VOL. 67 – NO. 17 APRIL 24, 2020

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council honors the Washington Nationals on winning baseball's 2019 World Series
- Office of Cable Television, Film, Music, and Entertainment updates the rules for administering the Rebate Fund Program
- Board of Elections notifies the public of availability of the Voter Guide with Sample Ballots for the June 2, 2020 Primary Election
- Department of Health establishes emergency regulations to allow distribution of medical marijuana prescription orders using the delivery, curbside or at-the-door pickup options
- Public Employee Relations Board updates its regulations to ensure consistency with relevant statutes and court decisions
- Public Service Commission revises regulations for billing and billing error notifications
- Public Service Commission introduces emergency regulations to waive certain rules for licensing electricity and gas suppliers to expedite response to contingencies resulting from COVID-19
- District Department of Transportation updates regulations for parking meters and bus parking zones

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
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ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-205

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 19, 2019

To recognize, honor and congratulate the Washington Nationals on their incredible run of a successful winning season culminating as 2019 World Series champions.

WHEREAS, The Washington Nationals overcame numerous "weren't suppose to's" on the road to becoming baseball's 2019 World Series champions;

WHEREAS, The Washington Nationals weren't supposed to beat their playoff opponents. They weren't supposed to be taking part in the postseason after their awful start of 19-31;

WHEREAS, The Nationals beat the Milwaukee Brewers in the one game Wild Card round to advance to the NLDS to face the Los Angeles Dodgers where they won the division in a best of 5 games series, 3-2;

WHEREAS, The Nationals advanced to the NLCS where they swept the St. Louis Cardinals, becoming the National League Champions, headed to the World Series;

WHEREAS, The Nationals started the best of 7 series with a 2-0 start, winning both games in Houston;

WHEREAS, The Nationals were determined to stay in the fight after a 3 game loss at home, came back to win game 6 in Houston;

WHEREAS, we know Trea Turner was actually safe on first base at the top of the 7th inning in game 6. Anthony Rendon answered the umpire's controversial call with a two-run home run to put the Nationals in the lead;

WHEREAS, The Nationals rallied in the 7th inning of Game 7 with history changing home runs from Anthony Rendon and Howie Kendrick giving the team a 3-2 lead;

ENROLLED ORIGINAL

WHEREAS, The Washington Nationals' dismissed the hypothetical and has emphatically earned the first World Series title in franchise history and the first title for D.C. baseball since 1924, almost a century ago;

WHEREAS, The Washington Nationals continue a long tradition of baseball in the District of Columbia, which includes the Homestead Grays, who fielded baseball Hall of Fame members Josh Gibson, Ray Brown, and Buck Leonard, and were winners of the Negro League World Series in 1943, 1944, and 1948, in addition to winning the Negro National League Pennant 10 times;

WHEREAS, Strasburg pitched flawlessly throughout the playoffs with a record 5-0 wins, pitching 8 1/3 innings in a must win Game 6 in the World Series. His record for the playoffs was 47 strikeouts against just 4 walks, and he was named the 2019 World Series MVP;

WHEREAS, Nationals Park had record sell-out crowd and watch parties for all 7 games of the World Series;

WHEREAS, The Washington National's manager, Dave Martinez, has been described as "special", bridging the gap between the old familiar Nationals and the slowly remolded roster built around newer, younger stars. Indeed, he has done just that.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Washington Nationals World Series Champions Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia salutes the Washington Nationals for their dedication, passion and persevering spirit in advancing sporting excellence in Washington, D.C., and elevating our city to prominence in professional baseball.

Sec. 3. The Council of the District of Columbia declares October 30, 2019 as "Washington Nationals Day" in the District of Columbia.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-226

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 7, 2020

To recognize and honor Fred Taylor for his service to the poor and disadvantaged children of the District of Columbia.

WHEREAS, Fred Taylor was born on May 23, 1932 in Princeton, Kentucky. He received a Bachelor of Arts from Vanderbilt University in 1954 and a Master of Divinity from Yale Divinity School in1957;

WHEREAS, Fred Taylor began his career as a minister in Northern Virginia;

WHEREAS, Fred Taylor left his position as a Pastor and joined President Lyndon B. Johnson's War on Poverty as a counselor for the District of Columbia Work Training Opportunity Center;

WHEREAS, Fred Taylor devoted the remainder of his career to disadvantaged children becoming the founding Executive Director of For Love of Children (FLOC), a pioneering, community-based child and family service organization which provides counseling, educational and training opportunities to thousands of needy, neglected and homeless children;

WHEREAS, Fred Taylor was instrumental in the closing of Junior Village in 1973, a District center for impoverished children which had gone from being a state-of-the-art children's center, to becoming an overcrowded place that was abusive to its clients;

WHEREAS, Fred Taylor was named "Washingtonian of the Year" by Washingtonian Magazine in January 2002;

WHEREAS, Fred Taylor served the District as a Board member for the Children and Youth Investment Trust Corporation;

WHEREAS, Fred Taylor passed on the knowledge and expertise he gained working with poor children through his book "Roll Away the Stone: Saving America's Children" where he portrays the 3 essential elements for ending persistent poverty in the Unites States: the removal of structural barriers that the poor cannot move themselves; the participation of the poor in their own liberation; and step-by-step release from the vicious cycles that perpetuate poverty;

ENROLLED ORIGINAL

WHEREAS, Fred Taylor passed away on November 23, 2019;

WHEREAS, Fred Taylor is survived by his wife, Sherrill P. Taylor, 3 children (Sarah Harris, F. Chapman Taylor, and Grace Taylor), a stepdaughter Jocelyn Kovalenko, and 8 grandchildren.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fred Taylor Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes, honors and posthumously thanks Fred Taylor for his service to the poor and disadvantaged children of the District of Columbia.

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Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

A CEREMONIAL RESOLUTION

23-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 7, 2020

To recognize and honor HEXAGON for the unique, charitable and entertaining place it has in Washington D.C's history and future.

WHEREAS, HEXAGON was formed in 1955 as an all-volunteer non-profit organization whose purpose was to put on a quality, entertaining show and donate all of the proceeds to local charities;

WHEREAS, HEXAGON has performed for tens of thousands of Washington area residents for 60 years;

WHEREAS, HEXAGON has provided for decades a plethora of original, fun, satirical, comedic entertainment;

WHEREAS, HEXAGON has donated more than $4 million to more than 40 area charities over its 65 year history;

WHEREAS, HEXAGON has consistently put on professional-quality shows, though being an all-volunteer organization;

WHEREAS, HEXAGON has received formal recognition for its contributions to the Washington area community, including being the first organization honored by *Washingtonian Magazine* as "Washingtonian of the Year" and also being selected by President Ronald Reagan as a recipient of the President's Volunteer Action Award for Service.

RESOLVED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "HEXAGON Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes and honors HEXAGON for its charitable contributions to many worthy organizations in the Washington area community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize and celebrate Victor Shargai's life and his contributions to the cultural and artistic development of the District of Columbia and to declare Friday, February 14, 2020, as "Victor Shargai Day" in the District of Columbia.

WHEREAS, Mr. Shargai was a resident of the District of Columbia for 6 decades;

WHEREAS, Mr. Shargai was a local business owner and world-renowned interior designer whose creativity brought spaces to life including the South Opera Lounge of the Kennedy Center for the Performing Arts, embassy homes, federal offices, and private residences in the District of Columbia, across the nation, and around the world;

WHEREAS, Mr. Shargai was a tireless supporter, promoter, and advocate for live theater in the District of Columbia for over 40 years and helped transform the D.C. area into a leading arts and cultural center;

WHEREAS, Mr. Shargai was a respected member of the Washington, D.C. theater community and served as a board member and chairman of Theatre Washington and on the boards of several other cultural institutions and organizations including the Washington Ballet, Studio Theatre, and Signature Theatre;

WHEREAS, Mr. Shargai's dedication to the artistic and cultural vibrancy of the District of Columbia contributed to the exponential growth of professional theaters in the region that now support more than 200 productions annually, with a majority in the District of Columbia;

WHEREAS, Mr. Shargai helped establish the Helen Hayes Awards to recognize excellence in the District of Columbia theater and through his leadership the award became a nationally recognized honor to theater artists and institutions;

WHEREAS, Mr. Shargai was named Washingtonian of the Year in 1994 by Washingtonian Magazine and received the Helen Hayes Tribute Award in 2014;

WHEREAS, Mr. Shargai died on December 24, 2019 at the age of 83 at his home in the District of Columbia and is survived by his husband Craig Pascal; and

ENROLLED ORIGINAL

WHEREAS, Mr. Shargai's unforgettable legacy will live on through his artistic and creative contributions to the cultural vibrancy of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Victor Shargai Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes the contributions of Victor Shargai to the District of Columbia's arts, theater, and creative economy, and declares Friday, February 14, 2020, as "Victor Shargai Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-238

COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To celebrate and recognize Ms. Naomi Reem for 15 years as the Head of School at Milton Gottesman Jewish Day School of the Nation's Capital.

WHEREAS, Naomi Reem became the Head of School of Milton Gottesman Jewish Day School of the Nation's Capital in 2005;

WHEREAS, Naomi Reem is a native of Buenos Aires, Argentina;

WHEREAS, Naomi Reem has worked in a variety of educational settings across 3 continents, which has included time in Argentina, Israel, and across the United States;

WHEREAS, Naomi Reem holds a teaching degree from the Agnon Institute in Buenos Aires, Argentina, a Bachelor of Arts from Hebrew University in Jerusalem, Israel, and a Masters in Jewish Education from Hebrew College in Newton, Massachusetts;

WHEREAS, prior to serving at Milton Gottesman Jewish Day School, Naomi Reem was Head of School at Sinai Academy of the Berkshires, located in Pittsfield, Massachusetts, for 7 years;

WHEREAS, Naomi Reem has served as mentor at the Day School Leadership Training Institute, a program that is sponsored by AVI CHAI and the Jewish Theological Seminary to train new and aspiring heads of school;

WHEREAS, Naomi Reem has served as a Board Member of the Association of Independent Maryland and D.C. Schools, where she chaired 2 accreditation teams for other Jewish Day Schools in Maryland;

WHEREAS, Naomi Reem is a member of the Executive Council for the Jewish Federation of Greater Washington and previously served as its co-chair for 3 years;

WHEREAS, during Naomi Reem's time as the Head of School at Milton Gottesman Jewish Day School, the school saw substantial growth;

ENROLLED ORIGINAL

WHEREAS, Milton Gottesman Jewish Day School received its first independent school accreditation under Naomi Reem;

WHEREAS, during Naomi Reem's tenure as Head of School Milton Gottesman's enrollment has grown from under 200 students to over 390 students, has opened an additional campus geared towards pre-kindergarten through grade one, and opened a middle school program that extends through grade eight;

WHEREAS, under the leadership of Naomi Reem, Milton Gottesman Jewish Day School has adopted new curricular initiatives in General Studies, Hebrew, and Judaic Studies, earning the school recognition locally and nationally;

WHEREAS, the first middle school class will graduate at the end of the 2019-2020 academic year, a mark of the success of the school over the years;

WHEREAS, last year, Naomi Reem announced that the 2019-2020 academic year would be her last at Milton Gottesman; and

WHEREAS, the Ward 4 community is grateful to Naomi Reem for her time as Head of School at Milton Gottesman Jewish Day School and is excited to see where she goes next.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Milton Gottesman Jewish Day School Head of School Naomi Reem Ceremonial Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes the impact that Naomi Reem has had on both the Milton Gottesman Jewish Day School and the community and wishes her luck as she takes on a new journey.

Sec. 3. This Resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-240

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize February as "Teen Dating Violence Awareness and Prevention Month" in the District of Columbia.

WHEREAS, teen dating violence is an ongoing problem that affects youth in every community around the nation;

WHEREAS, the severity of intimate partner violence is often greater in cases where the pattern of abuse was established in adolescence;

WHEREAS, in the District of Columbia 35.3% of high school students and 26.6% of middle school students in 2019 reported experiences of dating violence, including physical, sexual, and emotional abuse by someone they are dating or going out with in the past year; and

WHEREAS, young women between the ages of 16 and 24 are especially vulnerable to intimate partner violence, experiencing abuse at a rate almost triple the national average;

WHEREAS, one in three adolescent girls in the United States is a victim of physical, emotional, or verbal abuse from a dating partner, a figure that far exceeds victimization rates for other types of violence affecting youth;

WHEREAS, lesbian, gay, bisexual, and questioning middle and high school students in the District of Columbia are more than two times more likely to report experiencing sexual, physical, and emotional violence from the person they are dating or going out with than their heterosexual peers;

WHEREAS, 89% of transgender youth nationally report experiences of dating violence;

WHEREAS, young people victimized by a dating partner are more likely to experience disrupted development of self-esteem and body image, resulting in unhealthy dieting behaviors, risky sexual behavior, and other unsafe practices;

ENROLLED ORIGINAL

WHEREAS, high school students who experience physical violence in a dating relationship are more likely to use drugs and alcohol, are at greater risk of suicide, and are much more likely to carry patterns of abuse into future relationships;

WHEREAS, witnessing violence has been associated with decreased school attendance and academic performance;

WHEREAS, nearly half of teens who experience dating violence report that incidents of abuse took place in a school building or on school grounds;

WHEREAS, only 33% of teens who are in an abusive relationship tell anyone about the abuse, and 82% of parents surveyed either believe teen dating violence is not an issue or admit they do not know if it is one;

WHEREAS, it is essential to raise community awareness and to provide training for teachers, counselors, and school staff so that they may recognize when youth are exhibiting signs of dating violence;

WHEREAS, by providing young people with education about healthy relationships and relationship skills and by changing attitudes that support violence, the Council recognizes that dating violence is preventable;

WHEREAS, Teen Dating Violence Awareness and Prevention Month benefits young people, their families, schools, and communities, regardless of socioeconomic status, gender, sexual orientation, or ethnicity, by bringing attention to the issue and the various forms it can take; and

WHEREAS, all residents of the District of Columbia have the right to a safe and healthy relationship and to be free from abuse.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council affirms the right of every young person to have safe and healthy dating or intimate relationships and declares February 2020 as "Teen Dating Violence Awareness and Prevention Month" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Teen Dating Violence Awareness and Prevention Month Recognition Resolution of 2020".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-241

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize February as Black History Month and to celebrate the legacy, achievements, and contributions of African-Americans in the District of Columbia, and to honor the important role African-Americans played in American history.

WHEREAS, Black History Month was first proposed by Black educators and the Black United Students at Kent State University in February 1969;

WHEREAS, this tradition was transformed into a nationally recognized event by President Gerald Ford during the United States Bicentennial celebration in 1976;

WHEREAS, in the words of President Gerald Ford, the nation should "seize the opportunity to honor the too-often neglected accomplishments of Black Americans in every area of endeavor throughout our history";

WHEREAS, Washington, DC serves as a center of African-American history and culture and the epicenter of fights for abolition, civil rights, and race equity;

WHEREAS, Washington, DC has an abhorrent history of slavery and racial segregation;

WHEREAS, Washington, DC is home to countless destinations devoted to educating visitors from around the world on Black history and the accomplishments of Black Americans, including the National Museum of African American History and Culture, National Museum of African Art, Martin Luther King, Jr. Memorial, Malcolm X Park, Frederick Douglass National Historic Site, and the African American Civil War Museum and Memorial;

WHEREAS, Howard University and Howard University School of Law, were founded in Washington, DC as historically Black institutions that offered high-quality education to African-American students at a time when they were not welcomed at other institutions of higher education;

ENROLLED ORIGINAL

WHEREAS, in 1871, Frederick Douglass was appointed by President Ulysses S. Grant to serve on the eleven-member Legislative Council of the District of Columbia and served as the Marshall for the District of Columbia, the first African-American confirmed for a presidential appointment by the United States Senate in 1877;

WHEREAS, in 1896, Mary Church Terrell, educator and civil and women's rights advocate, was the first Black woman appointed to the District of Columbia Board of Education and the founding president of the National Association of Colored Women and a founder of the NAACP;

WHEREAS, world renowned jazz music pioneer Edward Kennedy "Duke" Ellington was born in Washington, DC on April 29,1899 and is honored with 14 Grammy Awards, a Grammy Lifetime Achievement Award, and the Presidential Medal of Freedom;

WHEREAS, in 1933, the New Negro Alliance launched the "Don't Buy Where You Can't Work," campaign to protest discriminatory hiring practices in white-owned businesses in Washington, DC;

WHEREAS, Marvin Gaye, born in Washington, DC on April 2, 1939 at Freedmen's Hospital, now Howard University Hospital, and educated at Cardozo High School, was honored with a Grammy Lifetime Achievement Award and induction into the Rhythm and Blues Music Hall of Fame, the Songwriters Hall of Fame, and the Rock and Roll Hall of Fame;

WHEREAS, Chuck Brown, guitarist, bandleader, singer, and Godfather of Go-Go, moved to the District in the 1940s and developed DC's own musical genre, Go-Go, which continues to influence artists and music across the country today and has become a rallying cry to defend Washington, DC's culture;

WHEREAS, in 1943, Mary McLeod Bethune, educator, stateswoman, and philanthropist, operated the National Council of Negro Women in Washington, DC, and led Franklin Roosevelt's Black Cabinet advising the administration on issues facing Black people in America;

WHEREAS, in 1957, Washington, DC's African-American population grew to over 50 percent, making it the first predominantly Black major city in the nation, leading a nationwide trend;

WHEREAS, on August 28, 1963, Dr. Martin Luther King, Jr. gave his renowned "I Have a Dream" speech on the steps of the Lincoln Memorial in Washington, DC;

WHEREAS, Marion Barry, was the first prominent civil rights activist to become mayor of a major American city in 1979 and is referred to as DC's "Mayor for Life";

ENROLLED ORIGINAL

WHEREAS, Washington, DC's Black residents created a rich culture that permeates life in the District and residents still experience and appreciate today; and

WHEREAS, the Council of the District of Columbia is hosting "African-Americans and the Vote" at the John A. Wilson Building on February 7, 2020 from 1:00 P.M. to 2:30 P.M. with Master of Ceremonies Danella Sealock VanNiel.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, This resolution may be cited as the "Black History Month Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes the exceptional contributions of African-Americans to the United States and the District of Columbia and honors those who have shaped District history.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-242

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize and congratulate Coach Desmond Dunham as 2019 National Coach of the Year by the National Federation of State High School Associations (NFHS) Coaches Association.

WHEREAS, Coach Desmond Dunham recently concluded a five-year period as the Head Coach of Woodrow Wilson Senior High School Track team in Washington D.C.;

WHEREAS, on January 16, 2020, the National Federation of Sate High School Associations recognized Coach Desmond Dunham as it's 2019 National Coach of the Year;

WHEREAS, Coach Desmond Dunham helped his teams to capture: ten Boy's and Girl's DCIAA City Cross Country Championships, eight Boy's and Girl's DCIAA Indoor City Track & Field Championships, seven Boy's and Girl's DCIAA Outdoor City Track & Field Championships, two Girl's DCSAA Indoor State Girl's Championships, two Girl's DCSAA Outdoor State Championships, one Boy's DCSAA Outdoor State Championships, and two DCSAA State Record's;

WHEREAS, Coach Desmond Dunham has been a teacher and community leader in the District of Columbia for more than two decades and was also recognized as the 2016 Woodrow Wilson Teacher of the Year;

WHEREAS, Coach Desmond Dunham is widely recognized as a local youth sports expert;

WHEREAS, Coach Desmond Dunham is the Founder and Executive Director for Kids Elite Sports, Inc., managing the strategic direction and exponential growth of the non-profit;

WHEREAS, Kids Elite Sports, Inc., under Coach Desmond Dunham's leadership provides high-quality developmental sports, fitness, and enrichment programs to empower children to live healthy and active lifestyles;

ENROLLED ORIGINAL

WHEREAS, in 2007, Coach Desmond Dunham made United States history at the Penn Relays by winning two championship titles in the same meet—the high school girls 4x400 and the 4x800;

WHEREAS, Coach Desmond Dunham helped Eleanor Roosevelt High School capture three Maryland high school girls' cross-country team championships, qualified two teams to the Nike Team Nationals, and led the boys' track team to the Maryland Boys' State Championship title in 2012;

WHEREAS, Coach Desmond Dunham was presented with the Brooks Inspiring Coaches National Award (in 2014) for his impact on amateur athletes for having coached 17 indoor and outdoor national girl's relay championships ranging from the 4 x 200 to the distance medley relay;

WHEREAS, from 2008-2012, Coach Desmond Dunham joined the coaching staff at the University of Maryland as the head cross country coach and distance coach for track and field;

WHEREAS, Coach Desmond Dunham graduated from Howard University in 1995 and received a Masters from Trinity College in teaching secondary science;

WHEREAS, Coach Desmond Dunham resides in Washington, D.C. with his wife Jami and two children, Niles, 15 and Nia, 13.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Coach Desmond Dunham 2019 National Coach of the Year Recognition Resolution of 2020."

Sec. 2. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-243

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize Langdon Elementary School and their award-winning work and high achievement.

WHEREAS, Langdon Elementary School is located in the District of Columbia, in the heart of Ward 5;

WHEREAS, Langdon Elementary School strategically planned a curriculum that enabled their students to successfully achieve their goals;

WHEREAS, Langdon Elementary School, under the leadership of Principal Kemi Baltimore-Husband, faculty, staff members, counselors, educators, and parents who worked diligently to instill a sense of accomplishment and confidence among students, always encouraging them that they can and should perform at their highest potential;

WHEREAS, Principal Kemi Baltimore-Husband was awarded her second Rubenstein Award for Highly Effective Leadership from District of Columbia Public Schools;

WHEREAS, Langdon Elementary School has been named a Bold Improvement School for the last 2 consecutive years for their tireless work in closing the achievement gap for some of the District's most at risk students;

WHEREAS, Langdon Elementary School was recognized as a Title I Distinguished School from the National Title I Association;

WHEREAS, Langdon Elementary School adopted and believed the philosophy that no child will be left behind;

WHEREAS, Langdon Elementary School committed to providing equal opportunities for students that may have a disability, mobility, or learning difficulties to successfully meet any challenge with confidence;

ENROLLED ORIGINAL

WHEREAS, Langdon Elementary School created an atmosphere for each student to take responsibility for their success and favorable outcomes for themselves;

WHEREAS, Langdon Elementary School has supported many children in the Ward 5 community to embrace the potential to thrive;

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Langdon Elementary School High Achievement Recognition Resolution of 2020".

Sec. 2. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-244

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2020

To recognize the 75th anniversary of the Seafarers Yacht Club, their dedication to keeping the Anacostia River clean, and their important cultural contributions to the District of Columbia.

WHEREAS, the Seafarers Yacht Club is one of the nation's oldest Black boating organizations;

WHEREAS, Mr. Charles "Bob" Martin, who at the age of 12 was not allowed to rent a boat at the waterfront because he was Black, vowed to get a boat and eventually started the boat club, D.C. Mariners, in the 1950s;

WHEREAS, Mr. Lewis T. Green, Mr. Martin's former shop teacher who wanted to start a boat club for himself and other Black boaters in the city, got the attention of philanthropist Mary McLeod Bethune who then contacted her friend, First Lady of the United States Eleanor Roosevelt for assistance;

WHEREAS, in 1945, the Interior Department allowed Mr. Green to use a small plot of land by the railroad tracks near the Anacostia River where the Seafarers Boat Club began;

WHEREAS, Mr. Green later advised Mr. Martin to change his club's name from the D.C. Mariners to the Seafarers Boat Club and to replace Mr. Green as commodore;

WHEREAS, the Seafarers Boat Club was reborn in 1965, and the name was officially changed years later to the Seafarers Yacht Club;

WHEREAS, the Seafarers Yacht Club are stewards of the Anacostia River and have organized an annual Anacostia River cleanup since 1985;

WHEREAS, the Seafarers' clubhouse has long been a place that is open to the community where club members and their friends and family can commune;

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, This resolution may be cited as the "Seafarers Yacht Club 75th Anniversary Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes the continuing importance of highlighting people and organizations in our community for their unique contributions to the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-245

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2020

To declare the month of April 2020 as "Sexual Assault Awareness Month" in the District of Columbia, and to urge residents to show their support for victim-survivors and work to prevent sexual assault, abuse, harassment, and human trafficking.

WHEREAS, women's organized protests against sexual violence began in the late 1970s in England with "Reclaim the Night" marches in direct response to the violence that women encountered as they walked the streets at night;

WHEREAS, in the 1970s, the first "Take Back the Night" events in the United States were held in Philadelphia, San Francisco, and New York City;

WHEREAS, the movement that developed in the United States was also created in the wake of the civil rights movement, which was buoyed by black women's activism to disrupt the persistent and systemic sexual violence that they experienced;

WHEREAS, the month of April has been designated as Sexual Assault Awareness Month in the United States and was first observed nationally in April 2001, after the alarming statistics of sexual assaults and underreporting became more apparent;

WHEREAS, sexual assault awareness activities have expanded to include the issue of sexual violence against men and men's participation in ending sexual violence;

WHEREAS, sexual assault awareness includes prevention and advocacy efforts to address various forms of sexual violence, including childhood sexual abuse, sexual harassment, human trafficking, and rape;

WHEREAS, according to the National Human Trafficking Hotline, sex trafficking reports or supports have been the highest human trafficking need for hotline callers since 2012;

ENROLLED ORIGINAL

WHEREAS, according to the Administration for Children and Families, racial and ethnic minorities, communities exposed to multigenerational trauma, individuals with a history of substance abuse, runaways, homeless youth, the poor, and children in the child welfare system as well as those with a history of sexual abuse are identified as some of the groups most vulnerable to human trafficking;

WHEREAS, according to the National Center for Missing and Exploited Children ("NCMEC"), of the more than 23,500 endangered runaways reported to NCMEC in 2019, one in six were likely victims of child sex trafficking;

WHEREAS, according to research conducted by World Without Exploitation, between 33% and 84% of victims of commercial sexual exploitation are survivors of childhood sexual abuse;

WHEREAS, the prevalence of childhood sexual abuse in samples of victims of commercial sexual exploitation is 3 times to 9 times higher than that of the general population;

WHEREAS, 30.8% of sex trafficking victims 12 through 18 years of age had a history of sexual violence;

WHEREAS, 87% of youth involved in commercial sexual exploitation coupled with a history of sexual abuse are runaways;

WHEREAS, 68% of adolescents that were victims of commercial sexual exploitation were sexually abused during childhood;

WHEREAS, 7.8 years is the average age at which sexual victimization begins for girls in the sex trade;

WHEREAS, according to the FBI, almost 59% of all juvenile prostitution arrests involve Black children;

WHEREAS, according to the Statistical Analysis Center for the District, Black girls in their teens and twenties in the District of Columbia were the largest proportion of trafficking victims in 2016;

WHEREAS, according to the Journal of American Health Behavior ("JAHB"), 44% of women engaged in sex work in the District reported unwanted sexual contact as children;

WHEREAS, according to the JAHB, 44% of sex-trade involved women had been raped while in the sex trade, and customers committed 60% of those rapes;

ENROLLED ORIGINAL

WHEREAS, according to the Rape, Abuse and Incest National Network ("RAINN"), every 73 seconds, someone in the United States is sexually assaulted;

WHEREAS, according to the Centers for Disease Control & Prevention's ("CDC") National Intimate Partner and Sexual Violence Survey, 1 out of every 5 women has been the victim-survivor of an attempted or completed rape in her lifetime;

WHEREAS, according to RAINN, in the United States, 1 out of every 10 rape victims are men;

WHEREAS, according to RAINN, girls 16 to 19 years of age are 4 times more likely than the general population to be victim-survivors of rape, attempted rape, or sexual assault;

WHEREAS, according to RAINN, women 18 to 24 years of age who are not in college are 3 times more likely to have experienced sexual violence than women in general;

WHEREAS, sexual violence exists on a spectrum of behaviors, ranging from verbal harassment to sexual assault, and it is imperative to recognize that sexual harassment in the workplace is a pervasive, yet often overlooked, manifestation of sexual violence;

WHEREAS, survivors who feel that they have been treated fairly, and afforded their rights on paper and in practice, tend to experience less secondary victimization, and have greater respect for and satisfaction with the justice system;

WHEREAS, the Equal Employment Opportunity Commission's ("EEOC") Task Force on the Study of Harassment in the Workplace found that 45% of all workplace harassment complaints filed in 2015 were based on sex;

WHEREAS, according to the EEOC, only 6% to 13% of individuals who experience harassment file a formal complaint;

WHEREAS, according to the EEOC, sexual harassment victim-survivors experience detrimental psychological and physical health effects;

WHEREAS, according to the CDC, 1 in 7 children have experienced abuse or neglect in the last year; and

WHEREAS, according to the National Center for Victims of Crimes, victim-survivors of child sexual abuse have higher rates of being sexually assaulted again as adults, and children who had an experience of rape or attempted rape in their adolescent years are 13.7 times more likely to experience rape or attempted rape in their first year of college.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sexual Assault Awareness Month Recognition Resolution of 2020".

Sec. 2. The Council of the District of Columbia recognizes and supports Sexual Assault Awareness Month, urges residents to show their support for victim-survivors and work to prevent sexual assault, abuse, and harassment, and declares the month of April 2020 as "Sexual Assault Awareness Month" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-246

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2020

To posthumously celebrate the life of Pastor Otis Meriedy Jr., a native Washingtonian and Ward 8 resident for his passion and joy in serving the Ward 8 community.

WHEREAS, Pastor Otis Meriedy Jr. was born on May 2, 1957 in Washington D.C. and raised in a Southeast Neighborhood of Washington D.C.;

WHEREAS, Pastor Otis passed away unexpectedly on January 12, 2020;

WHEREAS, Pastor Otis was a loving father to 2 sons Marcus Jackson and Marque Jackson;

WHEREAS, Pastor Otis married Edith Meriedy on June 17, 1995 and has been wed to her for over 25 years;

WHEREAS, Pastor Otis was a loving husband and father who worked in the District of Columbia as a driver taking clients to doctor appointments and meetings;

WHEREAS, Pastor Otis founded Bless Our Children Ministry 10 years ago with the purpose of sharing the gospel and serving the community;

WHEREAS, Pastor Otis could always be found on a Sunday morning in the pulpit sharing a stirring sermon;

WHEREAS, Bless Our Children Ministry grew over the past 10 years with numerous lives changed for the better after meeting Pastor Otis;

WHEREAS, Pastor Otis was known for greeting everyone he saw with a smile and drew great joy out of serving;

WHEREAS, Pastor Otis enjoyed engaging the community through outreach such as food drives and clothing donations;

WHEREAS, most recently Pastor Otis and Bless Our Children Ministries hosted a Christmas Holiday event where they donated clothes, toys and food to those in need;

WHEREAS, Pastor Otis was overheard at the conclusion of the Christmas event by one of his sons saying “I’ve done my job” with a big grin on his face;

WHEREAS, Pastor Otis has met a lot of people through his volunteering and has made a lasting impact on the Ward 8 community;

ENROLLED ORIGINAL

WHEREAS, Ward 8 will miss Pastor Otis and his huge heart but acknowledge that he is in a better place.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Pastor Otis Meriedy Jr. Posthumous Recognition Resolution of 2020."

Sec. 2. The Council of the District of Columbia Posthumously honors Pastor Otis Meriedy Jr. for his life that he poured out in service to the community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PROPOSED RESOLUTIONS

PR23-787 Mortgage Relief Emergency Declaration Resolution of 2020

Intro. 4-20-20 by Councilmember McDuffie 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 23-75: **FY 2020 Grant Budget Modifications of April 10, 2020**

RECEIVED: 14-day review begins April 21, 2020

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 reprogramming's are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 23-100: Request to reprogram $1,118,130.00 of Fiscal Year 2020 Local funds from the Office of State Superintendent of Education, Division of Health and Wellness was filed in the Office of the Secretary on April 20, 2020. This reprogramming ensures that OSSE's budget is properly aligned to support Health and Wellness objectives and spending.

RECEIVED: 14-day review begins April 21, 2020

OFFICE OF CABLE TELEVISION, FILM, MUSIC AND ENTERTAINMENT

NOTICE OF FINAL RULEMAKING

The Office of Cable Television, Film, Music and Entertainment ("the Agency"), pursuant to authority set forth in the Film DC Economic Incentive Act of 2006, effective March 14, 2007 (D.C. Law 16-290; D.C. Official Code § 39-502 (2012 Repl.)), as re-codified by the Film DC Economic Incentive Amendment Act of 2015, effective March 9, 2016 (D.C. Law 21-81; D.C. Official Code §§ 2-1204.11 *et seq.* (2016 Repl.)), and as amended by the Office of Cable Television, Film, Music, and Entertainment Amendment Act of 2019, effective September 11, 2019 (passed as §§ 2031-2033 of the Fiscal Year 2020 Budget Support Act of 2019, D.C. Law 23-16; 66 DCR 8621 (July 26, 2019)) (the "Act"); and Mayor's Order 2019-105, dated October 28, 2019, hereby gives notice of the adoption of the following amendment to Chapter 31 (Film DC Economic Incentive Grant Fund Program) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking modifies an emergency and proposed rulemaking which was adopted by the Office of Motion Picture and Television Development, a predecessor agency of the Agency, on April 21, 2015 and published in the *D.C. Register* on May 15, 2015 at 62 DCR 6097. The rulemaking expired on August 15, 2015 and a Notice of Final Rulemaking was not adopted. No public comments were received during the comment period. These amendments made to the original emergency and proposed rulemaking would place the Agency's rulemakings in conformity with the Act.

These amendments were published as Notice of Second Proposed Rulemaking in the *D.C. Register* on January 24, 2020, at 67 DCR 636. No public comments were submitted in response to this Notice of Proposed Rulemaking during the thirty (30)-day comment period. However, two technical edits have been made to the rulemaking. First, in Subsection 3101.4(a), a parenthetical was added following the phrase "total qualified expenditures" to add the definition of total qualified expenditures that is also included in the Subsection 3199(1) definitions. The second change is in Subsection 3101.5(a)(14) where the word "film" was deleted in the phrase "bona fide distribution plan" to clarify that all bona fide content distribution plans are considered by the Agency.

The Director adopted these rules as final on April 8, 2020, and they will become effective upon publication of this notice in the *D.C. Register*.

