Interagency Agreement, and Chapter 34 of Title 22-A DCMR.

Serious and Persistent Mental Illness – a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-5 or its ICD-10-CM equivalent (and subsequent revisions) with the exception of DSM-5 “Z” codes, substance abuse disorders, intellectual disabilities and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of amendments to Chapter 63 (Occupational Therapy) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to require occupational therapists seeking to renew, reactivate, or reinstate the license to complete continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published as a proposed rulemaking in the *D.C. Register* on April 19, 2019 at 66 DCR 5155. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on June 4, 2019 and will be effective upon publication in the *D.C. Register*.

Chapter 63, OCCUPATIONAL THERAPY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**Section 6306, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:****Subsection 6306.3 is amended to read as follows:**

6306.3 An applicant for license renewal shall complete a minimum of twenty-four (24) contact hours of approved continuing education in accordance with §§ 6307 and 6308 during the two (2)-year period preceding the date the license expires and ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Beginning with the licensure term starting on October 1, 2017, the continuing education required in this section shall include two (2) hours of LGBTQ continuing education.

Section 6309, REACTIVATION, is amended as follows:**Subsection 6309.2 is amended to read as follows:**

6309.2 A reactivation applicant whose license has been inactive five (5) years or less who does not hold a license in any other jurisdiction shall complete twelve (12) contact hours of approved continuing education for each year that the applicant was not licensed, up to a maximum of sixty (60) hours, providing further that, regardless of the total number of continuing education hours required, two (2) of the required hours shall be LGBTQ continuing education. Ten percent (10%) of the total

required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

Section 6309.3 is amended to read as follows:

6309.3 A reactivation application whose license has been inactive for more than 5 (five) years and who does not hold an active license in any other jurisdiction shall complete:

- (a) Twelve (12) contact hours of approved continuing education for each year that the applicant was not licensed, up to a maximum of sixty (60) hours, provided that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Additionally, twenty-four (24) of the required contact hours shall have been completed within two (2) years prior to the date the application is submitted and two (2) of the total hours required shall be LGBTQ continuing education; and
- (b) One hundred sixty (160) hours of supervised clinical training by a licensed occupational therapist within the two (2) months prior to the date the application is submitted.

Section 6310, REINSTATEMENT, is amended as follows:

Subsection 6310.3 is amended to read as follows:

6310.3 A reinstatement applicant who holds an active license in any other jurisdiction shall complete twelve (12) contact hours of approved continuing education for each year that the applicant was not licensed in the District, up to a maximum of sixty (60) hours, provided that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Additionally, twenty-four (24) contact hours must have been completed within two (2) years prior to the date the application is submitted and two (2) of the total hours required shall be LGBTQ continuing education.

Subsection 6310.4 is amended to read as follows:

6310.4 A reinstatement applicant who does not hold an active license in any jurisdiction shall submit proof of having completed the following:

- (a) Twelve (12) contact hours of approved continuing education program for each year that the applicant was not licensed up to a maximum of sixty (60) hours, provided that ten percent (10%) of the total required

continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Additionally, twenty-four (24) contact hours shall have been completed within two (2) years prior to the date the application is submitted and two (2) of the total hours required shall be LGBTQ continuing education; and

- (b) One hundred sixty (160) hours of supervised clinical training by a licensed occupational therapist within two (2) months prior to the date the application is submitted.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the intent final action to amend Chapter 69 (Psychology) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to require psychologists seeking to renew, reactivate, or reinstate the license to complete continuing education in public health priorities as determined and amended from time to time by the Director. Additionally, the rulemaking will remove the requirements that reactivation and reinstatement applicants re-take the jurisprudence examination if their license has been inactive or expired more than two (2) years. Further, the rulemaking also seeks to amend and delete provisions pertaining to authorized practice by persons seeking to accrue pre-licensure practice hours to qualify for license since such persons may now practice and accrue qualifying hours as psychology associates registered under Chapter 86.

The rulemaking was published as a proposed rulemaking in the *D.C. Register* on April 19, 2019 at 66 DCR 5158. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on June 4, 2019 and will be effective upon publication in the *D.C. Register*.

Chapter 69, PSYCHOLOGY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6906, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 6906.4 is amended to read as follows:

- 6906.4 To qualify for the renewal of a license, an applicant shall complete thirty (30) hours of valid continuing education during the two (2)-year period preceding the date the license expires, which shall also meet the following requirements:
- (a) At least fifteen (15) hours of valid continuing education shall be completed in live program(s);
 - (b) Ten percent (10%) of the required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate; and
 - (c) Three (3) hours shall be in ethics and two (2) hours shall be LGBTQ continuing education.

Subsection 6906.5 is amended to read as follows:

6906.5 A reactivation applicant in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11, who submits an application to reactivate the license shall submit proof of having completed fifteen (15) approved continuing education hours for each inactive year, which shall include one (1) hour each of ethics and LGBTQ continuing education for each year that the license was inactive, provided further that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

Subsection 6906.6 is amended to read as follows:

6906.6 An applicant for reinstatement of a license shall submit proof of having completed fifteen (15) approved continuing education hours for each year after the license has expired, including one (1) hour each of ethics and LGBTQ continuing education, provided further that ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

Subsection 6906.9 is repealed.**Section 6911, PRACTICE OF PSYCHOLOGY BY STUDENTS, GRADUATES, OR PERSONS SEEKING RE-LICENSURE, is amended to read as follows:****6911 PRACTICE OF PSYCHOLOGY BY STUDENTS OR PSYCHOLOGY ASSOCIATES ACCRUING HOURS TO QUALIFY FOR LICENSURE**

6911.1 A student or a psychology associate accruing Psychological Practice Experience to qualify for licensure may practice only under the primary supervision of a psychologist licensed in the District under the Act and in accordance with this section. The primary supervising psychologist may, based on his or her professional judgment, delegate some supervisory responsibility to another psychologist, a psychiatrist, or an independent clinical social worker licensed in the District, provided that he or she retains full responsibility for ensuring that the supervisee comply with the laws and regulations governing the practice of psychology.

6911.2 A student whose practice fulfills educational requirement under § 103(c) of the Act, D.C. Official Code § 3-1201.03(c) (2016 Repl.) may practice psychology without a license provided that the practice is properly supervised in accordance with § 6911.1 and the student does not receive any direct or indirect compensation for the practice.

- 6911.3 A person who is not an enrolled student meeting the requirements of § 103(c) of the Act, D.C. Official Code § 3-1201.03(c) (2016 Repl.) and seeks to accrue hours of Psychological Practice Experience in the District in order to qualify for licensure shall first obtain registration as a psychology associate pursuant to chapter 86 of this title.
- 6911.4 A student or psychology associate accruing Psychological Practice Experience shall identify himself or herself as a student or psychology associate to a client before providing services to the client.
- 6911.5 A supervisor shall fully inform a client or patient that the supervisee will be providing services and obtain the client's or patient's consent thereto prior to the provision of the services by the supervisee.
- 6911.6 A minimum of ten percent (10%) of the total supervised practice hours shall be performed under immediate supervision of the primary supervisor.
- 6911.7 A psychology associate shall not receive compensation of any nature, directly or indirectly, from a patient but may receive a salary or other form of compensation from his or her employer based on hours worked in the training program.
- 6911.8 A supervisor shall be fully responsible for all supervised practice by a student or psychology associate during the period of supervision, and shall be subject to disciplinary action for any violation of the Act or this chapter by the student or psychology associate.
- 6911.9 A student or psychology associate accruing practice hours shall be subject to all applicable provisions of the Act and this chapter. The Board may deny an application for a license by, or take other disciplinary action against, a student or psychology associate who is found to have violated the Act or this chapter, in accordance with chapter 41 of this title.
- 6911.10 All documentation including patients' and financial records shall clearly show work performed by the supervisor and the supervisee and the supervisee's services shall not be invoiced as work performed by the supervisor. Nor shall the supervisee be permitted to independently or directly invoice for his or her services.
- 6911.11 A licensed psychologist intending to act as a primary supervisor for any Psychological Practice Experience not meeting the requirements of §§ 6902.4(a) or (b) shall meet the following requirements:
- (a) Possess and maintain a valid, active license free of any formal disciplinary action, whether pending or active, by the Board or any other licensing authority; and

- (b) Complete a minimum of four (4) hours of continuing education or training in supervision during each licensure period in which he or she performs the duties of a primary supervisor.

6911.12 A primary supervisor shall have the duty of ensuring that the overall Psychological Practice Experience complies with the requirements under this chapter and is consistent with the goals and principles of the professional practice of psychology.

6911.13 A supervisor may not supervise an individual with whom he or she has a familial, social, or financial relationship that may create an appearance of or an actual conflict of interests.

6911.14 The primary and the delegated supervisors shall be jointly responsible for ensuring that the supervisee comply with all the ethical, professional, and legal requirements under the Act and this chapter.

Section 6999, DEFINITIONS, is amended as follows:

Subsection 6999.1 is amended as follows:

The following definition is added after the definition of “Act”:

Board – Board of Psychology, established by § 211(a) of the Act (D.C. Official Code § 3-1202.11(a)).

The following definition is added after the definition of “Delegated Supervisor”:

Director – the Director of the Department of Health or the Director’s designee.

The definition of “Psychological Practice Experience” is amended to read as follows:

Psychological Practice Experience – a period of pre-licensure supervised practice of psychology, as required pursuant to § 6902.1(c), by a student or a graduate of a doctoral program meeting the requirements of §§ 6902.1(a) and (b).

The definitions of “Pre-initiation Agreement”, and “Supervised Practice” are repealed.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of amendments to Chapter 70 (Social Work) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend the continuing education requirements for social workers to include continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published as a proposed rulemaking in the *D.C. Register* on April 19, 2019 at 66 DCR 5162. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on June 4, 2019 and will be effective upon publication in the *D.C. Register*.

Chapter 70, SOCIAL WORK, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 7008, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 7008.4 is amended to read as follows:

- 7008.4 To qualify for the renewal of a license, an applicant shall have completed forty (40) hours of approved continuing education credit during the two (2)-year period preceding the date the license expires, which shall include:
- (a) No more than twelve (12) hours of independent home studies, distance learning continuing education activities, or internet courses;
 - (b) Ten percent (10%) of the total required continuing education being in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate; and
 - (c) Six (6) hours of continuing education credits in live, in-person, face-to-face ethics, professional conduct, or boundary course(s) in which the participant and presenter are physically present in the same room and two (2) hours of LGBTQ continuing education.

Subsection 7008.7 is amended to read as follows:

- 7008.7 To qualify for the reactivation of a license, an applicant in inactive status within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11 (2016 Repl.)) for five (5) years or less shall submit proof of having completed forty (40) hours of approved continuing education credit during the two (2) years immediately preceding the application, which shall include:
- (a) Six (6) hours of continuing education credits in live, face- to-face ethics, professional conduct, or boundary course(s);
 - (b) Two (2) hours of LGBTQ continuing education;
 - (c) No more than twelve (12) continuing education hours in independent home studies, distance learning continuing education activities, or internet courses; and
 - (d) Ten percent (10%) of the total required continuing education being in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

Subsection 7008.8 is amended to read as follows:

- 7008.8 To qualify for the reactivation of a license, an applicant in inactive status within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11 (2016 Repl.)) for more than five (5) years shall submit proof of having completed, during the two (2) years immediately preceding the application, forty (40) hours of continuing education as required in § 7008.7 and may be required to practice, for a period of up to twelve (12) months, under the supervision of a board-approved supervisor who shall submit quarterly competency reports to the Board.

Subsection 7008.10 is amended to read as follows:

- 7008.10 To qualify for the reinstatement of a license, an applicant whose license has expired for less than five (5) years, shall submit proof of having completed, during the two (2)-year period immediately preceding the application, forty (40) hours of approved continuing education, which shall include:
- (a) Six (6) hours of continuing education credits in live, face- to-face ethics, professional conduct, or boundary course(s);
 - (b) Two (2) hours of LGBTQ continuing education;
 - (c) No more than twelve (12) continuing education hours in independent home studies, distance learning continuing education activities, or internet

courses; and

- (d) Ten percent (10%) of the total required continuing education being in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

Section 7099, DEFINITIONS, is amended as follows:

Subsection 7099.1 is amended as follows:

The following definition is added after the definition of “Board”:

Director – The Director of the Department of Health, or the Director’s designee.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

Rodent Control Regulations

The Director of the District of Columbia Department of Health, pursuant to Sections 4902(a)(13) and 4908 of the Department of Health Functions Clarification Act of 2001 (Act), effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(a)(13) and (b) (2018 Repl.); Section 902 of the Rodent Control Act of 2000, effective October 19, 2000, (D.C. Law 13-172; D.C. Official Code §§ 8-2101.01 *et seq.* (2013 Repl.)); Section 11 of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.* (2013 Repl.)); the Preventive Health Services Amendment Act of 1985, effective November 27, 1985 (D.C. Law 6-83; D.C. Official Code § 7-131(a) (2018 Repl.)); and Mayor's Order 2000-184, dated December 5, 2000, and Mayor's Order 98-141 dated August 20, 1998, hereby gives notice of the adoption of new Public Health Nuisances and Rodent Control Regulations in a new Subtitle I (Public Health Nuisances and Rodent Control Regulations) of Title 25 (Food Operations and Community Hygiene Facilities) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these rules is to establish new standards for identifying public health nuisances, enforcement remedies, and definitions.

On March 15, 2019, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 66 DCR 003061. The Department received two (2) public comments which are summarized below and each of the Department's responses is labelled as "DOH Response". No changes were made by the Department to these rules.

1. Food left on the ground:

Commenter: Humane Rescue Alliance (HRA)

Comment: The Standard of Care for the Animals Amendment Act of 2017 creates and defines a standard of care for animals who are kept outside, including requirements of adequate care, food, space, shelter and water. The second part of condition (g), which includes "leaving uneaten pet food or bird feed on the ground after feeding" contradicts those requirements.

Several species of animals in the District are fed outdoors including, chickens, dogs, cats and wild birds. The regulations as currently written place an unnecessary burden on resident who feed them.

HRA is recommending rewriting the second part of condition (g) which would then read as follows:

Storing pet food or bird feed in containers that are not rodent-proof or leaving uneaten pet food or bird feed *in a quantity that is more than necessary to sustain the life of the animal being fed*[.]

DOH Response: No changes were made to Subsection 202.2(g) of these regulations.

The requested language is too subjective and would result in the provision being unenforceable.

2. Excessive Fines:

Commenters: Humane Rescue Alliance

Comment: Violations carry excessive penalties. This infraction would be subject (page 7, § 203.1) to the issuance of a Notice to Abate Violation which if not complied with carries a potential for arrest on a misdemeanor charge (page 16, § 403.1), and subject to up to a \$ 10,000 fine for each violation, or imprisonment for no more than 90 days or both.

DOH Response: No changes were made to Subsections 203.1 or 403.1 of the regulations.

Property owners violating Subsection 202.2(g) of these regulations are subject to Subsection 203.2, which reads:

If the property owner fails or refuses to comply with Subsection 203.1, the Department shall impose special assessments, fines, and penalties as specified in Sections 304 [Administrative Remedies – Notices to Abate Violations, fines], 305 [Administrative Remedies – Notices of Infractions (NOIs), Fines & Penalties], and 306 [Administrative Remedies – Special Assessments on Private Property & Interest on Unpaid Fines] of these regulations against the property and the property owner.

The reference in Subsection 403.1 to Criminal Sanctions – Criminal Fines, Imprisonment would be imposed as a last resort for health hazard and other conditions injurious to protect public health as stated in Subsection 306.1 of these regulations. Such violations are subject to stringent standards of proof prosecuted in D.C. Superior Court by the Office of the Attorney General for the District of Columbia.

3. Notable Provision:

Commenters: National Pest Management Association.

Comment: Pursuant to 25-I DCMR § 206.3, the proposed rules requires multi-residential buildings and commercial property owners to take corrective action for rodent infestations and ensure, “[T]hat all corrective action is performed by a licensed and certified pest controller.”

This is an excellent provision, good policy, and we applaud the DOH for recognizing that pest management professionals are best suited to protect health and property from dangerous and deadly rodent pests. Both the U.S. Environmental Protection Agency (EPA) and the D.C. Department of Energy and Environment (DOEE) currently regulate the structural pest control industry in D.C. Not only do pest management professionals have to be trained and certified to meet rigorous federal and state standards, but they also have to be recertified every five years. In addition to the high barrier of entry into the profession, pest management professionals are also able to access additional training through the NPMA Resource Center. The only way to ensure that public health and property are protected from rodents is requiring that pest management professionals be engaged in the solution, and the DOH has done just that with this provision.

DOH Response: Thank you! We appreciate the compliment.

4. Notable Provision:

Commenters: National Pest Management Association.

Comment: DOH promulgated these regulations as a way to protect public health and property in the District. 25-I DCMR § 201.3 is a critical provision that will protect public health where property owners must hire a pest management professional to treat for rodent burrows on their property. NPMA agrees with this policy and argues that it should be expanded to the interior of the structure as well. Mice can squeeze through an opening the size of a dime and rats can squeeze through an opening the size of a quarter, therefore, it is appropriate to expand this requirement by licensed professionals to the interior of structures because when rodents infest where humans eat, sleep, live, and play, public health and property are jeopardized. Property owners should be required to hire licensed and certified pest exterminators to manage rodents inside and outside of the structure in order to effectively and safely manage rodent populations.

DOH Response: We agree with your assessment. However, the Rodent Control Division’s inspection authority extends only to outdoor spaces of public and private properties.

These rules were adopted as final on June 3, 2019, and will take effect immediately upon publication of this Notice in the *D.C. Register*.

A new Subtitle I of Title 25 DCMR, FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES, is added to read as follows:

SUBTITLE I PUBLIC HEALTH NUISANCES AND RODENT CONTROL REGULATIONS

CHAPTER 1: TITLE AND INTENT

- 100 TITLE – PUBLIC HEALTH NUISANCES AND RODENT CONTROL REGULATIONS**
- 101 INTENT**
- 102 COMPLIANCE WITH DISTRICT LAWS AND REGULATIONS**

CHAPTER 2: TYPES OF PUBLIC HEALTH NUISANCES AND VIOLATIONS, AND RAZING OF BUILDINGS AND STRUCTURES

- 200 PUBLIC HEALTH NUISANCES – ENVIRONMENTAL CONDITIONS, ORGANIC DECAY, AND ODORS**
- 201 PUBLIC HEALTH NUISANCES – PRESENCE OF RODENT ACTIVITY, PRIVATE PROPERTY**
- 202 PUBLIC HEALTH NUISANCES – RODENT HARBORAGE CONDITIONS, PRIVATE PROPERTY**
- 203 ISSUANCE OF NOTICE TO ABATE VIOLATION – PRIVATE PROPERTY, RESIDENTIAL AND COMMERCIAL**
- 204 ISSUANCE OF NOTICE TO ABATE VIOLATION – ENVIRONMENTAL CONDITIONS ON PRIVATE PROPERTY, RESIDENTIAL AND COMMERCIAL, AND TIME FRAME FOR CORRECTIVE ACTION**
- 205 ISSUANCE OF NOTICE TO ABATE VIOLATION – INDIVIDUAL HOMEOWNERS AND MULTI-RESIDENTIAL/APARTMENT BUILDINGS CONSISTING OF THREE (3) OR FEWER UNITS, CONTENT AND TIME FRAME FOR CORRECTIVE ACTION**
- 206 ISSUANCE OF NOTICE TO ABATE VIOLATION – MULTI-RESIDENTIAL/APARTMENT BUILDINGS CONSISTING OF FOUR (4) OR MORE UNITS AND COMMERCIAL PROPERTIES, CONTENT AND TIME FRAME FOR CORRECTIVE ACTION**
- 207 ISSUANCE OF NOTICE TO INSPECT BEFORE RAZING OF BUILDINGS AND OTHER STRUCTURES**

CHAPTER 3: OUTREACH ACTIVITIES, INSPECTIONS, AND ADMINISTRATIVE REMEDIES

- 300** **OUTREACH ACTIVITIES – PUBLIC AND PRIVATE SPACES**
- 301** **INSPECTIONS – AUTHORITY AND RIGHT OF ENTRY FOR PUBLIC HEALTH NUISANCES**
- 302** **INSPECTIONS AND TREATMENT OF PUBLIC OUTDOOR SPACES**
- 303** **INSPECTIONS – PRIVATE OUTDOOR SPACES**
- 304** **ADMINISTRATIVE REMEDIES – NOTICES TO ABATE VIOLATIONS, FINES**
- 305** **ADMINISTRATIVE REMEDIES – NOTICES OF INFRACTIONS (NOIS), FINES AND PENALTIES**
- 306** **ADMINISTRATIVE REMEDIES – SPECIAL ASSESSMENTS ON PRIVATE PROPERTY AND INTEREST ON UNPAID FINES**

CHAPTER 4: SERVICE OF PROCESS, CRIMINAL SANCTIONS, AND JUDICIAL REVIEW

- 400** **SERVICE OF PROCESS, NOTICES, PROPER METHODS**
- 401** **SERVICE OF PROCESS – NOTICE, EFFECTIVENESS**
- 402** **SERVICE OF PROCESS – PROOF OF PROPER SERVICE**
- 403** **CRIMINAL SANCTIONS – CRIMINAL FINES, IMPRISONMENT**
- 404** **JUDICIAL REVIEW – APPEALS**

CHAPTER 99: DEFINITIONS

- 9900** **GENERAL PROVISIONS**
- 9901** **DEFINITIONS**

CHAPTER 1 TITLE AND INTENT

- 100** **TITLE – PUBLIC HEALTH NUISANCES AND RODENT CONTROL REGULATIONS**
- 100.1 These provisions shall be known as the Public Health Nuisances and Rodent Control Regulations.
- 101** **INTENT**
- 101.1 The purpose of these regulations is to protect public health and the environment by establishing standards to control, reduce, and eradicate conditions that foster rodent activity in the District of Columbia.