Chapter 31, FILM DC ECONOMIC INCENTIVE GRANT FUND PROGRAM, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is amended in its entirety to read as follows:

CHAPTER 31 FILM, TELEVISION, AND ENTERTAINMENT REBATE FUND PROGRAM

3100 AUTHORITY AND SCOPE

3100 AUTHORITY AND SCOPE

3100.1 Subject to the Act, the Rebate Fund Program is administered by the Agency. The Rebate Fund Program is intended to encourage the use of the District as a site for movies, television shows, broadcasting, and other entertainment productions as well as film and digital media infrastructure projects; to encourage the hiring of District residents as cast and crew; and to encourage the use of District-based service and equipment companies in support of these productions. This rulemaking describes the standards and procedures under which the Agency shall determine whether to provide production or infrastructure support funding to the Rebate Fund applicant.

3101 DETERMINATION OF DC FILM, TELEVISION, AND ENTERTAINMENT REBATE FUND PROGRAM ELIGIBILITY

3101.1 Subject to D.C. Official Code § 2-1204.11, the Director of the Agency determines whether individual movie, television, broadcasting, and other entertainment productions, and the expenditures associated with those projects, qualify for incentives under the Act. Subject to D.C. Official Code § 2-1204.11 and the availability of funds, the recipient of the incentive may receive an amount up to the following:

(a) The sum of thirty-five percent (35%) of the company's qualified production expenditures that are subject to taxation in the District. This category includes production- related expenditures or services contracted through registered District of Columbia business entities, vendors or contractors, unless an out-of-state business entity, vendor or contractor collects and remits applicable District of Columbia sales/use taxes;

(b) The sum of twenty-one percent (21%) of the company's qualified production expenditures that are not subject to taxation in the District, examples include, but are not limited to expenditures for: location site fees, film permits, services of D.C. government officials (*e.g.*, off duty police officers), unprepared food and beverage, and shipping costs if not included in the total costs of an item delivered to the District;

(c) The sum of thirty percent (30%) of the company's qualified personnel expenditures that are subject to taxation in the District;

(d) The sum of ten percent (10%) of the company's qualified personnel expenditures that are not subject to taxation in the District; and

(e) The sum of fifty percent (50%) of the company's qualified job training expenditures.

3101.2 Subject to D.C. Official Code § 2-1204.11(c), the Director of the Agency determines whether individual film and digital media infrastructure projects qualify for an incentive under the Act. Subject to the availability of funds, the recipient of the incentive may receive:

(a) A payment of up to twenty-five percent (25%) of the taxpayer's base infrastructure investment; provided, that if all or a portion of the base infrastructure investment is in a facility that may be used for purposes unrelated to production or postproduction activities, then the base infrastructure investment shall be eligible for up to 25% payment only if the Director of the Agency determines that the facility will support and be necessary to secure production or postproduction activity.

3101.3 In evaluating whether a production or infrastructure project is eligible for rebate funding, the Director of the Agency will take into consideration the mandatory and discretionary criteria set forth in this section. The Agency shall require all applicants meet the mandatory criteria. The Director of the Agency will consider discretionary criteria based on the Agency's assessment of the current needs of the District of Columbia. The discretionary criteria are not intended to be used in a mathematical equation; consequently, mere compliance with a majority of these discretionary criteria does not guarantee receiving a Rebate Fund award. The Agency may also consider other factors in determining whether a particular project is eligible for rebate funding, provided that the additional factors are reasonably related to the goals of the Act.

3101.4 MANDATORY CRITERIA

To be eligible and qualified to receive a Rebate Fund award under D.C. Official Code § 2-1204.11(b) or infrastructure rebate funding under D.C. Official Code § 2-1204.11(c), the applicant must:

(a) Spend at least $250,000 in total qualified expenditures (*i.e.*, the sum of qualified production expenditures plus qualified personnel expenditures) on a qualified production, or invest and expend at least $250,000 on a qualified film and digital media infrastructure project;

(b) File an application with the Agency;

(c) Enter into a rebate agreement with the Agency;

(d) Comply with the terms of the agreement;

(e) Not be delinquent in a tax or other obligation owed to the District or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to the District; and

(f) For purposes of the production rebate, agree to contain a five (5)-second long "Filmed in the District of Columbia" credit and logo provided by the Agency in the final production and a link to the District of Columbia on the project's web page, or an alternative recognition agreed upon by the Agency that offers equal or greater promotional value to the District.

3101.5 DISCRETIONARY CRITERIA

(a) To determine whether to enter into a rebate agreement with the applicant under D.C. Official Code §§ 2-1204.11(b)-(c), the Agency may consider:

(1) Written documentation, verification and proof that the motion picture, television, digital media production or infrastructure project has the necessary financing in place to begin and complete project;

(2) The record of the applicant in completing commitments to engage in a production or film and digital media infrastructure project;

(3) The extent to which the production or film and digital media infrastructure project will attract film, television, and entertainment production to the District;

(4) The extent to which the production or film and digital media infrastructure project will create contracting and procurement opportunities for certified business enterprises (CBE) and business entities registered to do business in the District, including written assurances of the number of CBEs and District businesses the applicant agrees to use, and the establishment of production support vendor agreements with business entities registered to do business in the District;

(5) The extent to which the production or film and digital media infrastructure project will create jobs, job training opportunities, and apprenticeships for District residents;

(6) The extent to which the production or film and digital media infrastructure project will produce media training or employment opportunities for District youth;

(7) The extent to which the production or film and digital media infrastructure project will promote economic development and neighborhood revitalization in the District;

(8) The potential that, in the absence of a payment under D.C. Official Code § 2-1204.11(b), the production or film and digital media infrastructure project will be produced or constructed in a location other than the District;

(9) In the case of a film and digital media infrastructure project, the extent to which an incentive payment will attract private investment for the production of other productions or base infrastructure investments in the District;

(10) The amount and percentage of direct District expenditures;

(11) The extent to which the production will promote the District as a tourist destination;

(12) In the case of a production, how many days the production will film in the District;

(13) In the case of a production, the percentage of the production to be filmed in the District;

(14) In the case of a production, the extent to which the production has a bona fide distribution plan, including the date the completed content will be released for distribution, or has the secured financing in place to effectively self-distribute the content;

(15) The extent to which the production schedule follows a reasonable timeline leading to completion of the project;

(16) Whether the production will establish temporary hotel, production offices, or other occupancy arrangements in the District for its principals and out-of-state crew;

(17) The credentials and references of the production company and its principals and producers;

(18) Whether the applicant or its principals have or plan to establish a long-term, sustainable media production footprint in the District;

(19) Whether the applicant will locate its permanent or temporary production offices in the District;

(20) The existence of an acceptable completion bond and insurance policy in place with industry recognized providers;

(21) The extent to which the applicant has complied with the Agency application and information disclosure requirements;

(22) Whether the applicant has applied for, received, or been denied any incentive support from another District agency for the same project; and

(23) Any other factor considered appropriate by the Agency in order to further the purposes of the Act.

Priority will be given to eligible production companies and infrastructure projects that hold the most promise for benefiting the District by hiring District residents, using local suppliers, being bonded and insured, and having a bona fide distribution plan in place.

3101.6 PROGRAMMATIC DISQUALIFICATION

Any production company or film and digital media infrastructure project applicant may be disqualified from the Rebate Fund Program during the application process or after the incentive has received Rebate Fund pre-qualification, based on programmatic considerations, at the discretion of the Agency and consistent with the purposes of the Act, including, but not limited to:

(a) Failure to begin qualifying project activity within same fiscal year as the date on the Pre-Certification Qualifying Project Letter, unless a waiver is granted by the Agency;

(b) Failure to file any required reports or program related deliverables by any applicable delivery deadline date(s);

(c) Failure to pay minimum wages or scale rate payments required by law or by any applicable collective bargaining agreements;

(d) Failure to submit, upon the conclusion of qualified production activity or completion of construction in the District, a certified accounting and cost report of project expenditures, prepared in accordance with generally accepted accounting principles, that is prepared by an independent certified public accountant selected and paid for by the Rebate Fund Awardee prior to the reimbursement of qualified production expenditures. The Rebate Fund Awardee may engage its regular independent certified public accountant, if applicable, to perform this activity;

(e) Violation of any agreement made with the District with regard to residency, District resident employment, or job development programs;

(f) Failure to adhere to any District or federal laws or regulations governing the production or infrastructure project or applicant;

(g) Loss of financing required to complete the project as originally represented to the Agency during the application process; or

(h) Failure to accurately respond to any questions in or disclose any information required by the application.

3102 APPLICATION PROCEDURES

3102.1 The Agency will provide application forms upon request to parties wishing to apply for a production or infrastructure incentive under the Rebate Fund. The application requires specific information be submitted, as appropriate, concerning the production company, production, production timelines, film and digital media infrastructure project, construction timeline, total anticipated expenditures, anticipated District expenditures and other pertinent information.

3102.2 All financial reports submitted to the Agency must be prepared in accordance with generally accepted accounting principles and certified by an authorized representative of the production company or film and digital media infrastructure project company of record.

3102.3 The Agency will notify the applicant of its program qualification determination in writing within twenty-one (21) business days from the date the Agency receives the Rebate Fund application. If accepted into the Rebate Fund program, the applicant will receive a "Pre-Certification Qualifying Project Letter" and "Program Guidance Document".

3102.4 The Agency requires that the Program Guidance Document be completed and signed by a person authorized to sign on behalf of the applicant and returned to the Agency within fourteen (14) business days from the receipt of the Program Guidance Document.

3102.5 In the event an applicant does not meet the minimum program requirements, or the Rebate Fund application is not accepted or approved for any reason, the Agency will notify the applicant in writing of its disapproval of the Rebate Fund application by sending a Disapproval Letter within twenty-one (21) business days from the date the Agency receives the Rebate Fund application.

3102.6 If the Agency requires additional information from the applicant in order to make a final determination of a Rebate Fund award, the Agency will make a formal request for additional information or deliverables by sending a Request for

Supplementary Information Letter within fourteen (14) business days from the date the Agency receives the Rebate Fund application.

3102.7 The applicant must submit to the Agency the additional information or deliverables for further consideration and review within seven (7) business days of the postmarked date on the Request for Supplementary Information Letter.

3102.8 If the applicant does not submit the supplemental information within seven (7) business days of the Request for Supplementary Information Letter, the Agency will notify the applicant of its Rebate Fund award determination in writing within seven (7) business days.

3102.9 If the applicant does submit the supplemental information within seven (7) business days, the Agency will notify the applicant of its final Rebate Fund award determination in writing within seven (7) business days from the receipt of the supplementary deliverables.

3102.10 In order for the government of the District to reserve Rebate Fund award funds for the Rebate Fund Awardee, the Rebate Fund Awardee must begin verifiable production activity or infrastructure construction in the District during the same fiscal year as the date on the Pre-certification Qualifying Project Letter, unless the Rebate Fund Awardee is granted an "Extension Waiver" from the Agency. The Rebate Fund Awardee must comply with the vendor registration requirements listed in Subsection 3102.11 below.

3102.11 Prior to the disbursement of any Rebate Fund award, the Rebate Fund Awardee will be required to comply with the District's administrative processes for vendor registration and must secure and/or submit the following to the Agency:

1. W-9/ W-8 Form;
2. Master Supplier Form;
3. Data Universal Number System (DUNS) Number;
4. Ariba Network Supplier Number;
5. Clean Hands Certificate from the DC Department of Consumer and Regulatory Affairs;
6. Automatic Clearing House Form (ACH); and
7. Special Event Registration Application (FR-500 or FR-500B).

3103 REBATE FUND AWARD ASSIGNMENT AND DISBURSEMENT PROCEDURES

3103.1 The Rebate Fund Awardee has sixty (60) days after the production or construction is completed to provide the Agency with an expenditure report reviewed by an independent auditor. All required verification of local qualifying expenditures subject to D.C. Official Code §§ 2-1204.11a - 2-1204.11c should be included in the report. The Agency will make available to each Rebate Fund Awardee a copy of

the Rebate Fund Expenditure Report Procedures and the Rebate Fund Expenditure Report Template" to guide the Rebate Fund Awardee and their accounting agents in compliance with the expenditure report deliverable requirement.

3103.2 The Agency, or its accounting agent, will have up to sixty (60) business days to verify and certify the Rebate Fund Awardee's request for the incentive award after the submission of all receipts and proof of qualifying expenditures. The Agency will send the Rebate Fund Awardee an itemized accounting of all certified eligible spending in the form of a Rebate Award Assignment Letter and Rebate Award Authorization for review and execution. The Rebate Award Authorization must be signed by a person authorized to sign on behalf of the Rebate Fund Awardee and returned to the Agency within seven (7) business days of the postmarked date of the Rebate Award Assignment Letter. After the Agency receives that signed Rebate Award Authorization, and all requirements of Subsection 3102.11 have been met, the Rebate Award payment will be issued to the Rebate Fund Awardee within thirty (30) business days. No Rebate Fund award shall exceed the production project's direct District expenditures or the maximum allowable rebate based on the total qualified expenditures verified by the Agency.

3103.3 If the Rebate Fund Awardee wishes to appeal or dispute any of the submissions that have been disqualified or has any other dispute with regard to the findings in the Rebate Award Assignment Letter, the Rebate Fund Awardee must alert the Agency by mail within seven (7) business days of the date on the Rebate Award Assignment Letter. The Rebate Fund Awardee then has up to fourteen (14) business days to prepare its dispute or appeal response and forward it to the Agency in the form of a "Request for Reconsideration Letter." In this letter, the Rebate Fund Awardee can itemize and substantiate any disputed expenditures and make a case for reconsideration. If the Agency does not receive the appeal or dispute letter within the designated time period, the Rebate Fund Awardee waives all rights to dispute and agrees to receive only the incentive awards outlined in the Agency's original Rebate Award Assignment Letter.

3103.4 If the Rebate Awardee submits its Request for Reconsideration Letter within the designated time period, the Agency will have thirty (30) business days to review the appeal and make its final determination. A final Rebate Award Assignment Letter will be sent to the Rebate Awardee by the Agency indicating the final determination of all issues in question. This determination will be final. The final Rebate Award Assignment Letter must be signed by a person authorized to sign on behalf of the Rebate Awardee and returned to the Agency within seven (7) business days of the date of the final Rebate Award Assignment Letter. After the Agency receives that signed letter, and all requirements of Subsection 3102.11 have been met, the Rebate Fund award payment will be sent to the Rebate Fund Awardee within thirty (30) business days. If the Rebate Fund Awardee fails to sign the final Rebate Award Assignment Letter, the Rebate Fund Awardee waives all claims for rights to the Rebate Fund award.

3199 DEFINITIONS

3199.1 For purposes of this section, the following terms shall have the meanings ascribed:

"Above-the-line Crew" means a person or persons employed by an eligible production company for a qualified production such as producers, directors, writers, actors, and casting directors, excluding "below-the-line" crew.

"Act" means the Film DC Economic Incentive Act of 2006, effective March 14, 2007 (D.C. Law 21-81; D.C. Official Code §§ 2-1204.11 *et seq.*), as amended.

"Agency" means the Office of Cable Television, Film, Music and Entertainment.

"Base" Infrastructure Investment" means the cost, including renovation, rehabilitation, fabrication and installation, expended by a person in the development of a qualified film and digital media infrastructure project for tangible assets of a type that are, or under the United States Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes that are physically located in the District for use in a business activity in the District and that are not mobile tangible assets. The term "base infrastructure investment" does not include a qualified production expenditure or a qualified personnel expenditure.

"Below-the-line Crew" means a person or persons employed by an eligible production company for a qualified production after production begins and before production is completed, excluding above-the-line crew such as a producer, director, writer, actor, or other person in a similar position. These positions include but are not limited to the following:

Assistant Director
Art Director
Film Editor
Line Producer
Best Boy Electric
Best Boy Grip
Boom Operator
Character generator (CG) operator (television)
Costume Designer
Director of Photography
Camera operator
Composer
Dolly grip
Gaffer
Graphic Artist

Hair Stylist
Key Grip
Make-up Artist
Production Assistant
Script Supervisor (continuity)
Sound Engineer
Stage Manager (television)
Stage Carpenter
Technical Director (TD) (television)
Video control Broadcast engineering (television)
Visual Effects Editor
Extras & Bit Players
Catering/Craft Service

"Business Day" - Any day, Monday through Friday, that is not a public holiday.

"Digital Interactive Media Production" means any interactive entertainment intended for commercial exploitation, including, but not limited to:

(1) Video game projects;

(2) Console games;

(3) Handheld console games;

(4) Mobile electronic device games; and

(5) Multi-player online video games and virtual worlds that meet the requirement of multi-market distribution via the Internet or any other channel of exhibition.

"Direct District Expenditure" means a qualified production expenditure or a qualified personnel expenditure to a District resident above-the-line or below-the-line crew member.

"Disapproval Letter" means a letter to the program applicant from the Agency that contains a final determination that the production company does not qualify for incentive funding through the Rebate Fund.

"Eligible Production Company" means an entity in the business of producing qualified productions.

"Extension Waiver" means a waiver issued to the Rebate Awardee allowing an extension to the rule mandating all approved Rebate Fund qualifying project activity begin within the same fiscal year as the issuance of the Pre-Certification Qualifying Project Letter.

"Fiscal Year" means the budget and accounting year of the District, commencing on the first day of October of each year and ending on the 30th day of September of the succeeding calendar year.

"Postproduction Expenditure" means a direct expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special or visual effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, addition of sound or visual effects, and related expenses.

"Pre-Certification Qualifying Project Letter" means a letter to the program applicant from the Agency that contains a preliminary determination that the project qualifies for incentive funding pursuant to the Rebate Fund.

"Preproduction Expenditure" means a direct expenditure in the process of preparation for actual physical production, which includes, but is not limited to, activities such as location scouting, hiring of crew, construction of sets, and the establishment of a dedicated production office."

"Production Company" means any individual, partnership, corporation or other business entity that is primarily responsible for the production of a film or television project.

"Qualified Film and Digital Media Infrastructure Project" means a film, video, television, or digital media production or postproduction facility located in the District, movable and immovable property and equipment related to the facility, and any other facility that is a necessary component of the primary facility. The term "qualified film and digital media infrastructure project" does not include a movie theater or other commercial exhibition facility.

"Qualified Job Training Expenditure" means salary and other expenditures paid by an eligible production company to provide qualified personnel with on-the-job training to upgrade or enhance the skills of the qualified personnel as a member of the below-the-line crew for a qualified production.

"Qualified Personnel" means a District resident that is legally eligible for employment or non-residents performing production activity on a qualified production in the District of Columbia.

"Qualified Personnel Expenditure" means an expenditure made in the District directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in the District and is a payment of wages, benefits, or fees to above-the-line or below-the-line crew members and includes a payment to a personal services corporation or

professional employer organization for the services of qualified personnel as below-the-line crew members who are not residents of the District. The term "qualified personnel expenditure" does not include salary, wages, and other compensation for personal services of above-the-line crew members that when combined exceed five hundred thousand dollars ($500,000) in salary, wages, or other compensation for personal services in connection with any qualified production activity.

"Qualified Production" means motion picture, television, or video content created in whole or in part in the District, intended for nationwide distribution or exhibition by any means, including by motion picture, documentary, television programming, commercials, or internet video production and includes a trailer, pilot, or any video teaser associated with a qualified production. A motion picture film production shall include digital interactive media production. The term "qualified production" does not include production that:

(1) Consists primarily of televised news or current events;

(2) Consists primarily of a live sporting event, except boxing, wrestling and mixed martial arts;

(3) Consists primarily of political advertising;

(4) Primarily markets a product or service other than a qualified production; or

(5) Is a radio program.

"Qualified production expenditure" means a preproduction, production, or postproduction expenditures made in the District directly related to the qualified production, including:

(1) Set construction and operation;

(2) Wardrobes, makeup, accessories, and related services;

(3) Photography and sound synchronization, lighting, and related services and materials.

(4) Editing and related services, including film processing, transfers of film to tape or digital format, sound mixing, computer graphic services, special effects services, and animation services;

(5) Rental of facilities in the District and equipment used in the District;

(6) Establishment of office space in the District;

(7) Leasing of vehicles;

(8) Food and lodging;

(9) Music, if performed, composed, or recorded by a District musician or published by a person or company domiciled in the District; and

(10) Any other production expense incurred in the District that is approved by the Mayor.

"Rebate Award Assignment Letter" means a letter drafted by the Agency that itemizes all of the approved qualified spend made by the Rebate Awardee and indicates the final total award amount due to the Rebate Awardee pursuant to the Rebate Fund Program.

"Rebate Award Authorization" means a document drafted by the Agency that identifies the Rebate Award amount assigned to the project and directs the Awardee to "accept" or "dispute" the award. If the Awardee accepts the award, the Awardee is directed to execute the document and return to the Agency along with an invoice for the Rebate Award amount. If the Awardee disputes the assigned award, the Agency will follow the procedures outlined in Subsections 3103.3 and 3103.4.

"Rebate Fund" means the economic rebate fund program established by the Act.

"Rebate Fund Awardee" means a qualifying applicant that has received a Pre-Certification Qualifying Project Letter indicating a preliminary determination by the Agency that the Rebate Fund Program applicant qualifies for a Rebate Fund award.

"Request for Reconsideration Letter" means a letter that itemizes any formal dispute the Rebate Awardee has with any of the findings in the Agency's Rebate Award Assignment Letter and determination of a final Rebate Fund award.

"Request for Supplementary Information Letter" means a letter to the program applicant from the Agency that contains a formal request for the program applicant to submit additional information to the Agency as part of a continuation of the application consideration process.

"Response to Request for Reconsideration Letter" means a letter from the Agency to the Rebate Fund Awardee in response to the Awardee's formal dispute or request for reconsideration in response to the Rebate Award Assignment Letter.

"Total Qualified Expenditures" means the sum of qualified production expenditures plus qualified personnel expenditures. In order for a project to qualify for a Rebate Award, the pre-certified qualifying project must spend at least two hundred fifty thousand dollars ($250,000) in the District of Columbia on "Total Qualified Expenditures."

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2016 Repl.)), hereby gives notice of a correction to the Notice of Final Rulemaking and Zoning Commission Order No. 12-08C, issued by the Zoning Commission of the District of Columbia and published in the *D.C. Register* on February 14, 2020, at 67 DCR 1534, *et seq*.

The final rulemaking amended Subtitle K (Special Purpose Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

Among other changes, the final rulemaking corrected cross-references in Subsections 614.1 and 618.1. The final rulemaking included the following numbering mistakes:

- In Subsection 614.1, erroneously numbered the CBIF use provision as paragraph (b) instead of the correct paragraph (a);
- In Subsection 614.1, erroneously numbered the applicable code and licensing provision as subparagraph (4) instead of the correct subparagraph (3) in correctly numbered paragraph (a); and
- In Subsection 618.1, erroneously referenced paragraph (b) instead of the correct paragraph (a) of Subsection 614.1.

Therefore, the final rulemaking is corrected to amend Sections 614 and 618 to read as follows (the corrections to the final rulemaking are made below (additions are shown in **bold and underline**; deletions are shown in ~~**bold and strikethrough**~~)):

I. Amendments to Subtitle K, SPECIAL PURPOSE ZONES

Section 614, USES PERMITTED BY SPECIAL EXCEPTION (STE), of Chapter 6, SAINT ELIZABETHS EAST CAMPUS ZONES – STE-1 THROUGH STE-19, of Subtitle K, SPECIAL PURPOSE ZONES, is amended to correct erroneous numbering, to read as follows:

614.1 The uses in this section shall be permitted in the StE zones as a special exception if approved by the Board of Zoning Adjustment pursuant to the general standards of Subtitle X and subject to the applicable conditions of each section as stated below:

~~**(a) Except as permitted as a matter of right in the St-E 2 zone …**~~

~~**(b)**~~ **(a)** Community-based institutional facilities (CBIF) for seven (7) to fifteen (15) persons, not including resident supervisors or staff and their families, subject to the criteria set forth in Subtitle K § 618 and the following conditions:

(1) There shall be no other property containing a CBIF …
…

~~(4)~~ **(3)** The CBIF shall meet all applicable code and licensing requirements.
…

Section 618, SPECIAL EXCEPTION – GENERAL USE PROVISIONS (STE), of Chapter 6, SAINT ELIZABETHS EAST CAMPUS ZONES – STE-1 THROUGH STE-19, of Subtitle K, SPECIAL PURPOSE ZONES, is amended to correct an erroneous reference, to read as follows:

618.1 In addition to the general standards set forth in Subtitle X, an applicant for a special exception to establish a community based institutional facility (CBIF) pursuant to Subtitle K § 614.1~~(b)~~ **(a)** shall demonstrate …

These corrections by this Errata Notice to the Notice of Final Rulemaking is non-substantive in nature and does not alter the intent, application, or purpose of the proposed rules. The rules are effective upon the original publication date of the Notice of Final Rulemaking of February 14, 2020.

Any questions or comments regarding this notice shall be addressed by mail to Victor L. Reid, Esq. Administrator, Office of Documents & Administrative Issuances, 441 4th Street, N.W., Suite 520S, Washington, D.C. 20001, email at victor.reid@dc.gov, or via telephone at (202) 727-5090.

PUBLIC EMPLOYEE RELATIONS BOARD

NOTICE OF FINAL RULEMAKING

The Public Employee Relations Board (Board), pursuant to the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Law 2-139; D.C. Official Code § 1-605.02(11) (2016 Repl.)), hereby gives notice of its adoption of a new Chapter 5 (Rules of the Public Employee Relations Board) of Title 6 (Personnel), Subtitle B (Government Personnel), of the District of Columbia Municipal Regulations (DCMR), effective May 1, 2020.

This rulemaking is necessary to amend procedures of the Board and to implement its authority under D.C. Official Code § 1-605.02(11) (2016 Repl.) to conduct its business and carry out its powers and duties. The amendments improve readability, provide clarity, and ensure consistency with relevant statutes, court decisions, and other provisions of law.

The Board's proposed rulemaking was published in the *D.C. Register* on May 3, 2019, at 66 DCR 5660 to receive comments on the proposed rulemaking. The comment period expired September 30, 2019. On November 18, 2019, a public hearing was held to give commenters an additional opportunity to be heard and to solicit any additional comments. A notice of second proposed rulemaking was published in the *D.C. Register* on January 17, 2020, at 67 DCR 384 to receive comments on revisions made as a result of the Board's consideration of initial comments received. On March 19, 2020, the Board met to consider the comments received during the public comment period and consider recommendations from the Executive Director and staff. After consideration of all comments received, the report and recommendations from the Executive Director and staff, the Board voted to amend the DCMR.

The current Chapter 5 of Title 6-B DCMR will be repealed in its entirety and the following amendments and new rules will be adopted

These rules were adopted as final by the Board on March 19, 2020, and will become effective on May 1, 2020.

Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:

Chapter 5, RULES OF THE PUBLIC EMPLOYEE RELATIONS BOARD, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

500 GENERAL PROVISIONS

500.1 The District of Columbia Public Employee Relations Board ("Board") was established in 1979 by § 501(a) of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-605.01(a) (2016 Repl.)) ("CMPA"), and administers the Labor-Management Relations Program for the District of Columbia pursuant to §§ 1701–1718 of the CMPA (D.C. Official Code §§ 1-617.01-1-617.18 (2016 Repl.)).

500.2 The five Board members are appointed by the Mayor with the advice and consent of the Council of the District of Columbia. The Board may appoint such employees as may be required to conduct its business.

500.3 These rules should be construed broadly to effectuate the purposes and provisions of the CMPA.

500.4 The Executive Director is the principal administrative officer of the Board and performs duties designated by the CMPA or assigned by the Board, including the investigation of all petitions, requests, complaints, and other matters referred or submitted to the Board.

500.5 The Executive Director is authorized, among other things, to conduct conferences and hearings, administer oaths, issue subpoenas, sign and issue notices and reports, certify copies of papers and documents, consider requests for extensions of time and requests to intervene in a case, and, pursuant to action by the Board or by an authorized panel thereof, sign and issue decisions and orders made by or on behalf of the Board.

500.6 The Executive Director is authorized to dismiss a case on motion of the complainant or petitioner or for any of the following reasons:

(a) Untimeliness evident on the face of the complaint or petition;

(b) Failure to cure a deficiency in an initial pleading within seven (7) days of a notice of the deficiency given under § 502.14;

(c) Failure to allege facts that, if true, would entitle the complainant or petitioner to relief under the CMPA;

(d) Failure to prosecute the case;

(e) Noncompliance with an investigation of the case; or

(f) Any other ground for dismissal that the Board places within the discretion of the Executive Director.

500.7 A decision by the Executive Director will become the final decision of the Board unless within twenty-eight (28) days after issuance of the decision a party files a motion requesting the Board to reconsider the decision.

500.8 Official documents of the Board, including but not limited to notices, subpoenas, and other communications may be signed on behalf of the Board by the Executive Director or any staff members or agents authorized to sign on the Board's behalf.

500.9 Communications may be addressed to the Public Employee Relations Board at its office, 1100 Fourth Street S.W., Suite E630, Washington, D.C. 20024.

500.10 The business hours of the office are from 8:30 a.m. to 4:45 p.m., Monday through Friday, exclusive of holidays recognized by the Government of the District of Columbia.

500.11 The regular meetings of the Board are held on the third Thursday of each month at the Board's office, unless otherwise specified. The Board may hold a special meeting at any time at the request of the Chair, any member of the Board, or the Executive Director.

500.12 The Executive Director must give the public timely notice of all meetings of the Board. The notice must comply with D.C. Official Code § 2-576 (2016 Repl.).

500.13 The official acts of the Board must be recorded in the minutes of the Board. The Executive Director must maintain the minutes of the Board.

500.14 The Board is not bound in any way by any action or statement of an individual member or group of members of the Board, except when that action or statement is authorized by an official act of the Board or the provisions of this chapter.

500.15 Unless specifically provided for by a majority of the Board members present, only members of the Board, the Executive Director, staff, and agents of the Board may address the Board or participate in the discussion of matters at regular monthly, special, or emergency meetings of the Board.

500.16 The Board must make its decisions after consideration of the parties' briefs and the records submitted by the parties. The Board may order additional briefs where it deems appropriate. The Board may also order oral arguments on its own motion or upon motion of a party.

500.17 Three (3) members constitute a quorum. No decision of the Board will be valid unless supported by the majority of a quorum.

500.18 If a Board member cannot attend a meeting in person, that member may participate in the Board meeting via teleconference upon approval of the Chair.

500.19 If a Board member cannot attend a meeting in person or via teleconference, that Board member must provide reasonable notice to the Chair and the Executive Director.

500.20 If the Government of the District of Columbia is closed due to weather or a national emergency or other event, then a meeting of the Board scheduled to occur during the closure is deemed cancelled.

500.21 The public may inspect or copy the rules, decisions, and public records of the Board to the extent and in the manner authorized by the District of Columbia Freedom of Information Act, D.C. Official Code §§ 2-531—2-540.

500.22 A labor organization that represents employees of the District of Columbia Government must send the Board the name, telephone number, email address, and mailing address of each appointed and elected office holder.

501 COMPUTATION AND EXTENSIONS OF TIME

501.1 When an act is required or allowed to be done within a specified time by these rules, the Board, Chair, or the Executive Director may, upon timely request, order the time period extended or reduced to effectuate the purposes of the CMPA, except that no extension may be granted for the filing of initial pleadings.

501.2 A motion for an extension or reduction of time must be in writing and made at least three (3) business days before the expiration of the filing period. The Executive Director may allow exceptions to this requirement for good cause shown by a party.

501.3 A motion for an extension or reduction of time must indicate the purpose and reason for the requested extension or reduction of time and the positions of all interested parties regarding the change.

501.4 Whenever a period of time is measured from the service of a pleading and service is by U.S. mail, five (5) days will be added to the prescribed period.

501.5 In computing any period of time prescribed by these rules, the time begins to run the day after the event occurs. Whenever the last day to file a document falls on Saturday, Sunday, or a District of Columbia holiday, the period extends to the next business day. All prescribed time periods are calendar days, unless specified as business days.

502 FILING AND SERVICE OF PLEADINGS

502.1 All pleadings filed with the Board must be filed electronically through File & ServeXpress, pursuant to § 561, except those filed by a *pro se* party. All pleadings must include the following:

(a) The title of the proceeding (for example, unfair labor practice complaint, standards of conduct complaint, arbitration review request, petition for compensation unit determination, enforcement petition, negotiability appeal, and petition for unit clarification) and the case number, if known;

(b) The name, title, address, and telephone number of the person signing and the date of signing;

(c) The name, mailing address, email address, and telephone number of the representative, if any, of the party filing the pleading; and

(d) A signed certificate of service naming all other parties and attorneys or representatives, if any, on whom concurrent service was made. The certificate must state how and when such service was made.

502.2 As illustrated in the following example, all pleadings must contain a caption setting forth the name of the Board, the title of the proceeding, the case number, if known, and the title of the pleading:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

[Name of Party] Complainant or Petitioner	)	
v.	)	PERB Case No. ___
[Name of Party] Respondent	)	

[Title of the Proceeding]

502.3 All pleadings submitted to the Board must be typed or legibly hand-written and limited to twenty (20) double-spaced pages. Requests to increase the page limitation must be submitted to the Executive Director at least three (3) business days before the pleading is due. The page limitation of this rule does not apply to pleadings filed with the trier of fact when the trier of fact is not the Board itself.

502.4 An initial pleading must be filed electronically through File & ServExpress, pursuant to § 561, unless filed by a *pro se* party. An initial pleading must include the following:

(a) The name, mailing address, email address, and telephone number of each party filing the pleading and, if known, of each respondent;

(b) A concise statement of the nature of the case, the basis for the claim, and the relief requested;

(c) A concise statement of all information deemed relevant, which must be set forth in numbered paragraphs; and

(d) A statement as to the existence of any related proceedings or other proceedings involving matters related to the complaint, if known, and the status or disposition of those proceedings.

502.5 A *pro se* party may file an initial pleading by personal delivery during the Board's business hours established in § 500.10. A *pro se* party may utilize the Board's public access terminal to upload the document free of charge.

502.6 An initial pleading must be served on the respondent or respondents by personal delivery, commercial delivery, or U.S. mail.

502.7 An initial pleading that is filed will be assigned a filing date and case number. The Board or its designated representative will review the pleading to determine whether it was filed in accordance with the procedural requirements of the CMPA and these rules.