102 COMPLIANCE WITH DISTRICT LAWS AND REGULATIONS

102.1 The provisions in these regulations apply to public spaces and private properties, and residential and commercial activities regulated under:

- (a) The Rodent Control Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code §§ 8-2103.01 *et seq.* (2013 Repl.));
- (b) The Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.* (2013 Repl.));
- (c) The Preventive Health Services Amendment Act of 1985, as amended, effective November 27, 1985 (D.C. Law 6-83; D.C. Official Code § 7-131(a) (2018 Repl.)); and
- (d) Chapter 27 (Refuse, Recyclables, and Returnables) of Subtitle A (Retail Food Code Regulations) of Title 25 (Food Operations and Community Hygiene Facilities) of the District of Columbia Municipal Regulations (DCMR).

CHAPTER 2 TYPES OF PUBLIC HEALTH NUISANCES AND VIOLATIONS, AND RAZING OF BUILDINGS AND STRUCTURES**200 PUBLIC HEALTH NUISANCES – ENVIRONMENTAL CONDITIONS, ORGANIC DECAY, AND ODORS**

200.1 The Department of Health (Department) shall deem organic decay, nuisance odors, or any other offensive substances in the District of Columbia that is thrown, placed or allowed to remain on any street, avenue, alley, sidewalk, gutter, public space or private property, or open lot, or environmental conditions injurious to public health in accordance with the Preventive Health Services Amendment Act of 1985, effective November 27, 1985 (D.C. Law 6-83; D.C. Official Code § 7-174 (2018 Repl.)) including but not limited to:

- (a) Filth;
- (b) The contents of cesspools;
- (c) Offal;
- (d) Solid Waste;
- (e) Foul water;

- (f) Refuse from factories, warehouses, or commercial operations;
- (g) Construction and demolition waste;
- (h) Ordure;
- (i) Urine; or
- (j) Composting of decayed animal or vegetable matter in accordance with the Home Composting Incentives Amendment Act of 2018, effective July 17, 2018 (D.C. Law 22-146; D.C. Official Code §§ 8-1031.12(b) (2018 Supp.)).

201 PUBLIC HEALTH NUISANCES – PRESENCE OF RODENT ACTIVITY, PRIVATE PROPERTY

201.1 Rodent activity in buildings, structures, or open spaces whether public land or private property is a health nuisance injurious to public health.

201.2 When conducting complaint-based or field inspections, the Department shall determine the existence of past or present rodent activity by observing one or more of the following occurrences:

- (a) Burrows or nests;
- (b) Fecal droppings;
- (c) Rub marks;
- (d) Gnaw marks, such as rodent gnawed food;
- (e) Runways;
- (f) Odors; or
- (g) Live or dead rodents.

201.3 Property owners shall control, reduce, and eradicate rodent activity on their property by:

- (a) Inspecting their property frequently, including along fence lines, for signs of rodent activity, as specified in Subsection 201.2;
- (b) Removing dead rodents from their property to prevent the accumulation, decomposition, or attraction of pests; and

- (c) Obtaining a D.C. licensed and certified pest exterminator/ contractor to treat rodent burrows found on their property pursuant to Subsection 207.4(a) of these Regulations.

202 PUBLIC HEALTH NUISANCES – RODENT HARBORAGE CONDITIONS, PRIVATE PROPERTY

202.1 Property owners shall inspect their property for conditions that could support rodent harborage before they transfer or change the occupancy of any property in the District.

202.2 The Department shall consider one or more of the following rodent harborage conditions a nuisance injurious to public health:

- (a) Grass or weed growth at eight inches (8”) or higher on public or private property, in accordance with Section 908(a) of the Rodent Control Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 8-2103.05(a) (2013 Repl.)), not including “critical areas” designated by the Department of Energy and Environment pursuant to the Fisheries and Wildlife Omnibus Amendment Act of 2016, effective May 19, 2017 (D.C. Law 21-282, § 202; D.C. Official Code § 8-1731.02 (2018 Supp.));
- (b) Allowing spillage from outdoor receptacles or waste handling units such as collection vehicles to remain on the property;
- (c) Accumulating trash, animal fecal matter, discarded items and furniture, boxes, tires, vehicles, or construction materials on the property;
- (d) Accumulating trash, debris, discarded or unnecessary items on public property, such as tree beds, alleyways, or roadways.
- (e) Accumulating trash, debris, discarded or unnecessary items on any part of private property, including porches, basement well areas, yard areas, or other exterior areas;
- (f) Accumulating trash, debris, discarded or unnecessary items on any part of private property adjacent to public or private property, such as garages, driveways, or other exterior areas.
- (g) Storing pet food or bird feed in containers that are not rodent-proof or leaving uneaten pet food or bird feed on the ground after feedings;
- (h) Placing refuse in plastic bags outside of container to store and dispose of solid waste other than yard waste;

- (i) Improperly storing debris, solid waste, food waste, or grease receptacles outdoors;
- (j) Storing debris, solid waste, food waste, or grease outdoors in residential receptacles that are accessible to rodents and other pests;
- (k) Storing debris, solid waste, food waste, or grease in outdoor receptacles that are not rodent proof, as defined in Section 9901 of these regulations, due to damaged or improper construction;
- (l) Storing debris, solid waste, food waste, or grease in outdoor receptacles that are not rodent proof, as defined in Section 9901 of these regulations, due to improper maintenance;
- (m) Storing food waste or grease in outdoors receptacles that are not rodent proof, with tight fitting lids, doors, or covers, as defined in Section 9901 of these regulations;
- (n) Storing food waste outdoors in receptacles that are not durable, cleanable, insect and rodent proof, leak proof, and nonabsorbent, as defined in Section 9901 of these regulations;
- (o) Storing food waste outdoors in unprotected plastic bags and paper bags, or baled units that contain materials with food residue;
- (p) Storing debris, solid waste, food waste, or grease outdoors in waste receptacles that do not have drain plugs in place;
- (q) Maintaining an insufficient number of waste receptacles to properly store the amount of debris, solid waste, food waste, or grease being generated;
- (r) Storing debris, solid waste, food waste, or grease on an outdoor surface that is not constructed of nonabsorbent material such as concrete or asphalt;
- (s) Storing debris, solid waste, food waste, or grease on an outdoor surface that is not smooth, durable and sloped to drain;
- (t) Using an outdoor storage or enclosure area that is not constructed of durable and cleanable materials to store debris, solid waste, food waste, or grease;
- (u) Using an outdoor storage or enclosure area that lacks sufficient capacity to hold debris, solid waste, food waste, or grease being stored;

- (v) Using an on-site compactor that is not installed flushed with the base pad under the unit that does not provide easy access to effectively clean around the unit;
- (w) Storing discarded or unnecessary items in outdoor storage or enclosure areas;
- (x) Soiled waste receptacles not cleaned on a regular basis to prevent the development of buildup of waste matter or from becoming an attractant to insects and rodents; or
- (y) Not using regularly scheduled pickups to remove debris, solid waste, food waste, or grease from the property at a frequency that minimizes the development of objectionable odors and other conditions that attract or harbor insects and rodents.

203 ISSUANCE OF NOTICE TO ABATE VIOLATION – PRIVATE PROPERTY, RESIDENTIAL AND COMMERCIAL

203.1 Property owners shall comply with all Notices to Abate Violations issued by the Department for:

- (a) Environmental conditions identified in Subsection 200.1 of these regulations;
- (b) Rodent Activity identified in Subsections 201.2 of these regulations; and
- (c) Rodent Harborage Conditions identified in Subsection 202.2 of these regulations.

203.2 If the property owner fails or refuses to comply with Subsection 203.1, the Department shall impose special assessments, fines, and penalties as specified in Sections 304, 305, and 306 of these regulations against the property and the property owner.

204 ISSUANCE OF NOTICE TO ABATE VIOLATION – ENVIRONMENTAL CONDITIONS ON PRIVATE PROPERTY, RESIDENTIAL AND COMMERCIAL, AND TIME FRAME FOR CORRECTIVE ACTION

204.1 If the Department determines the presence of environmental conditions on private property, as specified in Subsection 200.1, the Department shall issue the property owner a Notice to Abate Violation, which shall include:

- (a) A description of the environmental condition observed or reported on the property;

- (b) The corrective action the property owner will be required to take for the cleanup or removal of environmental conditions identified in Subsection 204.1(a) from the premises, including proof of proper removal and disposal; and
- (c) A statement notifying the property owner that special assessments, fines, and penalties as specified in Sections 304 and 306 of these regulations may be assessed against the property if all corrective actions identified in Subsection 204.1(b) are not completed within fourteen (14) days from the date on the Notice to Abate Violation.

204.2 If a property owner fails to comply with Subsections 204.1(b) and (c), the Department shall issue the property owner a Notice of Infraction as specified in Section 305 of these regulations, except for property owners identified in Section 205 of these regulations.

205 ISSUANCE OF NOTICE TO ABATE VIOLATION – INDIVIDUAL HOMEOWNERS AND MULTI-RESIDENTIAL / APARTMENT BUILDINGS CONSISTING OF THREE (3) OR FEWER UNITS, CONTENT AND TIME FRAME FOR CORRECTIVE ACTION

205.1 If the Department determines the presence of rodent activity or rodent harborage conditions on private property, as specified in Subsections 200.1, 201.2 and 202.2, the Department shall issue the property owner a Notice to Abate Violation, which shall include:

- (a) Information regarding where the rodent activity was observed or reported on the property;
- (b) Information as to what corrective action or actions the property owner will be required to take to reduce or eliminate the rodent activity or rodent harborage conditions including proof of proper disposal; and
- (c) A statement notifying the property owner that special assessments, fines, and penalties pursuant to Sections 203, 304 and 306 of these Regulations may be assessed against the property if all corrective actions identified in Subsection 205.1(b) are not completed within fourteen (14) days from the date on the Notice to Abate Violation.

206 ISSUANCE OF NOTICE TO ABATE VIOLATION – MULTI-RESIDENTIAL / APARTMENT BUILDINGS CONSISTING OF FOUR (4) OR MORE UNITS AND COMMERCIAL PROPERTIES, CONTENT AND TIME FRAME FOR CORRECTIVE ACTION

206.1 If the Department determines that there are environmental conditions, rodent activity, or rodent harborage conditions in private commercial buildings or structures, as specified in Subsections 200.1, 201.2, and 202.2 of these regulations, the Department shall issue the property owner a Notice to Abate Violation, which:

- (a) States the nature of the violation observed or reported on the property;
- (b) Requires the property owner to take corrective action by:
 - (1) Reducing or eliminating violations identified in Subsection 206.1(a) were cleaned-up and removed, with proof of proper disposal;
 - (2) Sealing all visible rodent entryways with hardware cloth or other appropriate material to prevent active infestation or to prevent a re-infestation; and
 - (3) Ensuring that all corrective action is performed by a licensed and certified pest controller, as specified in Subsection 207.4(a); and
- (c) Notifies the property owner that special assessments, fines, and penalties pursuant to Sections 203, 304 and 306 of these regulations may be assessed against the property if all corrective actions identified in Subsection 206.1(b) are not completed within fourteen (14) days from the date on the Notice to Abate Violation.

206.2 The Department shall issue a Notice of Infraction to the property owner who does not comply with Subsections 206.1(b) and (c), Section 305 of these regulations.

207 ISSUANCE OF NOTICE TO INSPECT BEFORE RAZING OF BUILDINGS AND OTHER STRUCTURES

207.1 The Director of the Department and the Director of the Department of Consumer and Regulatory Affairs (DCRA) are authorized to make, or cause to be made, inspections of existing buildings and structures to determine the prevalence of rodents or rodent harborage conditions for the protection of public health under the Preventive Health Services Amendment Act of 1985, effective November 27, 1985 (D.C. Law 6-83; DC Official Code §§ 7-131(a) and 7-138 (2018 Repl.)).

207.2 Before authorizing the demolition, move, or removal a building or structure, in whole or in part as specified in Section 7-138 of the D.C. Official Code and Subsections 207.4, 207.5, and 207.7 of these regulations, DCRA shall require property owners to submit the following documents issued by the Department of Health:

- (a) An Inspection Report; and
- (b) An “Approval for the Issuance of a DCRA Raze Permit”.

207.3 As part of DCRA’s Raze Application process, DCRA shall:

- (a) Assign Raze Permits to the Department of Health for review and approval through the electronic plan review system which is currently “ProjectDox”;
- (b) Provide property owners with written Instructions to contact the Department of Health to schedule an inspection within thirty (30) days of filing an “Application for Raze Permit” with DCRA;
- (c) After the property owner contacts the Department of Health to schedule an inspection, the Department shall issue the property owner a “Notice to Inspect” within two (2) weeks of the scheduled inspection; and
- (d) An “Approval for the Issuance of a DCRA Raze Permit” shall be issued by the Department of Health to the property owner as specified in Subsection 207.7.

207.4 If during an inspection, the Department of Health observes evidence of rodent activity or rodent harborage conditions, the Department shall require the property owner to:

- (a) Provide the Department with a copy of a professional service contract and service schedule, which documents the following information:
 - (1) The Name and address of a D.C. licensed and certified pest exterminator/contractor the property owner has contracted with to treat the building or structure in accordance with the DCMR, Chapters 22 through 25; and
 - (2) The type of rodenticide to be used under the contract; and
 - (3) Frequency of treatment and treatment date(s), including the last date of treatment under the contract;
- (b) Seal all holes and gaps in the building, or other structure, or part thereof;

- (c) Remove all trash or refuse and discarded items from the premises;
- (d) Cleanup and remove environmental conditions injurious to public health from the premises, and provide proof of proper removal and disposal; and
- (e) Complete all corrective action required by the Department in accordance with these Regulations.

- 207.5 The Department shall conduct a re-inspection of the property to ensure that all corrective actions identified in the Inspection Report were completed.
- 207.6 The Inspection Report shall include a statement that special assessments, fines, and penalties pursuant to Sections 203, 304 and 306 of these regulations may be assessed against the property if all corrective actions identified in Subsection 207.4(e) are not completed within the timeframe identified in the Inspection Report.
- 207.7 If the Department verifies the property owner is in compliance with Subsection 207.4, the Department shall issue the property owner an “Approval for the Issuance of a DCRA Raze Permit” within seven (7) business days of conducting an inspection or re-inspection, which states: “Proper measures have been taken to eradicate and prevent the spread of rodents from the premises.”
- 207.8 The property owner shall maintain a record of all corrective actions completed as specified in Subsection 207.4, verified by the Department as specified in Subsection 207.7, for the duration of the project.
- 207.9 The property owner shall comply with Subsections 207.1 through 207.7 of these Regulations if the Mayor or his or her designated agent orders the demolition or removal of an insanitary or unsafe building, or part thereof, other than a fence or shed.
- 207.10 The Department shall issue the property owner a Notice to Abate Violation, pursuant to Section 203 of these Regulations if the property owner fails to comply with Subsections 207.4(e) and 207.6.
- 207.11 The Department shall issue the property owner a Notice of Infraction pursuant to Section 305 of these Regulations if the property owner fails to comply with Subsection 207.6.
- 207.12 The Department shall not issue an “Approval for the Issuance of a DCRA Raze Permit” if there are outstanding assessments, fines, and/or penalties against the property or the property owner pursuant to Subsection 207.6 of these Regulations.

**CHAPTER 3 OUTREACH ACTIVITIES, INSPECTIONS, AND
ADMINISTRATIVE REMEDIES**

300 OUTREACH ACTIVITIES – PUBLIC AND PRIVATE SPACES

300.1 In an effort to prevent conditions on public space and private property that are injurious to public health, the Department shall:

- (a) Conduct outreach and education activities targeting public and private space; and
- (b) Coordinate outreach and education with other District agencies through interagency agreements targeting the elimination of rodents.

301 INSPECTIONS – AUTHORITY AND RIGHT OF ENTRY FOR PUBLIC HEALTH NUISANCES

301.1 The Department is authorized to inspect public outdoor spaces and private properties as specified in these regulations.

301.2 A property owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall provide a Department representative access to any building or premises during hours of operation or other reasonable times as determined by the Department, to conduct inspections identified in Sections 200, 201, and 202 of these regulations. The Department representative shall present the property owner with official credentials and state the purpose of their visit.

301.3 If the property owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof refuses to allow the Department entry during normal business hours or at other reasonable times, the Department may impose special assessments, fines, and penalties as specified in Sections 304, 305, and 306 of these regulations against the property.

302 INSPECTIONS AND TREATMENT OF PUBLIC OUTDOOR SPACES

302.1 The Department shall inspect public outdoor spaces where rodents or rodent harborage conditions are:

- (a) Observed by the Department through an inspection; or
- (b) Reported to the Department by the public.

302.2 The Department shall treat the inspected areas when it observes evidence of rodent activity or harborage conditions in public outdoor spaces.

303 INSPECTIONS – PRIVATE OUTDOOR SPACES

303.1 The Department shall inspect private outdoor spaces for public health nuisance violations identified in Sections 200, 201, and 202 that have been:

- (a) Observed by the Department through an inspection;
- (b) Reported to the Department by the public; or
- (c) At the public’s request.

304 ADMINISTRATIVE REMEDIES – NOTICES TO ABATE VIOLATIONS, FINES

304.1 The Department shall issue an administrative order for public health nuisance violations associated with a particular residence or commercial property pursuant to the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.* (2013 Repl.)) and these Regulations.

304.2 Pursuant to the Litter Control Act of 1985, as amended, and Section 306 of these Regulations, the Department shall impose special assessments, fines, and penalties against the property when public health nuisance violations are not corrected within the allotted timeframe as directed in the Notice to Abate Violation.

305 ADMINISTRATIVE REMEDIES – NOTICES OF INFRACTIONS (NOIS), FINES AND PENALTIES

305.1 The Department may impose against any property owner civil infraction fines and penalties for violations of any provision of these Regulations pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985 (Civil Infractions Act), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.* (2016 Repl.)); and the Preventive Health Services Amendment Act of 1985, as amended, effective November 27, 1985 (D.C. Law 6-83; D.C. Official Code § 7-176 (2018 Repl.)).

305.2 A property owner who receives a Notice of Infraction as specified in Subsection 400.1, may pay the assessed fine or appear before the Office of Administrative Hearings as directed on the reverse side of the Notice of Infraction in accordance with the “Office of Administrative Hearings Rules of Practice and Procedure” in Section 2808, Title 1 of the District of Columbia Municipal Regulation.