502.8 An initial pleading may be amended as a matter of course before an answer is filed. Once an answer is filed, the initial pleading may be amended by motion. Unless the Board orders otherwise, an answer to an amended pleading must be made within the time remaining to respond to the original pleading or no later than fourteen (14) days after service of the amended pleading, whichever is later.

502.9 A complainant or petitioner may withdraw an initial pleading without prejudice at any time before an answer is filed. After an answer is filed, an initial pleading may be withdrawn only by order of dismissal by the Board or the Executive Director. Unless the order states otherwise, the dismissal is without prejudice.

502.10 Once a respondent has filed a notice of appearance, subsequent pleadings must be filed with the Board electronically through File & ServeXpress. A party submitting a subsequent pleading to the Board must concurrently serve a copy of the pleading on every other party, unless otherwise directed by these rules or by instructions from the Board. If a party is represented by an attorney or other representative, serving the attorney or representative is sufficient.

(a) A *pro se* party must be served by personal delivery, commercial delivery, or U.S. mail, unless a *pro se* party has waived such method of service in writing and agreed to be served by email or electronically or has used File & ServeXpress for a filing in the case. A *pro se* party may serve a party by File & ServExpress, personal delivery, commercial delivery, or U.S. mail.

502.11 A party named as a respondent in an initial pleading must file an answer no later than fourteen (14) days after service of the initial pleading, unless otherwise stated in these rules. An answer must contain a statement of its position with respect to the allegations set forth in the initial pleading. An answer must also include a statement of any affirmative defenses.

502.12 An answer must include a specific admission, denial, or statement that the respondent is without knowledge to admit or deny each allegation in the initial pleading. A statement of a lack of knowledge to admit or deny will operate as a denial. Admissions or denials may be made to all or part of an allegation but must address every allegation.

502.13 A respondent who fails to file a timely answer may be deemed to have admitted the material facts alleged in the initial pleading and to have waived a hearing. A failure to deny an allegation may also be deemed an admission of that allegation.

502.14 If review of a pleading reveals that the pleading does not comply with the procedural requirements of the CMPA or these rules, the Executive Director will notify the party or the party's representative of the deficiencies in the pleading and allow seven (7) days from the date of notice for the deficiencies to be cured. Failure to cure deficiencies in an initial pleading within that time may result in dismissal of the case without further notice. An amended pleading filed to cure deficiencies pursuant to a notice from the Executive Director relates back to the date of the original pleading.

502.15 An interested party who wishes to intervene in a pending proceeding must promptly file a request to intervene and state the grounds for intervention.

502.16 The Board or the Executive Director may grant or deny a request for intervention, taking into consideration the nature of the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.

502.17 When there is a change in representation, the new representative of a party must promptly file a notice of appearance in the case and serve a copy on all parties to the proceeding.

503 EXCLUSIVE RECOGNITION AND NONCOMPENSATION UNIT DETERMINATION

503.1 A labor organization seeking exclusive recognition as the representative for an appropriate unit may file a "recognition petition." The recognition petition must include the following:

(a) A description of the proposed unit, including the name, address, and telephone number of the employing agency (and agency subdivision, if any), the number of employees in the proposed unit, and the general classifications of employees;

(b) The name, address, and telephone number of any other labor organization known to the petitioner that claims recognition as a representative of any employees in the proposed unit;

(c) A statement as to whether there is a collective bargaining agreement in effect covering the proposed unit or any part of it, including the effective date and expiration date of any such agreement;

(d) A statement as to how the employees in the proposed unit share a community of interest, by virtue of such common factors as skills, working conditions, supervision, physical location, organizational structure, distinctiveness of functions performed, or the existence of integrated work processes;

(e) A roster of the petitioner's officers and representatives, a copy of its constitution, articles of incorporation, and bylaws, if any, and a statement of its objectives; and

(f) A statement that the petitioning labor organization subscribes to the standards of conduct for labor organizations, as set forth in § 1703(a) of the CMPA, D.C. Official Code § 1-617.03(a) (2016 Repl.).

503.2 A petition for exclusive recognition must be supported by a showing of interest, not more than one year old, that at least thirty percent (30%) of the current employees in the proposed unit desire representation by the petitioner. Evidence of the employees' showing of interest must be submitted to the Board by commercial delivery, U.S. mail, or personal delivery to the Board's office. Forms of evidence may include the following:

(a) Current dues deduction authorizations;

(b) Notarized membership lists;

(c) Membership cards;

(d) Individual authorization cards or petitions signed and dated by employees indicating their desire to be represented by the labor organization; or

(e) Other evidence as determined appropriate by the Board.

503.3 Upon service of the recognition petition by the petitioner, the agency must prepare an alphabetical list of all employees in the proposed unit for the last full pay period before the filing of the petition. The list must distinguish between professional and nonprofessional employees. This list, along with any comments concerning the petition, must be served on the Board no later than fourteen (14) days after the agency's receipt of the petition. The Executive Director may request additional payroll records from the agency in order to properly investigate the showing of interest.

503.4 The Board or its designee must determine whether the petitioner's evidence adequately shows that at least thirty percent (30%) of the employees in the proposed unit desire representation by the petitioner. While signed and dated authorization cards, in accordance with § 503.2, will always be accepted as adequate evidence, other forms of evidence may be considered adequate by the Board as prescribed under § 503.2 and § 503.12. The showing of interest determination may not be subject to appeal.

503.5 If the petition is amended to seek to represent a unit different from that in the original petition, the amended petition must be accompanied by a thirty percent (30%) showing of interest in the new unit.

503.6 In cases where an agency's staffing fluctuates due to the seasonal nature of the work or in cases where a unit is expanding, a showing of interest is required only among those employees employed at the time the petition was filed.

503.7 If the status of employees in the proposed unit or the appropriateness of the unit is disputed, the Executive Director may conduct proceedings to resolve the dispute.

503.8 If the Executive Director is unable to resolve issues concerning the eligibility of employees or unit appropriateness, a hearing may be ordered in the matter. If the hearing examiner recommends a change in the unit, the petitioner may submit additional evidence to establish a showing of interest in the changed unit, no later than seven (7) days after the issuance of the hearing examiner's report and recommendation.

503.9 The Board must maintain the confidentiality of the showing of interest submitted in support of a petition filed under this section or § 506, and this evidence will not be available for public access.

503.10 If the requirements of §§ 503.1, 503.2, and 503.3 are met, the Executive Director must prepare a notice of recognition petition to be posted by the agency in conspicuous places on all employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) consecutive days. The notice must include the following:

(a) The name of the petitioner;

(b) A description of the proposed unit;

(c) The date the notice was posted;

(d) The name of any other labor organization currently representing employees in the proposed unit; and

(e) The requirements for intervention by any other labor organization.

503.11 A labor organization may file an intervention petition within the period required by the notice. The intervention petition must contain the same information as required of a petitioner under § 503.1.

503.12 An intervention petition must be accompanied by:

(a) A showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the petition for exclusive recognition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) must accompany the intervenor's petition; or

(b) Where applicable, a statement that the intervenor is the incumbent exclusive representative of the employees in the proposed unit. The incumbent labor organization must be allowed to intervene as a matter of right without submitting any showing of interest.

503.13 If the intervenor's showing of interest is insufficient, the request for intervention will be denied.

503.14 A petition for exclusive recognition will be barred if:

(a) During the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, a certification of representative has been issued, or the Board has determined the compensation unit placement; or

(b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit unless:

(1) The agreement is of three (3) years or shorter duration and the petition is filed between one hundred twenty (120) and sixty (60) days before the scheduled expiration date or after the stated expiration of the contract; or

(2) The agreement has a duration of more than three (3) years and the petition is filed after the contract had been in effect for nine hundred seventy-five (975) days.

503.15 Upon the filing of a petition under § 503.1 or § 503.11, the Executive Director may conduct a preliminary investigation. Thereafter, the Board must take appropriate action, which may include any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing;

(e) Conducting an election; or

(f) Approving the petition certifying the labor organization pursuant to § 503.17.

503.16 Hearings under § 503.15(d) are investigatory and not adversarial.

503.17 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the Board may approve the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than fifty percent (50%) support for the petitioning labor organization), such as documentary proof not more than one year old, indicating that a majority of employees wish to be represented by the petitioning labor organization. The Executive Director must determine majority status and must recommend to the Board whether certification should be granted without an election.

(a) If the proposed unit contains professionals and nonprofessionals, recognition without an election may be permitted only if a majority of the professional employees petition for inclusion in the unit.

503.18 If the choice available to employees in an appropriate unit includes two (2) or more labor organizations, the Board must order an election in accordance with these rules.

504 COMPENSATION UNIT DETERMINATION

504.1 An agency, a labor organization, or a group of labor organizations may file a "petition for compensation unit determination" seeking determination of an appropriate unit for the purpose of negotiations for compensation.

504.2 The Board may on its own motion initiate proceedings for the determination of units for compensation bargaining absent the filing of a petition by any party.

504.3 A petition for the determination of a compensation unit must include the following:

(a) The name and address of each personnel authority, agency, and labor organization that might be affected by the petition;

(b) A description of the proposed unit, setting forth the numbers and types of employees to be included;

(c) A list of the pay, retirement, and other compensation systems to be included in the proposed unit; and

(d) A showing that the proposed unit consists of broad occupational groups so as to minimize the number of pay systems.

504.4 Upon the filing of a petition or commencement of proceedings by the Board on its own motion for the determination of a compensation unit, the Executive Director must prepare an official notice to be posted by the employing agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's transmittal of the notice and keep it posted for fourteen (14) consecutive days thereafter. The notice must indicate the following:

(a) The party or parties that filed the petition or initiated the proceedings;

(b) Each labor organization that might be affected by the proposed unit;

(c) The proposed unit description;

(d) A list of the compensation systems proposed to be included;

(e) The date the notice was posted; and

(f) A statement that within fourteen (14) days after posting of the notice any interested labor organization or person may file written comments.

504.5 A labor organization may file a request to intervene in the case and any party may file comments concerning the proposed unit.

504.6 The Executive Director must serve a copy of the notice on each labor organization that has exclusive recognition for any employees in the proposed unit and on each affected agency or its representative.

504.7 Any labor organization that has exclusive recognition for any employees in the proposed unit must be permitted to intervene.

504.8 After the filing of a petition or upon commencement of a proceeding, the Executive Director may conduct a preliminary investigation.

504.9 In making its determination regarding an appropriate compensation unit, the Board may take any one or more of the following actions:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Conducting a hearing; or

(e) Granting the petition or determining a unit.

504.10 Hearings under § 504.9(d) are investigatory and not adversarial.

505 MODIFICATION OF UNITS

505.1 A petition for unit modification of either a compensation or non-compensation unit may be filed by a labor organization or by a labor organization and an agency jointly. A unit modification may be sought for any of the following purposes:

(a) To reflect a change in the identity or statutory authority of the agency;

(b) To add to an existing unit unrepresented classifications or employee positions created since the recognition or certification of the exclusive representative;

(c) To delete classifications that are no longer in existence or that, by virtue of changed circumstances, are no longer appropriate to the established unit; or

(d) To consolidate two (2) or more bargaining units within an agency that are represented by the same labor organization.

505.2 A petition for unit modification must include the following:

(a) The names and addresses of all labor organizations and agencies affected by the proposed change;

(b) A description of each existing unit and the proposed unit, including the name and address of the employer, the number of employees in the existing and proposed units, and the personnel and payroll classifications of the employees;

(c) The date of recognition or certification of each labor organization for the affected units;

(d) A copy of the documentation evidencing any existing recognition or certification; and

(e) A statement of the reasons for the proposed modification.

505.3 Upon the filing of a petition for unit modification, the Executive Director must prepare an official notice to be posted by the agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) days thereafter. The notice must indicate the following:

(a) The party or parties who filed the petition or initiated the proceedings;

(b) The names and addresses of all labor organizations that would be affected by the proposed modification;

(c) The existing and the proposed unit descriptions;

(d) A list of the compensation systems proposed to be included;

(e) The date the notice was posted; and

(f) A statement that, within fourteen (14) days after posting of the notice, any labor organization or person that would be affected may file written comments.

505.4 An affected labor organization may file a request to intervene in the case and any party may file comments concerning the proposed modification. All comments or requests to intervene must meet the requirements of § 502.

505.5 Upon the filing of a petition under this section, the Board may direct a preliminary investigation and thereafter must take appropriate action, which may be any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing; or

(e) Granting the modification sought.

505.6 Hearings under § 505.5(d) are investigatory and not adversarial.

506 CLARIFICATION OF UNITS

506.1 A petition filed for clarification of an existing unit may be filed by the agency or by the exclusive representative of the unit. The petition must include the following:

(a) A description of the existing unit;

(b) A copy of the documentation evidencing any existing recognition or certification; and

(c) A statement of why a clarification of the existing unit is requested.

506.2 The Board must grant or deny the petition following an appropriate investigation and recommendation to the Board by the Executive Director or a hearing examiner.

507 DECERTIFICATION PETITIONS

507.1 The purpose of a decertification proceeding is to determine whether a majority of the employees in a bargaining unit maintain their desire to be represented by the existing exclusive bargaining representative.

507.2 A petition to decertify an exclusive representative of a bargaining unit may be filed with the Board by the District or by an employee or employees in the bargaining unit. The petition must be served on the exclusive representative in accordance with § 502.6 and must include the following:

(a) The name, address, and telephone number of the petitioner and of the petitioner's representative if any. (A petitioner's representative under this rule may not be a labor organization.)

(b) The name, address, and telephone number of the exclusive representative.

(c) The name, address, and telephone number of the employer;

(d) A specific and detailed description of the bargaining unit including employee classifications or job titles;

(e) The approximate number of employees in the bargaining unit;

(f) The date that the exclusive representative was recognized and the method of recognition, if known; and

(g) A brief description of any collective bargaining agreements covering any employees in the bargaining unit, including the expiration dates of the agreements.

507.3 A petition for decertification filed by an employee or employees must be accompanied by a showing that at least thirty percent (30%) of the employees in the bargaining unit no longer desire to be represented by the exclusive representative.

507.4 An employing agency may not assist an employee or group of employees in the filing of a decertification petition.

507.5 A petition for decertification filed by the District must be accompanied by a sworn statement and supporting evidence of lack of activity by the exclusive representative.

507.6 The exclusive representative may file a response to the decertification petition no later than fourteen (14) days after the date of service of the petition. If the exclusive representative does not file a timely response indicating that it desires to continue to represent the employees, the Board may issue a decertification order.

507.7 If the exclusive representative files a timely response indicating that it desires to continue to represent the employees and the requirements of § 507.2 and § 507.3 or § 507.5 have been met, the Board must order an election to determine majority status.

507.8 The Board will not entertain a decertification petition in the following circumstances:

(a) Within the preceding twelve (12) months, the Board has certified the results of an election among all or some of the employees in the bargaining unit or has determined the compensation unit placement;

(b) The exclusive representative of the employees in the bargaining unit was voluntarily recognized within the preceding twelve (12) months and the recognition was certified by the Board; or

(c) A collective bargaining agreement is in effect covering employees in the bargaining unit except in the following circumstances:

(1) The agreement is of three (3) years or shorter duration and the petition is filed between one hundred twenty (120) and sixty (60) days before the scheduled expiration date or after the stated expiration of the contract; or

(2) The agreement has a duration of more than three (3) years and the petition is filed after the contract had been in effect for nine hundred seventy-five (975) days.

507.9 Upon receiving a timely response from the exclusive representative pursuant to § 507.6, the Board must transmit a copy of the decertification petition to the agency. The agency must prepare an alphabetical list of all employees in the unit for the last full pay period before the filing of the petition. This list, along with any comments concerning the petition, must be served on the Board no later than fourteen (14) days after the Board's service of the petition on the agency.

507.10 The Board or its designee must determine the adequacy of the showing of interest.

507.11 If the requirements of §§ 507.2, 507.3 and 507.9 are met, the Executive Director must prepare a notice to be posted by the agency in conspicuous places on all employee bulletin boards at work sites of employees in the unit and to be distributed in a manner by which notices are normally distributed. The agency must post the notice no later than seven (7) days after the Board's service of the notice and keep it posted for fourteen (14) consecutive days. The notice must include the following:

(a) The name of the petitioner;

(b) A description of the unit;

(c) The date the notice was posted;

(d) The name of the labor organization currently representing employees in the unit; and

(e) The requirements for intervention by any other labor organization.

507.12 A labor organization may file an intervention petition within the period required by the notice. The petition must contain the same information as required under § 507.2.

507.13 An intervention petition must be accompanied by a showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the decertification petition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) must accompany the intervenor's petition.

507.14 Upon the filing of a petition pursuant to § 507.2 or § 507.12, the Executive Director may conduct a preliminary investigation. Thereafter, the Board must take appropriate action, which may include any one or more of the following:

(a) Approving a withdrawal request;

(b) Dismissing the petition;

(c) Conducting an informal conference;

(d) Holding a hearing;

(e) Conducting an election.

507.15 Hearings under § 507.14(d) are investigatory and not adversarial.

507.16 When there is no intervening labor organization, an election to decertify an incumbent exclusive representative is not held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election is held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

510 ELECTION PROCEDURES: GENERAL

510.1 Representation elections will be conducted by the Board or by an impartial body selected by the mutual agreement of the parties. The parties to a representation election must inform the Board as to whether they have selected by mutual agreement an impartial body to conduct the election. If they inform the Board that they have not selected an impartial body, the Board will conduct the election.

510.2 All elections must be by secret ballot.

510.3 The agent of the Board or other impartial body conducting the election must furnish to the agency and to the labor organization(s) that are parties to the proceeding an official notice setting forth the details of the election. This notice must be posted not less than seven (7) days before the date of the election and must remain posted until after the election. Copies of the Notice must be distributed in a manner by which notices are normally distributed.

510.4 In any election, each party to the election may be represented at each polling place by an equal, predesignated number of poll watchers of its choice, subject to limitations that are either prescribed by the agent of the Board or other impartial body or mutually agreed upon by the parties and approved by the Board.

510.5 Each party must submit the names(s) of its designated observer(s) to the agent of the Board or other impartial body before the day of the election. The observers represent their principals, challenging voters and generally monitoring the election process.

510.6 When an election involves a bargaining unit containing professional and non-professional employees, all professional employees must be given two (2) ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any.

510.7 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the employing agency has submitted a written waiver of a hearing, and the Board cannot determine whether a majority of the proposed bargaining unit wish to be represented by the petitioning labor organization or the employing agency chooses not to voluntarily recognize the appropriate unit, an election pursuant to §§ 512 or 513 will be conducted.

510.8 Parties are encouraged to enter into election agreements. If the parties are unable to agree on procedural matters—specifically, the eligibility period, method of election, dates, hours, or locations of the election—the Executive Director will decide election procedures and issue a direction of election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

510.9 When there is no intervening labor organization, an election will not be held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor and the petitioner provides the Executive Director with a written request to withdraw the petition, an election will be held if the intervenor presents a thirty percent (30%) showing of interest within the time period established by the Executive Director.

510.10 The parties may consent to an election without holding a hearing on the appropriateness of the unit.

511 ELECTION PROCEDURES: ELIGIBILITY

511.1 To be eligible to vote in an election, an employee must have been employed in the bargaining unit during the pay period before the date on which the Board ordered the election or as otherwise determined by the Board or consented to by the parties and must still be employed in the bargaining unit on the date of the election.

511.2 The employer must file with the Board and the labor organization(s) a list of employees eligible to vote in the election no later than seven (7) days after approval of an election agreement or seven (7) days after the Board or the Executive Director has directed an election, whichever occurs first. Such list must also include the home addresses of the eligible employees.

511.3 To be eligible to vote in a runoff election, an employee must have been eligible to vote in the original election and still be employed in the bargaining unit on the date of the runoff.

511.4 The agent of the Board agent or other impartial body or any authorized observer may challenge the eligibility of any voter and in so doing must state the reason for the challenge. A voter whose identity has been challenged may establish identity by showing any piece of identification acceptable to the agent of the Board or other impartial body.

511.5 An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the agent of the Board or other impartial body are unable to resolve the challenged ballot(s) before the tally of ballots, the agent of the Board or other impartial body will impound and preserve the unresolved challenged ballot(s) until the Executive Director or the Board makes a determination regarding the eligibility of the voter.

511.6 A challenged ballot must be placed in a "challenged ballot" envelope. The envelope must be sealed by the agent of the Board or other impartial body and initialed by the observers. The agent of the Board or other impartial body must write the reason for the challenge and the voter's name on the envelope and place the envelope in the ballot box.

511.7 The agent of the Board or other impartial body should attempt to resolve ballot challenges to the satisfaction of both parties before the ballots are counted.

512 ELECTION PROCEDURES: ON-SITE ELECTIONS

512.1 The procedures set forth in this section apply to an election conducted on-site, unless otherwise agreed to by the parties and approved by the Board.

512.2 The agent of the Board or other impartial body must designate the areas in proximity to the polling place in which electioneering will be prohibited.

512.3 The agent of the Board or other impartial body must examine the ballot box in the presence of the observers immediately before opening the polls and must seal the ballot box following the observers' inspection of the polls and the ballot box. The seal must allow for only one opening on the top of the ballot box for voters to insert their ballots.

512.4 A voter casts a ballot by marking an (X) or a (√) in a circle or block designating the voter's choice in the election.

512.5 If a voter inadvertently spoils a ballot, the voter may return the ballot to the agent of the Board or other impartial body who must give the voter another ballot. The spoiled ballot must be placed in a "spoiled ballot" envelope. The envelope must be sealed by the agent of the Board or other impartial body and initialed by the observers. The agent of the Board or other impartial body must place the envelope in the ballot box.

512.6 A voter should fold the ballot so that no part of its face is exposed and on leaving the voting booth deposit the ballot in the ballot box.

512.7 Each ballot box must be sealed by the agent of the Board or other impartial body and initialed by the observers after each election session and so kept until the re-

opening of the polls and must remain in the custody of the agent of the Board or other impartial body until the tallying of the ballots.

512.8 Upon request of a voter, the agent of the Board or other impartial body may privately assist the voter to mark the ballot.

512.9 Upon conclusion of the polling, ballots will be tallied in accordance with § 514.

512.10 If there is only one polling location, ballots will be tallied at the polling site. If there is more than one polling location, the agent of the Board or other impartial body must, upon conclusion of the voting, seal the ballot boxes, each of which must be initialed by the observers. The agent of the Board or other impartial body must transport them to a predetermined central location. When all of the ballot boxes have arrived, the agent of the Board or other impartial body must open the ballot boxes in the presence of observers and commingle the ballots for tallying.

513 ELECTION PROCEDURES: MAIL BALLOTS

513.1 Taking into consideration the desires of the parties, the Executive Director may direct an election to be conducted by mail when the schedules, shifts, or work sites of employees prevent them from being present at a common location at common times.

513.2 Unless otherwise agreed to by the parties and approved by the Board, the procedures in this section apply to an election conducted by mail ballot.

513.3 When an election is conducted by mail, the agency must, at least fourteen (14) days before the date of the election, provide to the Board a copy of the employee list in the form of mailing labels or in a format in which the information can be readily transferred to mailing labels. The list must distinguish between professional and nonprofessional employees.

513.4 The agent of the Board or other impartial body must mail each eligible voter a packet containing a ballot, ballot envelope, pre-addressed stamped return envelope, and instructions.

513.5 The instructions must advise the voter to mark the ballot with an (X) or a (√) in the circle or block designating a choice in the election without identifying marks, place the ballot in the ballot envelope, seal the ballot envelope, place the ballot envelope in the return envelope, seal the return envelope, sign the return envelope, and mail the return envelope to the designated post office box or address provided in the instructions. The instructions must also advise the voter of the date by which envelopes must be received. Ballots not returned by U.S. mail will not be accepted.

513.6 When the election includes a vote on a combined professional/nonprofessional unit, the agent of the Board or other impartial body must mail the professional and

nonprofessional employees separate ballots and ballot envelopes for unit preference and for choice of representative. The instructions must advise these voters to mark the ballots separately, to place them in their respective ballot envelopes, and to place both ballot envelopes in the return envelopes.

513.7 The parties may designate an equal number of representatives, as set by the Board, to observe the tallying of the ballots. The ballots will be tallied on a date and location set by the Board.

513.8 Ballots must remain unopened and be kept in the custody of the agent of the Board or other impartial body until the date set for tallying. On the date set for tallying, the representatives and the Agent may challenge any ballots before the opening of the return envelopes.

513.9 Only ballots received prior to the tally will be counted.

513.10 Challenged ballots must be handled in accordance with § 511.6.

513.11 All ballots that have not been challenged must be separated from their return envelopes and commingled before tallying. The ballots will be tallied in accordance with § 514.

514 ELECTION PROCEDURES: TALLYING

514.1 Representation will be determined by the majority of the valid ballots cast. Each party may designate representative(s) to observe the tallying of the ballots. Ballots must be tallied in the presence of the parties' observers. The count must proceed as set forth in this section.

514.2 The agent of the Board or other impartial body must segregate the challenged ballots. The challenged ballots will be opened and counted only if the challenges have been resolved to the satisfaction of the parties and the challenged ballots could be determinative of the outcome of the election.

514.3 When the election includes a vote on a combined professional/nonprofessional unit, the ballots on unit preference must be tallied first. If a majority of the professional employees casting valid ballots votes for a combined unit, the ballots on choice of representative, if any, must be tallied with the ballots of nonprofessional employees. If a majority of professional employees voting fails to vote for a combined unit, the ballots on choice of representative, if any, must be tallied separately.

514.4 The Board must preserve all ballots until the conclusion of any related proceedings.

514.5 The participants in the tally are the agent of the Board or other impartial body and official observers, in the numbers necessary. Members of the press and other

interested persons may be present to the extent permitted by the physical facilities and the permission of the owner of the premises being used. The agent in charge of the election has discretion to limit the number of participants.

514.6 The intent of the voter, if clearly ascertainable from the ballot itself, must be followed in assessing the marking of the ballot.

514.7 If the ballot is defaced, torn, or marked in a manner that makes it not understandable or that identifies the voter, the ballot must be declared void.

514.8 If challenges to ballots have not been resolved to the satisfaction of the parties and the challenges are sufficient in number to affect the outcome of the election, the Board must resolve the challenges in accordance with §§ 515.3 and 515.4.

515 CERTIFICATION OF ELECTION RESULTS

515.1 The Executive Director must prepare a report of election results that includes a tally of the ballots. The Executive Director must serve the report on each party, attaching a certificate of service.

515.2 No later than seven (7) days after the tally of ballots has been served, any party to the election proceeding may file with the Board objections to the election procedure or to any conduct that might have improperly affected the results of the election. The objecting party must include a specific statement of the reasons for each objection.

515.3 If the challenged ballots are sufficient in number to affect the results of the election or if objections are filed, the Executive Director, or other person designated by the Board, must conduct an investigation and make a report of findings to the Board. If the Board has reason to believe that such allegations or challenges may be valid, the Board must order a hearing on the matter within two (2) weeks after the date of receipt of the objections. Any hearing held pursuant to this subsection is investigatory and not adversarial.

515.4 Following its consideration of all challenges and objections, the Board may:

(a) Set aside the election and order that a new election be conducted;

(b) Issue a certification of representative; or

(c) Issue a certification of results that no union has been selected.

515.5 Except as provided in D.C. Official Code § 1-617.10(d), the Executive Director, on behalf of the Board, must certify the results of each election no later than ten (10) business days after the tally of ballots has been served.

515.6 Where there are three (3) or more choices on the ballot, an election in which (after any determinative challenges have been resolved) none of the choices receives a majority of the valid votes cast is considered an inconclusive election. In such case, the Board must order that another election be conducted between the two (2) choices on the original ballot that received the highest and next highest number of votes. In the event of a tie in the second election, the Board must certify the election results indicating that no representative was selected.

516 PETITIONS TO AMEND CERTIFICATION

516.1 An exclusive representative may file a petition with the Board to amend its certification when there is a change in the identity of the exclusive representative that does not raise a question concerning representation (*e.g.*, whether the employees have designated a particular organization as their bargaining agent). A change in the identity of the representative that does not raise a question concerning representation may include a change in the name of the labor organization.

516.2 The petition must contain the following:

(a) The name, address, and telephone number of the employer as shown in the certification;

(b) The name, address, and telephone number of the exclusive representative, as shown in the certification;

(c) The name, address, and telephone number of the petitioner's representative; and

(d) A description of the proposed amendment.

516.3 The Board may grant or deny the petition following an appropriate investigation, which may include a hearing and recommendation to the Board by the Executive Director.

520 UNFAIR LABOR PRACTICE COMPLAINTS

520.1 The rules in this section detail the procedures for initiating, processing, and resolving complaints that the agency, employees, or a labor organization has committed or is committing an unfair labor practice in violation of D.C. Official Code § 1-617.04 (2016 Repl.).

520.2 An unfair labor practice complaint may be filed with the Board by a labor organization, an agency, or an aggrieved person. An unfair labor practice complaint and any answer thereto must be filed in accordance with § 502.

520.3 Unfair labor practice complaints must include a clear and complete statement of the facts constituting the alleged unfair labor practice, including the date, time, and place of occurrence of each particular act alleged, the date the complainant became aware of such an act if that date is later than the date on which the act occurred, and the manner in which D.C. Official Code § 1-617.04 (2016 Repl.) is alleged to have been violated.

520.4 An unfair labor practice complaint must be filed no later than one hundred twenty (120) days after the date on which the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.

520.5 An amended complaint and any answer thereto must be filed in accordance with § 502.8. An amended complaint may allege an additional violation if the amended complaint is filed no later than one hundred twenty (120) days after the date on which the alleged additional violation occurred or the date the complainant knew or should have known of the alleged additional violation, if later.

520.6 If a review of the complaint and any response thereto reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.

520.7 The Executive Director must investigate each complaint. The investigation may include an investigatory conference with the parties. When requested by the Executive Director, the parties must submit to the Executive Director evidence relevant to the complaint. Such evidence may include affidavits or other documents. If the evidence a complainant submits to the Executive Director is insufficient to establish the existence of an essential element of the complainant's case as to which it has the burden of proof, the Executive Director may dismiss the case.

520.8 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Executive Director must issue a notice of hearing and serve it upon the parties.

520.9 The Board may order preliminary relief. A request for preliminary relief must be accompanied by affidavits or other evidence supporting the request. Preliminary relief may be granted where the Board's ultimate remedy may be inadequate and the Board finds that the conduct is clear-cut and flagrant, the effect of the alleged unfair labor practice is widespread, the public interest is seriously affected, or the Board's processes are being interfered with.

526 IMPASSE RESOLUTION PROCEEDINGS: COMPENSATION NEGOTIATIONS

526.1 A notice of impasse under D.C. Official Code §§ 1-617.17(f)(2) or (3) (2016 Repl.) may be filed by one or both of the parties and must include the following:

(a) The name of the chief negotiator for each party;

(b) The expiration date of the existing collective bargaining agreement (if any);

(c) A description of the unit affected by the impasse, including the approximate number of employees in the unit;

(d) The date when negotiations commenced and the date of the last meeting; and

(e) The nature of the matters in dispute and any other relevant facts, including a list of specific demands upon which impasse has been reached. Any bargaining proposal included with the notice of impasse must be filed in a manner consistent with D.C. Official Code § 1-617.17(h) (2016 Repl.).

526.2 Upon receipt of a notice of impasse concerning compensation negotiations, other than an automatic impasse as prescribed under D.C. Official Code § 1-617.17(f)(2) (2016 Repl.), the Executive Director must verify with the other party (unless jointly filed) that the parties are at impasse.

526.3 Upon receipt of a notice of impasse and, if required, verification thereof, the Executive Director must consult with the parties regarding their choice of mediator, if any. If the parties are unable to agree upon a mediator, the Executive Director must appoint one or request that the Federal Mediation and Conciliation Service provide one.

526.4 Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of duties is confidential.

526.5 If impasse is not resolved through mediation within thirty (30) days, using a method of their choosing, the parties may recommend an arbitrator or board of arbitration to be appointed by the Executive Director.

526.6 If the parties do not make a recommendation, an arbitrator will be selected in the following manner:

(a) The Executive Director must submit to the parties a list of at least five (5) names of arbitrators.

(b) The parties must confer in person or by telephone and select an arbitrator by means of alternate striking of names from the list until one remains.

(c) The parties must give the remaining name to the Executive Director, who will appoint that individual as the arbitrator.

(d) If the appointed arbitrator declines or is unable to serve, the above process will be repeated.

526.7 No later than seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, must jointly select a date, time, and place for the hearing.

526.8 Arbitration awards must be in writing and signed by the arbitrator and must be served on the parties no later than forty-five (45) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator's fee and expenses should be submitted with the award.

527 IMPASSE RESOLUTION PROCEEDINGS: NONCOMPENSATION NEGOTIATIONS

527.1 Upon receipt of a request for impasse resolution concerning terms and conditions of employment other than compensation, or upon its own motion, the Executive Director may declare an impasse when the following has occurred:

(a) After a reasonable period of negotiations, further negotiation appears to be unproductive; or

(b) An impasse is declared in compensation negotiations covering the same employees as the terms and conditions negotiations.

527.2 A request for resolution of an impasse concerning terms and conditions of employment other than compensation must include the following:

(a) The name of the chief negotiator for each party;

(b) The expiration date of the existing collective bargaining agreement (if any);

(c) A description of the unit affected by the impasse, including the approximate number of employees in the unit;

(d) The date when negotiations commenced and the date of the last meeting; and

(e) The nature of the matters in dispute and any other relevant facts, including a list of specific demands upon which impasse has been reached.

527.3 Upon receipt of a request for impasse resolution procedures for noncompensation matters, the Executive Director must initiate an informal inquiry. If the Executive Director determines that the parties have reached an impasse, despite diligent efforts, the Executive Director must consult with the parties regarding their choice of impasse resolution procedures. These include mediation, fact-finding, and arbitration, either exclusively or some combination thereof. The parties may decide,

by mutual agreement, to engage in any of the impasse resolution procedures outlined in D.C. Official Code §§ 1-617.02(c) and 1-617.17(f)(3A) (2016 Repl.).

527.4 If the parties are unable to agree on the type of impasse resolution procedures to be utilized, the Executive Director will appoint a mediator.

527.5 If the parties are unable to agree upon a mediator, the Executive Director must appoint one or request that the Federal Mediation and Conciliation Service provide one.

527.6 Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of mediation duties is confidential.

527.7 The Executive Director may direct fact-finding using the following procedures:

(a) The parties may jointly request the assignment of a specific fact-finder or fact-finder arb or designate the mediator to serve as the fact-finder or as a member of a fact-finding panel;

(b) If the parties are unable to make a selection from a list supplied by the Executive Director, the Executive Director must assign a fact-finder;

(c) The fact-finder must review the positions of the parties with a view toward focusing attention on the issues in dispute and resolving differences as to facts;

(d) The fact-finder must meet with the parties within seven (7) days after appointment, hold conferences and hearings, if necessary, to facilitate the fact-finding process, and take any other steps necessary to investigate and to effect settlement of the impasse through fact-finding;

(e) The fact-finder must make a written report of findings of fact and recommendations for resolution of the impasse. The Board may set a deadline for the submission of the report, which must be submitted confidentially to the parties and to the Board, unless the parties resolve the dispute before the submission of the written report; and

(f) If the parties are unable to resolve the dispute within seven (7) days after the Board receives the report and recommendations, the Board may make the report and recommendations public using the news media or other appropriate means.

527.8 Upon joint request of the parties, the Executive Director may appoint an arbitrator to resolve the impasse. The parties may jointly request the assignment of a particular arbitrator, or the use of a particular arbitrator selection service. The

parties may request as an arbitrator for noncompensation matters, an arbitrator or Board of Arbitration currently appointed to consider compensation matters at impasse between the parties.

527.9 If the parties do not make a recommendation, an arbitrator will be selected in the following manner:

(a) The Executive Director must submit to the parties a list of at least five (5) names of arbitrators.

(b) The parties must confer in person or by telephone and select an arbitrator by means of alternate striking of names from the list until one remains.

(c) The parties must give the remaining name to the Executive Director, who will appoint that individual as the arbitrator.

(d) If the appointed arbitrator declines or is unable to serve, the above process will be repeated.

527.10 No later than seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, must jointly select a date, time, and place for the hearing.

527.11 Arbitration awards must be in writing and signed by the arbitrator and must be served on the parties no later than forty-five (45) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator's fee and expenses must be submitted with the award.

527.12 Fact-finding or arbitration proceedings directed by the Board may proceed in the absence of any party who, after due notice, fails to be present and fails to obtain an adjournment.

532 NEGOTIABILITY APPEAL PROCEEDINGS

532.1 If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board. If a negotiability issue exists at the time the Executive Director determines that an impasse has occurred, a negotiability appeal must be filed with the Board no later than seven (7) days after the Executive Director's determination as to the existence of an impasse. Unless otherwise ordered by the Board, impasse proceedings will not be suspended pending the Board's determination of a negotiability appeal.

532.2 Except as provided in § 532.1, a negotiability appeal must be filed no later than thirty-five (35) days after a written communication from the other party to the negotiations

asserting that a matter is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA.

532.3 A negotiability appeal must include the following:

(a) The name, title, mailing address, email address, and telephone number of the chief negotiator for each party;

(b) A clear and complete statement of the negotiability issue(s), including a copy of the proposed or existing provisions at issue and specific reference to any applicable statute, regulation, or collective bargaining agreement provision; and

(c) Any written communication from the other party to the negotiation asserting that a proposal is nonnegotiable.

532.4 The respondent may file an answer and supporting brief to the negotiability appeal within fourteen (14) days after the date of service of the appeal. The response must state in clear and complete terms the respondent's position on each negotiability issue raised in the appeal.

532.5 The petitioner may file a reply brief within fourteen (14) days after the date of service of the answer.

532.6 Following final submission on the matter, the Board may issue a written decision or, if necessary, hold a hearing. A hearing pursuant to this subsection is investigatory and not adversarial.

538 GRIEVANCE ARBITRATION REVIEW REQUEST

538.1 A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file with the Board a request for review of the award no later than twenty-one (21) days after service of the award. Service of the arbitration award on a party occurs when the award is personally delivered during business hours; deposited in the U.S. mail, properly addressed, first class postage prepaid; sent through commercial delivery; or served by email or facsimile. Whenever an award is served by U.S. mail, five (5) days will be added to the prescribed period of time to file an arbitration review request.

538.2 The arbitration review request must include the following:

(a) The name, address, and telephone number of the arbitrator;

(b) A brief requesting the Board to set aside, remand, or modify an award on one or more of the grounds set forth in D.C. Official Code § 1-605.02(6);

(c) A copy of the award;

(d) An affidavit or other proof of the date of service of the award; and

(e) Any other portion of the arbitration record upon which the petitioner relies in the arbitration review request.

538.3 A brief in opposition to the arbitration review request may be filed with the Board by the other party to the arbitration proceeding no later than fourteen (14) days after service of the request. The respondent may file with its opposition any portion of the arbitration record not submitted by the petitioner.

538.4 The Board must make its decision after consideration of the review request, the parties' briefs and the record submitted by the parties.

544 STANDARDS OF CONDUCT COMPLAINTS

544.1 The provisions of D.C. Official Code § 1-617.03 (2016 Repl.), concerning the standards of conduct for labor organizations, must govern the conduct of any labor organization that has been accorded exclusive recognition under D.C. Official Code § 1-617.10(a) or § 1-617.11(b) (2016 Repl.) or that is seeking to be certified as an exclusive representative by the Board.

544.2 Any individual aggrieved because a labor organization has failed to comply with the standards of conduct for labor organizations set forth in D.C. Official Code § 1-617.03(a) may file a complaint with the Board. A standards of conduct complaint and any answer thereto must be filed in accordance with § 502.

544.3 A standards of conduct complaint must include:

(a) A clear and complete statement of the facts constituting the alleged standards of conduct violation, including date, time and place of occurrence of each particular act alleged;

(b) The date the complainant became aware of each such act if that date is later than the date on which the act occurred; and

(c) The manner in which D.C. Official Code § 1-617.03 (2016 Repl.) is alleged to have been violated.

544.4 A complaint alleging a violation under this section must be filed no later than one hundred twenty (120) days from the date the alleged violation occurred or the date the complainant knew or should have known of the alleged violation, if later.

544.5 An amended complaint and any answer thereto must be filed in accordance with § 502.8. An amended complaint may allege an additional violation if the amended

complaint is filed no later than one hundred twenty (120) days from the date the alleged additional violation occurred or the date the complainant knew or should have known of the alleged additional violation, if later.

544.6 A complainant may withdraw a complaint without prejudice at any time before an answer is filed.

544.7 The Executive Director must investigate each complaint. The investigation may include an investigatory conference with the parties. When requested by the Executive Director, the parties must submit to the Executive Director evidence relevant to the complaint. Evidence may include affidavits or other documents.

544.8 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Executive Director will issue a notice of hearing and serve it upon the parties.

544.9 The Board may order preliminary relief. A request for preliminary relief must be accompanied by affidavits or other evidence supporting the request. Preliminary relief may be granted where the Board's ultimate remedy may be inadequate and the Board finds that the conduct is clear-cut and flagrant, the effect of the alleged violation is widespread, the public interest is seriously affected, or interference with the Board's processes.

549 *EX PARTE* COMMUNICATIONS

549.1 For purposes of this section, the phrase "*ex parte* communication" means any oral or written communication between decision-making personnel and a party in a proceeding, the party's representative, or any other person who might be affected by the outcome of a proceeding without the participation of the other parties to the proceeding. Decision-making personnel include, for example, any hearing examiner, employee, or member of the Board who reasonably may be expected to participate in the decision-making processes of the Board.

549.2 No party or representative of a party may engage in any *ex parte* communication with a hearing examiner or with any member of the Board regarding proceedings pending before the Board.

549.3 Except during settlement discussions or mediations, *ex parte* communications with an employee of the Board that involve the merits of a case or that violate other rules requiring submissions to be in writing are prohibited until the Board has rendered a final decision in the case. Interested parties may make inquiries to the Executive Director about such matters as the status of a case and when it will be heard. Parties must not make orally a submission that is required to be made in writing or inquire about such matters as what defense they should use or whether their evidence is adequate.

549.4 If a prohibited *ex parte* communication is made orally, the hearing examiner or other presiding official must describe that occurrence on the record with notice to the parties either by filing a memorandum or by making a statement. If a prohibited *ex parte* communication is made in writing, the hearing examiner or presiding official must file into the record of the proceeding any writing delivered to him or her.

549.5 A Board member who receives an *ex parte* communication that violates § 549.2 must promptly report the communication to the chairperson of the Board and to the Executive Director.

549.6 The Executive Director must promptly report to the Board any *ex parte* communications he or she receives that violate § 549.3. Any other employee of the Board who receives an *ex parte* communication that violates § 549.3 must promptly report the communication to the Executive Director.

549.7 Upon determining that a party has initiated a prohibited *ex parte* communication, the hearing examiner, the Executive Director, or the Board may impose procedural sanctions or take remedial actions that are appropriate under the circumstances.

550 HEARINGS

550.1 The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. A party with the burden of proof must carry that burden by a preponderance of the evidence.

550.2 In any proceeding when a hearing is to be held, the Executive Director or any authorized agent of the Board may meet with the parties to conduct one or more pre-hearing conferences to do any one or more of the following:

(a) Delineate the issues;

(b) Agree on facts, matters, and procedures that will facilitate and expedite the case; and

(c) Exchange lists of witnesses and exhibits.

550.3 No statement or communication made during the course of a pre-hearing conference may be offered as evidence in the same or a subsequent proceeding except upon agreement by all parties.

550.4 When a hearing has been directed by the Board or Executive Director, unless otherwise provided by these rules or directed by the Board, the Executive Director must issue a notice of hearing to all parties to the proceeding at least fourteen (14) days before the scheduled date of the hearing. The hearing will be conducted at the time and place specified in the notice of hearing and will be open to the public.

550.5 The Executive Director may postpone a hearing for good cause shown by a party. A request for postponement must propose alternate dates for the hearing and state the positions of all other parties on the postponement and on the alternate dates.

550.6 Except under extraordinary circumstances, no request for postponement may be granted during the seven (7) days immediately preceding the date of a hearing.

550.7 Any party intending to introduce documentary exhibits at a hearing must make every effort to furnish a copy of each proposed exhibit to each of the other parties at least seven (7) days before the hearing.

550.8 When a copy of an exhibit has not been tendered to the other parties because it was not available before the opening of the hearing, a copy of the exhibit must be furnished to each of the other parties at the outset of the hearing.

550.9 One copy of each documentary exhibit must be submitted to the hearing examiner at the time the exhibit is offered into evidence at the hearing, unless otherwise requested by the hearing examiner.

550.10 Objections to an exhibit are reserved until the exhibit is offered into evidence.

550.11 Any party intending to call witnesses to testify at a hearing must furnish a list of proposed witnesses to each of the other parties at least seven (7) days before the hearing. The party calling the witness is responsible for notifying the witness of the time and place of the hearing and, for witnesses who are employees of the District, so informing the representative of record for the District in the proceeding.

550.12 Hearings will be presided over by a hearing examiner, who is a representative of the Board. A hearing examiner will have full authority to conduct a hearing unless restricted by the Board.

550.13 Hearing examiners must conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings, and maintain order. To those ends, hearing examiners are authorized to:

(a) Administer oaths and affirmations;

(b) Request the issuance of subpoenas;

(c) Rule upon motions;

(d) Compel discovery of evidence ruled competent, relevant, material, and not cumulative;

(e) Regulate the course of the proceeding, fix the time and place of any continuance of a hearing or conference, and exclude persons from such hearings or conferences for contumacious conduct;

(f) Call and examine witnesses and introduce or exclude documentary or other evidence;

(g) Recommend to the Board dismissal of a case based on a settlement agreement reached by the parties; and

(h) Take any other appropriate action authorized by statute, these rules, or the Board.

550.14 All objections to evidence must be raised before the hearing examiner. Any objection not made before the hearing examiner is waived unless the failure to make such objection is excused by the Board because of extraordinary circumstances.

550.15 Strict compliance with the rules of evidence applied by the courts is not required. The hearing examiner may admit and consider proffered evidence that possesses probative value. Evidence that is cumulative or repetitious may be excluded.

550.16 The hearing examiner may impose procedural sanctions upon the parties as necessary to serve the ends of justice, including, but not limited to, the instances set forth in §§ 550.17, 550.18, and 550.19 below.

550.17 If a party fails to comply with an order for the production of evidence within the party's control or for the production of witnesses, unless for good cause, the hearing examiner may:

(a) Draw an inference in favor of the requesting party with regard to the information sought;

(b) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(c) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(d) Strike any part of the pleadings or other submissions of the party failing to comply with such request that relate to the requested information.

550.18 If a party fails to prosecute an action, the hearing examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party.

550.19 The hearing examiner or Executive Director may refuse to consider any motion or other action that is not filed timely in compliance with this section.

550.20 The Board must reach its decision upon a review of the entire record. The Board may adopt the recommended decision of a hearing examiner to the extent that it is supported by the record, reasonable, and consistent with the Board's precedent.

552 CLOSING ARGUMENTS AND BRIEFS

552.1 Any party is entitled, upon request, to a reasonable time for oral argument before the close of the hearing. Upon the agreement of all parties or at the direction of the hearing examiner, the parties may make oral or written closing arguments instead of filing post-hearing briefs.

552.2 Except as provided in § 552.1, any party may submit to the hearing examiner a brief meeting the requirements of §§ 502 and 561. Briefs must be filed no later than thirty-five (35) days after the transcript becomes available and the parties are so informed. The Executive Director may, for good cause shown, extend the time for the filing of briefs.

553 HEARING EXAMINER'S REPORT/EXCEPTIONS

553.1 Following a hearing, the hearing examiner must submit a report and recommendations to the Executive Director and the parties no later than thirty-five (35) days following the submission of post-hearing briefs, if any, or following the conclusion of closing arguments. Upon request of the hearing examiner, the Executive Director may extend the time for submission of the report and recommendations.

553.2 A party may file exceptions and a brief in support of the exceptions no later than fourteen (14) days after service of the hearing examiner's report and recommendations. A response or opposition to the exceptions may be filed by a party no later than fourteen (14) days after service of the exceptions. A party may file a request for oral argument before the Board, stating the reasons for the request.

554 SUBPOENAS

554.1 An application for issuance of a subpoena requiring a person to appear and testify at a specific place and time or to produce designated documents must be made in writing to the Executive Director. All requests for *subpoenas ad testificandum* must clearly identify the person subpoenaed and, except for employees of the Government of the District of Columbia, be accompanied by a forty dollar ($40) per diem consisting of a certified check or money order payable to each person subpoenaed.

554.2 An application for issuance of a subpoena requiring a person to produce documents (including writings, drawings, graphs, charts, photographs, electronic records and other recordings, and other data compilations from which information may be obtained) at a specific time and place must be made in writing to the Executive Director.

554.3 An applicant for a subpoena must arrange for service. A subpoena may be served in either of two (2) ways:

(a) Personal service. Service of a subpoena may be made by any person who is not a party to the proceeding and who is at least eighteen (18) years of age. The person making such service must attest to the service of the subpoena in an affidavit. The attesting affidavit must state the date, time, and method of service.

(b) Service by certified mail. Service of a subpoena may be made by certified mail. If the subpoena is served by certified mail, the subpoena must be mailed to the address of the person or business entity to be served, at the person's residence, principal office, or place of business. The return receipt will serve as proof of service of the document.

554.4 Any motion to limit or quash the subpoena must be filed no later than seven (7) days after service of the subpoena or on the date for compliance with the subpoena, whichever is earlier. The motion must set forth all assertions of privilege, burdensomeness, irrelevance, or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation.

554.5 In the case of contumacy or failure to obey a subpoena, the Board may request enforcement of the subpoena in the Superior Court of the District of Columbia pursuant to D.C. Official Code § 1-605.02(16) (2016 Repl.).

554.6 Board members and employees may not be subpoenaed.

554.7 When an employee of the District receives a subpoena to appear and testify or to produce designated documents, the employing agency must make the employee available to respond to the subpoena, pursuant to D.C. Official Code § 1-605.02(8). When responding to a subpoena, a witness will be on official duty status and must not be required to use leave.

555 MOTIONS

555.1 Motions must briefly state the relief sought and set forth with particularity the grounds for the motion. A motion, other than one made at a hearing, must be filed with the Board and meet the requirements of §§ 502 and 561.

555.2 Any response to a written motion must be in writing and filed no later than fourteen (14) days after service of the motion or no later than two (2) days after service in the case of a motion for an extension of time filed under § 501.2 or a motion to increase the page limit filed under § 502.3. The Executive Director may allow additional responses by the moving or responding party upon a request made no later than seven (7) days after service of a pleading.

555.3 The Executive Director may refer to a hearing examiner motions made before the issuance of a hearing examiner's report and recommendations. Motions made during a hearing will be ruled on by the hearing examiner, except when the hearing examiner refers the matter to the Board.

555.4 All rulings on motions must be in writing, except that rulings made at a hearing may be stated orally on the record.

556 INTERLOCUTORY APPEALS

556.1 Unless authorized by the Board, interlocutory appeals to the Board from rulings by the Executive Director, a hearing examiner, or other Board agents are not permitted. The Board will consider objections to such rulings when it examines the record of the proceeding.

557 DISQUALIFICATION

557.1 A hearing examiner or Board member must withdraw from proceedings whenever that person has a conflict of interest.

557.2 When a party requests a hearing examiner to withdraw and the hearing examiner does not withdraw, the hearing examiner must state the reason for the decision on the record. The Board must consider the request when it examines the record of the proceeding.

558 MEDIATION AND SETTLEMENT OF DISPUTES

558.1 It is Board policy to encourage voluntary efforts of parties to settle disputes involving issues of representation, unfair labor practices, standards of conduct, or issues arising during negotiations.

558.2 Parties' efforts at resolution and any settlements or adjustments reached must be consistent with the provisions, purposes, and policies of the CMPA.

558.3 No admissions or offers of settlement made during efforts toward resolution may be used in any proceeding as evidence or as an admission of a violation of any law or regulation.

558.4 Parties filing pleadings before the Board may be required to submit to the mediation program established by the Board. The Executive Director may schedule a disputed case for mediation or for a settlement conference.

558.5 The Executive Director will designate the mediator in each matter scheduled for mediation.

558.6 The parties must make a good faith effort in all mediations to resolve the issues in dispute. Party representatives at mediation proceedings must have settlement authority of the party.

558.7 Parties must inform the Executive Director when they have multiple pending cases that raise common issues. The Board encourages the resolution and consolidation of multiple cases for the purpose of mediation and other resolution.

558.8 If mediation does not resolve a dispute within a reasonable period of time, the Executive Director may terminate mediation and continue proceedings for resolution of the matter pursuant to these rules and the CMPA.

559 ISSUANCE AND RECONSIDERATION OF ORDERS

559.1 A decision and order of the Board is final upon service on the parties either through File & ServeXpress or as provided in § 502.10(a). The Board may reopen a case on its own motion within fourteen (14) days after issuance of the decision, unless the order specifies otherwise.

559.2 A party may file a motion for reconsideration of an order of the Board no later than fourteen (14) days after issuance of the order.

559.3 The Board will not entertain a motion to reconsider a ruling on a motion for reconsideration filed under § 559.2.

560 ENFORCEMENT

560.1 A prevailing party in a case may petition the Board to seek judicial process to enforce an order of the Board issued in the case if:

(a) The respondent in the case has failed to comply with the order;

(b) Neither a motion for reconsideration nor a request for judicial review is pending in the case; and

(c) No timely request for reconsideration or judicial review of the order remains available.

560.2 A party named as a respondent may file an answer to the petition no later than fourteen (14) days after service of the petition.

561 ELECTRONIC FILING

561.1 All pleadings, motions, memoranda of law, orders, or other documents to be filed in connection with a case must be filed electronically through File & ServeXpress, except for documents excluded by these rules, including §§ 502.5 and 502.10(a), or by order of the Executive Director.

561.2 Unless the Board orders otherwise, an original of a document filed electronically, including original signatures, must be maintained by the party filing the document and must be made available, upon reasonable notice, for inspection by another party or the Board.

561.3 Any pleading filed electronically is deemed filed with the Board at the time the transaction is completed. Any document filed with the Board before midnight Eastern Time is deemed filed with the Board on that date; however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business must be deemed to have been filed on the day and at the time of the next opening of the Board for business.

561.4 File & ServeXpress is the Board agent for the electronic filing, receipt, service, or retrieval of any pleading or document filed electronically. Upon filing and receipt of a document, File & ServeXpress issues a confirmation that the document has been received. The confirmation serves as proof that the document has been filed.

561.5 If the electronic filing is not filed with the Board because of: (1) an error in the transmission of the document to File & ServeXpress, which was unknown to the sending party; (2) File & ServeXpress's failure to process the electronic filing upon receipt; or (3) other technical problems that the filer might experience, the Board or Executive Director may upon satisfactory proof file an order permitting the document to be filed *nunc pro tunc* on the date it was first attempted to be filed electronically.

561.6 Documents filed electronically must be formatted as an 8½-inch by 11-inch document with black print on a white background.

561.7 Every pleading, document, and instrument electronically filed must be deemed to have been signed by the representative or *pro se* party and must bear a facsimile or typographical signature of such person, along with the name, address, and telephone number. Typographical signatures must be styled "/s/ name" and must be treated as personal signatures for all purposes under these rules.

561.8 When cases are consolidated, all parties must file a notice of appearance in the designated lead case. A single filing in the lead case is deemed to be filed in all cases consolidated with it.

561.9 The Board may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of this section.

561.10 Documents may be filed under seal if leave is granted by the Executive Director upon motion of a party. Redacted copies of documents filed under seal may be filed and served electronically. Documents filed under seal containing confidential information may be filed conventionally (in physical form) or as a sealed electronic document.

566 LIST OF NEUTRALS

566.1 The Board must establish and maintain on its website a list of persons qualified to act as neutrals in resolving disputes. The list must specify, for each person, the capacities for which that person is qualified (for example, mediator, fact-finder, arbitrator, hearing examiner). Unless otherwise specified by these rules or by the parties' mutual agreement, the selection of mediators, fact-finders, and arbitrators must be made in order from the list of neutrals maintained by the Board, assuming the availability of the selected neutral.

566.2 Nomination of a person to the list referred to in this section may be made by a member of the Board, the Executive Director, or any other person including the nominee, by writing to the Executive Director. A nomination must include the following information:

(a) The name, occupation, residence, business address, and telephone number of the nominee;

(b) A resume, which includes any relevant professional memberships; and

(c) A statement of any association the nominee has or had, other than as a neutral, with an agency or with a labor organization that represents or seeks to represent employees of the Government of the District of Columbia.

566.3 In making appointments to the list, the Board must consider such factors as experience and training, membership on other recognized mediation or arbitration panels, education, prior published awards, current advocacy in employment relations matters, potential conflicts of interest, letters of recommendations supporting the application, and any other relevant material supplied by the applicant or requested by the Board. Special consideration will be granted to applicants who are residents of the District of Columbia who meet the above qualifications.

566.4 Every person appointed to the list must file a fee schedule with the Board. An individual on the list who is selected to serve in a case as a mediator, fact finder or arbitrator, must not charge a fee greater than that listed in the fee schedule the individual has filed with the Board. A minimum of thirty (30) days prior written notice must be given to the Board of changes in fee schedules.

567 AMENDMENTS TO RULES

567.1 Whenever the Board deems amendment of these rules to be in the public interest, it must give notice of the proposed amendments in accordance with the requirements in the District of Columbia Administrative Procedure Act, D.C. Official Code § 2-505. Copies of the proposed amendments must be posted as appropriate and published in the *D.C. Register*.

567.2 Any interested person may petition the Board in writing for amendments to any portion of the rules and may provide specific proposed language together with a statement of grounds in support of the amendments.

567.3 Any person desiring to comment on a proposed amendment may do so within the time specified by the Board in the notice of the proposed amendment published in the *D.C. Register*. Comments must be in writing unless otherwise stated in the notice.

599 DEFINITIONS

599.1 As used in this chapter, the following terms and phrases must have the meanings ascribed:

Agency - Any unit of the Government of the District of Columbia required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term "agency" must also include any unit of the Government of the District of Columbia created by the reorganization of one or more of the units of an agency and any unit of the Government of the District of Columbia created or organized by the Council of the District of Columbia as an agency. The term "agency" does not include the Council of the District of Columbia.

CMPA - the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-601.01 to 1-636.03 (2016 Repl.)).

Days - Calendar days, unless otherwise specified.

Board - The District of Columbia Public Employee Relations Board.

Impasse - The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining.

Party - A person, employee, organization, agency, or agency subdivision initiating a proceeding authorized by these rules or named as a participant in a proceeding or whose intervention in a proceeding has been granted or directed under the authority of the Board.

Pleading - A complaint, petition, appeal, notice of impasse, request for review or resolution, motion, exceptions, briefs, or a response to one of the foregoing.

***Pro se* party -** A party who is neither represented by legal counsel nor represented in proceedings before the Board by a representative from a labor organization.

Showing of Interest - Documents offered to the Board to establish that a percentage (as defined by these rules) of employees in a proposed or existing bargaining unit desires representation by a petitioner seeking exclusive recognition or by another labor organization seeking to intervene in a representation proceeding, or that the unit employees no longer desire representation by a labor organization.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM3-2019-01 – UTILITY CONSUMER BILL OF RIGHTS AND RESPONSIBILITIES;

RM36-2019-01 – ELECTRICITY QUALITY OF SERVICE STANDARDS; AND

RM37-2019-02 – NATURAL GAS QUALITY OF SERVICE STANDARDS,

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2019 Repl.), hereby gives notice of its final rulemaking adopting the following amendments to Chapter 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the "Consumer Bill of Rights" (CBOR).

2. On November 22, 2019, a Notice of Proposed Rulemaking (NOPR) was published in the *D.C. Register* and a Second Notice superseding the first NOPR was published on February 7, 2020.[1] In the first NOPR, the Commission made amendments to Section 304 (Billing) to include Billing Error Notifications and by moving provisions from Section 3604 of Chapter 36 (Electricity Quality of Service Standards) and Section 3706 of Chapter 37 (Natural Gas Quality of Service Standards) to Section 304 of Chapter 3.[2] The amendments were proposed to better align these provisions with other utility-related billing information. The Commission also proposed to add a new provision indicating that failure to comply with the provisions of the Section could result in sanctions. Comments were received from the Potomac Electric Power Company ("Pepco") and Vistra Energy Corp.

3. Based upon the comments received, the Commission, in the Second NOPR made further amendments to: (a) Subsection 304.16(b) to increase the time from three (3) to five (5) business days for which an initial billing error notification must be submitted; (b) Subsection 304.18(e) to prescribe the timing for completion of corrective actions and to clarify that it is the customer who is to receive the credit/refund; (c) Subsection 304.21 to clarify that the same reporting threshold requirements of Subsection 304.16 apply to this subsection; (d) Subsection 304.22 to note the Commission's authority to impose sanctions and providing a cross-reference to the appropriate statutory provision for sanctions; and (e) Subsection 399 to enhance the definition section to include the terms "Billing Error" and "Office of Compliance and Enforcement."

4. No comments on the Second NOPR were filed. The Commission approved the amendments as proposed in a vote at the April 8, 2020, open meeting, with the amendments becoming effective upon publication of this notice in the *D.C. Register*.

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[1] 66 DCR 15545-15548 (November 22, 2019); and, 67 DCR 1262-1266 (February 7, 2020).

[2] 66 DCR 15545-15548 (November 22, 2019).

Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, is amended as follows:

Section 304, BILLING, is amended as follows:

The title of Section 304 is renamed BILLING AND BILLING ERROR NOTIFICATION.

Subsections 304.16 - 304.22 are added to read as follows:

304.16 When a billing error has occurred, the Electric Utility, Natural Gas Utility or the Energy Suppliers shall:

(a) Notify the Commission and the Office of the People's Counsel when a billing error has affected one hundred (100) or more customers or when the number of affected customers is equal to or more than two (2) percent of the Electric Utility, Natural Gas Utility or Energy Supplier's customer base in the District, whichever is fewer. The Electric Utility, Natural Gas Utility or Energy Supplier with a customer base of fewer than one hundred (100) customers shall report errors when two (2) or more customers are affected.

(b) Submit an initial billing error notification within five (5) business days of discovering or being notified of the error. After submitting the initial notification, the Electric Utility, Natural Gas Utility or Energy Supplier must submit a follow-up written report within fourteen (14) calendar days and a final written report within sixty (60) calendar days.

(c) Send the initial billing error notification via e-mail to the Commission's Office of Compliance & Enforcement and the Office of the People's Counsel, and subsequently file the notice required by Subsection 304.16(b) with the Commission and provide a copy to the Office of the People's Counsel.

304.17 The initial billing error notification shall contain the following information:

(a) Type(s) of billing error(s) found;

(b) Date and time the billing error(s) was discovered;

(c) How the Electric Utility, Natural Gas Utility or Energy Supplier discovered the error(s); and

(d) Approximate number of customers affected.

304.18 The Electric Utility, Natural Gas Utility or Energy Supplier shall file a follow-up written report with the Commission, with a copy provided to the Office of the

People's Counsel, within fourteen (14) calendar days of the initial report. The follow-up written report, shall contain the following information:

(a) Type(s) of billing error(s);

(b) Date and time of the billing error(s);

(c) Number of customers affected;

(d) Cause of the error and status of any and all corrective action(s) taken; and

(e) Timeline for completing any and all other required corrective action(s) which must include the provision of refunds and/or credits, to be received by the customer, no later than 60 days after the billing error(s) was discovered, as necessary to correct the billing error(s).

304.19 The Electric Utility, Natural Gas Utility or Energy Supplier shall file a final written report with the Commission and provide a copy to the Office of the People's Counsel. The final written report shall contain the following information:

(a) Type(s) of billing error(s);

(b) Date and time of billing error(s);

(c) Number of customers affected, and the dollar amount involved;

(d) Duration of the billing error(s);

(e) Cause of the error, corrective action(s) and preventative measure(s) taken; and

(f) Lessons learned, if any.

304.20 Upon receipt of the final written report, the Commission shall determine whether any further investigation is necessary.

304.21 No later than sixty (60) days after the date the Electric Utility, Natural Gas Utility or Energy Supplier discovers or is notified of the billing error(s), consistent with the requirements of Subsection 304.16, it shall notify each affected customer of the following:

(a) The nature of the error;

(b) The amount by which the customer's previous bill(s) was inaccurate;

(c) If appropriate, the steps the Electric Utility, Natural Gas Utility or Energy Supplier will take to ensure that the customer receives a full refund if overbilled, or when customers will be required to make payment if underbilled, no later than sixty (60) days; and

(d) The Electric Utility, Natural Gas Utility or Energy Supplier shall by letter, bill insert, or any other means by which the Electric Utility, Natural Gas Utility or Energy Supplier and the customer have agreed to communicate, summarily describe to customers the nature of the billing error and the corrective action that the company intends to implement. If a refund or outstanding balance appears on a customer's billing statement, the Electric Utility, Natural Gas Utility or Energy Supplier shall provide a clear description and explanation of the reason(s) for the error in the letter, bill insert, or other means by which the customer has agreed to receive communication.

304.22 Any Electric Utility, Natural Gas Utility or Energy Supplier that violates this section may be subject to Sanctions as determined by the Commission consistent with D.C. Official Code §§ 34-706 *et seq*.

Section 399, DEFINITIONS, Subsection 399.1, is amended as follows:

Billing Error -- an under charge or over charge that is caused by, but not limited to, any of the following: (1) an incorrect actual meter reading by an Electric Utility or Natural Gas Utility; (2) an incorrect remote meter read; (3) an incorrect meter constant or pressure factor; (4) an incorrect calculation of the applicable rate; (5) a meter switched by an Electric Utility or Natural Gas Utility; (6) an incorrect application of a rate schedule; or (7) another similar act or omission by the utility, or Energy Supplier, in determining the amount of a customer's bill. An undercharge or overcharge that is caused by a non-registering meter, a meter error, or the use of an estimated meter reading is not a billing error.

Office of Enforcement and Compliance ("OCE") -- is an office of the Commission designated to perform responsibilities in accordance with this chapter.

Section 3604, BILLING ERROR NOTIFICATION, of Chapter 36, ELECTRICITY QUALITY OF SERVICE STANDARDS, is repealed in its entirety.

Section 3706, BILLING ERROR NOTIFICATION, of Chapter 37, NATURAL GAS QUALITY OF SERVICE STANDARDS, is repealed in its entirety.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation (DDOT), pursuant to the authority in Sections 3(b) and 5(a)(3)(Q), (R), (S), and (T) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02(b) and 50-921.04(a)(3)(Q), (R), (S) and (T) (2014 Repl.)), Section 105(a)(1) of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.05(a)(1) (2014 Repl.)), and Mayor's Order 2019-60, dated June, 20, 2019, hereby gives notice of this proposed action to adopt rules that amend Chapters 24 (Stopping, Standing, Parking, and Other Non-Moving Violations), 26 (Civil Fines For Moving And Non-Moving Infractions), 40 (Traffic Signs And Restrictions At Specific Locations), and 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The regulations will: (1) revise and add definitions to related terms identified in this rulemaking; (2) correct errors in, and provide clarification of, provisions related to the designation of parking meter zones and general parking provisions; (3) update references to multi-space meters and pay-and-display parking meters; (4) add a new reference and operating provisions for pay-by-space parking meters and pay-by-cell only zones; (5) remove references to Normal Demand Parking Meter Zones and Premium Demand Parking Meter Zones; (6) add a new reference and criteria for meter operation hours; (7) update parking meter rates to reflect changes made by Council of the District of Columbia in Section 19 of the Fiscal Year 2016 Budget Support Clarification Temporary Amendment Act of 2015; (8) add new references for bus parking zones; and (9) update citations to violations in Chapter 26 of Title 18.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 27, 2019, at 66 DCR 12794.

DDOT did not receive any public comments and is therefore publishing these regulations as final with no changes.

Pursuant to Section 105 of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law. 2-104; D.C. Official Code § 50-2301.05 (2014 Repl.)), these rules were submitted to Council for review and approval on December 18, 2019 as PR 23-631. Council took no action and the rules were deemed approved on March 13, 2020. The Director adopted these rules as final on April 24, 2020 and they shall become effective upon publication of this notice in the *D.C. Register*.