306 ADMINISTRATIVE REMEDIES – SPECIAL ASSESSMENTS ON PRIVATE PROPERTY AND INTEREST ON UNPAID FINES

- 306.1 The Department shall levy special assessments against any land, and improvements on the land to correct certain health hazards that have resulted from the harborage of rodents, including cleanup, abatement, and preventive measures, if the Department determines action is necessary to protect human health and one or more of the following conditions exist:
- (a) Action is required to protect public space;
 - (b) The Department is unable to contact the property owner or his agent or representative, or person having the care and management of the land and improvements on the land by telephone, email, or first-class or registered mail within fourteen (14) days from the date on the Notice to Abate Violation or less as determined by the Mayor to protect the public's health; or
 - (c) A situation exists that requires immediate action by the Department to protect human health; or
 - (d) The property owner or his agent or representative, or person having the care and management of the land and improvements on the land has failed or refused to comply with the Notice to Abate Violation within fourteen (14) days from the date on the Notice to Abate Violation as specified in Section 203 of these Regulations.
- 306.2 The Department shall levy a special assessment against any land and the improvements on the land to which any unpaid fines or penalties have been imposed pursuant to these Regulations in accordance with Section 907(b) of the Rodent Control Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 8-2103.04(b) (2013 Repl.)).
- 306.3 Any special assessment levied pursuant to this chapter shall be filed with the District of Columbia's Office of Tax and Revenue and the Office of Recorder of Deeds.
- 306.4 The Department shall require the payment of an interest charge to be assessed against the total fine, penalty, and charge for abatement services performed by the Department that have not been satisfied, in full, within thirty (30) days of the date that final notice, which requests payment, is mailed to the property owner. The rate of interest authorized by this section shall not exceed one and one half percent) (1½%) per month or part of a month that accrues thirty (30) days from the date of the final notice pursuant to the Litter Control Administration Act of 1985.

**CHAPTER 4 SERVICE OF PROCESS, CRIMINAL SANCTIONS,
AND JUDICIAL REVIEW****400 SERVICE OF PROCESS, NOTICES, PROPER METHODS**

- 400.1 A Notice of Infraction (NOI) or Order issued in accordance with the Rodent Control Act of 2000, effective October 19, 2000, (D.C. Law 13-172; D.C. Official Code §§ 8-2101.01 *et seq.* (2013 Repl.)) and these regulations shall be deemed properly served if it is served by one of the following methods pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05(a) (2016 Repl.)):
- (a) A Department representative, a law enforcement officer, or a person authorized to serve the Notice of Infraction or Order by a civil process, or personal service of the notice to the property owner, person of suitable age and discretion residing at the property or employed therein, or to a registered agent;
 - (b) The Department electronically serves the Notice of Infraction or Order to the property owner;
 - (c) The Department mails the Notice of Infraction or Order to the property owner's last known home or business address;
 - (d) The Department mails the Notice of Infraction or Order by postage prepaid, first class mail to the property owner's official address of record as maintained by the Office of Tax and Revenue;
 - (e) The Department posts the Notice of Infraction or Order on the door of the entryway or other conspicuous place on the property pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05(b)(1) (2016 Repl.)); or
 - (f) The Department posts the Notice of Infraction or Order on the Department's website pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05(b)(2) (2016 Repl.)).
- 400.2 A Notice to Abate Violation or Order issued in accordance with the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.* (2013 Repl.)) and these Regulations shall be deemed properly served when it is posted on the door of the entryway or other conspicuous place on the property.

400.3 If the property owner cannot be identified with reasonable certainty, the Department may conspicuously post the Notice to Abate Violation or Notice to Abate Order on the premises alleged to be in violation and deliver a copy of the Notice to the Director of the Office of Tax and Revenue in accordance with the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-803(c)(2) (2013 Repl.)).

401 SERVICE OF PROCESS – NOTICE, EFFECTIVENESS

401.1 Service is effective as specified in Subsection 400.1, or if service is made as specified in Subsection 400.2, at the time of posting.

402 SERVICE OF PROCESS – PROOF OF PROPER SERVICE

402.1 Proof of proper service may be made by:

- (a) Certificate of service signed by the issuing agent;
- (b) Certificate of Service by First-class United States pre-paid postage, if service is by mail; or
- (c) A written acknowledgement signed by the property owner.

403 CRIMINAL SANCTIONS – CRIMINAL FINES, IMPRISONMENT

403.1 Any person who fails to comply with a Notice to Abate Violation shall be liable to arrest and upon conviction shall be deemed guilty of a misdemeanor and shall be subject to a fine for each offense not to exceed ten thousand dollars (\$10,000), or shall be imprisoned for a period not to exceed ninety (90) days, or both, in the discretion of the court in accordance with Section 908(c) of the Rodent Control Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 8-2103.05 (c) (2013 Repl.)).

404 JUDICIAL REVIEW – APPEALS

404.1 Any person aggrieved by a final order or decision of the Department may seek judicial review in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2018 Repl.)).

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this Chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise.

9901 DEFINITIONS

9901.1 **Abate** – removing rodent infestations by eliminating or rodent-proofing rodent food sources, eliminating rodent nesting areas, rodent-proofing buildings entry ways, and poisoning or trapping existing rodent populations.

Burrow – a below ground nest or above ground harborage conditions for rodents.

Construction and demolition waste – discarded building materials and rubble resulting from, remodeling, repairs, and operations on houses, commercial buildings, pavements, and other structures.

Corrective action – Department directives to property owners to cleanup and abate specific, and to take preventive measures.

Debris – any of the following:

- (a) Construction or demolition waste that is not stored in a rodent proof container and not removed within fourteen (14) days or longer;
- (b) Yard waste and branches that are not bundled or bagged and set out for waste collection, but not yard waste placed in a properly maintained compost pile; and
- (c) Fire wood that is stored next to a building or left in loose piles on the ground, but not fire wood that is stored away from buildings and at least eighteen (18) inches above the ground or in a rodent-proof building.

Department – The District of Columbia Department of Health

Food waste – animal or vegetable waste resulting from the storage, handling, preparation, cooking, or serving of foods, but not food waste placed in a properly maintained compost pile or part of a properly managed compost pile or anaerobic digestion facility.

Foul – grossly offensive to the senses, disgustingly loathsome, noisome, a smell, or containing or characterized by an offensive or noisome matter such as air or stagnant water.

Grease – used cooking oil, vegetable oil, shortening, margarine or any other used fat or oil used for cooking, frying or baking intended for recycling or disposal.

Hardware cloth – galvanized metal cloth or netting with small diameter holes used to prevent rodents from entering buildings.

Notice of Abate Violation – an administrative order issued to correct a public health nuisance.

Occupant – the person who has the use of any building or any part thereof or who has the use or possession, actual or constructive, of the premises, as an owner or tenant. In the case of vacant buildings, or vacant portions of a commercial building or structure, or in case of occupancy in whole or in part by the owner, the owner of the building shall be deemed responsible for such building or structure.

Offal – the entrails and internal organs of an animal.

Ordure – excrement, dung; solid waste from the bowels of people or animals.

Person – any individual, firm, partnership, company, corporation, trustee, association, or any other private or public entity.

Premises – a building, together with any fences, walls, sheds, garages, or other accessory buildings appurtenant to that building, and the area of land surrounding the building and actually or by legal construction forming one enclosure in which the building is located.

Rodent-proofing – consist of but is not limited to the following:

- (a) Using impervious materials such as hardware cloth or other appropriate materials to prevent the ingress of rodents into buildings from the exterior or from one building to another, and closing all openings in the exterior walls, ground or first floors, basements, roofs, and foundations to prevent gnawing that may be reached by rodents from the ground, by climbing, or by burrowing with;

- (b) Using heavy gauge metal or heavy gauge plastic waste containers with tightly-fitting lids also constructed of heavy gauge metal or heavy gauge plastic and free of large gaps, cracks or holes and kept closed at all times other than when the container is being filled or emptied;
- (c) If waste containers are equipped with a drain plug, the plug shall be constructed of heavy duty plastic or metal and shall be kept in the drain hole until the filled container is transported to its ultimate destination for emptying and disposal of its contents; and
- (d) Areas where waste containers are stored are free of spilled waste at all times.

Rubmark – a dark, sometimes greasy mark formed from contact by the rat's body.

Runways – a narrow pathway of beaten earth and vegetation swept clear of debris by the frequent travel of a rat.

Solid waste – has the same meaning as provided in D.C. Official Code § 8-1031.01(15).

Weeds – uncultivated or wild vegetation that is greater than eight inches (8 in.) in height.

Yard waste – pruning's, grass clippings, weeds, leaves, and general yard and garden wastes.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health (“Department”), pursuant to § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)) (“Health Occupations Revision Act”), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of her intent to adopt the following amendments to Chapter 68 (Podiatry) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the rulemaking is to set forth amendments regarding educational, licensure, examination, and continuing education requirements to bring the D.C. Board of Podiatry up to date with current standards and best practices in the regulation of the podiatric profession. Consistent with the aim of the Health Occupations Revision Act, this rulemaking will enhance professionalism within the community and operate in support of the health and welfare of the public.

Chapter 68, PODIATRY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Subsections 6802.1 and 6802.2 of Section 6802, EDUCATIONAL REQUIREMENTS, are amended to read as follows:

6802.1 Except as otherwise provided for in this subtitle, an applicant for licensure must possess a Doctor of Podiatric Medicine degree (DPM) awarded by a podiatry school or college accredited by the Council on Podiatric Medical Education (CPME) in the year the applicant graduated. An official transcript shall serve as satisfactory proof of being awarded a degree of Doctor of Podiatric Medicine.

6802.2 Except as otherwise provided in this regulation, an applicant who submits an application for a license shall complete two (2) years of post-graduate clinical training in a residency program approved by CPME, or its successor, and approved by the Board in order to be eligible for the examination. The Board may waive this requirement at the request of an applicant who has practiced podiatry in another state for at least five (5) years immediately before applying for a license in the District.

Subsection 6804.1 of Section 6804, NATIONAL EXAMINATION, is amended to read as follows:

6804.1 To qualify for a license by examination, an applicant shall pass Parts One (1), Two (2), and Three (3) of the National Board of Podiatric Medical Examiners exam, or exams approved by the Board.

Section 6806, CONTINUING EDUCATION REQUIREMENTS, is amended to read as follows:

- 6806.1 Subject to § 6806.2, this section shall apply to applicants for the renewal, reactivation, or reinstatement of a license.
- 6806.2 This section shall not apply to applicants for an initial license by examination, reciprocity, or endorsement, nor shall it apply to applicants for the first renewal of a license granted by examination.
- 6806.3 A continuing education credit shall be valid only if it is part of a program or activity approved by the Board in accordance with § 6807.
- 6806.4 An applicant for renewal of a license expiring on March 31, 2020, and all subsequent licensure terms shall submit proof pursuant to § 6806.7 of having completed fifty (50) hours of approved continuing medical education (CME) during the two (2) year period preceding the date the license expires. At least ten percent (10%) of the total required CME shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently as deemed appropriate by the Director with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website. Twenty-five (25) CME credits must be directly related to the practice of podiatric medicine. Two (2) hours of CME are required in cultural competence and appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender non-conforming, queer, or questioning their sexual orientation or gender identity and expression. The CME credits may include the cardiopulmonary resuscitation (CPR) certification (as required in § 6811) or CME offerings through attendance at professional or scientific meetings of local, state, regional, national, or international professional or scientific organizations. Thirty (30) CME credits may be completed online. Proof of successful completion shall be submitted within thirty (30) days after it is requested by the Board.
- 6806.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Health Occupations Revisions Act, D.C. Official Code § 3-1205.11 (2016 Repl.), who submits an application to reactivate a license shall submit proof pursuant to § 6806.7 of having completed fifteen (15) hours of approved continuing education credit for each license year that the applicant was in inactive status, up to a maximum of seventy-five (75) hours.
- 6806.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof pursuant to § 6806.7 of having completed twenty-five (25) hours of approved continuing education credit for each year that the applicant was not licensed, up to a maximum of one hundred twenty-five (125) hours.

- 6806.7 An applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:
- (a) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
 - (b) The dates on which the applicant attended the program;
 - (c) The hours of credit claimed; and
 - (d) Verification by the sponsor of completion, by signature or stamp.
- 6806.8 An applicant for renewal of a license who fails to submit proof of having completed continuing education requirements by the date the license expires may renew the license up to sixty (60) days after expiration by submitting proof pursuant to § 6807 and by paying the required additional late fee.
- 6806.9 Upon submitting proof of paying the late fee, the applicant shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documentation and payment of the late fee.
- 6806.10 If an applicant for renewal of a license fails to submit proof of completion of continuing education requirements or pay the late fee within sixty (60) days after the expiration of applicant's license, the license shall be considered to have lapsed on the date of expiration.
- 6806.11 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause and proof of documentation. For the purposes of this section, "good cause" includes the following:
- (a) Serious and protracted illness of the applicant; or
 - (b) The death or serious and protracted illness of a member of the applicant's immediate family; or
 - (c) Any other appropriate circumstances at the discretion of the Board.
- 6806.12 The Board shall conduct a random audit of ten (10) percent of licensees to determine compliance with the continuing education requirements. The licensees shall submit proof of compliance with the continuing education requirements within thirty (30) days after it is requested by the Board.

Section 6807, APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES, is amended to read as follows:

- 6807.1 The Board may, in its discretion, approve continuing education programs or activities that directly or indirectly correlate to podiatric medicine and surgery that contribute to the growth of a licensee in professional competence in the practice of podiatry which meet the other requirements of this section.
- 6807.2 The Board may approve the following types of continuing education programs, if the program meets the requirements of § 6807.3:
- (a) A seminar or workshop;
 - (b) A program offered at professional or scientific meetings of local, state, regional, national, or international professional or scientific organizations; and
 - (c) In-service training.
- 6807.3 To be considered for approval by the Board, a continuing education program shall:
- (a) Be current in its professional subject matter as it relates to podiatric medicine;
 - (b) Be developed and taught by qualified individuals; and
 - (c) Meet one of the following requirements:
 - (1) Be pre-approved by the CPME or other accrediting body in the field of podiatric medicine; or
 - (2) Be submitted by the program sponsor to the Board for approval no fewer than sixty (60) days before the date of presentation.
- 6807.4 The Board shall issue an updated list of approved continuing education programs annually.
- 6807.5 An applicant shall have the burden of reviewing the Board's updated list of approved continuing medical education programs, and verifying whether a program is approved by the Board pursuant to this section prior to attending the program.
- 6807.6 In accordance with § 6807.1, credit shall be given for business or information technology courses that relate to the practice of medicine and surgery. No more

than ten credits will be accepted by the Board derived from practice management courses that correlate to the practice of medicine.

Subsections 6810.1(c) and 6810.1(g) of Section 6810, PODIATRIST'S PROFILE, are amended to read as follows:

6810.1

...

- (c) The names and dates of specialty Board qualification or certification, if any, as approved by the American Board of Foot and Ankle Surgery, the American Board of Podiatric Medicine, the American College of Foot and Ankle Surgeons, and the American Board of Multiple Specialties in Podiatry;

...

- (g) Appointments, if applicable, within the past ten (10) years to medical school or podiatric school faculties with the years of service and academic rank;

Subsection 6812.4 of Section 6812, HEALTH CARE RECORDS, is amended to read as follows:

6812.4 A podiatrist shall release, within twenty-one (21) business days after receipt of a request, a copy of a patient's health care records when the request is made by:

- (a) The patient; or
- (b) The legal representative or guardian of a patient or person authorized to have access to the patient's record under a health care power of attorney.

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

DEPARTMENT OF MOTOR VEHICLES**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Motor Vehicles (“Director”), pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2014 Repl.)), Section 6 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03 (2014 Repl.)), Section 2 of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 680; D.C. Official Code § 50-1501.02 (2014 Repl.)), and Mayor’s Order 2016-077, dated May 2, 2016, hereby gives notice of the intent to adopt the following amendments to Chapter 4 (Motor Vehicle Title and Registration) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (“DCMR”).

The proposed rule will allow for a vehicle owner to designate a beneficiary of the vehicle title with the Department.

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

Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:

Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, is amended as follows:

Section 402, TRANSFER OF CERTIFICATES OF TITLE, is amended as follows:

Subsection 402.2 is amended to read as follows:

402.2

- (a) An application for title by any person acquiring a vehicle which is titled in the name of a deceased person shall be accompanied by an assignment of ownership executed by the decedent's personal representative and an authenticated copy of the letters testamentary or administration issued to the representative by an appropriate court. If the vehicle is the subject of a small estate order and is a scheduled asset in the order, the person in whose name the probate court vests title in the vehicle may make the assignment. An authenticated copy of the small estate order shall accompany the application for a new certificate.
- (b) If the deceased has assigned a beneficiary or beneficiaries, as indicated in the Department’s database to a vehicle titled in the District, then the surviving beneficiary or beneficiaries may transfer the vehicle to themselves without having to file a probate action. The deceased’s assignment, as indicated in the Department’s database shall supersede any

other document executed by the decedent reflecting a different beneficiary or beneficiaries, including, but not limited to, a will or trust. The interest of the surviving beneficiary or beneficiaries shall remain subject to the rights of all lien holders and to any contract of sale, lease, assignment, or security interest to which the owner was subject during his or her lifetime.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, with David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024, dmvpubliccomments@dc.gov, or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposed rulemaking 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. 19-06

(Text Amendment – 11-X DCMR)

(To Clarify Voluntary Design Review FAR Aggregation)

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

Substantively, the Commission proposes to amend Subtitle X by revising §§ 600.1, 601, and 603 (including a new § 603.2 with current §§ 603.2 and 603.3 renumbered as §§ 603.3 and 603.4) and by adding new §§ 605 and 606 to clarify the intent to permit FAR aggregation across a Voluntary Design Review (VDR) project site and to incorporate provisions from the planned unit development chapter (Subtitle X §§ 310 and 311) governing the limitations on the construction and use of a site that receives VDR approval.

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

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

Chapter 6, DESIGN REVIEW, of Title 11-X DCMR, GENERAL PROCEDURES, is amended as follows:

Subsection 600.1 of § 600, DESIGN REVIEW PURPOSE, is amended as follows:

- 600.1 The purpose of the design review process is to:
- (a) Allow for special projects to be approved by the Zoning Commission after a public hearing and a finding of no adverse impact;
 - (b) Recognize that some areas of the District of Columbia warrant special attention due to particular or unique characteristics of an area or project;
 - (c) Permit some projects to voluntarily submit themselves for design review under this chapter in exchange for flexibility because the project is superior in design but does not need extra density, **provided that FAR is measured as the aggregate of all buildings within a Voluntary Design Review boundary;**
 - (d) Promote high-quality, contextual design; and

- (e) Provide for flexibility in building bulk control, design, and site placement without an increase in density or FAR beyond that allowed within the overall Voluntary Design Review application boundary or a map amendment.

Section 601, APPLICABILITY, is amended by revising §§ 601.2, 601.3, and 601.4 as follows:

- 601.1 Except for ...
- 601.2 As to all zones, this chapter applies when a property owner, or owners, voluntarily seeks design review development, which shall hereinafter be referred to as a “Voluntary Design Review” or “VDR.”
- 601.3 ~~The minimum area included within a~~ proposed ~~Voluntary~~ Design Review development application shall include no more than one (1) zone and have a minimum area, including the area of public streets or alleys proposed to be closed, ~~shall be~~ as follows:
- (a) A total of two (2) acres for a development to be located in any R, RF, or RA zone; and
- (b) No minimum area required for a development in any other zone.
- 601.4 All the property included in a design review application, whether voluntary or non-voluntary, shall be contiguous, except that the property may be separated only by a public street, alley, or right-of-way.