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

Chapter 24, STOPPING, STANDING, PARKING, AND OTHER NON-MOVING VIOLATIONS, is amended as follows:

Section 2404, PARKING METERS AND PARKING METER ZONES, is amended to read as follows:

2404 PARKING METERS AND PARKING METER ZONES

2404.1 No vehicle shall park in a parking meter zone at any time when such parking is otherwise prohibited.

2404.2 Except as provided in §§ 2406.12 and 2406.18, no person shall park any vehicle or allow any vehicle registered in his or her name to be parked overtime or beyond the lawful period of time indicated on the meter or by the signs applicable to the parking meter space or zone.

2404.3 No person shall park any vehicle or allow any vehicle registered in his or her name to be parked so that the vehicle is not within the area between the designated signs or other marking(s) delimiting the parking meter space or zone.

2404.4 No person shall stop, stand, or park a vehicle exceeding twenty feet (20 ft.) in length in a parking meter zone, except as provided in §§ 2402.6, 2404.12, 2428.8 and 2429.8.

2404.5 Immediately after parking a vehicle, the operator shall pay for the amount of parking time desired and, if a receipt is issued, place the receipt on the passenger side of the dashboard of the vehicle so that it is clearly visible through the windshield of the vehicle. The space may then be used by the vehicle during the parking limit indicated by the parking meter zone signs or on the parking meter for the amount of time that is confirmed through the receipt issued or the pay-by-cell system, as applicable.

2404.6 No person shall purchase more time than allowed for parking a vehicle in a parking meter space or zone as indicated by the signs in the zone, pay-by-cell system, or on the parking meter.

2404.7 Except as provided in §§ 2404.9, 2406.12, and 2406.18, a vehicle shall be considered illegally parked in a parking meter zone if:

(a) No parking payment has been made at the meter or through the pay-by-cell system;

(b) The amount of time paid for a parking meter space at a parking meter or using pay-by-cell has lapsed;

(c) The vehicle does not display a parking meter receipt in the manner

required by § 2404.5;

(d) The vehicle has been parked in the parking meter zone longer than the parking limit indicated by the signs or on the meters for that parking meter zone;

(e) The vehicle is oversized for the parking meter zone, pursuant to § 2404.4;

(f) The vehicle is not a tour bus and is parked in a bus parking zone; or

(g) The vehicle is not a motorcycle and is parked in a space designated for motorcycle parking only.

2404.8 An operator may park a vehicle in a parking meter space:

(a) Without depositing payment at a parking meter space:

(1) At times when the signs and meters in the parking meter zone indicates payment is not required;
(2) With unexpired time displayed on the meter, until such time has lapsed;
(3) If a vehicle identified by license plate as being owned, rented, or leased by the federal or District government is being used on official government business and is parked in a parking meter space; or
(4) If the vehicle is a tour bus parked in a bus parking zone only while actively engaged in loading and unloading of passengers.

(b) In the same pay-by-cell parking meter zone until the time confirmed by the operator's paid, active pay-by-cell session has lapsed;

(c) That is served by a pay-by-space parking meter until the time confirmed by the operator's paid, active pay-by-space session for the parking meter space has lapsed, provided, the operator's vehicle remains in the designated space for which payment was made;

(d) That is served by a pay-and-display parking meter in the same zone until the time on the receipt, displayed in accordance with § 2404.5, has lapsed; or

(e) That is served by a pay-by-plate parking meter until the time confirmed by the operator's paid, active pay-by-plate session has lapsed; provided the operator's vehicle remains in the parking meter zone for which payment was made.

2404.9 An operator may park in a parking meter space where the corresponding parking meter is broken if the operator pays for the amount of parking time desired at an adjacent, functioning multi-space parking meter, or through the pay-by-cell

system.

2404.10 The rate for each parking meter space shall be posted on the meter serving the space or any pay-by-cell application authorized to collect meter payment in the District.

2404.11 Except as otherwise provided, all civil infractions and their respective fines set forth in § 2404 shall apply to the provisions in § 2424.

2404.12 Notwithstanding § 2404.4, a tour bus may park outside a loading zone if it occupies no more than three (3) metered spaces or no more than sixty feet (60 ft.) within a designated bus parking zone serviced by a parking meter or pay-by-cell system.

2404.13 The Director shall designate, by the posting of signs or by the placement of meters with signage, the street segments that are subject to payment for parking.

2404.14 The Director shall establish objective criteria to create parking meter zones, set parking meter time limits, and determine parking meter operation hours. These criteria shall consider the need to promote:

(a) Short term parking access near commercial, cultural, educational, entertainment, medical, recreational and transportation facilities;

(b) Turnover of parking occupancy;

(c) Equitable availability; and

(d) Efficient use of public parking spaces.

2404.15 The Director shall provide written notice to the affected Advisory Neighborhood Commission ("ANC") and publish a notice of intent (NOI) on DDOT's website, of all proposed modifications to parking meter zone designations at least thirty (30) days before implementation.

2404.16 The rates for parking meters shall be as follows:

(a) Fifty cents ($0.50) for thirteen (13) minutes for automobile size spaces;

(b) Twenty-five cents ($0.25) per hour for motorcycle size spaces;

(c) One dollar and fifty cents ($1.50) for thirteen (13) minutes for bus size spaces; and

(d) Performance Parking Zone rates, as established pursuant to § 2424.

Section 2406, PARKING PROHIBITED BY POSTED SIGN is amended as follows:

Subsection 2406.15 is repealed.

Section 2427, STREETS EXEMPTED FROM PARKING METER FEE MORATORIUM, is repealed in its entirety and reserved.

Section 2428, COMMERCIAL PERMIT PARKING; ANNUAL PASS, is amended as follows:

Subsection 2428.8 is amended to read as follows:

2428.8 Notwithstanding § 2404.4, a commercial motor vehicle may park outside a loading zone between the hours of 10:00 a.m. and 2:00 p.m. with a valid annual pass if it occupies no more than two (2) metered spaces or no more than forty feet (40 ft.) within a parking zone serviced by a parking meter, multi-space parking meter, or pay-by-cell system.

Section 2429, COMMERCIAL PERMIT PARKING; DAY PASS, is amended as follows:

Subsection 2429.8 is amended to read as follows:

2429.8 Notwithstanding § 2404.4, a commercial motor vehicle may park outside a loading zone between the hours of 10:00 a.m. and 2:00 p.m. with a valid day pass if it occupies no more than two (2) metered spaces or no more than forty feet (40 ft.) within a parking zone serviced by a parking meter, multi-space parking meter, or pay-by-cell system.

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended as follows:

Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended as follows:

Section 2601.1 is amended as follows:

The following infractions are inserted after Bus lane, unauthorized vehicle parked in [§ 2405.1(j)] and before Bus stand or zone [§ 2409.3]:

Bus parked within a public space curbside area not designated as a bus parking zone [§ 2404.12]	$250.00
Bus Parking Zone, unauthorized vehicle in [§ 2404.7(f)]	$100.00

The rows regarding meter infractions are amended to read as follows:

Meter Infractions (includes fines associated with the Performance Parking Zone) [§ 2404.15, § 2424.12]	**Fine**	**In Performance Parking Zones [§ 2404.15, § 2424.12]**	**During Events in a Performance Parking Zone [§ 2424.12]**
Depositing additional payment to extend time beyond applicable limit [§ 2404.6, § 2424.12]	$ 20.00	$ 20.00	$ 40.00
Expiration time indicated on the parking meter receipt displayed on the vehicle, on the meter, or pay-by-phone session has lapsed [§ 2404.7(b), § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Failure to deposit payment [§ 2404.7(a), § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Failure of a bus operator to provide payment for use of a designated bus parking zone [§2404.5, § 2404.13]	$100.00	$100.00	$100.00
Failure to properly display pay-and-display parking meter receipt [§ 2404.7(c), § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Illegally parked [§ 2404.7, § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Not parked in parking meter space [§ 2404.3, § 2424.12]	$ 25.00	$ 25.00	$ 60.00
Overtime parking in a parking meter space or zone [§ 2404.2, § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Overtime parking in a commercial loading zone [§ 2402.3(c), § 2424.12]	$ 50.00	$ 50.00	$100.00
Oversized vehicle in a metered space [§ 2404.4, § 2424.12]	$ 25.00	$ 25.00	$ 50.00
Parking in a parking meter space that differs from the pay-by-space session or single space meter [§ 2404.8(a), (b), (c), § 2404.10(d), § 2424.12]	$ 30.00	$ 30.00	$ 60.00
Parking in a space within a pay-by-phone zone that does not correspond to the pay-by-phone	$ 30.00	$ 30.00	$ 60.00

session [§ 2404.8 (d), § 2424.12]			

A new fine is added after "Vendors stand, on [24 DCMR 501]" to read as follows:

WMATA property, parking, leaving unattended, or storing a vehicle in violation of posted parking restrictions at a parking facility on [DC Code § 50-2637]	$30.00

Chapter 40, TRAFFIC SIGNS AND RESTRICTIONS AT SPECIFIC LOCATIONS, is amended as follows:

Section 4023, PARKING METER ZONES, is repealed.

Chapter 99, DEFINITIONS, Section 9901, DEFINITIONS, is amended as follows:

Subsection 9901.1 is amended as follows:

The following definitions are added after the definition of "Bicycle":

Block – the two (2) opposite sides of a street between two (2) consecutive street intersections.

Block Face - one (1) side of a block.

Broken Meter – a meter that is physically or programmatically unable to operate and register payment.

The following definition is added after the definition of "Bus lane":

Bus Parking Zone – a designated and marked off section of a public roadway within the marked boundaries of which a tour bus may be parked and the use of which is regulated through parking meter zone payment.

The definition of "Director" is amended to read as follows:

Director - the Director of the Department of Motor Vehicles, the Director of the Department of Public Works, or the Director of the Department of Transportation, as applicable.

The definition of "Loading Zone" is amended to read as follows:

Loading Zone - on street parking space set aside for commercial motor vehicles used or maintained for transporting freight, merchandise, or other commercial loads or property.

The definition of "Multi-Space Parking Meter" is amended to read as follows:

Multi-Space Parking Meter - a parking meter that serves more than one (1) parking meter space.

The definition of "Parking Meter" is amended to read as follows:

Parking Meter - a mechanical or electronic device located upon a sidewalk or public parking adjacent to one or more places regularly designated as a parking meter space, which measures and displays the amount of time remaining for lawful parking or which issues a receipt indicating the time at which lawful parking will expire.

The following definition is added after the definition of "Parking Meter Rate Schedule":

Parking Meter Space - a section of a public roadway, with or without marked boundaries, within which a vehicle may be temporarily parked and allowed to remain for such period of time as indicated on a parking sign, parking meter, or on a receipt issued by a parking meter serving that parking meter space.

The following definition is added after the definition of "Parking Meter Space":

Parking Meter Time Limit – the maximum time that any vehicle can remain parked in a parking meter zone.

The definition of "Parking Meter Zone" is amended to read as follows:

Parking Meter Zone – a block face of roadway regulated in whole or in part by parking meters or pay-by-cell technology.

The following definitions are added after the definition of "Passenger Vehicle":

Pay-and-Display Parking Meter - a multi-space parking meter that issues receipts that indicate the duration of authorized parking.

Pay-by-Cell System – a parking meter payment system that accepts electronic payment from customers who call the provider's telephone number, enable the provider's mobile application, or enable the provider's electronic website to indicate the duration of parking and to remit payment.

Pay-by-Space Parking Meter - a multi-space parking meter that indicates the duration of parking on the meter for a specific, designated parking meter space.

Pay-by-Plate Parking Meter - a multi-space parking meter that indicates the duration of parking on the meter for a specific, designated motor vehicle identified by their license plate.

The following definition is added after the definition of "Public Vehicle for Hire":

Rate – charge per unit of time on a parking meter.

The definition of "Single-Space Parking Meter" is amended to read as follows:

Single-Space Parking Meter - a parking meter that serves no more than one (1) parking meter space.

The following definition is added after the definition of "Ticket":

Tour Bus – a bus transporting passengers for sightseeing purposes either on day trips or as part of a multi-day itinerary. This includes school buses transporting passengers for a field trip and excludes buses providing commuter, intercity, transit, or shuttle services.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING[1]
Z.C. Case No. 18-10
High Street, LLC
(Zoning Map Amendment @ Lot 976 in Square 5799)
January 13, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2018 Repl.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2016 Repl.)), hereby gives notice of its adoption of the following amendments to the Zoning Map:

- Rezone Lot 976 in Square 5799 (Property) from the R-3 zone to the RA-2 zone.

On June 27, 2018, High Street, LLC (Petitioner) filed a petition requesting that the Commission rezone the Property from the R-3 zone to the RA-2 zone pursuant to Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations] to which all references herein are made unless otherwise specified).

The Property's current R-3 zone is intended to allow for attached rowhouses on small lots, while including areas within which row dwellings are mingled with detached dwellings, semi-detached dwellings, and groups of three or more row dwellings. (Subtitle D §§ 300.6 and 300.7.) The R-3 zone permits a maximum height of 40 feet and 3 stories; a lot occupancy of sixty percent (60%) for attached dwellings or places of worship, or forty percent (40%) for all other structures; and minimum lot dimensions ranging between one thousand six hundred and four thousand square feet (1,600-4,000 sq. ft.) of lot area and between sixteen and forty foot (16-40 ft.) minimum lot width depending on building type. (Subtitle D §§ 302 - 304.)

The Property's proposed RA-2 zone is intended for areas developed with predominantly moderate-density residential development. (Subtitle F § 300.3.) The RA-2 zone permits a maximum floor area of 1.8 (2.16 for Inclusionary Zoning developments), a maximum height of fifty feet (f0 ft.) with no story limit, and a maximum lot occupancy of sixty percent (60%). (Subtitle F §§ 302 - 304.)

Comprehensive Plan (CP) and Small Area Plan (SAP)
Square 5799, including the Property, is designated on the Generalized Policy Map (the "GPM") of the Comprehensive Plan (Title 10A of the District of Columbia Municipal Regulations, the "CP") as a Neighborhood Enhancement Area, primarily residential in character with substantial amounts of vacant residentially zoned land in which new development "fits in" and responds to existing character, natural features, and existing/planned infrastructure capacity. New housing is encouraged and must be consistent with the land use designation of the CP's Future Land Use Map

[1] For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 18-10.

(the "FLUM"). (CP §§ 223.4, 223.5.)

The FLUM designates the Property in the Moderate-Density Residential category, defined as incorporating both row houses and low-rise garden apartment complexes. The CP identifies the R-3 (the Property's current zone), R-4, and R-5-A zones, and in certain circumstances, the R-5-B zone (the current RA-2 zone, to which the Property is proposed to be rezoned), as appropriate for the Moderate-Density Residential designation, although other zones may apply. (CP § 225.4.)

At its public meeting held on April 8, 2019, the Commission voted to take **PROPOSED ACTION** to authorize a Notice of Proposed Rulemaking to rezone the Property from the R-3 zone to the RA-2 zone.

VOTE (April 8, 2019): 5-0-0 (Anthony J. Hood, Robert E. Miller, Michael G. Turnbull, Peter A. Shapiro, and Peter G. May to **APPROVE**)

National Capital Planning Commission (NCPC)
The Commission referred the proposed map amendment to NCPC for the thirty (30)-day review period required by § 492 of the District Charter on April 11, 2019.

NCPC, through a delegated action dated May 28, 2019, found that the proposed text amendment was exempt from NCPC review under exception 12 of Chapter 8 of NCPC's submission guidelines because the propose amendment is consistent with the Height Act, would not cause adverse impacts on federal property or other federal interest, and would apply outside the boundary of the L'Enfant City.

Notice of Proposed Rulemaking (NOPR)
A NOPR was published in the *D.C. Register* on October 18, 2019 (66 DCR 13770). A Corrected NOPR correcting the Square of the Property to Square 5799 (not the initially published erroneous Square 579) was published in the *D.C. Register* on November 15, 2019 at 66 DCR 15274.

NOPR Comments
The Commission received no comments in response to the NOPR.

"Great Weight" to the Recommendations of the Office of Planning (OP)
The Commission must give "great weight" to the recommendation of OP, pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086-87 (D.C. 2016).)

OP submitted a report dated December 3, 2018 (OP Report), concluding that the proposed rezoning was not inconsistent with the Comprehensive Plan and recommending approval. (Ex. 19.) The Commission found OP's analysis and recommendation to approve rezoning the Property to the RA-2 zone persuasive and concurred in that judgment.

"Great Weight" to the Written Report of the Advisory Neighborhood Commission (ANC)
The Commission must give great weight to the issues and concerns raised in the written report of

an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment,* 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

ANC 8A submitted a report (ANC Report) stating that at a properly noticed public meeting held on March 5, 2019, it voted to support the proposed rezoning. (Ex. 32.) The ANC Report expressed concerns about the future development of the Property and proposed conditions to address these concerns, which the Petitioner accepted in a Memorandum of Understanding executed with the ANC. Although the Commission concluded that these conditions and the issues raised by the ANC Report were not legally relevant to the rezoning process, the Commission concurred with the ANC Report's support for the rezoning.

At its public meeting on January 13, 2020, in consideration of the case record and for the reasons stated above, the Commission took **FINAL ACTION** to amend the Zoning Map as follows:

SQUARE	LOT	MAP AMENDMENT
5799	976	R-3 to RA-2

VOTE (January 13, 2020): 5-0-0 (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Michael G. Turnbull, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on April 24, 2020.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2018 Repl.)); Section 4902(d) of the Department of Health Functions Clarifications Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(d) (2018 Repl.)); Mayor's Order 2011-71, dated April 13, 2011; Mayor's Order 2020-045, dated March 11, 2020; and Mayor's Order 2020-050, dated March 20, 2020, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 57 (Prohibited and Restricted Activities) of Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to protect the health, safety, and welfare of the District's residents reducing the spread of COVID-19 by enabling District of Columbia residents registered as qualifying patients to obtain medical marijuana while also adhering to social distancing guidelines and the District of Columbia Stay at Home Order, Mayor's Order 2020-054, dated March 30, 2020.

The purpose of this rulemaking is to allow, on a temporary basis, District of Columbia registered dispensaries to provide medical marijuana to qualifying patients through delivery, curbside pickup, and at-the-door pickup options.

This emergency rulemaking was adopted on April 10, 2020, and became effective immediately on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (August 8, 2020) or forty-five (45) days after the public health emergency declared by Mayor's Order 2020-050 dated March 20, 2020 or any substantially similar subsequent Mayor's Order is declared over, whichever occurs first.

Chapter 57, PROHIBITED AND RESTRICTED ACTIVITIES, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5703, DELIVERY OF MEDICAL MARIJUANA, is amended to read as follows:

5703.1 Except as provided in §§ 5703.2 and 5703.3, a dispensary shall not be permitted to transport or deliver medical marijuana to a qualified patient or caregiver or from a cultivation center or testing laboratory. It shall be a violation of this subtitle for a dispensary to transport or deliver medical marijuana to a qualified patient, cultivation center, or testing laboratory other than as provided in §§ 5703.2 and 5703.3.

5703.2 A dispensary, meeting the requirements of § 5703.3, shall only be permitted to deliver medical marijuana to a qualifying patient or caregiver registered in the District of Columbia Medical Marijuana Program and that has been issued a District of Columbia Government medical marijuana card. A dispensary shall not deliver or transport medical marijuana to a nonresident patient or to an individual who

possesses a medical marijuana card that was not issued by the District of Columbia Department of Health. A dispensary that delivers medical marijuana to nonresident patients or individuals who possess cards issued by unauthorized entities on the Internet such as getnugg.com shall be subject to disciplinary action, up to and including revocation of registration.

5703.3 A dispensary shall only be permitted to deliver medical marijuana to a qualifying patient or caregiver registered in the District of Columbia Medical Program if the dispensary complies with the following requirements:

(a) The dispensary shall register its delivery vehicle with the Department by completing a Department-issued application form and providing all required information which shall include: the vehicle license plate number, the vehicle's vehicle identification number (VIN), and the make, model and color of the vehicle;

(b) The dispensary shall only register one (1) delivery vehicle;

(c) The delivery vehicle shall not be marked with any signage, symbols, images, or advertisement identifying the vehicle as associated with medical marijuana;

(d) The delivery vehicle shall have a functioning global positioning system (GPS) to ensure that the most direct delivery route is followed;

(e) The dispensary shall register the name and medical marijuana employee registration number of the delivery driver(s) with the Department;

(f) The dispensary's delivery driver(s) shall have an active District of Columbia medical marijuana employee registration;

(g) The dispensary's delivery driver(s) shall wear an employee badge when making deliveries;

(h) The dispensary shall implement a mechanism or process for patients and caregivers to submit copies of their registration cards and identification cards to the dispensary for verification prior to delivery, and the dispensary shall maintain a copy of both as part of the dispensary's recordkeeping requirements;

(i) Prior to delivery, the dispensary shall:

(1) Verify that the patient, or the patient and caregiver, is actively enrolled in the District of Columbia medical marijuana program, and that the delivery address matches the patient's or caregiver's home address;

(2) Maintain a copy of the medical marijuana program registration card and a copy of the government-issued identification card; and

(3) Verify that the patient's requested amount does not exceed the patient's rolling thirty (30)-day limit of four (4) ounces;

(j) The dispensary shall only make deliveries to residential addresses located within the District of Columbia to qualifying patients and caregivers registered in the District of Columbia medical marijuana program as set forth in § 5703.2;

(k) The dispensary shall only make deliveries between the hours of 11:00 a.m. and 7:00 p.m.;

(l) The dispensary's delivery driver(s) shall meet the patient or caregiver curbside in front of the patient's residence or caregiver's residence and complete the delivery quickly and efficiently;

(m) The dispensary shall implement a mechanism or recordkeeping process for patients and caregivers to document receipt of medical marijuana deliveries, and shall maintain the records as part of the dispensary's recordkeeping requirements. If, in an enforcement action pursuant to Chapter 10, a patient or caregiver disputes receiving the medical marijuana and the dispensary does not have documentation proving the delivery occurred, the Department shall apply a rebuttable presumption that the delivery did not occur;

(n) A dispensary delivery driver shall not make more than ten (10) deliveries in a single delivery run;

(o) A dispensary delivery driver shall only travel from the dispensary to a delivery address(es) and return to the dispensary. A delivery driver shall ensure that there is sufficient gasoline in a delivery vehicle before loading the vehicle for deliveries, and if there is not sufficient gasoline, shall fill the vehicle with sufficient gasoline before loading the vehicle for deliveries or obtain the gasoline after completing all deliveries for that delivery run;

(p) A dispensary delivery driver shall not at any time possess a combined total of cash and medical marijuana exceeding five thousand dollars ($5,000.00) in value;

(q) The dispensary shall record each delivery in the METRC delivery manifest system in real-time and maintain a copy of the record as part of the dispensary's recordkeeping requirements;

(r) The dispensary shall provide a copy of its delivery manifest to the Department and the Metropolitan Police Department (MPD) by 12:00 noon each Monday, which shall contain the entries for all deliveries made during the previous week; and

(s) The dispensary shall provide a copy of its delivery manifest to the Department or MPD immediately upon request.

5703.4 A dispensary shall only be permitted to dispense medical marijuana through curbside pickup or at-the-door pickup to a qualifying patient or caregiver if the dispensary complies with the following requirements:

(a) A dispensary shall only be permitted to dispense medical marijuana through curbside pickup or at-the-door pickup to a qualifying patient or caregiver registered in the District of Columbia medical marijuana program, or to a patient enrolled in another state's medical marijuana program who is recognized by the Department, as evidenced by a state-issued medical marijuana patient card and with a government-issued identification card. A dispensary that dispenses medical marijuana to individuals who possess cards issued by unauthorized entities on the Internet such as getnugg.com or states that are not yet recognized by the Department shall be subject to disciplinary action up to and including revocation of registration;

(b) The dispensary shall implement a mechanism or process for a patient or a District of Columbia registered caregiver to submit a copy of the patient's, or registered caregiver's, medical marijuana registration card and the patient's, or registered caregiver's, government-issued identification card to the dispensary for verification prior to dispensing. The dispensary shall maintain a copy of both as part of the dispensary's recordkeeping requirements;

(c) Prior to dispensing, the dispensary shall:

(1) Verify that the patient, or patient and registered caregiver, is actively registered in the District of Columbia medical marijuana program, or that the nonresident patient is actively enrolled in another state's medical marijuana program;

(2) Maintain a copy of the medical marijuana program registration card and a copy of the government-issued identification card; and

(3) Verify that the patient's requested amount does not exceed the patient's thirty (30)-day limit of four (4) ounces;

(d) The dispensary shall ensure that the entire exchange of the medical marijuana product to the patient or registered caregiver is clearly captured on the dispensary's video surveillance system;

(e) The dispensary shall only provide curbside pickup at curbside directly in front of the dispensary and in view of the dispensary's video surveillance cameras. If the dispensary's location or video surveillance system is not equipped to meet this requirement, the dispensary shall not provide curbside pickup or at-the-door pickup.

(f) The dispensary shall implement procedures to ensure that curbside pickup or at-the-door pickup is completed quickly and efficiently; and

(g) The dispensary shall implement a mechanism or recordkeeping process for patients to document receipt of curbside pickup or at-the-door pickup, and shall maintain the records as part of the dispensary's recordkeeping requirements. If, in an enforcement action pursuant to Chapter 10, a patient disputes receiving the medical marijuana and the dispensary does not have documentation including clear video evidence proving the dispensing occurred, the Department shall apply a rebuttable presumption that the dispensing did not occur.

5703.5 At the dispensary's discretion, the dispensary may require electronic payment before scheduling a delivery, curbside pickup or at-the-door pickup; may limit deliveries, curbside pickup, or at-the-door pickup to electronic payment only; and may limit the areas to which the dispensary will deliver.

5703.6 A cultivation center shall not be permitted to deliver medical marijuana to any premises other than the specific registered premises of the dispensary where the medical marijuana is to be sold.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF SECOND EMERGENCY RULEMAKING

The Director of the District of Columbia ("District") Department of Human Services ("Department"), pursuant to the authority set forth in Section 31 of the Homeless Services Reform Act of 2005 ("HSRA" or "Act"), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-756.02 (2019 Repl.)), and Mayor's Order 2006-20, dated February 13, 2006, hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 25 (formerly entitled "Shelter and Supportive Housing for Individuals and Families" and hereby renamed "Continuum of Care Programs") of Title 29 ("Public Welfare") of the District of Columbia Municipal Regulations, to become effective immediately.

The amendments include changes to multiple sections of Chapter 25 as a result of the "Homeless Services Reform Amendment Act of 2017" ("2017 Act") effective February 28, 2018 (D.C. Law 22-65; 65 DCR 331 (January 19, 2018)). These amendments address a variety of components of the Continuum of Care, the District's comprehensive range of services for individuals and families experiencing or at risk of experiencing homelessness. The legislative changes made by the 2017 Act are addressed in the amendments and are described in detail in the 2017 Act's long title. The most significant legislative changes addressed in this rulemaking include clarifying who qualifies as a resident of the District of Columbia for purposes of Continuum of Care eligibility and describing the function of the District's centralized or coordinated assessment system protocol to determine referrals for eligible individuals and families within the Continuum of Care.

In addition to implementing recent legislative amendments, the proposed amendments establish standards to administer Rapid Re-Housing Programs; revise standards to administer Permanent Supportive Housing Programs; and establish standards for Interim Eligibility Placement in the family shelter system.

These rules were first published as emergency and proposed in the *D.C. Register* on September 6, 2019, at 66 DCR 11821, were adopted on August 21, 2019, and became effective on that date. This rulemaking is substantially similar to the emergency and proposed rulemaking. Emergency action is necessary to promote the immediate preservation of the health, safety, and welfare of District residents who are homeless or at risk of experiencing homelessness by permitting the Department to administer the broad array of Continuum of Care services in compliance with recent legislative changes. These changes align with the Department's work to ensure that the experience of homelessness within the District is rare, brief, and non-recurring.

DHS adopted these emergency rules on January 2, 2020, and they became effective on that date. These emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until May 1, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, the Department shall publish the effective date with the Notice of Final Rulemaking.

Chapter 25 of Title 29 DCMR, PUBLIC WELFARE, is deleted and replaced with the following:

CHAPTER 25 CONTINUUM OF CARE PROGRAMS

2500 SCOPE

2500.1 The provisions of this chapter shall apply to:

(a) Continuum of Care programs offered by the District or by a Provider receiving funding for the program from either the District or the federal government, if such funds are administered, whether by grant, contract, or other means, by the Department or its designee; and

(b) Clients of programs covered under paragraph (a) of this subsection.

2500.2 In multi-program agencies, the provisions of this chapter shall only apply to those programs that meet the criteria in Subsection 2500.1(a) of this section and clients of those programs.

2500.3 Nothing in this chapter shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any services within the Continuum of Care, other than shelter in severe weather conditions as authorized by Sections 7(c) and 9(a)(5) of the Act (D.C. Official Code §§ 4-753.01(c) and 4-754.11(a)(5)).

2501 GENERAL ELIGIBILITY CRITERIA FOR CONTINUUM OF CARE SERVICES

2501.1 An applicant, whether an individual or family, shall be eligible to receive services provided within the Continuum of Care if the applicant:

(a) Is homeless or at risk of homelessness as defined in Sections 2(18) and (5B) of the Act (D.C. Official Code § 4-751.01(18) and (5B));

(b) Is a resident of the District of Columbia as defined in Section 2(32) of the Act (D.C. Official Code § 4-751.01(32)), except as provided in Subsection 2501.2; and

(c) Meets any special eligibility requirements established by the Provider, as long as such eligibility requirements are approved by the Department as part of the Provider's Program Rules pursuant to Subsection 2515.17. Such special eligibility requirements must be for the purpose of limiting entry into the program to those exhibiting the specific challenges that the program is designed to address.

2501.2 (a) No applicant may be deemed ineligible for services solely because the applicant cannot establish proof of homelessness or residency at the time of their application for assistance.

(b) Low-barrier shelters and severe weather shelters operating as low-barrier shelters shall not be required to receive demonstration of residency or prioritize District residents.

(c) The Department shall determine that a person seeking shelter by reason of domestic violence, sexual assault, human trafficking, refugee status, or asylum is a resident of the District without receiving demonstration of District residency in accordance with Section 2(32) of the Act (D.C. Official Code § 4-751.01(32)).

(1) For the purpose of this section, a refugee is any person who is outside his or her country of nationality or habitual residence, and is unable or unwilling to return to or seek protection of that country due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.

(2) For the purpose of this section, asylees are individuals who, on their own, travel to the United States and subsequently apply for/receive a grant of asylum.

2501.3 An applicant may demonstrate residency pursuant to Section 101(32)(A)(iii) of the Act (D.C. Official Code § 4-751.01(32)(A)(iii)) by:

(a) Providing evidence that the individual or family is receiving public assistance from the District as administered by the Department; or

(b) Providing one (1) of the following:

(1) Documents from the U.S. Social Security Administration addressed to the individual or a member of the family at a residential address in the District;

(2) Evidence that the individual or a member of the family is attending school in the District;

(3) A valid, unexpired District motor vehicle operator's permit or other official non-driver identification in the name of the individual or a member of the family;

(4) A utility bill for water, gas, electric, oil, cable, or a land-line telephone issued within the last sixty (60) days that contains the

name and a residential District address of the individual or a member of the family;

(5) A personal income tax document issued within the last year by the District or federal government that contains the name of the individual or a member of the family and indicates a residential address in the District;

(6) A pay stub issued within the last sixty (60) days to the individual or a member of the family that indicates a residential address in the District;

(7) A valid voter registration card, military identification, or veteran's identification issued by the District or federal government that contains the name of the individual or a member of the family and indicates a residential address in the District;

(8) An unemployment document or stub issued to the individual or a member of the family that indicates a residential address in the District;

(9) A current motor vehicle registration in the name of the individual or a member of the family that indicates a residential address in the District;

(10) An eviction notice from a residential property in the District issued to the individual or a member of the family within the last sixty (60) days;

(11) A valid unexpired District lease or rental agreement with the name of the individual or a member of the family listed as the lessee or as a permitted resident or renter; or

(12) Any other document that reasonably identifies the applicant as a District resident, as determined by the Department.

2501.4 An applicant may demonstrate residency pursuant to Section 2(32)(B) of the Act (D.C. Official Code § 4-751.01(32)(B)) by providing each of the following:

(a) A document listed in paragraph 2501.3(b), which must have been issued or otherwise valid within the last two (2) years; and

(b) A written verification by a verifier who attests, to the best of the verifier's knowledge, that the individual or family:

(1) Became homeless in the District, and

(2) Has not established a permanent residence outside the District in the previous two (2) years.

2501.5 In determining whether an applicant can demonstrate residency pursuant to Subsections 2501.3 or 2501.4, the Department shall search Department databases and other data systems to which it has access, to assist individuals and families in demonstrating residency, including:

(a) Department-maintained databases regarding the receipt of assistance from the District;

(b) Databases maintained by the District of Columbia Housing Authority;

(c) Databases regarding the receipt of assistance from the District and maintained by other District agencies; and

(d) Other relevant databases maintained by District agencies.

2501.6 (a) If, in consideration of the factors set forth in Subsections 2501.3 or 2501.4, the Department can demonstrate by clear and convincing evidence, that an applicant is not a resident of the District, the Department may determine that the applicant is ineligible to receive services within the Continuum of Care.

(b) For the purposes of this subsection, the term "clear and convincing evidence" means information or documentation that provides reasonable certainty or high probability that the applicant is not a resident of the District.

(c) For the purposes of this subsection, "clear and convincing evidence" may include:

(1) The applicant has an unexpired motor vehicle operator's permit or other official non-driver identification in another jurisdiction;

(2) The applicant has a current utility bill from another jurisdiction;

(3) The applicant has valid voter identification in another jurisdiction;

(4) The applicant has a lease agreement in the applicant's name in another jurisdiction;

(5) The applicant has a current mortgage statement for a residential address in another jurisdiction;

(6) The applicant has a current bank statement that indicates a residential address in another jurisdiction;

(7) The applicant currently receives locally administered public assistance from another jurisdiction;

(8) The applicant's children are enrolled in another jurisdiction;

(9) The applicant is in the District for a temporary purpose, for reasons including but not limited to:

(A) Providing care to a relative in the District, while maintaining a lease in another jurisdiction;

(B) Participating in a legal proceeding in any court in the District; or

(C) Seeking medical treatment at a medical facility in the District; or

(10) Any other relevant or conflicting residency factor demonstrating that the applicant does not reside in the District.