Section 603, DESIGN REVIEW FLEXIBILITY, is amended by revising § 603.1; adding a new § 603.2; and renumbering current §§ 603.2 and 603.3 as new §§ 603.3 and 603.4, respectively; as follows:

- 603.1 As part of the design review process, the Zoning Commission may grant relief from the development standards for height, setbacks, yards, lot occupancy, courts, and building transitions; as well as any specific design standards of a specific zone. Except as allowed pursuant to Subtitle X § 603.2, the design review process shall not be used to vary other building development standards including FAR, Inclusionary Zoning, or ~~green area ratio~~ Green Area Ratio.
- 603.2 The FAR of all buildings within a Voluntary Design Review (VDR) boundary shall not exceed the aggregate of the FARs as permitted in the zone included within the VDR boundary.
- ~~603.2~~ 603.3 Except for height, the amount of relief from the standards authorized by Subtitle X § 603.1 is at the discretion of the Zoning Commission, ~~but~~ provided

that the relief is required to enable the applicant to meet all of the standards of Subtitle X § 604. The Zoning Commission may grant no greater height than that permitted if the application were for a PUD.

- ~~603.3~~ 603.4 An application for a special exception or variance that would otherwise require the approval of the Board of Zoning Adjustment may be heard simultaneously with a design review application, and shall be subject to all applicable special exception criteria and variance standards and the payment of all applicable fees.

A new § 605 is added as follows:

605 LIMITATIONS ON DEVELOPMENT OF A VOLUNTARY DESIGN REVIEW (VDR) SITE

- 605.1 No order approving a VDR shall be deemed to include relief from any zoning regulation unless such relief was expressly requested by the applicant and expressly granted in the order.

- 605.2 The grant of a VDR approval prohibits any construction on the VDR site that is not authorized in the order approving the VDR, including development under matter-of-right standards, until:

(a) The validity of the VDR order expires; or

(b) The Zoning Commission issues an order granting the applicant's motion to extinguish the VDR approval as authorized by the VDR order, which motion to extinguish shall demonstrate that the VDR site will be compliant with the Zoning Regulations without the VDR approval.

A new § 606 is added as follows:

606 IMPLEMENTATION OF A VOLUNTARY DESIGN REVIEW (VDR) APPROVAL

- 606.1 Following approval of a VDR application by the Zoning Commission, the applicant may file a building permit with the proper authorities of the District of Columbia.

- 606.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Zoning Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Zoning Commission may have applied.

- 606.3 The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of

Columbia between the owner or owners of all property within the VDR boundary and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner or owners and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission.

606.4 Following the recordation of the covenant, the VDR boundaries shall be designated on the Zoning Map.

606.5 The orders of the Zoning Commission issued in accordance with this chapter shall have all the force of this title, and violations shall be prosecuted in accordance with the provisions of Subtitle A § 305 of this title.

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JULY 10, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Mike Silverstein,
James Short, Bobby Cato, Rema Wahabzadah

| | |
|---|-----------------|
| Protest Hearing (Status) Case # 19-PRO-00032; Watergate Hotel Lessee, LLC, t/a Watergate Hotel 2650 Virginia Ave NW, License #91162, Retailer CH Application to Renew the License | 9:30 AM |
| Protest Hearing (Status) Case # 19-PRO-00037; Deset Ethiopian Restaurant, LLC, t/a Deset Ethiopian Restaurant, 6128 Georgia Ave NW, License #98818, Retailer CR Application to Renew the License | 9:30 AM |
| Protest Hearing (Status) Case # 19-PRO-00038; Only Paradise Restaurant, Inc., t/a Golden Paradise Restaurant, 3903 14th Street NW, License #98205, Retailer CR Application to Renew the License | 9:30 AM |
| Protest Hearing (Status) Case # 19-PRO-00039; Black's 14th Street NW, LLC, t/a Pearl Dive Oyster Palace/Black Jack, 1612 14th Street NW, License #85382, Retailer CR Application to Renew the License | 9:30 AM |
| Show Cause Hearing (Status) Case # 19-CMP-00014; HB Wharf, LLC, t/a The Brighton, 949 Wharf Street SW, License #105932, Retailer CT Operating After Hours | 9:30 AM |
| Fact Finding Hearing* Voodoo Brewing Co. Inc., t/a Voodoo Brewing, 625 & 631 T Street NW License #113780, Retailer CT Review of License Application | 10:00 AM |

Board's Calendar
July 10, 2019

Show Cause Hearing***11:00 AM**

Case # 19-251-00032; Kiss, LLC, t/a Kiss Tavern, 637 T Street NW, License #104710, Retailer CT

Operating After Hours, Failed to Carry or Refused to show Valid Identification, The Licensee or ABC Manager was under the Influence of Alcohol, Interfered with an Investigation, Violation of Settlement Agreement, Security Plan or Board Order No. (2017-169)

This hearing has been continued to August 7, 2019 at 11:00 am, at the request of the Respondent

Show Cause Hearing***11:00 AM**

Case # 18-CMP-00078; Mythology, LLC, t/a Mythology & Lore/Dirty Water 816 H Street NE, License #95033, Retailer CT

Sub-leased the ABC License and Transferred 50% of Ownership without Board Approval, Trade Name Change Without Board Approval

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

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, JULY 10, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, July 10, 2019 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# 19-AUD-00041, Quara Ethiopian Fusion Restaurant, 818 H Street N.E., Retailer CR, License # ABRA-105042

2. Case# 19-AUD-00040, MXDC, 600 14th Street N.W., Retailer CR, License # ABRA-090420

3. Case# 19-CC-00074, Capitol Hill Wine & Spirits, 323 Pennsylvania Avenue S.E., Retailer A, License # ABRA-100211

4. Case# 19-CMP-00076, The Elroy, 1423 H Street N.E., Retailer CT, License # ABRA-096771

5. Case# 19-251-00067, El Nuevo Migueleno, 1721 Columbia Road N.W., Retailer CR, License # ARA-075403

6. Case# 19-CMP-00073, Eye Bar/Garden of Eden, 1716 I Street N.W., Retailer CN, License # ABRA-083133

7. Case# 19-AUD-00047, Habesha Market & Carry-out Restaurant, 1919 9th Street N.W., Retailer DR, License # ABRA-087362

8. Case# 19-AUD-00048, Stoney's on L, 2101 L Street N.W., Retailer CR, License # ABRA-092362

9. Case# 19-AUD-00049, I-Thai, 3003 M Street N.W., Retailer CR, License # ABRA-090427

10. Case# 19-251-00086, El Rincon, 1826 Columbia Road N.W, Retailer CR, License # ABRA-060003

11. Case# 19-CC-00078, Slipstream, 1333 14th Street N.W., Retailer CT, License # ABRA-093244

12. Case# 19-CMP-00078, Toro Toro, 1300 I Street N.W., Retailer CR, License # ABRA-091165

13. Case# 19-CMP-00081, 12 Twelve DC/Kyss Kyss, 1210-1212 H Street N.E., Retailer CT, License # ABRA-072734

14. Case# 19-251-00085, Dynamix Lounge, 1220 H Street N.E., Retailer CT, License # ABRA-106194

15. Case# 19-251-00097, 18th Street Lounge, 1212 18th Street N.W., Retailer CT, License # ABRA-021211

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JULY 10, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption Inside Premises:* Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Cafe:* Sunday 11:30am to 1:30am, Monday-Friday 10:30am to 11:30pm, Saturday 11:30am to 11:30pm. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Inside Premises:* Sunday-Thursday 10am to 2am, Friday-Saturday 10am to 3am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Café:* Sunday 10am to 1:30am, Monday-Saturday 10am to 11:30pm. ANC 2C. SMD 2C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Jaleo*, 480 7th Street NW, Retailer CR, License No. 019105.

2. Review Application for Change of Hours. *Approved Hours of Operation:* Sunday 10am to 1:30am, Monday-Thursday 8am to 1:30am, Friday-Saturday 8am to 2:30am. *Approved Hours of Alcoholic Beverage Sales and Consumption:* Sunday 10am to 1am, Monday-Thursday 8am to 1am, Friday-Saturday 8am to 2am. *Proposed Hours of Operation:* Sunday 10am to 2am, Monday-Thursday 8am to 2am, Friday-Saturday 8am to 3am. *Proposed Hours of Alcoholic Beverage Sales and Consumption:* Sunday 10am to 1:30am, Monday-Thursday 8am to 1:30am, Friday-Saturday 8am to 2:30am. ANC 2F. SMD 2F06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Lost and Found*, 1240 9th Street NW, Retailer CT, License No. 094510.

3. Review Application for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday 11am to 11pm, Monday-Saturday 11am to 1am. *Approved Hours of Live Entertainment:* Sunday 6pm to 11pm, Monday-Saturday 6pm to 12am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday 9am to 11pm, Monday-Saturday 9am to 1am. ANC 3E. SMD 3E04. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Maggiano's*, 5333 Wisconsin Avenue NW, Retailer CR, License No. 072256.

4. Review Application for Summer Garden with 13 seats. ***Proposed Hours of Operation for Summer Garden:*** Sunday-Thursday 7am to 10pm, Friday-Saturday 7am to 11pm. ***Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden:*** Sunday-Thursday 11am to 10pm, Friday-Saturday 11am to 11pm. ANC 1B. SMD 1B03. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Dulcinea Bar & Grill***, 2618 Georgia Avenue NW, Retailer CR, License No. 088870.
-

5. Review Application for Entertainment Endorsement to provide live entertainment indoors and outdoors. ***Proposed Hours of Live Entertainment Inside Premises:*** Sunday-Thursday 8am to 2am, Friday-Saturday 8am to 3am. ***Proposed Hours of Live Entertainment Outdoors:*** Sunday-Thursday 8am to 10:30pm, Friday-Saturday 8am to 12am. ANC 6D. SMD 6D07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Dacha Navy Yard***, 79 Potomac Avenue SE, Retailer CT, License No. 106040.
-

6. Review Application for Tasting Permit. ANC 8A. SMD 8A05. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***New Seven Market***, 1406 Good Hope Road SE, Retailer B, License No. 113576.
-

***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.**

CARLOS ROSARIO INTERNATIONAL PUBLIC CHARTER SCHOOL**REQUEST FOR QUOTES****Kitchen Equipment**

The Carlos Rosario School is looking to replace some kitchen equipment at the Harvard Street Campus located at 1100 Harvard street, NW Washington, DC 20009. For more information, please contact Sebastien Lamerre at slamerre@carlosrosario.org. Bids are due by 4:00 pm on July 12, 2019.

OFFICE OF DISABILITY RIGHTS**DC COMMISSION ON PERSONS WITH DISABILITIES (DCCPD)
COMMISSION MEETING****Thursday, June 27th, 2019 at 10:00 a.m. to 11:30 a.m.*****All Commission Meetings are available and open to the public to attend****Location:** 441 4th Street NW, 11th Floor Conference Center (Room 1112)**Call-In Number:** (866) 628-2987**Passcode:** 8488992

All reasonable accommodation requests must be made at least five (5) business days prior to the scheduled meeting date. Please contact julia.wolhandler@dc.gov or 202-727-2890

AGENDA:**10:00 a.m.** Welcome and Call to Order: Kamilah Martin-Proctor, Chair**10:02 a.m.** Commissioners Roll-Call: Hope Fuller**10:04 a.m.** Public Members Roll-Call: Hope Fuller**10:06 a.m.** Reminder that all public comments and questions will be taken at the end of the meeting and to mute phones: Hope Fuller**10:08 a.m.** Approval of May 2019 Meeting Minutes (Formal Vote)**10:15 a.m.** **Updates:**

- DCFHV Accessibility Advisory Committee: Terrance
- Developmental Disabilities Council: Ron
- Call for Models with Disabilities: Julia
- Emergency Resource Fair – ADA Celebration: Julia
- Olmstead Community Integration Conference, August 23: Julia

- M-Enabling Summit: Jarvis
- Other Updates by Commissioners: Open to all Commissioners

10:30 a.m. Upcoming Statements

- Special Olympics: Travis
- Difference in Sign Language Within Language: Travis
- Olmstead:
- ADA Anniversary:

11:00 a.m. Public Comment Period

11:15 a.m. Adjourn

OFFICE OF THE DEPUTY MAYOR FOR EDUCATION
NOTICE OF PUBLIC MEETING
COMMISSION ON OUT OF SCHOOL TIME GRANTS AND YOUTH
OUTCOMES

Commission on Out of School Time Grants and Youth Outcomes (OST Commission) Public Meeting Washington, DC – The Commission on Out of School Time Grants and Youth Outcomes will hold a public meeting on Thursday, August 8, 2019 from 6:30 pm to 8:00 pm at One Judiciary Square, 441 4th Street NW, Room 1107 South. The OST Commission will hear updates from the Office of Out of School Time Grants and Youth Outcomes and present the OST Strategic Plan for a Public Vote. Finally, the Commission will hear updates from the OST Commission’s standing committees.

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. 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 Tuesday, August 6th 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. Approval of the Agenda
- V. Approval of Minutes
- VI. Updates: Office of Out of School Time Grants and Youth Outcomes
- VII. Public Vote on Strategic Plan
- VIII. Needs Assessment Committee Update
- IX. Adjournment

The Office of Out of School Time Grants and Youth Outcomes (OST Office) and the 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: August 8, 2019
Time: 6:30 p.m. – 8:00 p.m.
Location: One Judiciary Square
Room 1107 South
441 4th 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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH CARE FINANCE**

NOTICE OF FUNDING AVAILABILITY

The Department of Health Care Finance (DHCF) announces a Notice of Funding Availability (NOFA) for grant funds under the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, approved February 27, 2009, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. No. 111-5, §§ 13001-424,123 Stat. 226) and the Health Information Technology Implementation Advanced Planning Document Update (IAPD-U) approved by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) on December 3, 2018.

The Director of DHCF has authority pursuant to 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(4) (2012 Repl.) to make grant funds available to help develop a comprehensive, efficient, and cost-effective health care system for the District's uninsured, underinsured, and low-income residents. The funds for this grant, titled the "Community Resource Information Exchange Technical Solution (CoRIE) Development Grant" are being made available through federal financial participation funds.

DHCF plans to issue one (1) grant to one (1) qualified applicant to develop and implement a CoRIE technical solution that facilitates use of a community resource inventory. This solution must facilitate bi-directional exchange and be integrated within local or regional health information exchange (HIE). The technical solution should allow participating entities to support person-centered care for Medicaid beneficiaries by: screening for social service needs; referring beneficiaries to social services; monitoring, tracking and filing follow-ups after referrals; and analyzing population-level referral data. The solution shall utilize a Community Resource Inventory (CRI) developed under a separate grant recently awarded to the D.C. Primary Care Association. The CRI will be complete on or before September 30, 2019. The applicant shall also provide tailored technical assistance and training so that system users understand and can integrate CoRIE into local workflows and successfully implement the system to facilitate transitions of care, referrals to social service organizations, and improve outcomes during the grant period.

Eligibility Requirements: Each eligible applicant must meet the following qualifications:

1. Be organized under the District of Columbia Non-Profit Corporation Act (D.C. Official Code, § 29-401.01 *et seq.*) or organized as a Non-Profit organization in the jurisdiction where the entity is incorporated.
2. Have the authority to enter into an agreement with DHCF and be in compliance with applicable District of Columbia laws and regulations.
3. Be a registered organization in good standing with the DC Department of Consumer and Regulatory Affairs (DCRA), Corporation Division, the Office of Tax and Revenue (OTR), the Department of Employment Services (DOES), and the Internal Revenue Service (IRS), and demonstrate Clean Hands certification at the time of application.
4. Be an HIE entity; defined as a unit that creates or maintains an infrastructure that provides organizational and technical capabilities in an interoperable system to enable the secure,

electronic exchange of health-related information among participating organizations not under common ownership.

5. Be a HIE entity operating in the District to facilitate patient care for District residents through the secure electronic exchange of health-related information. To demonstrate compliance with the requirement, an applicant must be identified as a HIE entity in the State Medicaid HIT Plan (SMHP) or submit proof of HIE activities and contractual relationships. Applicants identified in the 2018 [SMHP](#) as an HIE entity should cite the SMHP and provide a brief description of HIE services currently offered in the District in their application. Applicants not identified in the SMHP must provide in their application legally-binding supportive documentation that their HIE entity:
 - a. Is operational in the District as of January 1, 2016;
 - b. Facilitates patient care for District residents by creating or maintaining an infrastructure that provides organizational and technical capabilities in an interoperable system to enable the secure, electronic exchange of health-related information among participating organizations not under common ownership; and
 - c. Connects to existing HIE entities identified in the SMHP.

Total Grant Funding and Period of Performance: The amount not-to-exceed anticipated for this grant is displayed below and is subject to the availability of funds each grant year:

| Grant Period | Not to Exceed Amount (Subject to Availability of Funds) |
|--|---|
| Date of Award to September 30, 2019 (Base Year) | \$1,000,000 |
| October 1, 2019- September 30, 2020 (Option Year 1) | \$2,000,000 |
| October 1, 2020- September 30, 2021 (Option Year 2) | \$2,000,000 |

Request for Applications (RFA) Release Date and Amendments: The RFA will be released on or around July 19, 2019. The application package will be available online at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> and the DHCF website (<https://dhcf.dc.gov/page/dhcf-grant-opportunities>). Hard copies of the application package may be obtained at DHCF, 441 4th St. N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk daily from 9:00 am until 4:00 pm.

Pre-Proposal Conference: DHCF will hold a pre-proposal conference on July 23, 2019 at 2pm at DHCF, 441 4th St. N.W., Washington, D.C. 20001, on the 10th floor, Main St Conference Room. Prospective applicants must provide an email address to DHCF to receive notification of amendments or clarifications to the RFA.

Application Submission Deadline: Completed applications must be received on or before 4:00 pm ET on August 19, 2019. Applications must be submitted in hard copy and in-person at DHCF, 441 4th St. N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk. No applications will be accepted after the submission deadline.

For additional information regarding this NOFA, please contact DaShawn Groves, Lead Project Manager, DHCF, Health Care Reform and Innovation Administration at dashawn.groves@dc.gov or at 202-442-8956.

**DEPARTMENT OF HEALTH (DC Health)
 NOTICE OF FUNDING AVAILABILITY (NOFA)
 Community Health Administration (CHA)
 RFA#: CHA_DCHS_7.12.19
 DC Healthy Start Program**

The District of Columbia, Department of Health (DC Health) is soliciting applications from qualified applicants for services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of the Department of Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

General Information:

| | |
|-----------------------------|---|
| Funding Opportunity Title: | DC Healthy Start Program |
| Funding Opportunity Number: | FO-CHA-PG-00011-000 |
| Program RFA ID#: | CHA_DCHS_7.12.19 |
| Opportunity Category: | Competitive |
| DOH Administrative Unit: | Community Health Administration |
| DOH Program Bureau | Family Health Bureau |
| Program Contact | Kristal Dail kristal.dail@dc.gov Community Health Administration |
| Program Description: | This funding opportunity seeks to implement Healthy Start perinatal health support services utilizing the care coordinator/community health worker model and community-based doula services, during and after pregnancy. The services implemented through this funding are intended to reduce racial/ethnic disparities in rates of infant death and adverse perinatal outcomes in the District of Columbia. |
| Eligible Applicants | Not-for profit, public and private organizations located and licensed to conduct business within the District of Columbia with experience providing preventive and obstetrical health services among populations at higher risk for poor perinatal outcomes. Eligible applicants must have a minimum of 2 years' experience providing doula services or have the ability to partner with an existing doula services organization that has a minimum of 2 years' experience. |
| Anticipated # of Awards: | 2 |

| | |
|-------------------------------|-----------------|
| Anticipated Amount Available: | Up to \$809,000 |
| Floor Award Amount: | \$250,000 |
| Ceiling Award Amount: | \$600,000 |

Funding Authorization

| | |
|--|---|
| Legislative Authorization | Public Health Service Act, Section 751 Title III, Part D, Section 330H ; 42 U.S.C. 254c8 and as amended as amended by the Healthy Start Reauthorization Act of 2007 (P.L. 110339) |
| Associated CFDA# | 93.926 |
| Associated Federal Award ID# | 2H49MC00117-19-00 |
| Cost Sharing / Match Required? | No |
| RFA Release Date: | Friday July 12, 2019 |
| Pre-Application Meeting (Date) | Friday July 26, 2019 |
| Pre-Application Meeting (Time) | 10:30am to 12:30pm |
| Pre-Application Meeting Location | 899 North Capitol Street, NE Washington, DC 20002 3rd Floor Conference Room (306) |
| Conference Call Access | Not Applicable |
| Letter of Intent Due date: | Not Applicable |
| Application Deadline Date: | August 30, 2019 |
| Application Deadline Time: | 6:00 PM |
| Links to Additional Information about this Funding Opportunity | DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse . DOH EGMS https://dcdoh.force.com/GO__ApplicantLogin2 |

Notes:

1. DC Health reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a DUNS #, Tax ID#, be registered in the federal Systems for Award Management (SAM) and the DC Health Enterprise Grants Management System (EGMS)
5. Contact the program manager assigned to this funding opportunity for additional information.
6. DC Health is located in a secured building. Government issued identification must be presented for entrance.

OFFICE OF HUMAN RIGHTS

**Advisory Council on Street Harassment (ACSH) Meeting Agenda
441 4th St NW, Room 1114
June 26, 2019 at 2pm**

1. Welcome from OHR Director Palacio & Councilmember Nadeau
2. Introductions
3. ACSH Updates
4. Survey Updates
5. Public Awareness Campaign Updates
6. Trainings Updates
7. Policies Updates
8. Next Steps
9. Subcommittee Time (if available)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
FAMILY SERVICES ADMINISTRATION (FSA)**

NOTICE OF FUNDING AVAILABILITY (NOFA): JA-FSA-SO-001-20

COMPREHENSIVE STREET OUTREACH NETWORK

The District of Columbia (District) Department of Human Services (DHS) Family Services Administration (FSA), hereinafter referred to as the “DHS/FSA” seeks eligible entities to operate a geographically defined, year-round Comprehensive Street Outreach Network (“Street Outreach”) program. The total amount available for the project is up to approximately \$3,000,000 for up to three awards.

Purpose/Description of the Project: According to the 2019 Point in Time count, the District has 3,578 homeless individuals living in our community. Of these individuals, 44% are chronically homeless, 31% have severe mental illness, 22% suffer from chronic substance abuse, 21% have a chronic health problem, 16% have a physical disability, and 17% (608 individuals) are unsheltered individuals residing on the street or in locations not fit for human habitation who are exposed to difficult weather conditions in both winter and summer. Because of the overlapping vulnerabilities experienced by unsheltered individuals, the District wishes to expand the points of access and services to unsheltered individuals to advance the first strategy of the [Homeward DC Plan to End Chronic Homelessness](#).

In that vein, this Notice of Funding Availability seeks to identify potential applicants that can provide Street Outreach for unsheltered individuals. The Street Outreach provided by the applicant should primarily be focused on meaningfully engaging consumers disconnected from services, high risk individuals, long term homeless individuals, individuals requiring navigation within the homeless services system, and engagement with encampments and other hot spots through trauma informed care to make connections to housing solutions, the homeless services system, and other mainstream resources. In addition, the successful Street Outreach team will provide interventions and support to increase the health, safety, and quality of life of unsheltered individuals. The outreach provided by the Grantee(s) will take place within a broader network that will span three geographic clusters covering all eight wards and will be supported with transportation, technology, and telecommunication infrastructure to unify outreach efforts by a central coordinating entity.

Eligibility: Non-profit community organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations, faith-based organizations, such as churches, synagogues, mosques, or religiously based social service affiliates of such organizations, and private enterprises located in the District that have demonstrated experience working unsheltered individuals are encouraged to apply. Applications are also encouraged from collaborating community-based and faith-based organizations.

Applicants will be judged based on past experience or clear plan to administer high quality Street Outreach efforts. In addition to having the appropriate staff qualifications and experience performing services similar in size and scope to the requirements of this grant, the eligible Grantee(s) must also demonstrate their intent and ability to:

- Establish effective and efficient communication channels with other Grantees, shelters, day service programs, homeless service providers within the Continuum of Care, and the entity managing the District's central outreach coordination;
- Provide the required services and deliverables while delivering high-value housing focused and trauma informed care and services to consumers;
- Leverage non-governmental assets and coordinate with other organizations in the homeless services Continuum of Care; and
- Offer services at scale while maintaining client confidentiality;

Length of Grant Award and Available Funding: The Grantee(s) will be awarded funding based on their capacity to meet the requirements of the program. The award period for the grant will be from October 1, 2019 through September 30, 2020. The amount available for up to three Grantees for the project is up to approximately \$3,000,000 for one base year with four option years, subject to funding availability.

RFA Release: The RFA will be released on **July 12, 2019**. A copy of the RFA may be obtained by the following means:

Download from the Office of Partnerships and Grant Services website under the District Grants Clearinghouse (<http://opgs.dc.gov/page/opgs-district-grants-clearinghouse>).

Email a request to Jim Crawford with "Request copy of RFA #JA-FSA-SO-001-20" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 64 New York Ave., 6th Fl., Washington, DC 20002. To make an appointment, call Jim Crawford at 202-671-4357 and mention this RFA by name.

Write DHS at 64 New York Ave., 6th Fl., Washington, DC 20002, "Attn: Jim Crawford RE: RFA #JA-FSA-SO-001-20" on the outside of the envelope.

Deadline for Applications: The deadline for application submissions is **August 9, 2019 at 4:00 PM**. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to jim.crawford@dc.gov. Late or incomplete applications will not be forwarded to the review panel.

For additional information, write to: Jim Crawford at jim.crawford@dc.gov.

MERIDIAN PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS (RFP)****Out of School Time (OST) Providers**

The Board of Trustees of Meridian PCS located in Washington, DC, hereinafter referred to as the “LEA” invites proposals from out of school time providers to provide services to LEA students. Deadline of submission of proposals is July 11 by 12:00pm Eastern Time.

To request full scope of school needs and/or seek any additional information, please email:

Michael L. Russell
Director of Operations
Meridian Public Charter School
mrussell@meridian-dc.org

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT**

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY2019 Investor Engagement Grant

- Grant Identification No.:** DMPED – BD019–2322
- Background Information:** The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the Investor Engagement Grant. Funding for this program is authorized from the [funding source/legislation] and any subsequent emergency and permanent legislation.
- Purpose of Grant Program:** The purpose of the Investor Engagement Grant is to enable the grantee to conduct an investor gap analysis and curate a program to introduce the Washington DC ecosystem to potential seed, angel, and venture capital investors.
- Length of Award:** **Date of grant execution through September 30, 2020.**
- Anticipated Number of Awards:** DMPED will award one (1) grant up to \$100,000 to conduct market assessment and investor engagement. Joint ventures (i.e. teams with members from more than one organization) are eligible to apply, but the grants will be disbursed to one organization.

Eligibility Criteria

The successful applicant will have experience with and knowledge of the Washington DC entrepreneurial landscape. Applicants should also be familiar with the local investment landscape and how to successfully market and grow it. A demonstrated commitment and knowledge of the capital needs of underrepresented entrepreneurs in the Washington, DC region, is preferred though not required. For-profit corporations and non-profit/tax-exempt corporations (designated by the Internal Revenue Service) will be eligible to apply. Applicants must be authorized to do business in the District of Columbia as required by the Department of Consumer and Regulatory Affairs and comply with District Certified Business Entity and First Source requirements.

- Availability of RFA:** The grant application will be released on July 12, 2019. The RFA will be posted on DMPED's website (www.dmped.dc.gov),
- Grant Information Sessions:** DMPED will host at least one informational session. Once confirmed, details about the informational session(s) will be posted on DMPED's website.
- Contact Name:** LaToyia Hampton, Grants Manager
dmpedgrants@dc.gov
202.724.8111
- Deadline for Electronic Submission:** Applicants must submit a completed online application to DMPED via the Giftsonline system by **Wednesday, July 31, 2019, at 12:00 PM.**

DMPED reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

Government of the District of Columbia
Public Employee Relations Board

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| In the Matter of: | |) | |
| | |) | |
| Metropolitan Police Department | |) | |
| | |) | PERB Case No. 18-A-16 |
| | Petitioner |) | |
| | |) | Opinion No. 1708 |
| | v. |) | |
| | |) | |
| Fraternal Order of Police/ Metropolitan Police Department Labor Committee | |) | |
| | |) | |
| | Respondent |) | |
| <hr/> | |) | |

DECISION AND ORDER

I. Background

On April 6, 2018, the Board issued a Decision and Order in PERB Case No. 18-A-02 (“Slip Opinion No. 1662”). The Board found that the Arbitrator acted contrary to law and public policy by allowing the Metropolitan Police Department (“Department”) to increase the Adverse Action Panel’s recommended penalty.¹ The Board reversed and remanded the Award to the Arbitrator. The Arbitrator issued an Opinion and Award on Remand (“Remand Award”) consistent with the decision of the Board. On August 12, 2018, the Department filed this arbitration review request (“Request”) pursuant to the Comprehensive Merit Personnel Act (“CMPA”), D.C. Official Code § 1-605.02(6), seeking review of the Remand Award. The Department claims that the Remand Award is, on its face, contrary to law and public policy. The Fraternal Order of Police (“Union”) filed a timely Opposition to the Request. Having reviewed the Arbitrator’s conclusions, the pleadings of the parties and applicable law, the Board concludes that the Remand Award is not, on its face, contrary to law and public policy. Therefore, the Board denies the Department’s request.

II. Arbitrator’s Award

The Remand Award stated in full:

¹ *FOP/MPD Labor Comm.(on behalf of Kevin Whaley) v. MPD*, 65 D.C. Reg. 6435, Slip Op. No. 1662 at 5-6, PERB Case No. 18-A-02 (2018).

Decision and Order
PERB Case No. 18-A-16
Page 2

Pursuant to the Decision and Order of the Government of the District of Columbia, Public Employee Relations Board, dated March 23, 2018, remanding the arbitration for issuance of an Award consistent with the Board's Decision and Order, the following Award is issued.

AWARD

The Findings of Fact and Conclusions of Law and Recommendations of the Adverse Action Panel are confirmed and the penalty recommended by the Panel shall be imposed.²

III. Position of the Parties

A. Timeliness

The Department acknowledges that this appeal was filed past the twenty-one (21) day deadline required for an Arbitration Review Request.³ Although the Request is late, the Department argues that equitable tolling of the deadline applies in this case because the Board's rules are claim processing and there was good cause to justify the delay.⁴ The Department was not aware of the Remand Award at the time it was issued because it did not appear in the counsel's email inbox.⁵ Counsel only became aware of the Remand Award when a follow-up email was sent to the Arbitrator on July 22, 2018.⁶ The delay does not prejudice the other party and is devoid of bad faith.⁷ The Department requests the Board toll the deadline until July 22, 2018, when the Department actually received the Remand Award.⁸

The Union argues that the Request is untimely and should be dismissed.⁹ Regardless of whether Rule 538.1 is a claim processing rule, there still must be good cause in order for the 21-day deadline to be relaxed or waived. Despite the Department's claim that the delay has not prejudiced the Union, the four-month long delay has unnecessarily prolonged litigation for the grievant and if excused will result in longer delays rendering PERB Rule 538.1 meaningless.¹⁰

B. Remand Award

The Department claims that the Remand Award is contrary to law and public policy because a court must uphold an arbitrator's decision which draws its essence from the collective bargaining agreement.¹¹ Even if the Arbitrator has misinterpreted the relevant law in his

² Request at 14.

³ Request at 3.

⁴ Request at 3.

⁵ Request at 5.

⁶ Request at 5.

⁷ Request at 5.

⁸ Request at 5.

⁹ Opposition at 10.

¹⁰ Opposition at 11.

¹¹ Request at 14.

Decision and Order
PERB Case No. 18-A-16
Page 3

determination of whether the collective bargaining agreement was violated, the parties are bound by the arbitrator's interpretation.¹² According to the Department, the Arbitrator's initial award drew its essence from the parties' collective bargaining agreement.¹³ The conception of the Remand Award is contrary to the law and public policy that as long as the arbitrator's decision draws its essence from the collective bargaining agreement, it must stand.¹⁴

The Union first argues that the Request should be dismissed because it is actually a motion for reconsideration. The Board's Decision and Order did not require the arbitrator to make any additional factual findings or legal conclusions. The Department referred to the analysis in Slip Opinion No. 1662 to explain the Arbitrator's Remand Award. There is no dispute that the Department received Slip Opinion No. 1662 on April 6, 2018. A motion for reconsideration of a Board decision must be filed within 14 days.¹⁵ The Union argues that since this Request is in essence a motion for reconsideration and it was filed well after 14 days of receiving the Board's decision in Slip Opinion No. 1662 it is untimely.¹⁶

Finally, the Union argues that the Remand Award did not, on its face, violate law or public policy.¹⁷ The Board correctly determined that the Arbitrator's Award was directly at odds with the legal and regulatory framework that controls adverse actions cited by the Arbitrator.¹⁸ Limitations set forth in the District of Columbia Municipal Regulations ("DCMR") control what the Department can and cannot do after it receives a recommendation from the Panel. According to the Union, the Board correctly found that there was a well-defined public policy underlying the statutory framework of DCMR 6-A § 1001.5 and 6-B DCMR § 1623.2.¹⁹

IV. Discussion

The Board's authority to review an arbitration award is narrow. The Board is permitted to modify or set aside an arbitration award "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."²⁰ For the Board to find the Remand Award was, on its face, contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.²¹

A. Timeliness

¹² Request at 16.

¹³ Request at 15.

¹⁴ Request at 16.

¹⁵ Opposition at 12.

¹⁶ Opposition at 12.

¹⁷ Opposition at 12.

¹⁸ Opposition at 13.

¹⁹ Opposition at 14.

²⁰ D.C. Official Code § 1-605.02(6)

²¹ See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p.8.

Decision and Order
PERB Case No. 18-A-16
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Despite the Department's untimely filing of this Request, Board Rule 520.4 is waived and the Request may move forward. The Board stated in *Jenkins v. Department of Corrections*²² that "we overrule our prior holdings that filing deadlines established by the Board's rules are mandatory and jurisdictional. Those rules are claim-processing rules and the deadlines they set are waivable."²³ The 21-day deadline is found in Rule 520.4. It is not in the CMPA or in any other statute. It is a claim-processing rule. The Board may relax the deadline to allow a case to proceed despite untimely filing if there is good cause as to why it should not be dismissed. Although the Remand Award was emailed to the representatives on April 12, 2018, the Department did not receive the Remand Award until July 22, 2018 due to a technical error.²⁴ The 21-day deadline begins to run after service of the award. Because the Remand Award was not properly served on the Department until July 22, 2018, Rule 520.4 is waived, and the Request will be treated as timely.

B. The Remand Award

The Remand Award is not contrary to law and public policy. In Slip Opinion No. 1662, the Board found that there was a misinterpretation of law by the Arbitrator on the face of the Award. The Arbitrator acted contrary to the plain meaning of 6-A DCMR section 1001.5, 6-B DCMR section 1623.2, and the Board's precedent as established by *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on Behalf of Dunkins)*.²⁵ As a result, the Award was remanded to the Arbitrator to issue an award consistent with the decision.²⁶ The Arbitrator then issued the Remand Award which stated that the penalty imposed by the panel shall be imposed. Rather than meet its burden of proof regarding the Remand Award, the Department's Request responds to the Board's decision in Slip Opinion No. 1662 and argues why the Arbitrator's initial Award was not contrary to law and public policy. As stated earlier, for the Board to find the Remand Award was, on its face, contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.²⁷ At no point does the Department show the applicable law and public policy that was violated by the Arbitrator's Remand Award.

The Department's argument that the Arbitrator's initial Award draws its essence from the collective bargaining agreement does not override the Board's determination that it is contrary to law and public policy. The Board has stated that just as it defers to the arbitrator's interpretation of the contract "the Board must also defer to the arbitrator's interpretation of external law

²² 65 D.C. Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018).

²³ *Id.* at 10.

²⁴ In a companion case, PERB Case No. 18-U-33, an exhibit shows that the Department's Director, Mark Viehmeyer, was cc'ed in a July 2, 2018, email detailing the Arbitrator's decision in the Remand Award. Since this Arbitration Review Request was filed by the Attorney General's Office and we have no exhibits showing when the Attorney General's Office received the Remand Award, we are accepting the date provided by the Complainant.

²⁵ 60 D.C. Reg. 566, Slip Op. No. 1344, PERB Case No. 12-A-06 (2013).

²⁶ *FOP/MPD Labor Comm. v. MPD*, 65 D.C. Reg. 6435, Slip Op. No. 1662, PERB Case No. 18-A-02 (2018).

²⁷ See *FOP v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p.8.

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PERB Case No. 18-A-16
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incorporated into the contract.”²⁸ This deference exists because, through the parties’ collective bargaining agreement, the arbitrator has the sole authority to interpret the contract and the arbitrator maintains this authority even when contract interpretation requires the arbitrator to interpret law that is incorporated by reference.²⁹ The Board has previously stated that, when the collective bargaining agreement is not at issue, the arbitrator’s sole authority to interpret the collective bargaining agreement cannot be extended to the law.³⁰ In this case, the Department is not claiming that an interpretation of 6-A DCMR section 1001.5 and 6-B DCMR section 1623.2 is required to clarify the collective bargaining agreement. In their briefs, the parties discuss the law alone and do not refer to any specific portion of their collective bargaining agreement. Therefore the Arbitrator’s sole authority to interpret the collective bargaining agreement does not extend to encompass the pertinent law in this case.

V. Conclusion

The Board rejects the Department’s arguments and finds no grounds to modify, set aside, or remand the Remand Award. Accordingly, the Department’s Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

April 18, 2019

Washington, D.C.

²⁸ *FOP/Dep't of Corr. Labor Comm. (on behalf of Lee) and D.C. Dep't of Corr.*, 59 D.C. Reg. 10952, Slip Op. No. 1324 at 5, PERB Case No. 10-A-16 (2010).

²⁹ *Electrolux Home Prods. v. United Auto., Aerospace, & Agric. Implement Workers*, 416 F.3d 848, 853 (8th Cir. 2005) (citing *Am. Postal Workers Union v. U.S. Postal Serv.*, 789 F.2d 1, 6 (D.C. 1986)).

³⁰ *MPD v. FOP/MPD Labor Comm.*, 64 D.C. Reg. 10115, Slip Op. No. 1635 at 7, PERB Case No. 17-A-06 (2017).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-16, Op. No. 1708 was sent by File and ServeXpress to the following parties on this the 22nd day of April, 2019.

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**Government of the District of Columbia
Public Employee Relations Board**

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| In the Matter of: | |) |
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| American Federation of Government Employees, | |) |
| Local 1403 | |) |
| | |) |
| | Petitioner |) |
| | |) |
| | v. |) |
| | |) |
| The District of Columbia | |) |
| Department of Health | |) |
| | |) |
| | Respondent |) |
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PERB Case No. 18-U-02
Opinion No. 1709

DECISION AND ORDER

I. Introduction

On October 16, 2017, the American Federation of Government Employees, Local 1403 (“AFGE”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Department of Health (“DOH”). AFGE alleges that DOH committed an unfair labor practice by changing the performance evaluation system, with the introduction of the New Performance Review Calibration Process, without notice or an opportunity to bargain the impact and effects of the change. DOH filed an Answer on October 30, 2017, denying that it committed an unfair labor practice and requesting dismissal of the Complaint.

PERB ordered a hearing that occurred on November 28, 2018. The Hearing Examiner issued his Report and Recommendation (“Report”) on January 22, 2019. The Report concluded that DOH committed an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1) and § 1-617.04(a)(5) by unilaterally implementing the New Performance Calibration Review Process. DOH filed exceptions to the Report. The record is complete and before the Board.

The Board dismisses the Complaint, for the reasons herein.

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II. Hearing Examiner's Report and Recommendation

AFGE is the exclusive representative for fourteen line attorneys employed at DOH.¹ AFGE alleges violations of the 2014 and 2017 working conditions agreements (“working conditions agreements”) and the 2014 and 2017 compensation agreements (“compensation agreements”).²

Article 28 Section 2 of the working conditions agreements creates an appeal process for the performance ratings of line attorneys.³ This section permits the Attorney General to appoint a three-person committee to review performance ratings, conduct hearings, receive written briefs, and issue a written decision which shall approve, modify, or reject a performance rating.⁴ The decision of the committee is appealable to the Attorney General for a final decision.⁵ The working conditions agreements incorporate the compensation agreements by reference.