2501.7 (a) If the Department determines that an individual or family has an ownership interest in safe housing or is listed on a lease or occupancy agreement for safe housing, the Department may presume that the individual or family is not eligible for shelter, unless the individual or family provides credible evidence that the individual or family cannot safely inhabit the housing associated with the lease or occupancy agreement.

(b) For the purposes of this subsection, "credible evidence" means information or documentation, other than the applicant's own statement that the applicant resides in the District, that supports the applicant's assertion that the individual or family cannot safely inhabit the housing associated with the lease or occupancy agreement;

(c) For the purposes of this subsection, "credible evidence" includes:

(1) Documentation from a government agency that the housing is uninhabitable or unsafe;

(2) Police report or court order indicating that the housing arrangement is unsafe;

(3) Correspondence or report from a social worker stating that the housing or housing arrangement is unsafe; or

(4) Medical records documenting a medical diagnosis that renders the housing unsafe, such as asthma, mold allergy, or other similar medical condition.

(d) The presumption in paragraph (a) of this subsection:

(1) Shall not apply to individuals or families seeking shelter for reasons of domestic violence, sexual assault, or human trafficking; and

(2) Shall not affect an individual's or family's eligibility for crisis intervention services, including family mediation, conflict resolution, or other family services.

2501.8 (a) Except as provided in paragraph (c) of this subsection, upon receipt of new and relevant information regarding the eligibility of an individual or family receiving services within the Continuum of Care, the Department may redetermine an individual or family's program eligibility; provided that the Department shall not redetermine the eligibility of an individual or family more than once every one hundred eighty (180) days.

(b) For the purposes of this subsection, "new and relevant information" means any relevant information regarding the individual or family's eligibility, which may include information that:

(1) The individual or family is a resident of another jurisdiction;

(2) When applicable and based on program financial eligibility requirements, the individual or family has the financial means to find safe housing;

(3) The individual or family has access to safe housing or to a safe place to stay; or

(4) The individual or family currently receives locally administered public assistance from another jurisdiction.

(c) Notwithstanding paragraph (a) of this subsection, upon receipt of new and relevant information regarding program eligibility related to age, household composition, an absence from shelter placement of more than four (4) consecutive days without good cause, or identification as a tenant on a residential lease or occupancy agreement of an individual or family receiving services within the Continuum of Care, the Department may redetermine an individual or family's program eligibility.

(d) For the purposes of paragraph (c) of this subsection, "good cause" means:

(1) Hospitalization with verified documentation during the period of absence;

(2) Death of an immediate family member;

(3) Accident or illness involving an immediate family member that requires the presence of the individual or family member absent from shelter placement;

(4) Incarceration or detention;

(5) Other crisis, emergency, or other compelling situation that requires the absence of the individual or family from shelter placement;

(6) Authorized absence taken in compliance with the Program Rules; or

(7) Fleeing domestic violence.

(e) The Department may not determine that an individual or family is ineligible for services within the Continuum of Care pursuant to this subsection if the individual or family cannot safely inhabit the housing associated with the lease or occupancy agreement that identifies the individual or family as a tenant.

(f) An individual or family shall have the right to continue their current services while the Department redetermines their eligibility pursuant to this subsection.

2501.9 Intake workers shall provide the following for each individual seeking services:

(a) An overview of the shelter's policies in regards to the protection of residents based upon actual or perceived sexual orientation and gender identity;

(b) The opportunity for the individual to disclose whether he or she requests special placement or care based on safety concerns due to actual or perceived sexual orientation status or gender identity; and

(c) The opportunity to disclose, voluntarily and only following a discussion of the shelter's policies and accommodations for LGBTQ populations and ability to safeguard confidential information, the individual's sexual orientation and gender identification and expression; provided that the intake worker and all staff shall conduct this discussion in a culturally competent manner.

2502 INTAKE FOR SEVERE WEATHER SHELTER FOR INDIVIDUAL ADULTS

2502.1 Intake for severe weather shelter for individual adults shall consist of an eligibility determination and placement in a shelter.

2502.2 An individual adult applicant shall apply directly to and be determined eligible for severe weather shelter by the Provider from whom the individual is seeking services.

2502.3 Placement of eligible applicants in a specific severe weather shelter shall be on a first come, first served basis. If there is no available space in the shelter for an eligible applicant, the shelter shall arrange transportation for that person to another appropriate shelter that has available space.

2502.4 A Provider of severe weather shelter may fill a bed or unit allocated to an individual who leaves the facility for more than thirty (30) minutes after lights out. If the individual later returns to the severe weather shelter and the original bed was given to another individual, the Provider shall give the individual another bed. If no bed is available, the Provider shall arrange transportation for the individual to a severe weather shelter with an available bed.

2503 INTAKE FOR LOW BARRIER AND TEMPORARY SHELTER FOR INDIVIDUAL ADULTS

2503.1 Intake for low barrier and temporary shelter for individual adults shall consist of an eligibility determination and placement in a shelter.

2503.2 An individual adult applicant shall apply directly to and be determined eligible for low barrier and temporary shelter by the Provider from whom the individual is seeking services.

2503.3 Placement of eligible applicants in a specific low barrier shelter shall be on a first come, first served basis, except as provided for in Subsections 2503.4 and 2503.5.

2503.4 Notwithstanding Subsection 2503.3, low barrier shelters may allow clients who stayed at the shelter the previous night to enter the shelter first. Admittance of returning clients, however, shall be completed within two (2) hours of the start time of admittance and followed directly by first come, first served admittance.

2503.5 In addition to the returning client exception set forth in Subsection 2503.3, low barrier shelters may also make an exception to the first come, first served policy for persons who have difficulty meeting the intake time due to work, a medical appointment, or other necessary obligation. Providers shall give notice to clients of the procedures the client must comply with in order to receive this exception in the shelter Program Rules. Providers shall limit the number of exceptions that are

granted to ensure that the substantial majority of beds remain available for clients not receiving this exception.

2503.6 If an applicant to a low barrier shelter is determined eligible, but there is no available space in the shelter, the shelter may arrange transportation to another appropriate shelter that has available space.

2503.7 A Provider of low barrier shelter may fill a bed or unit allocated to an individual who leaves the facility for more than thirty (30) minutes after lights out. If the individual later returns to the shelter and the original bed was given to another individual, the Provider shall give the individual another bed. If no bed is available, the Provider may arrange transportation for the individual to a low barrier shelter with an available bed.

2504 ASSESSMENT FOR INDIVIDUAL ADULTS IN LOW BARRIER AND TEMPORARY SHELTER

2504.1 Individuals receiving low barrier shelter services shall be offered assessment and case management services with an appropriately trained, qualified, and supervised case manager.

2504.2 Individuals in low barrier shelter may choose to have an assessment interview with a case manager for the purpose of developing a Service Plan and identifying resources and programs for which the individual may be eligible. A Service Plan is not required for the client to receive referrals to resources and programs for which the individual may be eligible.

2504.3 Individuals receiving temporary shelter services for individual adults shall be provided assessment and case management services with an appropriately trained, qualified, and supervised case manager.

2504.4 Individuals residing in temporary shelters shall participate in the assessment and case management services provided.

2504.5 The assessment interview will use a uniform assessment tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool ("SPDAT") or appropriate version thereof, and will identify the appropriate housing assistance option based on the individual's needs.

2505 INDIVIDUAL OR YOUTH COORDINATED ASSESSMENT AND HOUSING PLACEMENT

2505.1 Individuals shall be referred to the appropriate housing assistance option for which they are eligible through either the Individual Coordinated Assessment and Housing Placement (I-CAHP) or the Youth Coordinated Assessment and Housing Placement (Y-CAHP), which is a part of the District's centralized or coordinated

assessment system, as defined in Section 2(6A) of the Act (D.C. Official Code § 4-751.01(6A)), for individuals and youth, as appropriate.

2505.2 The Department shall participate in the Individual Coordinated Assessment and Housing Placement (I-CAHP) protocol and the Youth Coordinated Assessment and Housing Placement (Y-CAHP) protocol, which are developed in accordance with federal grant funding regulations promulgated by the U.S. Department of Housing and Urban Development. Also referred to as "coordinated entry," I-CAHP and Y-CAHP use common assessment tools and other relevant criteria to determine the vulnerability of clients experiencing homelessness and refer clients to appropriate services and resources.

2506 [DELETED]

2507 INTAKE FOR FAMILIES – ELIGIBILITY DETERMINATION

2507.1 To determine eligibility for family shelter, each family seeking assistance shall complete an application at a central intake center. The application shall be in writing on a form prescribed by the Department and shall be signed by the applicant.

2507.2 If a family includes more than one (1) head of household, both heads of household must be present at the time of application. The Department may make exceptions for good cause in the following circumstances:

(a) Hospitalization with verified documentation during the period of absence;

(b) Death of an immediate family member;

(c) Accident or illness involving an immediate family member that requires the presence of the individual or family member absent from shelter placement;

(d) Incarceration or detention;

(e) Other crisis, emergency, or other compelling situation that requires the absence of the individual or family from the central intake center.

2507.3 A family applicant may be required to provide as part of the application the following information necessary to determine the family's general eligibility for services in the Continuum of Care:

(a) Housing status and history, including prior receipt of shelter or housing services through the Continuum of Care;

(b) Family composition;

(c) Employment status and history;

(d) Income and source of income, including public benefits; and

(e) Assets.

2507.4 Each family applicant shall provide documentation that is reasonably available to the applicant in support of the application.

2507.5 If the Department or its designee is unable to determine eligibility for shelter within the same business day in which the family submitted its application for shelter, the Department or its designee may place the family in an Interim Eligibility Placement for a period not to exceed three (3) days. The Department or its designee may extend that period up to three (3) times, but except as provided under the Act, an interim eligibility placement shall not exceed twelve (12) days.

2507.6 A family shall be placed in an Interim Eligibility Placement pursuant to Subsection 2507.5 if the family:

(a) Does not have a safe place to stay and cannot access other housing arrangements; and

(b) Agrees to participate in diversion services and family mediation, if appropriate.

2507.7 For purposes of this section, a "safe place to stay" shall be determined by the following standards:

(a) Whether the family is in a housing situation where they are not the primary lease holder and pursuant to the District's building, health, and sanitary code there is a material risk to health or safety, or a material risk of damage to personal property, should the family remain in the housing situation;

(b) Whether the family does not have access to any feasible alternative housing and is staying in or are at imminent risk of having to stay in a situation not meant for human habitation, such as a car, emergency room, or on the streets; or

(c) Whether the family has an alternative housing arrangement that lasts for a minimum of two (2) weeks absent extenuating circumstances.

2507.8 Any applicant who requires assistance with filling out the application form may request and shall receive such assistance. If a request for assistance is made by an applicant with a disability, or by the authorized representative of an applicant with a disability, the Provider or the intake center shall assist such applicant or authorized representative with any aspect of the application process necessary to

ensure that the applicant with a disability has an equal opportunity to submit an application.

2507.9 Pursuant to Section 2546, an applicant with a disability may request a reasonable modification at any time during the application process. Requests may be oral or in writing. Oral requests shall be reduced to writing by the applicant, intake or Provider staff, or any person identified by the individual, and submitted in accordance with the Provider or intake center policy and procedure.

2507.10 Based on the information received from the completed and signed application and an intake interview with the applicant, the intake center shall make a determination of shelter eligibility in accordance with Section 2501. The intake center shall give the applicant written notice of the applicant's general eligibility determination, which shall include:

(a) The date and time the family's signed application was determined to have been received by the intake center;

(b) A clear statement of the family's eligibility for shelter;

(c) A clear and detailed statement of the factual basis of a denial of eligibility, if the family is determined not eligible for shelter services;

(d) A reference to the statute, regulation, or Program Rule that is the legal basis of the denial, if the family is determined not eligible for shelter; and

(e) A clear and complete statement of the client's right to appeal a denial of eligibility through a fair hearing and administrative review, including deadlines for instituting the appeal.

2507.11 No individual or family may be deemed ineligible for Continuum of Care services solely because the individual or family cannot establish proof of homelessness or residency at the time of the individual or family's application for assistance.

2507.12 A family placed in an Interim Eligibility Placement pursuant to Subsection 2507.5 who was denied eligibility for shelter following their Interim Eligibility Placement because it was determined that they had access to safe housing or a safe place to stay, and they subsequently lose such access within fourteen (14) days of the eligibility determination, shall be placed in shelter without having to reapply if the Department or its designee determines that:

(a) The family is participating in prevention and diversion services; and

(b) The family has no access to other safe housing as defined in Section 2(32B) of the Act (D.C. Official Code § 4-751.01(32B)) or safe place to stay as defined in Subsection 2507.7.

2508 INTERIM ELIGIBILITY PLACEMENT FOR FAMILIES

2508.1 A Provider shall provide written notice to any family placed in an Interim Eligibility Placement which shall include the following information:

(a) The family is being placed in an Interim Eligibility Placement because the Department or its designee could not determine the family's eligibility on the same business day in which the family submitted its application for shelter;

(b) An Interim Eligibility Placement is not a permanent shelter placement, but a temporary placement for the family to give the Department or its designee additional time to determine whether the family is eligible for shelter; and

(c) The family shall be offered prevention and diversion services.

2508.2 A Provider shall offer family mediation and diversion services to families placed in an Interim Eligibility Placement, if appropriate. For the purposes of this subsection, "mediation" means assistance provided the family in an interim eligibility placement with the goal of avoiding homelessness and maintaining permanent housing. Mediation may involve mitigating interpersonal conflicts that may be occurring within a household and may include facilitated dialogue and limited financial support for items such as food or utilities.

2508.3 If the Department or its designee determines that a family placed in an Interim Eligibility Placement is eligible for the shelter, it shall provide the family with written notice of eligibility in accordance with Subsection 2507.10.

2508.4 If the Department or its designee determines that a family placed in an Interim Eligibility Placement is not eligible for shelter, the Department or its designee shall provide the family with prompt oral and written notice of the denial of eligibility for shelter placement. The Interim Eligibility Placement shall end forty-eight (48) hours or at the close of the next business day, whichever occurs later, following the client's receipt of the written notice. The denial notice shall include the following:

(a) The date and time in which the family applied for shelter;

(b) The date and time in which the family was placed in Interim Eligibility Placement, along with a copy of the Notice of Interim Eligibility Placement pursuant to Subsection 2508.1;

(c) A clear statement of the denial, including a clear and detailed statement explaining the Department's or its designee's reason(s) for determining the family was not eligible for family shelter;

(d) A clear and detailed statement of the factual basis for the denial, including the date or dates on which the basis or bases for the denial occurred;

(e) A reference to the statute, regulation, policy, or Program Rule pursuant to which the denial is being implemented;

(f) A clear and complete statement of the client's right to appeal the denial through fair hearing proceedings pursuant to Section 2550 and administrative review proceedings pursuant to Section 2552, including the appropriate deadlines for instituting the appeal; and

(g) A statement of the client's right, if any, to continuation of an interim eligibility placement pending the outcome of any appeal, pursuant to Subsection 2508.5.

2508.5 If the family disagrees with the denial of eligibility after Interim Eligibility Placement, they may request a fair hearing before the District of Columbia Office of Administrative Hearings (OAH) as described in Section 2550.

2508.6 Families placed in an Interim Eligibility Placement pursuant to Subsection 2507.5 shall be provided with a continuation of shelter pending the outcome of a fair hearing if the family requests a fair hearing within forty-eight (48) hours or before the close of the next business day, whichever occurs later, following receipt of written notice of the denial of application for shelter following an Interim Eligibility Placement.

2508.7 Prior to the fair hearing, an administrative review shall be granted to any family who wishes to appeal the Department's or its designee's denial of an application for shelter following their Interim Eligibility Placement pursuant to Subsection 2507.5. The administrative review shall be conducted in accordance with Section 2552, except that the written decision shall be issued within four (4) business days after the receipt of request for the fair hearing, unless a continuance is granted for good cause, as defined in Section 2599.

2508.8 A family who participated in an administrative review pursuant to Section 2552 and is dissatisfied with the administrative review decision may proceed to the fair hearing pursuant to Section 2550. A written determination of the fair hearing with respect to an Interim Eligibility Placement shall be made within ninety-six (96) hours (excluding Saturdays, Sundays and legal public holidays) of the issuance of the administrative review decision.

2509 FAMILY ASSESSMENT

2509.1 A family that receives a shelter or housing placement shall be referred for an assessment, with an appropriately trained, qualified, and supervised assessment specialist, on a uniform assessment tool as selected by the Department, such as the

Service Prioritization Decision Assistance Tool ("SPDAT") or appropriate version thereof, that identifies the appropriate housing assistance option based on the family's needs. The purpose of the assessment is to:

(a) Assess the family's full range of needs, including housing, medical, behavioral, economic, educational, and employment needs;

(b) Develop an initial Service Plan, in consultation with the client and the Client Advocate, if applicable; and

(c) Make any necessary referrals based on the family's immediate needs and priority determination.

2509.2 The family assessment shall be primarily conducted by a licensed social worker or other qualified, certified or licensed, professional. Other professionals, including psychologists, psychiatrists, and other professionals relevant to a client's needs, may also participate in the assessment as needed.

2509.3 The family shall be re-assessed at specified intervals as determined by the family's Service Plan.

2510 FAMILY COORDINATED ASSESSMENT AND HOUSING PLACEMENT

2510.1 After the family's initial assessment, the family may be referred to the Family Coordinated Assessment and Housing Placement (F-CAHP), which is part of the District's centralized or coordinated assessment system, as defined in Section 2(6A) of the Act (D.C. Official Code § 4-751.01(6A)).

2510.2 In making the referral to the F-CAHP, the Department or its designee shall first consider, where appropriate, referral to services that are designed to prevent homelessness through case management, emergency rental assistance, or other programs designed to stabilize or re-establish families in non-shelter housing.

2510.3 The Department shall participate in the F-CAHP protocol, which is developed in accordance with federal grant funding regulations promulgated by the U.S. Department of Housing and Urban Development. Also referred to as "coordinated entry," F-CAHP uses common assessment tools and other relevant criteria to determine the vulnerability of clients experiencing homelessness and refer clients to appropriate services and resources.

2511 FAMILY CASE MANAGEMENT

2511.1 All families placed in shelter shall be provided with a case manager. The case manager may be assigned to a family either during the intake process or following placement.

2511.2 With active participation from the family, the case manager shall develop the family's Service Plan. The Service Plan shall include, at a minimum, a listing of the family's strengths and challenges, the goals and milestones necessary for the family to attain and sustain permanent housing, and an exit plan, including a timeline that details clear steps and resources or connection with needed services and supports needed to exit the family out of the shelter.

2511.3 The case manager shall assist the family to achieve the goals listed in the Service Plan, make referrals for services as needed, coordinate the family's receipt of services, ensure that the family is connected to services, assist the family with working towards a long-term permanent housing placement, and monitor and track the family's progress toward reaching the Service Plan goals.

2511.4 The case manager shall review with the family the family's progress towards achieving the Service Plan goals at least one (1) time each month.

2511.5 The case manager shall update with the family the family's Service Plan at least every ninety (90) days.

2512 CLIENT RIGHTS

2512.1 At all times, clients shall be treated by Providers and the Department with dignity and respect.

2512.2 Clients shall be able to access services within the Continuum of Care free from discrimination on the basis of race, color, religion, national origin, language, culture, 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, and status as a victim of an intrafamily offense, and place of residence or business in accordance with the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq*. (2016 Repl. & 2019 Supp.)), the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 328; 42 USC §§ 12101 *et seq*.), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1095; 29 USC §§ 701 *et seq*.), Title II of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 243; 42 USC §§ 2000a *et seq*.), and the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq*. (2016 Repl. & 2019 Supp.)).

2512.3 Clients shall receive reasonable modifications to policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the client's Provider demonstrates that the modifications would fundamentally alter the nature of the services.

2512.4 Clients shall be able to access services within the Continuum of Care free from verbal, emotional, sexual, financial, and physical abuse and exploitation.

2512.5 Clients shall receive shelter in severe weather conditions.

2512.6 Clients shall, at a reasonable time and with reasonable prior notice, be permitted to view and copy, or have an authorized representative view and copy, all records and information that are related to the client and maintained by the client's Provider, including any relevant personal, social, legal, financial, educational, and medical records and information, subject to the provisions of Subsection 2512.7.

2512.7 Clients shall be entitled to confidential treatment by the Department and Providers of personal, social, legal, financial, educational, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, in a manner consistent with the confidentiality requirements of District and federal law.

2512.8 Clients shall be permitted to engage in or abstain from the practice of religion, including the religion of a particular Provider or other clients.

2512.9 Upon request, Clients shall be provided with the name and job title of any Provider staff member delivering services.

2512.10 Clients shall be permitted to provide input and feedback to Providers on their delivery of services. Providers shall offer a means of providing such input in an anonymous or confidential manner.

2512.11 Clients shall be permitted to file complaints with, testify before, or provide information to a Provider or the Mayor regarding the Provider's delivery of services or treatment of the client.

2512.12 Clients shall have the right to participate actively in developing their Service Plan, to assess progress made toward the goals of that Service Plan, and to review or update their Service Plan on a regular basis, with the assistance and support of a case manager. Clients shall also have the right to receive a review of the Service Plan upon request.

2512.13 Clients shall not be subject to testing for drugs or alcohol except when:

(a) Program guidelines prohibit intoxication and a licensed social worker or licensed professional counselor with experience identifying indications of drug or alcohol use or a certified addiction counselor determines that there is reasonable cause to believe that the client is engaging in drug or alcohol use; or

(b) A client consents to drug or alcohol testing as part of the client's Service Plan developed in accordance with Subsection 2512.12.

2512.14 Clients shall be permitted to meet and communicate privately with attorneys, advocates, clergy, physicians, and other professionals.

2512.15 Clients shall be given timely and adequate notice of a Provider's Program Rules as set forth in Subsection 2516.20.

2512.16 Clients shall be given timely and adequate notice of any denial of services, transfer to another Provider, or suspension or termination of services as set forth in this chapter.

2512.17 Clients shall be permitted to appeal a decision by the Department or a Provider that adversely affects the client's receipt of shelter or housing services provided within the Continuum of Care where permitted by Subsections 2550.1 and 2550.2.

2512.18 Clients shall be free from retaliation, punishment, or sanction for exercising any right provided under the Act.

2512.19 Clients shall be provided continuation of shelter and housing services provided within the Continuum of Care without change, other than transfer pursuant to Section 20 of the Act (D.C. Official Code § 4-754.34) or emergency transfer, suspension, or termination pursuant to Section 24 of the Act (D.C. Official Code § 4-754.38), pending the outcome of any fair hearing requested within fifteen (15) calendar days of receipt of written notice of a suspension or termination.

2512.20 Clients shall have the right to choose LGBTQ-specific accommodations and services if available or non-LGBTQ-specific accommodations and services.

2512.21 Clients shall have the right to receive information from the Department or Providers regarding LGBTQ-specific accommodations and services.

2512.22 Clients shall have the right to express their gender identity through their chosen attire, hairstyle, and mannerisms while using Department services.

2512.23 Clients served within the Continuum of Care shall have the right to be treated in all ways in accordance with the individual's gender identity and expression, including:

(a) Use of gender-specific facilities including restrooms, showers, and locker rooms;

(b) Being addressed in accordance with the individual's gender identity and expression;

(c) Having documentation reflect the individual's gender identity and expression;

(d) Being free from dress codes that are in conflict with the individual's gender identity and expression;

(e) Confidentiality of information regarding the individual's gender identity and expression; and

(f) Being free from discrimination in the provision of health care and mental health services related to the individual's gender identity and expression.

2512.24 Families shall not be separated based on sexual orientation, gender expression, or gender nonconformity of any members of the family.

2512.25 Clients shall have the right to associate and assemble peacefully with each other, during reasonable hours as established according to the Program Rules.

2513 ADDITIONAL RIGHTS FOR CLIENTS IN TEMPORARY SHELTER OR TRANSITIONAL HOUSING

2513.1 Clients shall be permitted to receive visitors in designated areas of the shelter or housing premises during reasonable hours and under such reasonable conditions as specified in the Provider's approved Program Rules.

2513.2 Clients shall be permitted to leave and return to the shelter or housing premises within reasonable hours as specified by the Provider’s approved Program Rules.

2513.3 Clients shall receive reasonable prior notice specifying the date and time of any inspections of a client's living quarters and of the Provider staff member authorized to perform the inspection, except when, in the opinion of the Provider's executive or program director, there is reasonable cause to believe that the client is in possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person on the Provider's premises. Reasonable cause shall be documented in the client’s record.

2513.4 Clients shall be permitted to be present or have an adult member of the family present at the time of any inspection unless, in the opinion of the Provider’s executive or program director, there is reasonable cause to believe that the client is in possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person on the Provider’s premises. Reasonable cause shall be documented in the client’s record.

2513.5 Clients shall be provided reasonable privacy in caring for personal needs and in maintaining personal living quarters.

2513.6 Clients shall be permitted to conduct their own financial affairs, subject to the reasonable requirements of the Provider’s Program Rules established in accordance

with Subsection 2516.17, or subject to a Service Plan developed pursuant to Subsection 2512.12.

2514 ADDITIONAL RIGHTS FOR CLIENTS IN PERMANENT HOUSING PROGRAMS

2514.1 Clients shall have the right to receive visitors in their own housing unit or, if applicable, in the common area designated for such purposes, in accordance with their lease or occupancy agreement.

2514.2 Clients shall have the right to leave and return to their own housing unit at will, in accordance with their lease or occupancy agreement.

2514.3 Clients shall have the right to be free from inspections by any person acting on behalf of a Provider or by a District agency administering the Act, except:

(a) As required as a condition of participation, but in any case, not more than once per year; or

(b) Notwithstanding paragraph (a) of this subsection, when, in the opinion of the Provider, person acting on behalf of the Provider, or District agency, there is reasonable cause to believe that the client is in possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person in the client's housing unit, and such reasonable cause is documented in the client's record.

2514.4 Clients shall have the right to reasonable advance notice of any inspection, except in circumstances described in Subsection 2514.3(b).

2514.5 Clients shall have the right to be present or have another adult authorized by the client be present at the time of any inspection, except in circumstances described in Subsection 2514.3(b).

2514.6 Clients shall have the right to be free from drug and alcohol testing, except when the client consents to testing as part of the client's service plan or case management plan.

2514.7 Clients shall not be responsible for the Provider's portion of the housing subsidy while the client is in the permanent housing program.

2514.8 Clients shall have the right to conduct their own financial affairs, subject to the reasonable requirements of Program Rules established pursuant to Subsection 2516.17 or to a Service Plan developed pursuant to Subsection 2512.12.

2514.9 Clients shall have the right to a housing inspection conducted in accordance with the Provider's program inspection requirements before moving into a housing unit, with a copy of the inspection report retained in the client's case file.

2515 CLIENT RESPONSIBILITIES

2515.1 Clients shall seek appropriate permanent housing according to the Program Rules established by a Provider pursuant to Subsection 2516.17, except when the client is residing in severe weather and low barrier shelter.

2515.2 Clients shall seek employment, education, or training when appropriate, except when the client is residing in severe weather and low barrier shelter.

2515.3 Clients shall refrain from the following behaviors while on a Provider's premises:

(a) The use or possession of alcohol or illegal drugs;

(b) The use or possession of weapons;

(c) Assaulting or battering any individual, or threatening to do so; and

(d) Any other acts that endanger the health or safety of the client or any other individual on the premises.

2515.4 Clients shall ensure that children within the client's family and physical custody are enrolled in school, where required by law.

2515.5 Clients shall ensure that their minor children receive appropriate supervision while on the Provider's premises.

2515.6 Clients shall utilize child care services that they qualify for and can afford, when available and necessary to enable the adult clients to seek employment or housing or to attend school or training, unless the clients meet any of the exemptions of Section 519g of the District of Columbia Public Assistance Act of 1982, effective April 20, 1999 (D.C. Law 12-241; D.C. Official Code § 4-205.19g (2019 Repl.)), or Section 5809.4(b)-(e) of Title 29 of the District of Columbia Municipal Regulations.

2515.7 Clients shall respect the safety, personal rights, and private property of Provider staff members and other clients.

2515.8 Clients shall maintain clean sleeping and living areas, including bathroom and cooking areas.

2515.9 Clients shall use communal areas appropriately, with attention to cleanliness and respect for the interests of other clients.

2515.10 Clients shall be responsible for their own personal property.

2515.11 Clients shall follow all Program Rules established by a Provider pursuant to Subsection 2516.17.

2515.12 Clients residing in temporary shelter and transitional housing shall participate in the assessment and case management services.

2516 PROVIDER STANDARDS FOR SHELTER AND HOUSING SERVICES PROVIDED WITHIN THE CONTINUUM OF CARE

2516.1 All Providers of shelter and housing services provided within the Continuum of Care shall meet the requirements of this section, as well as any additional requirements specific to the type of program provided as set forth elsewhere in this chapter.

2516.2 Providers shall ensure staff members are appropriately trained, qualified, and supervised.

2516.3 Providers shall maintain safe, clean, and sanitary facilities that meet all applicable District health, sanitation, fire, building, housing, and zoning codes. If it is not the responsibility of the Provider to correct an identified deficiency, the Provider shall promptly report to the Department or the appropriate agency the deficiency for corrective action, according to the applicable procedures.

2516.4 Providers in all types of shelter and housing services provided within the Continuum of Care shall assist clients to prepare for living in permanent housing, as deemed appropriate by the Provider and the client. Providers shall support the client's progress toward achieving goals set forth in the client's Service Plan, including the review of any Provider policies and procedures that are inconsistent with such goals.

2516.5 In accordance with a client's Service Plan and the type of shelter or housing service, Providers shall collaborate and coordinate with other service Providers to meet the client's needs, as deemed appropriate by the Provider and the client.

2516.6 Providers shall receive and utilize client input and feedback for the purpose of evaluating and improving the Provider's services.

2516.7 Providers shall establish procedures for their internal complaint procedures and, in addition to any other method, shall give notice to clients of these procedures through the Provider's approved program rules.

2516.8 Providers shall provide each client with printed information, distributed by the Department, describing the available services within the Continuum of Care, or other meaningful and up-to-date access to services information.

2516.9 Client Advocates and any other shelter or housing program case management staff shall be trained on the available services information and shall discuss with each client as applicable.

2516.10 Site-based Providers shall provide clients information regarding laundry facilities in close proximity to the shelter.

2516.11 Providers shall ensure that all clients are informed of services for which they may be eligible.

2516.12 Providers shall ensure the delivery of culturally competent services and provide language assistance for clients with limited English proficiency.

2516.13 Providers shall provide services free from discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, and source of income, and in accordance with the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401 *et seq.* (2016 Repl. and 2018 Supp.)), the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 328; 42 USC §§ 12101 *et seq.*), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1095; 29 USC §§ 701 *et seq.*), and Title II of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 243; 42 USC §§ 2000a *et seq.*).

2516.14 Providers shall provide reasonable modifications to policies, practices, and procedures in accordance with Section 2546 when the modifications are necessary to avoid discrimination on the basis of disability, unless the Provider demonstrates that making the modifications would fundamentally alter the nature of the services.

2516.15 Providers shall ensure confidential treatment of the personal, social, legal, financial, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, consistent with the confidentiality requirements of District and federal law. Providers shall ensure that all staff and volunteers are properly trained in these confidentiality requirements.

2516.16 Providers shall notify all applicants and clients that information about the client's receipt of services shall be included in HMIS for purposes of program administration and evaluation, and that such information shall be maintained in a confidential manner consistent with the requirements of District and federal law. Domestic violence shelters and housing programs subject to the Violence Against

Women and the Department of Justice Reauthorization Act of 2005, effective January 5, 2006 (Pub. L. No. 109-162; 119 Stat. 2160), shall notify all applicants and clients that the Provider shall only provide HMIS aggregated, non-personally identifying demographic information regarding services to the Provider's clients.

2516.17 Providers shall establish Program Rules related to the specific goals of their program. Program Rules shall include:

(a) Any applicable special eligibility requirements for the purpose of limiting entry into the program to individuals or families exhibiting the specific challenges that the program is designed to address, except in severe weather shelter and low barrier shelter;

(b) Client responsibilities, including those listed in Section 2515;

(c) Client rights, including those listed in Section 2512, and where applicable, Sections 2513 and 2514;

(d) The internal complaint procedures established by the Provider for the purpose of providing the client with an opportunity to promptly resolve complaints;

(e) Procedures by which an individual with a disability may request a reasonable modification pursuant to Section 2546;

(f) The procedures and notice requirements of any internal mediation program established by the Provider;

(g) The program's client property and storage policy and any procedures;

(h) Sanctions that a Provider may apply to clients who are in violation of the Program Rules. The list of sanctions shall include transfer, suspension, and termination as allowed by this chapter and any other sanctions the program may apply prior to transfer, suspension, or termination. Providers shall also state, as applicable, the basis for applying each sanction listed, the duration of the sanction, and how the client may have the sanction lifted; and

(i) The client's rights of appeal through a fair hearing and administrative review, including the appropriate deadlines for instituting the appeal.

2516.18 Providers shall submit their Program Rules to the Department for approval:

(a) Annually with any proposed changes clearly identified; and

(b) Whenever a Provider seeks to change its eligibility criteria, the rules of its internal grievance or mediation procedures, or its program sanctions.

2516.19 No Provider may enforce any provision within its Program Rules, other than those requirements or protections specifically enumerated by this chapter, unless the Department has approved the Program Rules in accordance with this section.

2516.20 Providers shall give prompt and effective notice of their Program Rules to clients by:

(a) Posting a copy of their Program Rules on the Provider's premises in a location easily accessible to clients and visitors; and

(b) Giving every new client written notice of the Provider's Program Rules, and reading and explaining the written notice to the client.

2516.21 The client and the Provider staff member delivering the notice pursuant to Subsection 2516.20(b) shall both sign a statement acknowledging the client's receipt of the notice and indicating the client's awareness, understanding, and acceptance of the Program Rules.

2516.22 Providers shall establish procedures to provide effective notice of the Program Rules to clients with special needs, including those who may have intellectual or mental disabilities, or who may have difficulty reading or have limited English proficiency.