The compensation agreements include a bonus protocol based on performance rating definitions found in the District Personnel Manual (“DPM”).⁶ Under the 2014 compensation agreement, an attorney rated as “exceeds expectations” or substantially similar would receive a 2% salary bonus. The 2017 compensation agreement provides a 1.5% salary bonus for an attorney rated “excellent” or substantially similar and a 2% salary bonus for an attorney rated “outstanding” or substantially similar.⁷ The definitions of “excellent” and “outstanding” are in DPM.⁸

On October 14, 2016, DOH issued a memorandum to its employees announcing a “New Performance Review Calibration Process.”⁹ There is no evidence that the New Performance Review Calibration Process was subject to negotiations.¹⁰ The memorandum made no reference to the working conditions agreements or the compensation agreements.¹¹ The memorandum accounted for neither the performance review procedure nor the definitions applicable to line attorneys under the DPM.¹² The Performance Review Calibration Process ranked employees on a scale. The scale and the rankings differed from the DPM.¹³

On October 13, 2017, DOH issued a memorandum which reiterated the earlier provisions of the Performance Review Calibration Process.¹⁴ AFGE sought arbitration at the Federal

¹ Report at 1.

² Report at 1.

³ Report at 1.

⁴ Report at 2.

⁵ Report at 2.

⁶ Title 6B DCMR.

⁷ Report at 2.

⁸ Report at 3.

⁹ Report at 3.

¹⁰ Report at 3.

¹¹ Report at 4.

¹² Report at 3.

¹³ Report at 11.

¹⁴ Report at 11.

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PERB Case 18-U-02
Page 3

Mediation and Conciliation Service (“FMCS”). DOH objected to the arbitration request and the FMCS refused to conduct an arbitration in the matter.¹⁵

The Hearing Examiner determined that the central issue was whether an agency’s unilateral modification of a material provision of a collective bargaining agreement constitutes an unfair labor practice.¹⁶ The Hearing Examiner found that the Performance Review Calibration Process materially changed the substance and process of performance evaluation for line attorneys; altering the terms of the compensation agreements.¹⁷ The Hearing Examiner questioned whether an agency, after entering into a binding collective bargaining agreement, may unilaterally alter the term of an agreement while the agreement remains in full force and effect.¹⁸ The Hearing Examiner determined that it would be against public policy and the CMPA to permit such action.¹⁹

DOH argued that the agency had an absolute management right to implement a performance management system for its employees, including the fourteen line attorneys.²⁰ The Hearing Examiner found that argument unpersuasive because performance ratings were subject to collective bargaining and resulted in specific language in the working conditions agreements.²¹ Also, the Hearing Examiner found that the compensation agreements incorporated provisions of the working conditions agreements into the sections applicable to bonuses and wages.²² The Hearing Examiner found that PERB precedent makes the attorneys’ performance management system a negotiable subject of bargaining.²³

The Hearing Examiner recommended the following:

“1. The Performance Review Calibration Process implemented by the Department of Health in memoranda of October 14, 2016 and October 13, 2017, should be discontinued as to all line attorneys employed by the Department.

2. Within 30 days of service of a Final Order of PERB in this matter, the DC Department of Health shall implement a performance review evaluation process

¹⁵ Report at 3.

¹⁶ The Hearing Examiner also addressed the question of timeliness. DOH argued that the filing of the Complaint was untimely. Under PERB Rule 520.4 parties must file an unfair labor practice complaint within 120-days of the alleged violation. The Complaint was filed on October 16, 2017, DOH argued that AFGE had notice of the alleged violation when the first memorandum was issued on October 14, 2016. The Hearing Examiner found that the performance management system implemented by the DOH memoranda of October 14, 2016, and October 13, 2017, continued into the present day. The Hearing Examiner found that AFGE filed a timely Complaint on October 16, 2017, because it did not have notice that the performance management system applied to attorneys until October 13, 2017.

¹⁷ Report at 10.

¹⁸ Report at 14.

¹⁹ Report at 14.

²⁰ Report at 14.

²¹ Report at 14.

²² Report at 15.

²³ Report at 15.

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for all Department line attorneys, which process shall be consistent with the provisions of District Personnel Manual, Chapter 36, and specifically Sections 3605.1 through 3605.19 and the definitions section of Chapter 36 appearing at Section 3699.1.

3. The bonus provisions set forth in the Compensation Agreements effective October 1, 2013 through September 30, 2020 are applicable to evaluation of DOH line attorneys and should be implemented within 30 days of service of Final Order of PERB.

4. All DOH line attorneys are entitled to reopening and reevaluation of their performance for the years 2016, 2017, and 2018. Each such evaluation shall be undertaken consistent with Chapter 36 of the District Personnel Manual and the provisions of the applicable Collective Bargaining Working Conditions Agreements and applicable Compensation Agreements.

5. If the reopening and reevaluation of a line attorney results in a revised rating justifying the award of a bonus under the applicable Compensation Agreement, then, and in that event, the appropriate bonus shall be paid to each qualifying line attorney within 30 days of service of Final Order of PERB in this matter.

6. The D.C. Department of Health shall comply with all provisions of the Collective Bargaining Working Conditions Agreement and the Compensation Agreement with AFGE Local 1403 presently in full force and effect.

7. The D.C. Department of Health shall notify Counsel to AFGE, Local 1403 of compliance with all provisions of Final Order of PERB in this matter.”²⁴

III. DOH Exceptions to Hearing Examiner Report and Recommendation

On February 22, 2019, DOH filed exceptions to the Report. First, DOH argues that the Hearing Examiner should be overruled because AFGE failed to prove an unfair labor practice as alleged in the Complaint. The Complaint asserts that DOH unilaterally implemented an evaluation system without notice or the opportunity to bargain the impact and effects of the change. DOH asserts that AFGE did not present any evidence to support its position and failed to produce evidence that the union requested the opportunity to bargain.²⁵

Next, DOH argues that the Hearing Examiner improperly analyzed the working conditions agreements, the compensation agreements, and the DPM to determine that a statutory

²⁴ Report at 21-22.

²⁵ Exceptions at 4.

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PERB Case 18-U-02
Page 5

violation occurred. DOH argues that the Hearing Examiner failed to defer to the parties' grievance procedure and instead chose to find a statutory violation.²⁶

Finally, DOH filed exceptions to the relief offered by the Hearing Examiner. DOH argues that the *status quo ante* relief provided by the Hearing Examiner is generally inappropriate once a performance evaluation is implemented. Moreover, DOH argues that the Board has generally ruled that once a performance evaluation system is in effect the Board will not stop an employer from operating the system.²⁷

AFGE did not file an Opposition to DOH's Exceptions.

IV. Analysis

The Board rejects the Report and Recommendation of the hearing examiner as unreasonable, unsupported by the record, and inconsistent with PERB precedent.²⁸

A. Performance Review Calibration Process

The performance review calibration process is a method to review the supervisor's rating to ensure consistency among raters.²⁹

The performance review calibration process occurs after the supervisor determines a proposed evaluation rating.³⁰ Under the calibration guidelines, if the rating is a "4" or "5" the supervisor presents the proposed evaluation to the calibration committee for review.³¹ The calibration committee is made up of DOH managers and senior staff.³² After the evaluation is reviewed by the calibration committee, the supervisor presents the proposed evaluation to the Director of the Mayor's Office of Legal Counsel (MOLC) for final approval. The MOLC determines the final rating of an attorney.³³

The performance review calibration process is designed to ensure employees are evaluated on objective criteria.³⁴ This process also has a goal of providing supervisors with an opportunity to learn how they can increase their ability to observe, document, and objectively

²⁶ Exceptions at 7.

²⁷ Resp. Exceptions at 8.

²⁸ See *Washington Teachers' Union v. DCPS*, 65 D.C. Reg.7474, Slip Op. 1668 at 5, PERB Case No. 15-U-28 (2018).

²⁹ Comp. Ex. C1 at 1-4.

³⁰ Comp. Ex. C1 at 1.

³¹ Comp. Ex. C1 at 1.

³² Comp. Ex. C1 at 1.

³³ Tr. at 104.

³⁴ Comp. Ex. C1 at 1.

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PERB Case 18-U-02
Page 6

evaluate performance.³⁵ The committee does not have the authority to change or draft any employee evaluations.³⁶

The performance review calibration process is consistent with the DPM.³⁷ The DPM expresses an intention to rely on advisory recommendations from outside the legal chain of command prior to the finalization of evaluations, and it plainly authorizes the MOLC to consult with any person who prepared an advisory evaluation under 6B DCMR §3605.5.³⁸

The finding that the performance review calibration process materially changed the substance of performance evaluation for line attorneys is unsupported by the record.

In this case, the compensation agreements and the working conditions agreements neither contain a process for performance evaluation nor incorporate the procedures of the DPM by reference.³⁹ The final evaluations of employees are consistent with the definitions required under 6B DCMR § 3699.⁴⁰ The calibration process is advisory; the supervisor and the MOLC maintain the sole discretion to finalize the evaluation of employees.⁴¹ Also, if an employee disagreed with the final evaluation rating the employee maintained the right to appeal under 6B DCMR §3605.8.⁴² DOH was not precluded from implementing the performance calibration review process as an element within the performance evaluation system, adoption of which is a management right.⁴³

B. Negotiability of Performance Evaluation System

The Hearing Examiner erroneously relied on the first holding in *Local 1403 v. D.C. Office of the Corporation Counsel*⁴⁴ to find that the performance management system applicable to attorneys under the Legal Services Establishment Act (“LSEA”)⁴⁵ is a negotiable subject of bargaining.⁴⁶ *Local 1403 v. D.C. Office of Corporation Counsel* contains two separate holdings regarding the negotiability of performance management systems. The first holding deals with

³⁵ Comp. Ex. C1 at 1.

³⁶ Tr. at 101-102.

³⁷ 6B DCMR §3605.

³⁸ 6B DCMR § 3605.5 “As soon as practicable after the receipt of the evaluations, the Attorney General, the Director, or the agency head shall complete his or her review. In reviewing evaluations of line attorneys, the Attorney General, the Director, or the agency head may consult with the supervisor who prepared the evaluation, any person who prepared an advisory evaluation, and the supervisors in the chain of command for the relevant unit.”

³⁹ See Joint Ex. 1 at 33; Joint Ex. 2 at 4; Joint Ex. 3 at 4; Joint Ex. 4 at 33.

⁴⁰ Tr. at 63. AFGE witness testified that her final evaluation was marked “successful”.

⁴¹ Comp. Ex. C1 at 1. “Once the respective reviewer concurrence is received, the supervisor will meet with the employee to complete the face-to-face feedback session.

⁴² 6B DCMR § 3605.8 “If a line attorney disagrees with the written evaluation, he or she may appeal it within thirty (30) days of receipt to the appropriate review committee established by the Attorney General or the Director.”

⁴³ D.C Official Code § 1-617.08(a).

⁴⁴ Slip Op. No. 709 at 3, PERB Case No. 03-N-02 (2003).

⁴⁵ D.C. Official Code §1-608.57

⁴⁶ Report at 16-15.

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PERB Case 18-U-02
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legality of bargaining over performance management systems, and the second holding deals with the implementation of performance management systems.

In *Local 1403 v. D.C. Office of Corporation Counsel*, the Board decided whether the topic of performance management was an illegal subject of bargaining.⁴⁷ The Office of Corporation Counsel argued that negotiation of a performance management system was an illegal subject of bargaining under section 1-613.52 of the CMPA.⁴⁸ The union argued that section 1-613.52 of the CMPA did not apply to attorneys because the LSEA provided a separate authority to establish a performance management system.⁴⁹ The Board agreed with the union, holding that because the LSEA contains “no language which prohibits negotiating over of a performance management system”, it is negotiable.⁵⁰ In its second holding, the Board addressed the question of whether a provision that establishes the purpose, objectives, and standards of a performance management system is negotiable.⁵¹ The Board held that “management’s right to evaluate employee performance is an exclusive one” under the CMPA.⁵² In *Comp Unit 31 v. WASA*,⁵³ the Board expanded on this holding from *Local 1403 v. D.C. Office of the Corporation Counsel*.

In *Comp Unit 31 v. WASA*, Comp Unit 31 proposed new descriptions of bonus levels that would link performance ratings and bonuses. The Board found that the new language constituted an attempt to establish criteria for conducting performance evaluations.⁵⁴ The Board held that a proposal that contains criteria for the agency to consider for performance evaluations is nonnegotiable under D.C. Code § 1-617.08(a) because it interferes with management’s right to direct and assign employees.⁵⁵ The Board made it clear that “it is within management’s exclusive rights to implement a performance evaluation system.”⁵⁶

Comp Unit 31 argued that because WASA had independent statutory authority to establish a personnel evaluation system the CMPA did not apply and therefore the proposal was negotiable. The Board found that Comp Unit 31’s argument was “irrelevant” because, under PERB’s case law, the right to evaluate personnel is bestowed by the management’s rights clause found in D.C. Official Code § 1-617.08(a).⁵⁷

⁴⁷ Slip Op. No. 709 at 3, PERB Case No. 03-N-02 (2003).

⁴⁸ *Local 1403 v. D.C. Off. of the Corp. Counsel*, Slip Op. No. 709 at 3, PERB Case No. 03-N-02

⁴⁹ *Id.*

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 5-6.

⁵² *Id.* at 6. Citing *Patent Office Professional Association and U.S. Department of Patent and Trademark*, 48 FLRA 129, 142 (1993).

⁵³ Slip Op. 1624 at 5, PERB Case 16-N-02 (2017).

⁵⁴ *Comp Unit 31 v. WASA*, 64. D.C. Reg. 9287, Slip Op. 1624 at 6, PERB Case 16-N-02 (2017).

⁵⁵ *Id.*

⁵⁶ *Comp Unit 31 v. WASA*, 64. D.C. Reg. 9287, Slip Op. 1624 at 5, PERB Case 16-N-02 (2017). *See, Serv. Emp. Int’l Union, Local 500, v. Univ. of D.C.*, Slip Op. No. 1539 at 12-14, PERB Case No. 15-N-01(2015); *AFGE Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at 6, PERB Case No. 03-N-02 (2003).

⁵⁷ *Id.*

Decision and Order
PERB Case 18-U-02
Page 8

Likewise, in this case, DOH had the exclusive right to implement the Performance Review Calibration Process. This decision was nonnegotiable under D.C. Official Code § 1-617.08(a)(1), management's right to direct and assign employees.⁵⁸

C. Impact and Effects Bargaining

In its Complaint AFGE alleges that DOH committed an unfair labor practice by implementing a change in the performance evaluation system without providing notice or affording an opportunity to engage in impact and effects bargaining.⁵⁹ Notwithstanding the non-negotiability of a management right, management has a duty to negotiate the impact and effects of its decision, upon request by the union.⁶⁰ "Absent a request to bargain concerning the impact and effects of the exercise of a management right, an employer does not violate D.C. Code § 1-617.04(a)(1) and (5) by unilaterally implementing a management right under the CMPA."⁶¹

The Hearing Examiner failed to discuss whether the AFGE requested impact and effects bargaining. AFGE had the burden to show that it requested bargaining and that DOH committed an unfair labor practice by refusing to negotiate.⁶² There is no evidence in the record that AFGE requested bargaining. Moreover, AFGE's witness provided testimony that it failed to request impact and effects bargaining.⁶³

Thus, the finding that DOH committed an unfair labor practice is inconsistent with PERB precedent.

V. Conclusion

Based on the foregoing, the Board finds that AFGE failed to carry its burden of proof to demonstrate that the unilateral change of the evaluation system constituted an unfair labor practice. The Hearing Examiner's Report and Recommendation is inconsistent with PERB precedent. Accordingly, the Hearing Examiner's Report and Recommendation is rejected, and AFGE's Complaint is dismissed with prejudice.

⁵⁸ *Id.*

⁵⁹ Complaint at 2.

⁶⁰ See *AFSCME District 20 and Local 2901 v. DPW*, 62 D.C. Reg. 5925, Slip Op. 1514 at 4, PERB Case No. 14-U-03 (2015).

⁶¹ *Id.*

⁶² PERB Rule 520.11.

⁶³ Tr. at 72.

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ORDER

IT IS HEREBY ORDERED THAT:

1. The unfair labor practice complaint is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By Unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

May 16, 2019

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 18-U-02, Opinion No. 1709 was sent by File and ServeXpress to the following parties on this the 20th day of May 2019.

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 /s/
Andrea Lozada

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

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| In the Matter of: | |) |
| | |) |
| Fraternal Order of Police/ Metropolitan | |) |
| Police Department Labor Committee | |) |
| (Ofc. Taunya Johnson) | |) |
| | |) |
| | Petitioner |) |
| | v. |) |
| | |) |
| Metropolitan Police Department | |) |
| | |) |
| | Respondent |) |
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PERB Case No. 19-E-03
Opinion No. 1710

DECISION AND ORDER

I. Introduction

On March 29, 2019, pursuant to Rule 560.1, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed a Petition for Enforcement related to PERB Case No. 17-A-09, Slip Op. No. 1644. FOP alleges that MPD has failed to comply with Slip Opinion 1644, which was issued on October 19, 2017, regarding an arbitration award in which FOP prevailed on behalf of Taunya Johnson (“Grievant”). FOP is requesting the Board to enforce its Decision and Order of October 19, 2017. MPD opposes FOP's Petition for Enforcement but does not contest the facts. Thus, as the uncontested facts establish the Union's entitlement to relief, the Petition for Enforcement is granted.

II. Statement of the Case

On January 24, 2011, MPD provided the Grievant with Notice of Final Adverse Action finding the Grievant guilty of untruthfulness and failure to obey orders. The Grievant’s appeal to the Chief of Police was denied and the FOP invoked arbitration.¹

¹ *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 64 D.C. Reg. 13401, Slip Op. 1644 at 2, PERB Case No. 17-A-09 (2017).

On July 26, 2017, the Arbitrator issued an Award that ordered MPD to reinstate and make the Grievant whole for any loss of pay or other benefits resulting from her removal, less a 60-day suspension without pay.

On July 26, 2017, MPD filed an arbitration review request (“Request”) seeking review of the July 26, 2017 Award. FOP opposed the Request.

In its Request, MPD asserted that the Arbitrator misanalysed the *Douglas* Factors² by failing to balance the factors with each other and relying on a single factor to determine that termination was not an appropriate remedy. Additionally, MPD argued that the Arbitrator failed to consider the adverse action panel’s reasonableness in its Analysis of the factors.³

The Board found that MPD's Request did not meet the requirements for reversing the Award. Specifically, the Board found that the Arbitrator’s conclusions were based on a thorough analysis of the record and could not be said to be clearly erroneous or contrary to law and public policy and therefore no grounds existed to modify, set aside, or remand the Award.⁴

Thereafter, MPD filed a Petition for Review in D.C. Superior Court. On October 4, 2018, the Hon. Robert R. Rigsby entered an order affirming PERB’s Decision and Order.⁵

On March 29, 2019, FOP filed the instant Petition for Enforcement. FOP contends the MPD has failed to comply with Slip Opinion 1644 by refusing to reinstate Grievant and provide back pay and benefits as required by the Award. FOP is requesting that the Board enforce Slip Opinion 1644 and compel MPD to comply with the terms of the Award.⁶

III. The Union's Entitlement to Relief

The elements for granting a petition for enforcement are present herein. FOP prevailed at arbitration, and MPD filed an arbitration review request. The Board denied MPD’s Request and issued Slip Opinion No. 1644. FOP then filed the instant Petition for Enforcement. MPD filed a response admitting the material facts. MPD has not reinstated Grievant or provided back pay and benefits as required. Therefore, MPD has not complied with the Award.

MPD's failure to comply with the terms of the Award is not based on a genuine dispute over the terms of the Award but is rather a flat refusal to comply with it. It is undisputed that the Board's order affirming the Award became final and that MPD did not comply with the Award. No dispute over the terms of the Award has been raised and no reason for noncompliance has been suggested. Therefore, the Petition for Enforcement is granted. The Board will seek judicial enforcement of its October 19, 2017 Decision and Order, as provided under D.C. Official Code § 1-617.13(b).

² *Douglas v. Veterans Admin.*, 5 MSPB 313 (M.S.P.B. 1981) sets forth a list of factors to be considered when assessing the appropriateness of a penalty.

³ *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 64 D.C. Reg. 13401, Slip Op. 1644 at 3, PERB Case No. 17-A-09 (2017).

⁴ *Id.* at 4.

⁵ Pet. Ex. 3

⁶ Petition at 3.

ORDER**IT IS HEREBY ORDERED THAT:**

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's petition for enforcement is granted.
2. Within ten (10) days from the issuance of this Decision and Order, the Metropolitan Police Department shall fully comply with the terms of the Award, if it has not already done so, and shall notify the Public Employee Relations Board in writing that it has complied.
3. The Board shall proceed with enforcement of Slip Opinion 1644 pursuant to D.C. Official Code §§ 1-605.02(16) and 1-617.13(b) if full compliance with the Award is not made and documented within ten (10) days of the issuance of this Decision and Order.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.

May 16, 2019

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 19-E-03, Opinion No. 1710 was sent by File and ServeXpress to the following parties on this the 20th day of May 2019.

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/s/

Andrea Lozada

Government of the District of Columbia
Public Employee Relations Board

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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| Metropolitan Police Department |) | |
| |) | PERB Case No. 19-A-04 |
| Petitioner |) | |
| |) | Opinion No. 1711 |
| v. |) | |
| |) | |
| Fraternal Order of Police/ Metropolitan |) | |
| Police Department Labor Committee |) | |
| |) | |
| Respondent |) | |
| _____ |) | |

DECISION AND ORDER

I. Introduction

On February 5, 2019, the District of Columbia Metropolitan Police Department (“MPD”) filed this Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act (“CMPA”), section 1-605.02(6) of the D.C. Official Code. MPD seeks review of an arbitration award (“Award”) issued on January 14, 2019, granting the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) on behalf of the Grievant. The Award rescinded the Grievant’s termination. MPD seeks review of the Award claiming it is contrary to law and public policy.

Pursuant to the CMPA, the Board is permitted to modify, set aside, or remand a grievance arbitration award only if: (1) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means.¹ Upon consideration of the Arbitrator’s conclusions, applicable law, and the record presented by the parties the request is denied, for the reasons stated herein.

¹ D.C. Official Code § 1-605.02(6).

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II. Statement of Case

On January 1, 2011, the Grievant responded to an accident which involved a pedestrian being struck by a vehicle on George Washington University's (GWU) campus.² Upon arriving, the Grievant spoke with a GWU police officer and the driver of the vehicle. The Grievant learned that the pedestrian was transported to GWU Hospital to be treated for injuries.³ The Grievant allowed the driver to leave the scene without issuing a citation.⁴

A second GWU police officer arrived at the scene after returning from escorting the pedestrian to GWU Hospital.⁵ The second GWU police officer relayed the pedestrian's version of the accident to the Grievant.⁶ Shortly thereafter, the Grievant went to GWU Hospital to interview the pedestrian. The Grievant told the pedestrian that he issued the driver a ticket.⁷ The Grievant also provided the pedestrian with an accident report number to use to obtain a copy of the report.⁸

On January 10, 2011, the pedestrian attempted to obtain a copy of the accident report from the public records division of the MPD. The accident report was unavailable, and the pedestrian was directed to request the accident report from the Second District police station.⁹ Between January 10, 2011, and March 14, 2011, the pedestrian called the Second District police station once or twice per week to no avail. On March 16, 2011, the pedestrian contacted the Grievant's Sergeant.¹⁰ The Sergeant noticed that the accident report was not submitted in the system and questioned the Grievant. The Grievant stated that he believed that he submitted the accident report and that the system had a glitch that did not allow it to appear.¹¹ The Sergeant directed the Grievant to contact the pedestrian and produce an accident report.¹²

The Grievant called the pedestrian. The pedestrian gave the Grievant information about the accident and referred the Grievant to the second GWU police officer for more details.¹³ The Grievant submitted an accident report on March 17, 2011.¹⁴ The pedestrian received a copy of the report on March 21, 2011. The accident report contained many errors.¹⁵ The errors included a misspelling of the pedestrian's name, an incorrect location of the accident, and a misclassification of the accident as a hit-and-run.¹⁶

² Request at 3.

³ Request at 3.

⁴ Request at 3.

⁵ Request at 4.

⁶ Request at 4.

⁷ Request at 4.

⁸ Request at 4.

⁹ Request at 5.

¹⁰ Request at 5.

¹¹ Request at 6.

¹² Request at 5.

¹³ Request at 6.

¹⁴ Request at 6.

¹⁵ Request at 6.

¹⁶ Request at 6.

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Page 3

On March 26, 2011, the Sergeant interviewed the Grievant concerning the accident report and the errors. The Grievant stated that he could not find his notes on the accident and admitted to falsifying the accident report.¹⁷

On March 27, 2011, MPD began an investigation into the failure to produce an accident report on January 2, 2011.¹⁸ On July 19, 2011, the Grievant was served with the Notice of Proposed Adverse Action.¹⁹

The Notice of Proposed Adverse Action included four charges.²⁰ Charge No.1 alleged that the Grievant falsified an official record when completing the March 17, 2011, report. Charge No.2 alleged that the Grievant made an untruthful statement that he completed an accident report on January 2, 2011. Charge No.3 alleged that the Grievant was in neglect of duty by failing to complete the January 2, 2011, report. Finally, Charge No.4 alleged that the Grievant's failure to complete the January 2, 2011, report was prejudicial to the reputation and good order of the police department.²¹

On August 23, 2011, an Adverse Action Panel was convened. The Panel found the Grievant guilty of all charges and recommended termination. On October 12, 2011, the Grievant appealed to the Chief of Police. The Chief of Police denied the appeal on November 1, 2011. On November 22, 2011, the FOP demanded arbitration.

III. Arbitration Award

The Arbitrator found that there were two issues presented by the parties: (1) whether MPD violated the 90-day time limit for taking corrective action under D.C. Code § 5-1031 ("90-day rule"), and (2) if MPD did not violate the 90-day rule, did the MPD have just cause to terminate the grievant, and if not, what is the appropriate remedy.²²

Before the Arbitrator, MPD argued that it did not violate the 90-day rule. MPD claimed that it did not have notice of the Grievant's failure to complete the report until the Sergeant spoke with the pedestrian on March 16, 2011.²³ MPD argued that the termination was appropriate and that the Arbitrator cannot substitute his judgment on whether a penalty is appropriate unless the agency's decision is clearly erroneous.²⁴ Also, MPD argued that it adequately analyzed the *Douglas* Factors.²⁵

Before the Arbitrator, FOP argued that the adverse action was untimely because the MPD should have known of the missing accident report on January 2, 2011.²⁶ Additionally, FOP argued that MPD had actual notice of the missing report when it was unable to locate the

¹⁷ Request at 7.

¹⁸ Request at 7.

¹⁹ Request at 8.

²⁰ Request at 8.

²¹ Request at 8.

²² Award at 2.

²³ Award at 16.

²⁴ Award at 17.

²⁵ *Douglas v. Veterans Admin.*, 5 MSPR 280, 5 MSPB 313 (1981). *Douglas* provides twelve factors as guidance to determine the appropriateness of discipline for public sector employees.

²⁶ Award at 19.

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accident report on January 10, 2011.²⁷ FOP argued that the standard of review for the Arbitrator is to determine whether discipline was issued for cause by weighing and determining the probative value of the evidence presented.²⁸ FOP asserted that the Panel erred in consideration of the *Douglas* Factors and that the *Douglas* Factors supported a lesser penalty.²⁹

The Arbitrator found that Charge No.3 and Charge No.4 involved the Grievant's failure to file an accident report on January 2, 2011. The Arbitrator determined that the 90-day rule began to run on January 10, 2011, because MPD had actual knowledge that the report was missing on that date. Therefore, disciplinary action was untimely. Additionally, the Arbitrator found that the record contained insufficient evidence to conclude that the Grievant failed to file an accident report on January 2, 2011. The Arbitrator found that the Grievant obtained a report number and provided it to the pedestrian on January 2, 2011.³⁰ The Arbitrator found that the Grievant's standard practice was to complete accident reports on the same day and that the Sergeant was not aware of any past deviation from that practice.³¹ Finally, the Arbitrator found that reports were known to go missing in the MPD system and that there was no evidence presented that the January 2, 2011, report did not go missing due to a system error.³² The Arbitrator dismissed Charge No.3 and Charge No.4.³³

The Arbitrator found that Charge No.2/Specification No.1 alleged that the Grievant lied about completing the accident report on January 2, 2011.³⁴ The Arbitrator dismissed Charge No.2 Specification No.1 since there was insufficient evidence to establish that the Grievant did not submit a report on January 2, 2011.³⁵ Charge No.2/Specification No.2 alleged that the Grievant lied about issuing the Driver a ticket.³⁶ The Arbitrator dismissed Charge No.2 Specification No.2 since the record contained insufficient evidence that the Grievant was intentionally attempting to deceive rather than attempting to remember and piece together what happened using his normal practices.³⁷

Finally, the Arbitrator found the Grievant guilty of Charge No.1 because the Grievant did not dispute that he knowingly mischaracterized the nature of the accident as a hit and run on the March 17, 2011, report.

The Arbitrator found that the Panel did not prejudice the Grievant in its weighing of the *Douglas* Factors but, because the Panel failed to identify the extent to which each factor related to each allegation, the Arbitrator could not give deference to the Panel's conclusions.³⁸ The Arbitrator conducted an analysis of the *Douglas* Factors and determined that Charge No.1 did

²⁷ Award at 19.

²⁸ Award at 19.

²⁹ Award at 21.

³⁰ Award at 23.

³¹ Award at 23.

³² Award at 24.

³³ Award at 24.

³⁴ Award at 24.

³⁵ Award at 24.

³⁶ Award at 25.

³⁷ Award at 25.

³⁸ Award at 28.

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Page 5

not provide just cause for termination, and implemented a forty-five (45) day suspension for falsifying the March 17, 2011, report.³⁹

IV. Position of the Parties

A. MPD Position

MPD argues that the Award is contrary to law because the Arbitrator misconstrues the date when the 90-day rule begins to run. MPD asserts that Charge No.3 and Charge No.4 concern the Grievant's failure to complete a report on January 2, 2011.⁴⁰ MPD argues that the fact MPD knew the report was missing on January 10, 2011, does not lead to the conclusion that the Grievant failed to complete the report. MPD argues that it did not know of the Grievant's failure to complete the report until March 16, 2011, and timely served the Grievant with the Notice of Proposed Adverse Action on the 88th day.⁴¹

MPD asserts that the Award is contrary to the public policy that police officers preserve peace, protect life, and uphold the law.⁴² MPD argues that to permit the Grievant to continue to work as a police officer knowing that he falsified an official police report would be directly at odds with public policy.⁴³

MPD cites to the Connecticut Superior Court for the position that there is a clear public policy requiring good conduct by police officers and that, when a police officer violates the public policies enumerated in state statutes and employment regulations, a reviewing court cannot enforce an arbitral award that reinstates the officer. MPD also cites to the Court of Appeals of Ohio for the position that falsification of a police report violates the public policy to preserve peace, protect persons, and obey and enforce the law.⁴⁴ MPD asserts that the Grievant's continued employment with MPD will erode the public's trust and confidence in the police department and runs contrary to a well-defined public policy.⁴⁵

B. FOP Position

FOP argues that MPD has failed to show that the Award is contrary to law and public policy. FOP argues that the Arbitrator was authorized to determine when the statutory time limit began to run and that the MPD's argument is a mere disagreement with the Arbitrator.⁴⁶ Further, FOP asserts that MPD misconstrued the 90-day rule's actual or constructive knowledge standard. FOP argues that MPD failed to address the finding that there was insufficient evidence in the record to support a finding that the Grievant failed to file an accident report on January 2, 2011.⁴⁷ FOP argues that the parties bargained for the Arbitrator's interpretation and PERB

³⁹ Award at 32.

⁴⁰ Request at 9.

⁴¹ Request at 10.

⁴² Request at 11.

⁴³ Request at 12.

⁴⁴ Request at 13.

⁴⁵ Request at 15.

⁴⁶ Opposition at 3.

⁴⁷ Opposition at 10.

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Page 6

should dismiss the request since it cites no legal grounds that show a violation of law and public policy.⁴⁸

V. Discussion

The Board may not modify or set aside the Award as contrary to law and public policy in the absence of a clear violation on the face of the Award.⁴⁹ The law and public policy exception is “extremely narrow.”⁵⁰ The narrow scope limits potentially intrusive judicial review under the guise of public policy.⁵¹ MPD has the burden to demonstrate that the award itself violates established law or compels an explicit violation of “well defined public policy grounded in law and or legal precedent.”⁵² The violation must be so significant that law and public policy mandate a different result.⁵³

MPD argues that the Award is contrary to the dominant public policy of requiring police officers to preserve peace, protect life, and uphold the law. MPD looks to cases from the Connecticut Superior Court and the Court of Appeals of Ohio that vacated arbitration awards based on public policy grounds. The Board has previously found that these cases are unpersuasive and rejected this broad public policy argument as a basis for overturning an arbitration award.⁵⁴ MPD failed to meet its burden and did not specify any “established law” and “well defined public policy” that mandates that the Arbitrator arrive at a different result.

The Arbitrator has the authority to resolve issues of fact including determinations regarding the credibility, significance, and weight of the evidence.⁵⁵ By agreeing to submit a grievance to arbitration “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based.”⁵⁶ In this case, the Arbitrator found that there was insufficient evidence in the record to support a finding that the Grievant failed to complete an accident report on January 2, 2011. The Arbitrator found that the Notice of Proposed Adverse Action was untimely served since the MPD had notice of the missing report on January 10, 2011. These findings result in the dismissal of Charge No.2, Charge No.3, and Charge No.4. Only Charge No.1 was upheld by the Arbitrator.

⁴⁸ Opposition at 21.

⁴⁹ *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg.7468, Slip Op. 1667 at 3, PERB Case No. 18-A-04 (2018).

⁵⁰ *American Postal Workers Union, AFL-CIO v. United States Postal Service*,789 F.2d 1, 8 (D.C. Cir. 1986). See *MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. 1487 at 8, PERB Case No. 09-A-05 (2014). *MPD v. FOP/MPD Labor Comm. ex rel. Johnson*, 59 D.C. Reg. 3959, Slip Op. 925 at 11-12, PERB Case No. 08-A-01 (2012).

⁵¹ *American Postal Workers*,789 F.2d at 8.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *MPD v. FOP/MPD Labor Comm.*, 65 D.C. Reg. 12884, Slip Op. 1684 at 4, PERB Case 18-A-09 (2018); *MPD v. FOP/MPD Labor Comm.*, 65 DC Reg. 7468, Slip Op.1667 at 4, PERB Case No. 18-A-04 (2018).

⁵⁵ *DCDHCD v. AFGE Local 2725 AFL-CIO*, 45 D.C. Reg. 326, Slip Op. 527 at 2, PERB Case No. 97-A-03(1998). *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253, PERB Case No. 90-A-04 (1990).

⁵⁶ *FOP v. Dept. of Corrections* 59 D.C. Reg. 9798, Slip Op. 1271 at 2, PERB Case No. 10-A-20 (2012). See *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633 at p. 3, PERB Case No. 00-A-04 (2000); *MPD v. FOP/MPD Labor Comm. ex rel. Fisher*, 51 D.C. Reg. 4173, Slip Op. 738, PERB Case No. 02-A-07 (2004).

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Page 7

It was reasonable for the Arbitrator to reexamine the *Douglas* Factors because the appropriateness of the penalty was an issue explicitly presented for the Arbitrator's consideration.⁵⁷ An arbitrator may overturn a termination decision based on his/her assessment of the agency's evaluation of the *Douglas* factors.⁵⁸ The Arbitrator determined that the Panel's *Douglas* analysis did not adequately differentiate the weight each factor had on a given charge. Because three out of four charges were dismissed, the Arbitrator could not defer to the Panel's findings. The Arbitrator conducted an independent analysis to reach an appropriate disciplinary decision for the falsification of the March 17, 2011, report. Upon this analysis the Arbitrator determined that a forty-five (45) day suspension was appropriate.

The Board will not substitute its own interpretation for that of the duly designated arbitrator.⁵⁹ Disagreement with the Arbitrator is not sufficient reason to modify, set aside, or remand an Award.⁶⁰

VI. Conclusion

Based on the foregoing, the Board finds that the Arbitrator's Award is not contrary to law and public policy. Accordingly, MPD's Arbitration Review Request is denied, and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

May 16, 2019

⁵⁷ *MPD v. FOP/MPD Labor Comm. ex rel. Garcia*, 63 D.C. Reg. 4573, Slip Op. 1561 at 3, PERB Case No. 14-A-09 (2016).

⁵⁸ *MPD v. FOP/MPD Labor Comm. ex rel. Kennie*, 61 D.C. Reg. 12364, Slip Op. 1493 at 5, PERB Case No. 14-A-06 (2014).

⁵⁹ *FEMS v. AFGE, LOCAL 3721*, 51 D.C. Reg. 4158, Slip Op. 728, PERB Case No. 2-A-08 (2004).

⁶⁰ *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253 at 3, PERB Case No. 90-A-04 (1990).

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 19-A-04, Opinion No. 1711 was sent by File and ServeXpress to the following parties on this the 20th day of May 2019.

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/s/

Andrea Lozada

Government of the District of Columbia
Public Employee Relations Board

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| In the Matter of: | |) | |
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| Greggory Pemberton | |) | PERB Case No. 18-S-02 |
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| Complainant | |) | Opinion No. 1712 |
| | |) | |
| v. | |) | |
| | |) | |
| Fraternal Order of Police/ Metropolitan Police Department Labor Committee | |) | |
| | |) | |
| Respondent | |) | |
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DECISION AND ORDER

I. Introduction

Greggory Pemberton (Complainant) filed this standards of conduct complaint (Complaint) alleging that the Fraternal Order of Police/Metropolitan Police Department Labor Committee (Union) violated section 1-617.03(a)(1) and (2) of the Comprehensive Merit Personnel Act (CMPA).¹ A hearing was held on September 17 and October 23, 2018. The Hearing Examiner’s Report and Recommendation (Report) is before the Board for disposition

II. Statement of the Case

At the time the events giving rise to this case occurred, the Complainant held the position of Treasurer of the Union. Sergeant Matthew Mahl held the position of Chairman and Sergeant Stephen Bigelow held the position of Vice-Chairman.²

On May 23, 2016, the Executive Committee met to discuss legal contracts. By a vote of 3-2, it was agreed to enter into a three-year contract with the law firm of Pressler, Senftle & Wilhite, P.C. (Pressler firm). The Complainant opposed the contract with the Pressler firm and instead favored retaining the services of Conti, Fenn & Lawrence (Conti firm).³

¹ Complaint at 9.

² Report at 2.

³ Report at 2.