2516.23 Providers shall submit an Unusual Incident Report to the Department for investigation or review, according to the Department's Unusual Incident Report policy and procedures. Providers shall complete the Unusual Incident Report form prescribed by the Department and include, where applicable, any actions or resolution taken to ameliorate the unusual incident.

2516.24 Providers shall publicly display information regarding the ability to seek redress under the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2016 Repl. & 2019 Supp.)).

2516.25 Providers shall develop a system for reporting bullying and harassment in accordance with the Youth Bullying Prevention Act of 2012, effective September 14, 2012 (D.C. Law 19-167; D.C. Official Code §§ 2-1535.01 *et seq.* (2016 Repl.)).

2516.26 Providers shall ensure that all homeless service workers, including intake workers, direct service staff, contractors, and volunteers, direct service staff managers, and direct service staff supervisors, shall be trained by the District's Office of Lesbian, Gay, Bisexual, Transgender and Questioning Affairs or its designee in cultural competence with regard to the LGBTQ population, including but not limited to, the following:

(a) Vocabulary and definitions relevant to LGBTQ clients;

(b) Information about how to communicate with clients about sexuality, sexual orientation, and gender identity;

(c) Information about the Department's nondiscrimination policy and discrimination complaint process;

(d) Best practices for data collection, privacy, storage, and use;

(e) Confidentiality policies and practices;

(f) Current social science research and common risk factors for LGBTQ youth;

(g) Information about the coming out process, its impact on LGBTQ youth, and how to address a youth who self-discloses his or her sexual or gender identity (e.g., offering support, engaging in conversation as appropriate, locating appropriate services);

(h) Best practices for supporting LGBTQ clients in shelter, housing, and supportive services, including but not limited to information on community resources available to serve LGBTQ clients;

(i) Suicide awareness and prevention; and

(j) Legal requirements for Providers and homeless service workers for homeless youth.

2517 ADDITIONAL SEVERE WEATHER SHELTER REQUIREMENTS

2517.1 Providers of severe weather shelter shall meet the requirements of Section 2516 as well as the additional requirements set forth in this section.

2517.2 Hypothermia shelters shall be operated in accordance with and pursuant to the District of Columbia Hypothermia procedures set forth in Mayor's Order 2001-161, or any subsequent Mayor's Order.

2517.3 Each day, Providers of Hypothermia Shelter shall provide a clean bed, clean linens, including a bottom sheet and a top sheet, clean pad, and clean blanket for each bed as applicable.

2517.4 Providers of Hypothermia Shelter shall either provide for a client's basic needs, including food, clothing, and supportive services, or provide information as to where the client can obtain food, clothing, and supportive services.

2517.5 Providers of Hypothermia shelter shall provide properly functioning toilet facilities, including toilet paper, functional sink with hot water, and soap. Those Providers

of Hypothermia shelter operating in publicly-owned facilities shall provide twenty-four (24) hour access to such toilet facilities.

2517.6 Providers of Hypothermia and Hyperthermia Shelter shall provide cool water, available via water cooler, fountain, or other means.

2517.7 Providers of Hypothermia and Hyperthermia Shelter shall provide properly functioning heating and cooling systems during the appropriate seasons. If it is not the responsibility of the Provider to correct an identified deficiency, the Provider shall promptly report to the Department or the appropriate agency the deficiency for corrective action, according to the applicable procedures.

2518 ADDITIONAL LOW BARRIER SHELTER REQUIREMENTS

2518.1 Providers of low barrier shelter shall meet the requirements of Sections 2516 and 2517 as well as the additional requirements set forth in this section.

2518.2 Providers of low barrier shelter shall ensure that all clients are offered case management services as set forth in Section 2504.

2518.3 Providers of low barrier shelter shall provide clean, hot shower facilities.

2518.4 Providers of low barrier shelter shall make available personal hygiene supplies, including bath size towels, washcloth, soap, shampoo, deodorant, toothpaste, and toothbrushes.

2519 ADDITIONAL TEMPORARY SHELTER, TRANSITIONAL HOUSING, AND PERMANENT HOUSING PROGRAM REQUIREMENTS

2519.1 Providers of temporary shelter, transitional housing, and permanent housing programs shall meet the requirements of Sections 2516 through 2518, as well as the additional requirements set forth in this section.

2519.2 Providers under this section shall ensure that an appropriately trained, qualified, and supervised case manager provides each client an assessment in order to identify each client's service needs.

2519.3 Providers under this section shall ensure direct provision of, or referral to, appropriate supportive services to enable the client to fulfill the goals and requirements in the client's Service Plan.

2519.4 Providers under this section of programs in which clients do not have independent units shall provide mail and phone services, or procedures for handling mail and phone messages, that enable the client to receive mail and messages without identifying the client as residing in temporary shelter, transitional housing, or a

permanent housing program and that respect the client's right to privacy in regards to their mail and telephone messages.

2519.5 Providers under this section in which clients do not have independent units shall provide private, secure space for the temporary storage of personal belongings.

2519.6 Providers under this section shall provide access to laundry facilities in the immediate vicinity of the shelter, transitional housing, or permanent housing program facility when all of the units are in one location.

2519.7 Providers under this section in which clients do not have independent units shall provide reasonable access to phones during reasonable hours and during emergencies.

2519.8 Providers under this section shall provide clients with the opportunity to establish a voluntary savings or escrow account. Providers may encourage clients, as part of the financial planning section of the client's Service Plan, to establish a savings or escrow account based on the client's individual circumstances and service goals.

2519.9 Providers of temporary shelter, transitional housing, or permanent housing programs for families shall provide clients with access to immediate indoor or outdoor areas equipped with basic facilities for exercise and play for use by minor children.

2520 ADDITIONAL TRANSITIONAL HOUSING REQUIREMENTS

2520.1 Providers of transitional housing shall meet the requirements of Sections 2516 through 2519 as well as the additional requirements set forth in this section.

2520.2 Providers of transitional housing shall offer follow-up supportive services, for a minimum of six (6) months, to clients who have transferred to permanent housing from their program, unless the client is receiving such supportive services from another Provider.

2520.3 Providers of transitional housing shall provide an apartment-style or group home housing accommodation.

2520.4 Providers of transitional housing offered in a group home setting shall provide clients with access to private space and personal time.

2521 CLIENT PROPERTY AND STORAGE REQUIREMENTS

2521.1 Providers of hypothermia and low barrier shelter shall adopt reasonable policies regarding client property based on the available space and reasonable needs of the clients which shall include:

(a) The amount of belongings a client may bring into the shelter, which shall be, at a minimum, two (2) medium size bags or the equivalent;

(b) Any limitations, based on health and safety considerations, on what clients may bring into the shelter;

(c) Whether lockers or other storage is available, under what conditions, and under what conditions a Provider may open, inspect, or remove property;

(d) The client's responsibility to manage their property while on the shelter premises and any limits on the Provider's liability for lost, stolen, or damaged property; and

(e) The Provider's policies regarding abandoned property.

2521.2 Hypothermia and low barrier shelter Providers shall submit the shelter's client property and storage policy to the Department as part of the Provider's Program Rules for annual approval by the Department. Providers shall give clients notice of these policies as part of the Provider's approved Program Rules.

2521.3 Temporary shelter and transitional housing Providers, except Providers who provide apartment style shelter and transitional housing, shall provide private, secure space for the temporary storage of personal belongings. Provision of temporary storage shall take into consideration the available space and reasonable needs of clients.

2521.4 When a client leaves a temporary shelter or transitional housing program, whether the client leaves voluntarily or as a result of a transfer or termination, the Provider shall hold any belongings the client does not take with them to the new placement for a minimum of seven (7) calendar days following the client's departure, except that when a Provider provides the client with moving services, the Provider shall not be required to hold any belongings left after the moving service has completed the move. After seven (7) days following the client's departure (and where no moving services are provided), the Provider may dispose of any remaining belongings.

2522 TRANSFER OF INDIVIDUALS AND FAMILIES IN SHELTER AND HOUSING PROGRAMS WITHIN THE CONTINUUM OF CARE

2522.1 Providers are strongly encouraged to use transfer as the primary mechanism for assisting clients to find the most appropriate placement and services within the Continuum of Care, including making reasonable efforts to transfer a client prior to taking action to terminate services to a client.

2522.2 A Provider may transfer a client to another Provider to ensure the client receives the most appropriate services available within the Continuum of Care whenever:

(a) The client consents to the transfer, including a transfer requested by the client;

(b) The Provider identifies and secures for the client a placement with another Provider that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's Service Plan. If the client is being transferred because of domestic violence or other urgent need, the Provider shall expedite the transfer;

(c) The client is a non-LGBTQ-identified youth occupying a bed established pursuant to Section 28(c)(1) of the Act (D.C. Official Code § 4-755.01(c)(1)) and an LGBTQ-identified homeless youth has presented a need for shelter; or

(d) The client is no longer eligible to receive services from the Provider's program.

2522.3 In addition to the provisions for transfer in Subsection 2522.2, a Provider may transfer a client when a client fails or refuses to comply with the Provider's Program Rules and the client responsibilities set forth in Section 2515, provided, that:

(a) The client has received proper notice of the approved Program Rules as required by Subsection 2516.20; and

(b) The Provider has made a good-faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without a transfer.

2522.4 In addition to the provisions for transfer in Subsections 2522.2 and 2522.3, a Provider may transfer a client when the Provider is unable to continue operating a program due to loss of funding or loss of control of the facility for circumstances beyond the control of the Department. A transfer pursuant to this subsection shall be to a program with a vacancy that best meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's service plans, the District's centralized or coordinated assessment system protocol, and the procedures in this section.

2522.5 For purposes of Subsection 2522.2(b), a low barrier shelter shall have secured a placement for a transferring client pursuant to Subsection 2522.2 and 2522.3 when the shelter has agreed to guarantee a bed for that client for one (1) week. The decision whether or not to provide a guaranteed bed to facilitate a transfer shall be at the discretion of the Provider. For purposes of this subsection, to guarantee a bed at a low barrier shelter means:

(a) The Provider shall hold a bed for the transferee each night for up to a week following the effective date of the transfer;

(b) Each night when a bed is to be guaranteed, the Provider shall hold a bed for the transferee for a minimum of two (2) hours beyond the shelter's intake period;

(c) If the transferee has not arrived at the shelter by two (2) hours past the shelters intake start time, the Provider may give the held bed to another client who needs a bed; and

(d) If the transferee does not stay at the shelter for two (2) consecutive nights without prior approval from the Provider, the Provider is under no obligation to continue to hold the bed for the remainder of the original one (1) week period.

2522.6 If a Provider determines that an individual or family, based on existing or reasonably expected change in circumstances such as reunification with children, change in child care, legal or physical custody arrangements, childbirth, or other similar change in the client's circumstances, is eligible and more appropriate for other shelter or housing services, the Provider may initiate a transfer of the resident to a more appropriate placement, pursuant to Subsection 2522.2.

2522.7 If a family no longer meets the criteria for family shelter or housing services due to the removal of a child or children by the District of Columbia Child and Family Services Agency (CFSA), or loss of custody pursuant to an agreement or Court order, and there are no children remaining in the home, then the parent(s) may be transferred in accordance with Subsection 2522.2 to a shelter or program that assists parents with reunification, if appropriate, based on the circumstances, and if a placement is available; or, to an individual adult shelter(s), if a placement that assists parents with reunification is not available or appropriate.

2522.8 In the case of CFSA removal, transfer may be initiated in accordance with Subsection 2522.7 after the decision to remove the child or children has been made at an adjudicatory hearing on the matter, or thirty (30) days, whichever is sooner, taking into consideration, after consultation with CFSA and others as applicable, the possibility of reunification. If after transfer the decision is made to allow reunification, and placement in family shelter or transitional housing would materially support the reunification goal, then the family may apply or re-apply for family shelter or transitional housing.

2522.9 For the purpose of Subsections 2522.2 and 2522.3, a Provider has secured a placement in temporary shelter or transitional housing for the client when the program with the new placement has agreed to accept the transferee and confirmed that a bed or unit is available and will be held through the effective date of transfer, subject only to reasonable requirements by the new placement on the transferee.

2522.10 A Provider has secured a placement in a low barrier shelter when the low barrier shelter Provider has agreed to guarantee a bed as of the effective date of a transfer in accordance with Subsection 2522.5. If the client requests to be allowed to transfer prior to the effective date, the receiving low barrier shelter shall attempt to provide the guaranteed bed prior to the effective date of the transfer to the extent possible.

2522.11 Providers may transfer clients through direct arrangements with other Providers or through coordination with a central intake center or via referral to the appropriate Coordinated Assessment and Housing Placement system.

2522.12 A Provider shall give written and oral notice to clients of their transfer to another Provider at least fifteen (15) days before the effective date of the transfer, except for emergency transfers pursuant to Section 2525.

2522.13 When a client has been absent from temporary shelter or transitional housing Provider's premises for more than four (4) consecutive days and the client has not complied with Program Rules regarding absences, the Provider is exempt from the requirement to give oral notice of the transfer. In such instances, the notice shall be mailed via certified mail, return receipt requested, or sent via electronic mail to the client, if the client has provided such contact information to the Provider, with a copy provided to the Department for verification of the issuance of the notice. A copy of the notice shall also be left in the client's unit or at the facility's sign-in location.

2522.14 The Provider shall not issue a notice of transfer until a placement is secured as defined by Subsection 2522.9 or Subsection 2522.10.

2522.15 Any written notice of transfer issued pursuant to this section shall be mailed to or served upon the client and shall include:

(a) A clear statement of the placement to which the client is being transferred and the effective date of the transfer;

(b) A clear and detailed statement of the factual basis for the transfer, including the date or dates on which the basis or bases for the transfer occurred;

(c) A reference to the statute, regulation, or Program Rule pursuant to which the transfer is being implemented; and

(d) A clear and complete statement of the client's right to appeal the transfer through a fair hearing and administrative review, including the appropriate deadlines for instituting the appeal.

2522.16 The client shall move to the new placement by the effective date of the transfer. The client may consent to move to the new placement any time before the effective date of the transfer in coordination with the new placement, except as provided by Subsection 2522.10.

2522.17 If the new placement requires certain procedures or paperwork in order for the transferred client to access the placement, the new placement shall communicate such requirements to the client, either through the originating placement, the client's coordinating case manager, or directly to the client. The client shall comply with the Provider's requirements to access the new placement. A client's failure to comply with the requirements for accessing the new placement shall not invalidate the transfer or allow the client to remain in the original placement.

2522.18 If a client does not consent to the transfer, the client may appeal the transfer pursuant to Section 2550, but the client shall move to the new placement while awaiting the outcome of the appeal. The client shall not have the right to remain in the original placement pending the outcome of the appeal.

2522.19 If the client appeals the transfer, and the Provider's transfer decision is not upheld, the client shall be returned to the original placement unless the program or facility has closed.

2522.20 If, following a client's successful appeal, the original placement has no available unit or bed, the client shall receive the first available opening at the original placement, unless a placement elsewhere is available and the client consents to the alternate placement.

2522.21 If the original program or facility is closed, the client shall receive the first available placement in a program providing services as comparable to the pre-transfer placement as possible.

2522.22 When a Provider or the Department closes a severe weather shelter at the end of the severe weather season, the Provider shall give clients using the program or facility at least fifteen (15) days' notice before the impending closure and information regarding alternative shelters.

2522.23 When a Provider or the Department closes a shelter program or facility other than a severe weather shelter at the end of the severe weather season, the Provider shall give clients using the program or facility at least thirty (30) days' notice of the impending closure, where feasible, and in no case less than fifteen (15) days' notice of the impending closure. Clients using the program or facility may be transferred pursuant to Subsection 2522.2.

2522.24 Transfers made pursuant to Subsection 2522.23 shall be made based on each client's assessment and Service Plan to the extent allowed by client participation, taking into consideration the number and type of available placements. The order

of transfers may take into account the length of time in the program specifically or shelter system generally, or some other manner of allocating the necessary transfers in an equitable and objective manner. For low barrier shelter programs, priority may be given to those persons who have the highest utilization rate over a certain period of time prior to transfer. When a low barrier shelter closure potentially involves large numbers of individuals who may be transferred during the same time period, such transfers shall be balanced with the need to ensure that the large majority of beds in other low barrier shelter remain available on a first-come, first serve basis.

2522.25 Clients transferred pursuant to this section shall take all their personal belongings to the new placement. A Provider may assist the client in the relocation of the client's property. The Provider shall treat any property left by the client at the originating placement in accordance with Section 2521.

2522.26 Providers may not use the transfer authority provided under this section in any way that interferes with a client's tenancy rights under a lease agreement governed by Title 14 of the District of Columbia Municipal Regulations.

2523 SUSPENSION OF INDIVIDUALS AND FAMILIES IN SHELTER AND HOUSING PROGRAMS WITHIN THE CONTINUUM OF CARE

2523.1 If a client fails or refuses to comply with the Provider's Program Rules and the client responsibilities listed in Section 2515, or engages in any of the behaviors listed in Subsection 2524.1(b), the Provider may suspend services to the client for an appropriate period of time in light of the severity of the act or acts leading to the suspension, but in no case for a period longer than thirty (30) days.

2523.2 A Provider may suspend a client from temporary shelter, transitional housing unit, permanent supportive housing program unit, or supportive services only when:

(a) The client has received proper notice of the Program Rules, including client responsibilities, and prohibited behaviors;

(b) The Provider has made a good faith effort to enable the client to comply with the Program Rules so that the client is able to continue receiving services without suspension; and

(c) The Provider has made a reasonable effort, given the severity of the situation, to transfer the client to another Provider within the Continuum of Care as set forth in Subsection 2524.1(d).

2523.3 A Provider may not suspend adult individuals or adult family members in a manner that results in minor children or dependent adults being left unattended in a temporary shelter, transitional housing unit, or permanent supportive housing program unit.

2523.4 A Provider shall give written and oral notice to clients of their suspension from services at least fifteen (15) days before the effective date of the suspension, except for a suspension of supportive services for a period shorter than ten (10) days. For suspension of supportive services for a period shorter than ten (10) days, the Provider shall, at a minimum, give oral notice and document such notice to the client in the client's file.

2523.5 A Provider's written notice to a client of his or her suspension shall include:

(a) A clear statement of the beginning and end date of the suspension;

(b) A clear and detailed statement of the factual basis for the suspension, including the date or dates on which the basis or bases for the suspension occurred;

(c) A reference to the statute, regulation, or Program Rule pursuant to which the suspension is being implemented;

(d) A clear and complete statement of the client's rights to appeal the suspension through a fair hearing and administrative review, including deadlines for instituting the appeal; and

(e) A statement of the client's right to continuation of shelter or supportive housing services pending the outcome of any fair hearing requested within fifteen (15) days after receipt of written notice of a suspension of such services.

2523.6 Providers may not use the suspension authority provided under this section in any way that interferes with a client's tenancy rights under a lease agreement governed by Title 14 of the District of Columbia Municipal Regulations.

2524 TERMINATION OF INDIVIDUALS AND FAMILIES FROM SHELTER AND HOUSING PROGRAMS WITHIN THE CONTINUUM OF CARE

2524.1 A Provider may terminate delivery of services to a client only when:

(a) The Provider documents that it has considered suspending the client in accordance with Section 2523, or, has made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with Section 2522;

(b) The client:

(1) Possesses a weapon on the Provider's premises;

(2) Possesses or sells illegal drugs on the Provider's premises;

(3) Assaults or batters any person on the Provider's premises;

(4) Endangers the client's own safety or the safety of others on the Provider's premises;

(5) Intentionally or maliciously vandalizes, destroys, or steals the property of any person on the Provider's premises;

(6) Fails to accept an offer of appropriate permanent housing that better serves the client's needs after having been offered two (2) appropriate permanent housing opportunities; or

(7) Knowingly engages in repeated violations of a Provider's Program Rules; and

(c) In the case of terminations pursuant to subparagraphs (b)(6) and (b)(7) of this subsection, the Provider has made reasonable efforts to help the client overcome obstacles to obtaining permanent housing.

(d) For purposes of this subsection, reasonable efforts to transfer shall be satisfied when the Provider, with the client's participation and input if possible, in light of the severity of the act or acts leading to termination:

(1) Determines what type of program or programs constitutes an appropriate transfer;

(2) Identifies the programs that offer such programs;

(3) Determines, either through contacting a central transfer coordinator or by contacting the programs directly, which of the identified programs have available placements; and

(4) Offers to the client the transfer options that the Provider has identified or implements transfer to an appropriate placement.

(e) For purposes of paragraph (d), the phrase "severity of the act or acts" means the degree of interference the continuing presence of the client may have, as determined by the Provider, with other clients' enjoyment of rights or on the Provider's ability to meet the standards by which services are to be delivered to other clients.

2524.2 A Provider shall, except as provided in Subsection 2522.13, give written and oral notice to clients of their termination from services at least fifteen (15) days before the effective date of the termination.

2524.3 A Provider's written notice to a client of his or her termination shall include:

(a) A clear statement of the effective date of the termination;

(b) A clear and detailed statement of the factual basis for the termination, including the date or dates on which the basis or bases for the termination occurred;

(c) A reference to the statute, regulation, or Program Rule pursuant to which the termination is being implemented;

(d) A clear and complete statement of the client's rights to appeal the termination through a fair hearing and administrative review, including deadlines for instituting the appeal; and

(e) A statement of the client's right to continuation of shelter or supportive housing services pending the outcome of any fair hearing requested within fifteen (15) days after receipt of written notice of a termination.

2524.4 When a Provider terminates an individual or family from a program, the termination applies only to the specific program and location from which the individual or family is terminated, except for scattered site programs that have no common location. The individual or family may seek services from other Providers within the Continuum of Care, as well as from other locations or programs offered by the Provider of the program from which they were terminated.

2524.5 Providers may not use the termination authority provided under this section in any way that interferes with a client's tenancy rights under an agreement governed by Title 14 of the District of Columbia Municipal Regulations.

2525 EMERGENCY TRANSFER, SUSPENSION, OR TERMINATION OF INDIVIDUALS AND FAMILIES FROM SHELTER AND HOUSING PROGRAMS WITHIN THE CONTINUUM OF CARE

2525.1 A Provider may transfer, suspend, or terminate a client within twenty-four (24) hours of the imminent threat, without providing prior written notice of the action, whenever a client presents an imminent threat to the health or safety of the client or any other person on a Provider's premises. For purposes of this section, imminent threat to the health or safety means an act or credible threat of violence on the premises of a temporary shelter, transitional housing facility, or permanent supportive housing program facility.

2525.2 In addition to the circumstances described in Subsection 2525.1, the Department or a provider may effect an emergency transfer of a client:

(a) In the case of a loss of unit that is beyond the control of the Department or Provider, such as in the case of an unexpected loss of a contract for shelter units, a fire, or other similar unexpected circumstance; or

(b) When a client's continued presence at a shelter location materially impairs the Provider's ability to provide services to current clients.

2525.3 Providers may not use the emergency transfer, suspension, or termination authority provided under this section in any way that interferes with a client's tenancy rights under an agreement governed by Title 14 of the District of Columbia Municipal Regulations.

2525.4 The Provider shall consider the severity of the act or acts leading to the imminent threat when deciding whether to proceed with an emergency transfer, suspension, or termination of the client. Providers are encouraged, when appropriate, to try to diffuse the situation by such means as separation, mediation, or non-emergency transfer, suspension, or termination, if feasible, as an alternative to or prior to taking an emergency action.

2525.5 If necessary to meet the terms of a protective order, the client against whom another party has a protective order may be transferred under the emergency transfer provisions of this section.

2525.6 Whenever a Provider transfers, suspends, or terminates a client pursuant to the emergency provisions of this section, the Provider shall endeavor to provide the client with written notice.

2525.7 If it is not possible or safe to provide written notice at the time of the action, a subsequent written notice shall be provided to the client within fifteen (15) days, or, if the client's whereabouts are unknown, upon request within ninety (90) days after the emergency action taken.

2525.8 Written notice to the client of an emergency transfer, suspension, or termination shall include:

(a) A clear statement of the emergency action;

(b) A clear and detailed statement of the factual basis for the emergency action, including the date or dates on which the basis or bases for the emergency action occurred;

(c) A reference to the statute or regulation pursuant to which the emergency action is being implemented;

(d) A clear and complete statement of the client's rights to appeal the emergency action through a fair hearing and administrative review, including deadlines for instituting the appeal;

(e) A statement that no client transferred, suspended, or terminated because of an imminent threat to health or safety shall have the right to request mediation of the action or to continue to receive shelter or supportive housing services without change pending appeal; and

(f) The name and contact information of the designated Department employee responsible for reviewing the proposed emergency action.

2525.9 The Provider shall immediately notify the Department of the emergency action by sending a copy of the written notice of emergency transfer, suspension, or termination to the designated Department employee. For purposes of this subsection, "immediately" shall mean as soon as reasonably possible after the incident. At a minimum, the Provider, in its notification to the Department, shall include:

(a) The identity of the client who was transferred, suspended, or terminated on an emergency basis;

(b) The nature, date, and time of the emergency action taken by the Provider, including the name of the staff person present when the underlying incident occurred or who is otherwise most knowledgeable of the circumstances leading to the emergency action;

(c) The Provider staff member authorizing the emergency transfer, suspension, or termination; and

(d) The specific act or acts leading to the emergency transfer, suspension, or termination.

2525.10 The Department shall issue a written finding of whether the emergency action complies with the statutory requirements of Section 24 of the Act (D.C. Official Code § 4-754.38) within twenty-four (24) hours of receiving notification from a Provider of an emergency transfer, suspension, or termination.

2525.11 In reaching its finding, the Department may make a brief inquiry into the facts and circumstances of the emergency action, including interviews with any party, if additional details or clarifications are needed. The requirement that a decision be made within twenty-four (24) hours of receipt of the notice of emergency transfer, suspension, or termination, however, precludes a comprehensive fact-finding or inquiry.

2525.12 The Department shall issue its written finding on an Emergency Action Compliance Finding form and send it to the Provider and to the client or client representative, if requested, by facsimile, electronic mail, or other immediate form of transmission.

2525.13 The Provider shall deliver or attempt to deliver a copy of the Emergency Action Compliance Finding form to the client as soon as reasonably possible after receipt of the form from the Department. If the client's whereabouts are unknown, the Provider shall retain a copy of the Emergency Action Compliance Finding form and deliver it to the client if and when the opportunity arises.

2525.14 The Provider shall document in the client's file its delivery or its attempt at delivery of the Emergency Action Compliance Finding form to the client.

2525.15 If the Department makes a finding that the emergency action complies with D.C. Official Code § 4-754.38 (2008 Repl.), the Provider's decision will stand, subject to appeal by the client through the fair hearing process.

2525.16 If the Department makes a finding that the emergency action does not comply with Section 24 of the Act (D.C. Official Code § 4-754.38), the Provider shall immediately reinstate the client's access to services. The Provider shall promptly notify the Department that the client was reinstated to services by completing the appropriate section of the Emergency Action Compliance Finding form and sending a copy to the Department as soon as practicable, but no later than twenty-four (24) hours after receipt of the Department's finding.

2525.17 The Provider shall make every reasonable effort to contact the client regarding reinstatement to enable the client to have shelter or housing at the earliest possible time.

2525.18 The client shall make every reasonable effort to stay in touch with the Provider pending the Department's finding, in order to be available to receive the Department's finding and notification of reinstatement, should the Department find the action is not in compliance.

2526 RAPID RE-HOUSING PROGRAMS – PURPOSE AND SCOPE

2526.1 The purpose of Rapid Re-Housing Programs ("RRH Programs") is to provide housing relocation assistance, time-limited case management services, and time-limited rental assistance, as necessary, to assist individuals and families experiencing homelessness move into permanent housing, as defined in Section 2(27B) of the Act (D.C. Official Code § 4-751.01(27B)) and achieve stability in permanent housing. RRH Programs are permanent housing programs, as defined in Section 2(27C) of the Act (D.C. Official Code § 4-751.01(27C)).

2526.2 RRH Programs shall consist of unit identification assistance, time-limited rental subsidy, tenant housing cost contribution, assessment, case management, and supportive services, as set forth in these subsections.

2526.3 Unless provided otherwise in Sections 2526 through 2533, RRH Programs shall be administered in accordance with the provisions of the Continuum of Care regulations found elsewhere in this chapter.

2526.4 RRH Programs shall be subject to annual appropriations and the availability of funds.

2526.5 Nothing in these rules shall be construed to create an entitlement, either direct or implied, on the part of any individual or family to RRH Programs.

2526.6 The Department may execute grants, contracts, and other agreements as necessary to carry out RRH Programs.

2526.7 Sections 2526 through 2533 do not apply to the Family Re-Housing and Stabilization Program (FRSP). FRSP is governed by Chapter 78 of this Title.

2527 RRH PROGRAMS – ELIGIBILITY DETERMINATION, ASSESSMENT, AND REFERRAL

2527.1 An individual or family that is eligible to receive services within the Continuum of Care may be referred directly to Individual, Youth, or Family Coordinated Assessment and Housing Placement (CAHP), as set forth in Sections 2505 and 2510, for assignment to a RRH Program. A RRH Program may establish special eligibility criteria in its Program Rules in accordance with Subsection 2516.17.

2527.2 An individual or family may be assessed using an evidence-based assessment tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool ("SPDAT"), which can be administered by the Department or its designees.

2527.3 To be eligible for RRH Programs for individuals, an individual shall meet the requirements set forth in Subsection 2501.1 and shall meet the definition of individual set forth in Section 2(21A) of the Act (D.C. Official Code § 4-751.01(21A)).

2527.4 To be eligible for RRH Programs for families, a family shall meet the requirements set forth in Subsection 2501.1 and shall meet the definition of family set forth in Section 2599.

2527.5 The RRH Provider shall create and maintain in the client's file detailed documentation of the RRH Program's eligibility determination, including the assistance for which the client qualifies and subsequent case-management review.

2527.6 When an individual or family has undergone assessment and referral in accordance with the appropriate CAHP protocol, the individual or family will be assigned to a RRH Provider, which will provide case management, housing assistance, and other supportive services.

2528 RRH PROGRAMS – INTAKE AND HOUSING SEARCH

2528.1 When an individual or family is assigned to a RRH Provider, the RRH Provider will perform an intake which may include but is not limited to:

(a) Assessing the participant's housing barriers, needs, income, and preferences;

(b) Completing with the participant the uniform, evidence-based assessment tool, such as the SPDAT, if one has not been completed in the last year;

(c) Calculating the participant's monthly rent contribution; and

(d) Providing other assistance necessary to obtain and maintain permanent housing.

2528.2 The individual or family participant shall:

(a) Enter into a lease and comply with the terms of such lease to the extent required by law;

(b) Contribute a portion of his or her adjusted annual income toward the cost for housing, pursuant to Section 2529;

(c) Accept a unit that meets the Rent Reasonableness Standard as defined in Section 2599 and the Housing Quality Standards established by the District of Columbia Housing Authority;

(d) Participate in case management and meet the case management requirements, as set forth in Section 2511, in order to remain in permanent housing when RRH Programs' assistance ends;

(e) Apply for all public benefits and housing assistance for which the applicant is eligible and as provided for in the applicant's case management plan, including applying for housing assistance from the District of Columbia Housing Authority;

(f) Provide additional information that the Department may deem necessary to determine the applicant's eligibility and which the Department may specify in its policy documents; and

(g) Comply with Program Rules established pursuant to Subsection 2516.17.

2528.3 The individual or family participant shall perform a housing search, with the goal of locating a unit that will be affordable to the participant once the RRH rental assistance ends.

2528.4 The RRH Provider may assist with the housing search and may:

(a) Assist the participant with obtaining government identifications and other necessary documentation such birth certificates, social security cards, income verification statements, or paystubs;

(b) Assist the participant with identifying potential housing units;

(c) Assist the participant with outreach and negotiation with landlords or property managers;

(d) Assist the participant with submission of rental applications;

(e) Assist with lease signing and payment of security deposit and first month's rent, as needed; and

(f) Facilitate moving in and assist with establishing utilities, as needed.

2528.5 Once the individual or family participant has identified an appropriate housing unit, the RRH Provider or previously assigned case management provider shall assist the participant by:

(a) Obtaining the appropriate housing inspection for the participant's unit and RRH Program; and

(b) Determining if the unit meets the Rent Reasonableness Standard.

2529 RRH PROGRAMS – FINANCIAL ASSISTANCE

2529.1 Each individual or family participant shall contribute to their gross housing expenses. RRH Program assistance shall be "needs-based," meaning that the assistance shall be based on the participant's household income and budget, and shall be the amount needed for the applicant to obtain housing and mitigate the likelihood of them returning to homelessness.

2529.2 The participant shall be notified of his or her initial rental assistance amount in a written notice, which shall include:

(a) A clear and detailed statement of the factual basis for the determination of the participant's rental assistance amount;

(b) A clear and detailed statement of the computation of the participant's rental assistance amount; and

(c) A clear and detailed statement of the participant's right to a reconsideration of the initial rental assistance calculation. Such requests for reconsideration of the initial calculation shall be made in writing to the RRH Provider within ten (10) days of receipt of the notice.

2529.3 RRH Programs shall allow a maximum rental amount equal to the Rent Reasonableness Standard. The Department or its designee may authorize, on a case-by-case basis, selection of a unit that exceeds the maximum allowable rental amount for the purposes of ensuring RRH Programs are readily accessible to and usable by families with a family size of five (5) or above, and individuals with disabilities, unless prohibited by the RRH grant agreement or contract.

2529.4 RRH Programs may also provide financial assistance in the form of rental arrears, security deposit, utility payments, and move-in assistance.

2529.5 Income and asset information provided by participants may be subject to verification.

2530 RRH PROGRAMS – RECERTIFICATION OF ELIGIBILITY AND RECALCULATION OF RENTAL ASSISTANCE

2530.1 RRH Programs shall periodically recertify each participant's eligibility. Recertification procedures shall be included in RRH Provider's Program Rules.

2530.2 In addition to periodic recertification of a participant's eligibility, RRH Programs shall periodically recalculate a participant's rental assistance to ensure that participating households are paying the appropriate tenant rental cost contribution. Rental assistance recalculation shall occur at regular intervals, as described in RRH Provider's Programs Rules.