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Page 2

On June 28, 2016, during an Executive Council meeting, the Complainant commented that he had shared privileged and confidential information regarding the Pressler legal contract with the Conti firm. Following the meeting, Chairman Mahl shared this news in an email to Metropolitan Police Department (MPD) Internal Affairs alleging a violation of federal law, specifically the Sherman Anti-Trust Act. Chairman Mahl did not inform the Complainant or other Union officials or chief stewards of his concern regarding a violation of law by the Complainant. He also did not inform them of his email to MPD Internal Affairs.⁴

Internal Affairs referred the matter to the Federal Bureau of Investigation (FBI), which later advised that this was not a violation of the Sherman Anti-Trust Act or any other federal law.⁵ Chairman Mahl was informed of the FBI's response and MPD completed a Form 854, indicating the matter was closed.⁶

The Complainant learned of Chairman Mahl's allegations against him when he saw the Form 854. On October 31, 2017, at an Executive Council meeting, the Complainant expressed his disapproval of Chairman Mahl's conduct and made a motion to impeach Chairman Mahl pursuant to Article 7 of the Union bylaws. Chairman Mahl ruled the motion out of order.⁷ Chairman Mahl stated that the provisions of Article 12 must be used to impeach any Executive Council member. Article 12 of the Union's bylaws details the process of impeachment which includes a formal written complaint by the person making the charge.⁸ The Chairman then indicated that those in attendance could vote to overturn his ruling, which the majority of those in attendance did.⁹ The Complainant then made a second motion to waive the 30-day requirement for a membership vote on the impeachment and to hold a vote at a previously scheduled membership meeting on December 20, 2017. The motion passed.¹⁰

On November 29, 2017, the Union Executive Council met and discussed the appropriate process for impeachment proceedings pursuant to the bylaws. Chairman Mahl explained that the motion for impeachment passed at the October 31, 2017, meeting was out of order and enquired how the Council wished to proceed.¹¹ The Council failed to pass any motions related to the impeachment vote. After this meeting, the Complainant spoke with Vice-Chairman Bigelow and offered to submit charges for impeachment pursuant to Article 12 to address the Council's concerns. Vice-Chairman Bigelow stated that he would not accept the charges.¹²

On December 20, 2017, during a general membership meeting, Vice-Chairman Bigelow again refused to accept impeachment charges pursuant to Article 12 even after Chairman Mahl told Vice-Chairman Bigelow to accept the charges.¹³ Soon after the meeting, Vice-Chairman

⁴ Report at 3.

⁵ Report at 4.

⁶ Report at 4.

⁷ Report at 4.

⁸ Report at 5.

⁹ Report at 5.

¹⁰ Report at 6.

¹¹ Report at 6.

¹² Report at 6.

¹³ Report at 6.

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Bigelow spoke with the Complainant and indicated that he would accept the charges if an attorney said he should, but the Complainant stated that he would seek other redress.¹⁴

The Complainant alleges that the CMPA was violated when Chairman Mahl notified MPD that the Complainant may have violated the Sherman Anti-Trust Act and Chairman Mahl and Vice-Chairman Bigelow then deprived him of the opportunity to seek impeachment and removal of Chairman Mahl pursuant to the bylaws.

III. Hearing Examiner's Report and Recommendation

A. Findings

The Hearing Examiner concluded that the Union violated section 1-617.03(a)(1) of the D.C. Official Code when it failed to provide the Complainant fair and equal treatment under the governing rules of the organization.¹⁵ The Hearing Examiner also found that the motion to impeach Chairman Mahl was improper and, therefore, invalid.¹⁶ The Hearing Examiner looked to the Union bylaws to conclude that certain due process protections of Article 12 are required in the Article 7 impeachment process. According to the Hearing Examiner, Chairman Mahl was correct when he determined that the motion was out of order.¹⁷ The Hearing Examiner further found that Chairman Mahl was mistaken in suggesting the participants could vote to overrule that determination, which they did.

The Hearing Examiner found that the Complainant was deprived of fair and equal treatment under the bylaws in violation of the CMPA when Vice-Chairman Bigelow on two occasions refused Complainant's attempts to submit charges against Chairman Mahl pursuant to Articles 7 and 12.

B. Recommendations

The Hearing Examiner recommended that the Union cease and desist from failing to provide fair and equal treatment to all members under the governing rules of the organization. In order to cease and desist from denying fair and equal treatment to the Complainant, the Hearing Examiner recommended that the Union process his compliant against Chairman Mahl pursuant to Article 12 of the bylaws. Although Chairman Mahl no longer holds an office subject to impeachment under Article 12, disciplinary charges related to former Chairman Mahl's notification may be brought against him as a member of the Union per Article 12. Finally, the Hearing Examiner recommended that the Union post a notice for thirty (30) days stating that it has violated D.C. Official Code § 1-617.03(a)(1).

¹⁴ Report at 6.

¹⁵ Report at 9.

¹⁶ Report at 7.

¹⁷ Report at 7.

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IV. Exceptions and Opposition to Exceptions

The Union filed Exceptions to the Hearing Examiner's Report and Recommendation. The Union states that the Hearing Examiner erred by ignoring Article 14 of the bylaws which precludes the filing of this Complaint, and ignoring the fact that the Complainant never submitted an Article 12 charge to the Union. The Union urges the Board to reject the Hearing Examiner's findings regarding Article 12 as they are inconsistent with the hearing record, precluded by the bylaws, and do not constitute a violation of the CMPA.¹⁸

The Complainant filed an opposition to the Union's exceptions. The Complainant states that the Union's exceptions are simply rehashing arguments made during the hearing, and constitute a mere disagreement with the Hearing Examiner's findings and should be rejected.¹⁹

V. Discussion

The Board will affirm a Hearing Examiner's Report and Recommendation if the recommendations are reasonable, supported by the record, and consistent with Board precedent.²⁰ Pursuant to Board Rule 520.11, "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." The Board has held that "issues of fact concerning the probative value of evidence and credibility are reserved to the Hearing Examiner."²¹

A. Subject Matter Jurisdiction

The Union argues that "the Complainant lacks subject matter jurisdiction" based on Article 14 of the bylaws.²² Article 14 requires that a complaint first be submitted to the Union for action prior to any other action being brought against the Union.²³ According to the Union, the fact that the Complainant never submitted an Article 12 complaint precludes him from submitting a complaint to the Board.²⁴

As the Superior Court has stated and the Board has agreed, D.C. Official Code section 1-605.02(9) grants the Board incontrovertible subject matter jurisdiction over standards of conduct complaints.²⁵ Furthermore, D.C. Official Code section 1-617.03(a)(1) and PERB Rule 544.2(a)

¹⁸ Respondent's Exceptions to Hearing Examiner's Report and Recommendation at 1.

¹⁹ Opposition to Exceptions at 6.

²⁰ See *Am. Fed'n of Gov't Emp., Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

²¹ *Council of Sch. Officers, Local 4, Am. Fed'n of Sch. Adm'r v. D.C. Pub. Schs.*, 59 D.C. Reg. 6138, Slip Op. 1016 at 6, PERB Case No. 09-U-08 (2010).

²² Respondent's Exceptions to Hearing Examiner's Report and Recommendation at 6.

²³ Respondent's Exceptions to Hearing Examiner's Report and Recommendation at 7.

²⁴ Respondent's Exceptions to Hearing Examiner's Report and Recommendation at 7.

²⁵ *Am. Fed'n of Gov't Emp, Nat'l Office v. D.C. Public Emp. Relations Bd.*, Case No. 2013 CA 000846 P(MPA) at p. 6; *Collins v. Am. Fed'n of Gov't Emp, Nat'l Office and Local 1975*, 63 D.C. Reg. 2102, Slip Op. 1557 at 4, PERB Case No. 10-S-10 (2016).

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allow any individual to file a standards of conduct complaint with the Board if that individual has been aggrieved by a lack of fair and equal treatment under the governing rules of the organization.²⁶ The Union argues that the Complainant should have first submitted an Article 12 complaint to the Union prior to taking action with the Board; however as found by the Hearing Examiner, the Complainant attempted to file an Article 12 complaint with Vice-Chairman Bigelow on multiple occasions.²⁷ Since this is the basis of the allegation in this case, the Board finds that there is no jurisdictional issue with respect to this Complaint.

B. Article 12

The Union argues that it never denied the Complainant fair and equal treatment because the Complainant never submitted an Article 12 complaint.²⁸ As the Hearing Examiner stated, the Union's refusal to accept the Article 12 complaint is the basis of the violation. The Hearing Examiner found that the Complainant attempted to submit an Article 12 complaint to the Vice-Chairman on two occasions but was denied that right. On a third occasion, the Vice-Chairman offered to accept a charge subject to advice from an attorney. This action of the Vice-Chairman constituted a lack of fair and equal treatment under the governing rules of the organization. The Board finds the Hearing Examiner's conclusion reasonable, supported by the record, and consistent with Board precedent.

VI. Conclusion

Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's report and recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Standard of Conduct Complaint is granted.
2. The Union shall cease and desist from failing to provide fair and equal treatment to all members under the governing rules of the organization, as codified under D.C. Official Code section 1-617.03(a)(1).
3. The Union shall cease and desist from denying fair and equal treatment to Complainant, Gregory Pemberton, by failing to process his complaint against former Chairman Mahl pursuant to Article 12 of the Union's bylaws. It is understood that while former Chairman Mahl no longer holds an office subject to impeachment pursuant to Article 7, disciplinary

²⁶ D.C. Official Code § 1-617.03(a)(1); PERB Rule 544.2(a).

²⁷ Report at 6.

²⁸ Respondent's Exceptions to Hearing Examiner's Report and Recommendation at 7-8.

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charges related to former Chairman Mahl's notification to Internal Affairs may be brought against former Chairman Mahl as a member of the Union pursuant to Article 12.

4. The Union shall conspicuously post for thirty (30) days, the attached Notice where notices to its members are normally posted.
5. The Union shall notify the Public Employee Relations Board in writing, within fourteen (14) days from the receipt of this Decision and Order that the Notice has been posted accordingly.
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, Barbara Somson, and Douglas Warshof.

May 16, 2019

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-S-02, Op. No. 1712 was transmitted to the following parties on this the 22nd day of May, 2019.

Greggory Pemberton
738 Longfellow Street, NW
#408
Washington, D.C. 20011

via U.S. Mail

Marc Wilhite, Esq.
Pressler, Senftle & Wilhite, P.C.
1432 K Street, NW
Twelfth Floor
Washington, DC 20005

via File & ServeXpress

/s/ Sheryl Harrington
PERB

OFFICE OF VICTIM SERVICES AND JUSTICE GRANTS**NOTICE OF FUNDING AVAILABILITY (NOFA)****FISCAL YEAR 2020 (FY20)****Incarceration Reduction Amendment Act (IRAA) Support Funding**

The Office of Victim Services and Justice Grants (OVSJG) announces the availability of grant funds under the Fiscal Year 2020 Local Fund to provide services and supports to currently incarcerated individuals within Department of Corrections or Bureau of Prisons facilities who meet the requirements to file an application for a sentence modification to reduce their sentence, according to the terms of the Incarceration Reduction Amendment Act of 2016 (IRAA), Title II of the Comprehensive Youth Justice Amendment Act of 2016 (D.C. Law 21-238).

Request for Application (RFA) Release Date: Monday, July 22, 2019

Period of Award: Fiscal Year 2020 (October 1, 2019 – September 30, 2020)

Available Funding: Funding will be available in the amount \$450,000 to be distributed as follows:

- \$200,000 for a grant for a social work school and returning citizen “peer navigator” partnership to provide reentry support to returning citizens sentenced as teenagers and young adults and released after decades of incarceration;
- \$150,000 for a grant for a criminal, young adult, or juvenile justice policy-focused non-profit organization to support implementation, coordination, and analysis of the Incarceration Reduction Amendment Act of 2016 (“IRAA”); and
- \$100,000 in recurring local funds for a grant for a law school clinic to represent and provide legal coordination for individuals seeking to petition for sentence review pursuant to IRAA.

Application Submission Deadline: Monday, August 19, 2019 at 11:59pm ET

The Request for Applications (RFA) will be available electronically beginning Monday, July 22, 2019 at <http://ovsjg.dc.gov>. All applications are to be submitted via [ZoomGrants™](#).

For additional information regarding this grant competition, please contact:

Melissa Milchman
Grants Management Specialist
Office of Victim Services and Justice Grants
(202) 727-5047
melissa.milchman@dc.gov

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO AWARD A SOLE SOURCE CONTRACT****Data Support, Training, and Infrastructure Maintenance**

Washington Leadership Academy intends to award a sole source contract to EmpowerK12 for data support services. For more information, contact Mandy Leiter at mleiter@wlapcs.org.

For full Notice of Intent to Award a Sole Source Contract, please visit: www.wlapcs.org/bids

WASHINGTON YU YING PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Organizations that Provide Diverse Teachers**

RFP for Organizations that Provide Diverse Teachers: Washington Yu Ying Public Charter School is requesting proposals from organizations that prepare, certify, and support effective, high quality teachers from diverse backgrounds, and place those teachers into public schools. Yu Ying would contract with the organization(s) to have teachers work at Washington Yu Ying PCS during the 2019-20 school year. Washington Yu Ying is an International Baccalaureate, Chinese immersion elementary school located in the District of Columbia and serves students in grades PK3-5th grade.

Deadline for submissions is noon, July 17, 2019. Please e-mail proposals and supporting documents to RFP@washingtoneying.org. Please specify “RFP for Organizations That Provide Diverse Teachers” in the subject line.

WASHINGTON YU YING PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Window Coverings**

RFP for Window Coverings: Yu Ying is requesting proposals for a vendor to supply and install internal window coverings (shades) for classroom windows in a 15,000 square-foot section of our elementary school that serves students in grades PK3-5th grade.

We desire products that are a safe and durable choice around children. Shades that can reduce internal room temperatures are a plus.

Deadline for submissions is noon July 17, 2019. Please e-mail proposals and supporting documents and measuring requests to RFP@washingtonyuying.org. Please specify “RFP for Window Coverings” in the subject line.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Audit Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, July 25, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

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

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, July 18, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

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|-----|--|---|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates 1. BPAWTP Performance | Vice-President, Wastewater Ops |
| 3. | Status Updates | Senior VP Chief Engineer, Engineering |
| 4. | Project Status Updates | Director, Engineering & Technical Services |
| 5. | Action Items - Joint Use - Non-Joint Use | Senior VP Chief Engineer, Engineering |
| 6. | Water Quality Monitoring | Senior Director, Water Ops |
| 7. | Action Items | Senior VP Chief Engineer Senior Director, Water Ops Director, Customer Care |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Finance and Budget Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, July 25, 2019 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

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

DRAFT AGENDA

- | | | |
|----|---|-----------------------|
| 1. | Call to Order | Committee Chairperson |
| 2. | June 2019 Financial Report | Committee Chairperson |
| 3. | Agenda for September 2019 Committee Meeting | Committee Chairperson |
| 4. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

District of Columbia Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) District of Columbia Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, July 23, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003 Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

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

DRAFT AGENDA

- | | | |
|----|---------------------|--|
| 1. | Call to Order | Committee Chairperson |
| 2. | Monthly Updates | Executive VP, Finance & Procurement |
| 3. | Committee Work Plan | Executive VP, Finance & Procurement |
| 4. | Other Business | Executive VP, Finance & Procurement |
| 5. | Adjournment | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20020 of Scott and Emilee Tison, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 206.2 and 5203.3, from the rooftop architectural elements provisions of Subtitle E § 206.1, to allow alteration of an existing porch rooftop architectural element on an existing, attached principal dwelling unit in the RF-1 Zone at premises 2219 Second Street N.W. (Square 3121, Lot 71).

HEARING DATE: June 19, 2019

DECISION DATE: June 19, 2019

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 18, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 39.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 34.)

Persons in Support. The adjacent neighbor at 2217 Second Street, N.W., testified at the hearing in support of the application.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E §§ 206.2 and 5203.3, from the rooftop architectural elements provisions of Subtitle E § 206.1, to allow alteration of an existing porch rooftop architectural element on an existing, attached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

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 AND ELEVATIONS.**

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Lesylleé M. White, Carlton E. Hart, and Peter G. May to APPROVE)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 24, 2019

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. 20020

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
BOARD OF ZONING ADJUSTMENT**

Application No. 20040 of Department of General Services, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the penthouse height limitations of Subtitle D § 303.2, to construct rooftop mechanical equipment screening on an existing public school in the R-3 Zone at premises 301 53rd Street, S.E. (Square 5301, Lot 809).

HEARING DATE: June 19, 2019

DECISION DATE: June 19, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 32 (Final Revised); Exhibit 15 (Revised); Exhibit 5 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 7E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on May 14, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 33.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 37.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 38.)

Variance Relief

The Applicant seeks relief under Subtitle X § 1002.1 for an area variance from the penthouse height limitations of Subtitle D § 303.2, to construct rooftop mechanical equipment screening on an existing public school in the R-3 Zone at premises 301 53rd Street, S.E. (Square 5301, Lot 809).

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS¹ AT EXHIBITS 9, 11 AND 12.**

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter G. May to APPROVE.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 24, 2019

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

¹ In granting the certified relief, the Board 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.

THERE TO) 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.

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Food Service Management Company Services**

Achievement Prep PCS is advertising the opportunity to bid on the management of breakfast, lunch, snack and/or CACFP supper program to children enrolled at the school for the 2018-2019 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposal (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on **July 5, 2019** from **Greg Gaines at bids@achievementprep.org**

Proposals will be accepted at **908 Wahler Place, SE, Washington, DC 20032** on **July 29th, 2019**, not later than **12 noon**.

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

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
MARY M. CHEH, CHAIR

REVISED AND ABBREVIATED

NOTICE OF PUBLIC HEARING ON

**B23-191, the Polystyrene Food Service and Loose Fill Packaging Prohibition
Amendment Act of 2019**

July 10, 2019, at 10:00 AM
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, July 10, 2019, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B23-191, the Polystyrene Food Service and Loose Fill Packaging Prohibition Amendment Act of 2019. The hearing will begin at 10:00 AM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B23-191 would prohibit the retail sale of polystyrene food service products and polystyrene loose fill packaging, commonly known as packing peanuts.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on July 24, 2019.

This hearing notice is revised to reflect that the time of the hearing has been moved from 11:00a.m. to 10:00a.m. In addition, the notice is being abbreviated in order to provide timely notice to the public.

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

**COUNCILMEMBER BRIANNE K. NADEAU, CHAIRPERSON
COMMITTEE ON HUMAN SERVICES**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

THE DISTRICT OF COLUMBIA'S COMMUNITY SERVICES BLOCK GRANT PROGRAM

**Wednesday, July 10, 2019, 11:00 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Wednesday, July 10th, 2019, Councilmember Brianne K. Nadeau, Chairperson of the Committee on Human Services, will hold a Public Oversight Roundtable on the "District of Columbia's Community Services Block Grant Program." The roundtable will take place in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, at 11:00 a.m.

The Community Services Block Grant Program provides funds to alleviate the causes and conditions of poverty in the District of Columbia. In accordance with the federal Community Services Block Grant Act, approved October 27, 1998 (112 Stat. 2728; 42 USC §9901 *et seq.*), the Committee convenes this roundtable to receive public comment on the District's plan for Community Services Block Grant activities. The Committee will hear from the Department of Human Services, as well as the United Planning Organization in its capacity as a community action agency.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at humanservices@dccouncil.us or at (202) 724-8170, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, July 8, 2019**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **fifteen single-sided copies** of their written testimony.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee at humanservices@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on July 12, 2019.**

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 23-358, Board of Industrial Trades Mr. Petrick Washington Confirmation Resolution of 2019
PR 23-359, Board of Industrial Trades Mr. Brian Cooper Confirmation Resolution of 2019
PR 23-360, Board of Industrial Trades Mr. Alvin D. Venson, Sr. Confirmation Resolution of 2019

on

Wednesday, July 10, 2019
10:30 a.m. Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of Whole on three Board of Industrial nominations (PR 23-358, PR 23-359, and PR 23-360). The roundtable will be held on **Wednesday, July 10, 2019 at 10:30 a.m. in Room 120** of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of **PR 23-358** is to appoint Mr. Washington to the Board for a term to end on June 26, 2022. The stated purpose of **PR 23-359** is to appoint Mr. Cooper to the Board for a term to end on June 26, 2022. The stated purpose of **PR 23-360** is to appoint Mr. Venson Sr. to the Board for a term to end on June 26, 2022. The purpose of the Board is to protect the public health, safety, and welfare of citizens of the District by ensuring that individuals engaged in trades such as plumbing and electrical work have the specialized skills and training required to perform such services. The purpose of this roundtable is to receive testimony from public witnesses as to the fitness of the nominees to serve on the Board of the Industrial Trades.

Those who wish to testify are asked to email the Committee of the Whole at cw@dccouncil.us, or call Blaine Stum, Legislative Policy Advisor at (202) 724-8092, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business **Tuesday, July 9, 2019**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on **Tuesday, July 9, 2019**, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>. Roundtable materials, including a draft witness list, can be accessed 24 hours in advance of the roundtable at <http://www.chairmanmendelson.com>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on **Wednesday, July 24, 2019**.

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