2530.3 The recertification determination shall be based on measurable benchmarks, which may include but are not limited to:

(a) Any change in the participant's income;

(b) Participant's progress on the participant's case management plan;

(c) Participant's progress on his or her own budget plan;

(d) Participant's engagement with her or her Temporary Assistance for Needy Families ("TANF") provider, if applicable; and

(e) Needs-based assessments, using a progressive engagement model, to determine if a less or more intensive intervention is required.

2530.4 When recalculation of a participant's rental assistance amount occurs, the participant shall be notified of his or her adjusted rental assistance amount in a written notice, which shall include.

(a) A clear and detailed statement of the factual basis of the change in the participant's rental assistance amount;

(b) A clear and detailed statement of the computation of the participant's new rental assistance amount;

(c) A clear statement of the effective date of the new rental assistance amount;

(d) A reference to the regulation or policy pursuant to which the change was made; and

(e) A clear and detailed statement of the participant's right to a reconsideration of the change of rental assistance amount by the Department, its designee, or the RRH Provider, as described in the RRH Provider's Program Rules, if such reconsideration is requested within ten (10) days of receipt of the notice, including the appropriate deadlines for instituting the request for reconsideration.

2530.5 A participant may request recalculation of his or her rental assistance amount at any time if the participant's circumstances change such that the participant believes he or she would qualify for greater rental assistance.

2531 RRH PROGRAMS – FINANCIAL ASSISTANCE PERIOD AND EXTENSION REQUESTS

2531.1 RRH Programs are designed to help participants exit homelessness to permanent housing with time-limited financial assistance and case management to support their progress toward housing stability.

2531.2 Because RRH financial assistance is time-limited, an individual or family participant will exit the RRH Program once they have been stabilized or once they have reached the time period for receiving financial assistance, whichever comes first. The time period for receiving RRH financial assistance shall be established in the RRH Provider's Program Rules.

2531.3 An individual or family participant may request an extension of RRH financial assistance beyond the designated time period. The extension request must be made in writing to the Department, its designee, or the RRH Provider, and must be signed by the participant.

2531.4 The Department, its designee, or the RRH Provider, shall exercise its discretion in granting or denying extension requests, based on the availability of resources, the participant's case management or service plan, and the participant's circumstances. A participant's length of time in the RRH Program shall be a valid basis for denial of an extension request.

2531.5 In the event that a requested extension of RRH financial assistance is denied, a participant shall be given written notice at least thirty (30) days prior to the final rental assistance payment. Such notice shall explicitly set forth the reason for the denial of the requested extension, and shall inform the participant that:

(a) The RRH participant has a right to appeal the determination through a fair hearing and administrative review, including deadlines for requesting an appeal; and

(b) The RRH participant has a right to continuation of RRH services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

2532 RRH PROGRAMS – CASE MANAGEMENT

2532.1 RRH Provider shall provide individual or family participants in RRH Program with case management, which shall include the development of a service or case management plan, as described herein. The individual or family participant shall participate in the development of his or her service or case management plan, as set forth in Subsection 2512.12.

2532.2 The participant's service or case management plan should be based on a thorough assessment of participant's needs. Goals in the service or case management plans may be guided by the results of a uniform, evidence-based assessment tool, such as the Service Prioritization Decision Assistance Tool ("SPDAT").

2532.3 The participant's service or case management plan should identify achievable objectives or goals in areas that may include but are not limited to:

(a) Housing stability;

(b) Employment and/or education;

(c) Budgeting and/or credit counseling;

(d) Food, transportation, clothing, hygiene;

(e) Legal assistance;

(f) Substance abuse or dependency issues;

(g) Domestic violence;

(h) Mental or physical health care; and

(i) Other areas as deemed appropriate by the participant and the case manager.

2532.4 The participant's service or case management plan shall be reviewed and updated regularly, with the participant's participation.

2532.5 The participant's case manager shall assist the participant in identifying and, as needed, accessing both formal and informal resources to support clients in helping to achieve housing stability.

2532.6 The participant's case manager shall be responsible for maintaining the participant's file, either electronically or in hard copy. The participant's file may include but is not limited to the following documentation:

(a) Eligibility and referral documents;

(b) Intake information;

(c) Authorization of Release of Information;

(d) Copy of Program Rules, signed by participant;

(e) Most recent results of an evidence-based assessment tool, such as SPDAT;

(f) Case management or service plan;

(g) Case notes or progress notes addressing case management or service plan goals;

(h) Referrals to other agencies or resources (including follow-up efforts, feedback, recommendations);

(i) Receipts for expenditures made by the Provider in addition to rent for the participant;

(j) Documentation of services that demonstrate assistance provided to participant in acquiring or maintaining housing; and

(k) Documentation of discharge or termination summaries.

2532.7 The participant's case manager shall coordinate with any case managers or case workers with other service providers with the goal of supporting participant in achieving housing stability and completing goals in the participant's service or case management plan.

2533 RRH PROGRAMS – TRANSFERS, TERMINATIONS, AND PROGRAM EXITS

2533.1 The RRH Provider may transfer an individual or family participant for the reasons set forth in Section 2522.

2533.2 The RRH Provider may terminate an individual or family participant from the RRH Program for the reasons set forth in Section 2524.

2533.3 The RRH Provider may exit an individual or family participant from the RRH Program for the reasons set forth in Section 22b of the Act (D.C. Official Code § 4-754.36b).

2533.4 The RRH Provider who is issuing a notice regarding an individual or family participant's transfer, termination, or program exit shall do so in compliance with Section 19 of the Act (D.C. Official Code § 4-754.33), as appropriate.

2533.5 An individual or family participant has the right to appeal the transfer, termination or program exit, as set forth in Section 2550.

2534 [DELETED]

2535 PERMANENT SUPPORTIVE HOUSING PROGRAMS – PURPOSE AND SCOPE

2535.1 The purpose of Permanent Supportive Housing (PSH) programs is to provide rental assistance and supportive services for an unrestricted period of time to assist individuals and families experiencing chronic homelessness, or at risk of experiencing chronic homelessness, to obtain and maintain permanent housing and to live as independently as possible.

2535.2 PSH programs consist of an ongoing rental assistance subsidy, which may be funded by local or federal housing assistance programs, and ongoing, intensive supportive services, which may also be funded by local or federal programs. The supportive services may include, but are not limited to: outreach and engagement, assessment, unit identification assistance, application assistance, ongoing stabilization services, and other services as outlined in the PSH program's funding source, contract, or grant agreement.

2535.3 PSH programs are permanent housing programs, as defined in Section 2(27C) of the Act (D.C. Official Code § 4-751.01(27C)), and are administered according to the provisions for permanent housing programs contained in this chapter.

2535.4 PSH programs shall be subject to annual appropriations and the availability of funds.

2535.5 Nothing in these rules shall be construed to create an entitlement either direct or implied on the part of any individual or family to a PSH program.

2536 PSH PROGRAMS – ELIGIBILITY AND ASSESSMENT

2536.1 In addition to the general eligibility requirements set forth in Section 2501 an individual or family shall, in order to be eligible for participation in PSH programs, be chronically homeless or at risk of chronic homelessness as defined in Section 2(5A) and (6C) of the Act (D.C. Official Code § 4-751.01(5A), (6C)).

2537 PSH PROGRAMS – REFERRAL PROCESS

2537.1 After the Department determines a family's eligibility for a PSH program for families, the family shall be submitted to the Family Coordinated Assessment and Housing Placement (F-CAHP), which is part of the District's centralized or coordinated assessment system protocol, as defined in Section 2(6B) of the Act (D.C. Official Code § 4-751.01(6B)) and established according to Section 2510.

2537.2 After the Department determines an youth or other individual's eligibility for a PSH program for youth or other individuals, the individual shall be submitted to the Individual Coordinated Assessment and Housing Placement (I-CAHP) or the Youth Coordinated Assessment and Housing Placement (Y-CAHP), which are part of the District's centralized or coordinated assessment system protocol for individuals and youth, respectively, as defined in Section 2(6B) of the Act (D.C. Official Code § 4-751.01(6B)) and established according to Section 2505.

2537.3 An individual or family seeking housing in the PSH program may be assessed using an evidence-based assessment tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool ("SPDAT"), which can be administered by the Department or its designees.

2537.4 An individual or a family may also be submitted directly from the Department to the appropriate CAHP.

2537.5 The assessment and contact information for any individual or family seeking PSH shall be maintained in the appropriate CAHP Registry, which shall be maintained by the District's Continuum of Care Governance Board and the District's collaborative applicant.

2537.6 PSH programs shall report any vacancies to the District's CAHP System Administrator, according to the relevant CAHP protocol, as described in Subsections 2505 and 2510.

2537.7 Vacancies in PSH programs shall be filled according to the relevant CAHP protocol, as described in Subsections 2505 and 2510, and by the appropriate CAHP System Administrator.

2537.8 Once an individual or family is assigned to a PSH program through the appropriate CAHP, the PSH Provider, in collaboration with outreach and shelter staff, shall engage with the individual or family to complete the application and begin the leasing process.

2537.9 If the PSH Provider's attempted outreach and engagement are not successful within a period of time, specified by the Provider's Program Rules, of the individual or family's assignment, and if the Department reviews the attempts and finds them sufficient, then the PSH vacancy may be released back to the CAHP.

2538 PSH PROGRAMS – CASE MANAGEMENT AND SUPPORTIVE SERVICES

2538.1 PSH programs shall offer participants a comprehensive needs assessment and case management that includes but is not limited to: outreach and engagement, unit identification assistance, application assistance, ongoing stabilization services, and other services as outlined in contract with the PSH provider.

2538.2 Participants shall not be required to participate in mental health treatment, substance abuse treatment, or other supportive services as a condition of receipt of the rental assistance, except that the PSH Provider may require reasonable case management requirements as set forth in the relevant PSH Program Rules, in order to ensure the participant abides by the terms of the participant's lease, prepares for the annual recertification of the participant's rental assistance, and maintains housing stability. A client's refusal of case management and supportive services does not relieve the PSH Provider of its responsibility to continue attempting to engage the participant and to offer assistance.

2539 PSH PROGRAMS – RENTAL AND FINANCIAL ASSISTANCE

2539.1 Subject to applicable income limitations or other eligibility requirements, an individual or family referred to a PSH program shall be provided a rental subsidy.

2539.2 PSH programs shall ensure that the individual or family receiving the rental subsidy meets any eligibility requirements specific to its funding source, contract, or grant agreement. The rental subsidy may be paid by programs including but not limited to:

(a) The District of Columbia Housing Authority's (DCHA) Housing Choice Voucher Program's (HCVP) limited local preference for permanent supportive housing for chronically homeless individuals and families, as defined in 14 DCMR §§ 7600 *et seq.*;

(b) Other available DCHA public housing or housing voucher programs, including the Local Rent Supplement Program (LRSP), as set forth in 14 DCMR §§ 9500 *et seq.*;

(c) Other District funded housing or rental assistance programs; or

(d) Any other housing or rental assistance program, including federally funded programs.

2539.3 PSH program participants receiving a rental subsidy shall follow the rules, policies, and procedures of the applicable PSH program, the rules set forth in Sections 2535 through 2542, or the rules otherwise set forth in the permanent housing rules in this chapter, as applicable.

2539.4 If the service needs of a PSH program participant change, the participant may be transferred to a different PSH program or different PSH provider, provided that such transfer does not result in a loss of housing for the PSH program participant. Any such transfer must be made pursuant to the transfer provisions set forth in Section 2522.

2539.5 In addition to the rental subsidy, PSH program participants may receive utility assistance and other financial assistance, if funding is available.

2539.6 Each PSH program participant shall contribute a participant's rental portion, which amount shall be determined according to the requirements of the PSH program's funding source, contract, or grant agreement.

2539.7 Each PSH program may also provide utility assistance, if the participant's utilities are not included in the total rental amount and if such assistance is permitted by the PSH program's funding source, contract, or grant agreement.

2539.8 To determine the PSH program participant's rental portion or utility assistance, the PSH program participant may be required to provide or update the following information:

(a) Employment status and history;

(b) Income and source of income, including public benefits;

(c) Assets; and

(d) Any other information relevant to determining security deposit, rental assistance, moving, move-in, or other applicable expenses needed to obtain housing.

2539.9 The PSH program participant's rental portion and utility assistance, if applicable, will be determined by the Department or its designee, according to the PSH Program Rules and consistent with the requirements of the applicable funding source. Once that determination is made, the PSH program participant shall receive a written notice of the amount of rental portion and utility assistance, if applicable. The written notice shall include:

(a) A clear statement of the rental assistance that the PSH program participant will receive;

(b) A clear statement of the PSH program participant's rental portion and the computation of how the PSH program participant's rental portion was determined;

(c) A clear and detailed statement of the utility assistance that the PSH program participant shall receive;

(d) A clear and detailed statement of how the utilities will be paid, and any responsibility that the PSH program participant will have for utilities; and

(e) A clear and complete statement of the PSH program participant's right to a reconsideration of the determination of the PSH program participant's rental portion, including the appropriate deadlines for instituting the request for reconsideration.

2540 PSH PROGRAMS – REPORTING CHANGE IN INCOME

2540.1 It shall be the responsibility of each PSH program participant to report to the PSH provider, in writing, any change in the participant's income as soon as the change occurs. Any resulting effect of a change in income on the PSH program participant's rental portion or utility assistance shall be made in accordance with the requirements applicable to the PSH program's funding source, contract, or grant agreement.

2541 PSH PROGRAMS – UNIT IDENTIFICATION AND ACCEPTANCE

2541.1 The PSH Provider shall assist the PSH program participant in identifying an appropriate unit. An appropriate unit shall be one that meets rental assistance program requirements established by the District of Columbia Housing Authority.

2541.2 An appropriate unit must also pass a housing inspection, the standard for which may be determined by the PSH program's funding source, contract, or grant agreement.

2541.3 To facilitate timely unit identification and entry into the PSH program, the participant shall:

(a) Make a reasonable effort to complete the PSH program's application requirements and housing search process. For purposes of this subsection, failure to take tangible steps towards obtaining or supplying items necessary to complete the requirements of the program may be considered not making a reasonable effort;

(b) Make a reasonable effort to work with the PSH program's staff to identify an appropriate unit, as defined in this section. For purposes of this subsection, refusal to meet with the Provider's representative three (3) times shall, unless the participant has good cause for each failure to meet with the representative, be considered not making a reasonable effort;

(c) If necessary and after viewing an appropriate unit, submit a timely and complete application to the landlord; and

(d) Accept a unit that meets the Rent Reasonableness Standard.

2541.4 If the PSH program participant fails to make a reasonable effort to complete any of the requirements set forth in Subsection 2541.3, the PSH program may discontinue the housing search process for that PSH program participant. Such discontinuation shall not, however, affect the PSH program participant's eligibility for the PSH program.

2541.5 The PSH program shall give written and oral notice to the PSH program participant of discontinuation of the housing search process at least fifteen (15) days before the effective date of such discontinuation.

2541.6 The PSH Provider may assist the PSH program participant to move to an alternate unit as long as the PSH program or the PSH program participant is able to ensure that the participant:

(a) Exits the existing lease with the landlord according to the terms of the lease, receives the landlord's written approval to exit the lease, or otherwise exits the lease in a manner authorized by law, without financial cost to the program;

(b) Identifies an alternate unit that passes a housing inspection and does not exceed the Rent Reasonableness Standard;

(c) Submits an application to the landlord within the necessary timeframe;

(d) Accepts the alternate unit and provides the PSH program with all necessary information regarding the new unit; and

(e) Has the ability to provide for the application fee and any required security deposit, any other initiation fee, and any costs associated with moving without additional assistance from the PSH program.

2541.7 For the purposes of this section, "good cause" means:

(a) Hospitalization with verified documentation during the period of absence;

(b) Death of an immediate family member;

(c) Accident or illness involving an immediate family member that requires the presence of the individual or family member absent from shelter placement;

(d) Incarceration or detention;

(e) Authorized absence taken in compliance with the Program Rules;

(f) Fleeing domestic violence; or

(g) Other crisis, emergency, or other compelling situation that requires the absence of the individual or family from shelter placement.

2542 [DELETED]

2543 SHELTER MONITORING UNIT

2543.1 The Shelter Monitoring Unit (Unit) shall monitor and evaluate shelters covered by the Act. As defined by the Act, "shelters" are limited to severe weather shelter, low barrier shelter, and temporary shelter.

2543.2 (a) The Unit shall monitor the conditions, services, and practices at shelters, evaluating, to the extent applicable, the:

(1) Health, safety, and cleanliness of shelters;

(2) Existence of, content of, and notice to clients of policies, practices, and Program Rules;

(3) Accessibility of shelters to clients with disabilities;

(4) Appropriateness of shelters for families;

(5) Compliance with applicable client rights set forth in Sections 2512 and 2513; and

(6) Compliance with applicable Provider standards set forth in Sections 2516 through 2519.

(b) The Unit shall perform the monitoring tasks in this subsection using client surveys and interviews, staff interviews, and shelter site visits.

2543.3 For each program required to be monitored the Unit shall conduct an inspection on the premises at least once during each calendar year. The Unit may conduct more than one (1) inspection per year per program and may conduct inspections on an announced or unannounced basis.

2543.4 For each monitoring inspection, the Unit shall issue to the Provider a monitoring report summarizing the findings of the inspection.

2543.5 For purposes of this section, if the Provider is a subcontractor of a District contractor, all written communications and reports from the Unit to the Provider shall also be provided to the prime contractor. Likewise, any written communication from the Provider to the Unit shall also be provided to the prime contractor.

2543.6 The monitoring report shall provide a comprehensive assessment of the program, including identifying areas of excellence, competence, and deficiencies. For identified deficiencies the report shall also include required corrective actions and required timeframe for completion of corrective action.

2543.7 Generally, Providers shall have up to seven (7) days from the date of the monitoring report to correct health and safety deficiencies, except that the Unit may require more immediate action for deficiencies that present an immediate danger to residents, staff, or the public. For purposes of this subsection, "health and safety" shall include deficiencies under federal disability law, including the Americans with Disabilities Act, effective July 26, 1990 (104 Stat. 327; 42 USC §§ 12131 – 12134), and the U.S. Attorney General's implementing regulation, 28 CFR Part 35, unless otherwise noted by the Unit. For non-health or safety deficiencies, Providers shall have thirty days from the date of the monitoring to report correct the deficiency, unless otherwise noted in the report.

2543.8 The Provider shall correct the deficiencies noted, and submit documentation to the Unit that such corrective actions were taken within the required timeframes.

2543.9 If the Provider is unable to complete a corrective action within the required timeframes, the Provider shall submit to the Unit the reason for not meeting the

required timeframe along with a proposed corrective action plan with reasonable deadlines that will correct the deficiencies in as timely a manner as possible. The proposed corrective action plan shall be submitted to the Unit by the deadline given for the corrective action. The corrective action plan will be considered accepted by the Unit, unless the Unit notifies the Provider otherwise within five (5) business days of receiving the proposed corrective action plan.

2543.10 Based on the corrective action plan, the Provider shall submit follow-up documentation to the Unit that the required corrective actions were taken within the projected timeframes, or why such work has not been completed in a timely manner and the Provider's proposed solution.

2543.11 If the Unit determines that the Provider has not satisfactorily corrected the deficiencies set forth in the monitoring report, either as required by the monitoring report or the corrective action plan submitted by the Provider, the Unit shall notify the Provider of the remaining deficiencies and the corrective action that is required, as well as any new deadlines for correcting deficiencies.

2543.12 At any time in the monitoring process, and particularly where the Provider fails to timely correct deficiencies outlined in a monitoring report, the Unit may pursue additional remedies, including requiring acceptance of technical assistance, training, increasing the number of announced or unannounced visits by Unit monitors, or other applicable remedies necessary to ensure Provider compliance. When determining whether to renew a contract with a provider, the Department or its contractor shall consider annual monitoring reports as well as investigatory findings made in response to complaints about the program filed with either the ADA Coordinator or the Unit.

2543.13 If the Provider is a direct contractor with the District, and the Unit determines that the Provider has not satisfied the deficiencies in the monitoring report, the Unit shall notify the Contracting Officer's Technical Representative (COTR) of the Provider's non-compliance.

2543.14 If the Provider is a subcontractor of a District contractor and the Unit determines that the Provider has not satisfied the deficiencies in the monitoring report, the Unit, after providing adequate and timely notice to the prime contractor in accordance with the timeframes established in the contract to correct the deficiencies, shall notify the COTR that the prime contractor has failed to ensure that its subcontractor is in compliance.

2543.15 Once the COTR receives notice that a Provider, or the prime contractor, is non-compliant with the contract, the COTR shall notify the Department's Contracting Officer in writing of the prime contractor's violation of the terms and conditions of the contract and shall develop a proposed notice to cure for review and approval by the Contracting Officer. The Contracting Officer shall proceed to send the notice

to cure to the contractor in accordance with 27 DCMR §§ 3711 – 3712, and any other applicable laws, policies, and regulations.

2543.16 If the contractor, whether the Provider or the prime contractor, fails to satisfy the terms of the notice to cure, the Contracting Officer may proceed with any remedy available under 27 DCMR §§ 3711 – 3712, and any other applicable laws, policies, and regulations.

2543.17 The Unit shall create and utilize a systematic tracking system to track the monitoring reports, deficiencies found, corrective action taken, and the timeframes within which deficiencies were corrected.

2543.18 The Unit shall issue an annual report, which shall include a summary of the quality and compliance of the shelters it has monitored and an analysis of the trends it has identified in the course of its monitoring efforts. The Unit shall make available, upon request, each annual monitoring report to clients of the program and members of the Interagency Council on Homelessness.

2543.19 In all activities conducted by the Unit pursuant to this section, and in any reports released pursuant to Subsection 2543.18, the Unit shall ensure confidential treatment of the personal, social, legal, financial, educational, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, consistent with confidentiality requirements of District and federal law.

2544 COMPLAINTS

2544.1 The Unit shall receive complaints about programs, facilities, and services provided within the Continuum of Care and shall investigate programs alleged to be out of compliance with the applicable standards set forth in Sections 2515-2519, in accordance with the policies and procedures described in Section 2543.

2544.2 Clients are encouraged to take advantage of Provider grievance procedures to resolve concerns, complaints, and conflicts, where possible. Clients are not required, however, to pursue the Provider grievance procedure before contacting the Unit regarding a complaint.

2544.3 When the Unit receives a complaint regarding alleged violations of Title II of the Americans with Disabilities Act (ADA), effective July 26, 1990 (104 Stat. 327; 42 USC §§ 12131 – 12134), and the U.S. Attorney General's implementing regulation, 28 CFR Part 35, or other federal or local laws prohibiting discrimination on the basis of disability, the Unit shall log in the complaint, refer the complaint to the Department's ADA Coordinator, inform the complainant that the complaint has been referred to the ADA Coordinator and when the complainant can expect to hear from that person, and ensure that the complaint has been appropriately addressed

by the ADA Coordinator by attaching the ADA Coordinator's Findings or Report to the complaint before closing the complaint in the Unit's log.

2544.4 The Unit shall conduct all investigations into complaints in a timely manner, taking into account the severity of the matter that is the subject of the complaint. The Unit shall provide a response to the complainant and his or her representative, if applicable, in a timely manner of the findings of the investigation, if the complainant has provided the Unit with contact information.

2544.5 Every Provider within the Continuum of Care shall post in prominent places at each shelter site the Unit's contact information, its procedures for accepting complaints, and procedures for requesting mediation or a fair hearing. The Unit shall provide each program and shelter site with the complaint form with the Unit's contact information for use by clients. Providers shall make the Unit's complaint form readily available to clients.

2544.6 Any person may file a complaint with the Unit in any form, including by telephone, electronic mail, in person, or by written communication. Complaints may be made anonymously.

2544.7 The Unit shall maintain a record of complaints received, the resolution of each complaint, and the response provided to complainant.

2544.8 The Unit shall make available, upon request, a copy of the findings of any investigation conducted under this section to the Provider of the program, the Mayor, and the Director to End Homelessness. Upon request, the Unit shall make available an appropriate number of copies of the final report to the program for distribution to clients of the program.

2544.9 In all activities conducted by the Unit pursuant to this section, and in any findings released pursuant to Subsection 2544.8, the Unit shall ensure confidential treatment of the personal, social, legal, financial, educational, and medical records and information related to a client or any member of a client's family, whether obtained from the client or from any other source, consistent with confidentiality requirements of District and federal law.

2544.10 In seeking to resolve complaints, the Unit shall encourage appropriate use of mediation, Provider grievance processes, and the fair hearing process, as appropriate.

2544.11 The Unit shall not disclose the identity of any person who brings a complaint or provides information to the Unit without the person's consent, unless the Unit determines that disclosure is unavoidable or necessary to further the ends of an inspection or investigation.

2544.12 No public or private entity that delivers shelter services covered by this chapter shall retaliate against, coerce, intimidate, threaten, or interfere with any individual who files or makes a complaint to the Unit, or aids or encourages any other person to file or make a complaint to the Unit.

2545 REASONABLE MODIFICATIONS – PURPOSE AND SCOPE

2545.1 The provisions of Sections 2545-2549 provide procedures for the prompt and equitable resolution of complaints by customers or prospective customers of shelter or housing programs who allege any action prohibited by Title II of the Americans with Disabilities Act of 1990 (ADA), approved July 26, 1990 (104 Stat. 327; 42 USC §§ 12101 *et seq*.), as required by 28 CFR § 35.107(b).

2545.2 These procedures apply to all services, programs, and activities in shelter and housing programs provided by the Department, whether such services, programs, or activities are provided directly by the Department or by the Department through contract or grant.

2545.3 Pursuant to Title II of the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the Department's shelter and housing programs, or be subjected to discrimination by the Department, its contractors or grantees.

2546 REASONABLE MODIFICATION POLICY

2546.1 If necessary for a qualified person with a disability to have access to covered services, programs, or activities, the Department, its contractors, and grantees shall provide reasonable modification of shelter and housing program policies, practices, or procedures to avoid discrimination unless the responsible entity demonstrates that the modification would fundamentally alter the nature of the services.

2546.2 For purposes of Sections 2545-2549, a reasonable modification is a change, modification, alteration, or adaptation in a policy, procedure, practice, program, or facility that provides a person with a disability the opportunity to participate in, or benefit from, a service, program, or activity.

2546.3 To receive a reasonable modification, an applicant or recipient of services or an authorized representative may make a request to the Provider of services, according to that Provider's reasonable modification policy and procedures.

2546.4 An applicant or recipient of services, or an authorized representative, has the right to file a complaint with the Department as set forth in Section 2547. In lieu of, or in addition to filing a complaint with the ADA Coordinator, an applicant or recipient of services, or authorized representative has the right to file a grievance directly with the Provider, to appeal a denial of a reasonable modification request

through the fair hearing process set forth in Section 2550, or pursue any other remedies available to the person through any other federal or District law.

2547 FILING A COMPLAINT WITH THE ADA COORDINATOR

2547.1 Any qualified individual with a disability or authorized representative may file a complaint with the Department alleging noncompliance with the provisions of Title II of the ADA or the federal regulation promulgated thereunder in the provision of shelter or housing covered by this chapter.

2547.2 If applicable, clients are encouraged to make a reasonable modification request to the shelter or housing program Provider and allow a reasonable time for the Provider to respond before filing a complaint under this section.

2547.3 A client may file a complaint with the Department's ADA Coordinator at the following address:

ADA Coordinator
Department of Human Services
Office of Program Review, Monitoring and Investigation
64 New York Avenue, N.E.
6th Floor
Washington, D.C. 20002
Telephone: 202-671-4200
E-Fax: 202-481-3827
TTY (Text Telephone): D.C. Relay – 1-800-509-2562 or 711
Email: ADA.Services@dc.gov

2547.4 A complaint shall be filed as soon as possible but no later than one hundred eighty days (180) days after the complainant becomes aware of the alleged violation.

2547.5 The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant, and shall include:

(a) The complainant's name and address;

(b) The nature of the individual's disability;

(c) A description of the alleged noncompliance in sufficient detail to inform the Department of the nature of the allegation, including dates and place of the alleged violation and names of persons involved, if known;

(d) If the complaint concerns a reasonable modification request that was made to a Provider but not resolved to the satisfaction of the client, the complaint shall include information regarding the reasonable modification request, including date and nature of request, and response, if any, from the Provider;

(e) The modification, accommodation, or remedy desired;

(f) The name and address of the person's authorized representative, if any; and

(g) The signature of the complainant or complainant's authorized representative.

2547.6 If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

2547.7 Any person other than the ADA Coordinator who receives a complaint alleging a violation of the ADA shall submit the complaint to the ADA Coordinator within three (3) business days of receipt.

2548 ADA COMPLAINT AND INVESTIGATION PROCEDURES

2548.1 Upon receipt of a complaint, the ADA Coordinator or designee shall send a notice and make best efforts to personally communicate with the complainant and the entity that is alleged to be in noncompliance within five (5) business days of its receipt. If the complaint is against a subcontractor or subgrantee of a Department contractor or grantee, the ADA Coordinator shall also send a notice to the contractor or grantee within the same time period.

2548.2 The complaint shall be reviewed by the ADA Coordinator to determine the appropriate method of resolution as follows:

(a) If the complainant is making a reasonable modification request rather than a complaint, but has not yet made the request to the appropriate Provider, the ADA Coordinator may refer the complainant's reasonable modification request to the Provider for resolution, except when the complainant has expressed a reason for not first making the request of the Provider and that reason is the basis of the complaint. The ADA Coordinator shall promptly notify both the complainant and the Provider of the referral and inform the complainant and the Provider that the ADA Coordinator will consider the matter resolved unless the complainant files a new complaint. The Department shall provide monitoring of the resolution of the reasonable modification request, as appropriate and required;

(b) If the complainant has requested a reasonable modification, but the complainant is not satisfied with the Provider's response, the ADA Coordinator shall ascertain the relevant facts and work with the complainant and the Provider in an attempt to reach a solution acceptable to both parties. If the Provider is a subcontractor or subgrantee of a Department contractor or grantee, the ADA Coordinator will work through the Department's contractor or grantee, to the extent possible; and

(c) For all other ADA complaints, or if the complainant and the Provider are not able to reach a resolution of a reasonable modification request, the ADA Coordinator shall review the complaint, determine the appropriate means of resolution, including referral to the Department's Office of Program Review, Monitoring, and Investigation (OPRMI) for an investigation of contractor's alleged noncompliance with the ADA. The ADA Coordinator shall notify the Administrator of the Department's Family Services Administration of each referral of an ADA Complaint to OPRMI.

2548.3 The ADA Coordinator shall make best efforts to reach a resolution of the complaint, and issue findings to the complainant, within forty-five (45) days, except that for complaints referred for investigation to OPRMI the time frame shall be as set forth in Subsection 2548.4.

2548.4 For complaints referred to OPRMI, OPRMI shall complete the investigation and issue a report within thirty (30) days of receipt of the referral. The ADA Coordinator and the Director or the Director's designee shall review the OPRMI report and issue findings within fifteen (15) business days after receipt of the report.

2548.5 Findings shall be sent to the complainant, the complainant's representative, if any, the Provider, and the Administrator of the Department's Family Services Administration. If the Provider is a subcontractor or subgrantee of a Department contractor or grantee, the report shall also be sent to the contractor or grantee.

2548.6 If the complainant disagrees with the Department's findings or proposed resolution, the complainant may appeal within fifteen (15) calendar days after receiving the Department's response. The appeal may be sent to the Office of Disability Rights, Attn: Director, 441 4th Street, N.W., Suite 729N Washington, D.C. 20001. The Office on Disability Rights shall respond to the complainant within fifteen (15) calendar days after consultation with the complainant.

2548.7 No public or private entity that delivers shelter or supportive services covered by this chapter shall retaliate against, coerce, intimidate, threaten, or interfere with any individual who files or makes a complaint, or requests a reasonable modification, or aids or encourages any other person to file or make a complaint or request a reasonable modification.

2549 ASSURANCE OF INDIVIDUAL'S RIGHTS

2549.1 The right of an individual to a prompt and equitable resolution of the complaint shall not be impaired by the individual's pursuit of other remedies. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

2549.2 This procedure is established to protect the substantive rights of interested individuals, to meet appropriate due process standards, and to assure that the Department complies with Title II of the ADA.

2549.3 The ADA Coordinator shall maintain the files and records relating to complaints filed in accordance with this procedure for three (3) years.

2549.4 A complainant has the right to representation (at the cost of the complainant), at any stage, in the consideration of his/her complaint or reconsideration.

2550 FAIR HEARINGS

2550.1 A client applying for or receiving shelter or housing services provided within the Continuum of Care and covered by this chapter shall have the right to appeal through a fair hearing, any decision by the Department or a Provider to:

(a) Transfer the client to another Provider;

(b) Suspend the client from services for a period longer than ten (10) days;

(c) Terminate services to the client;

(d) Deny an application for services;

(e) Deny eligibility for shelter following an interim eligibility placement; or

(f) Exit the client from a housing program.

2550.2 In addition to the bases for appeal in Subsection 2550.1, a client may request a fair hearing to appeal an administrative review decision made pursuant to Sections 2551 through 2555 or to obtain any legally available and practicable remedy for any alleged violation of:

(a) Any applicable Provider standards listed in Sections 2516 through 2520; or

(b) The client rights listed in Sections 2512 through 2514.

2550.3 A client shall request a fair hearing, orally or in writing, within ninety (90) days of receiving written notice of the adverse action; provided that, when written notice is given pursuant to Subsection 2524.3 because the client was absent from the temporary shelter or transitional housing provider's premises for more than four (4) consecutive days due to inpatient psychological or psychiatric treatment or hospitalization for medical treatment, the ninety (90)-day period to request a hearing shall begin the day that the client is released from the facility at which the client was treated.

2550.4 The Mayor shall treat a fair hearing request made by a client representative in the same manner as it would be treated if it were made directly by the client; provided, that the Mayor subsequently receives written documentation authorizing the client representative to act on behalf of the client in accordance with the requirements of Section 1005 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-210.05 (2019 Repl.)).

2550.5 A request for a fair hearing shall be made to the Office of Administrative Hearings, or to the client's Provider, the Department, or the Mayor. If the request is made orally, the individual receiving the request shall promptly acknowledge the request, reduce it to writing, and file the request for a fair hearing with the Office of Administrative Hearings.

2550.6 Any client who requests a fair hearing within fifteen (15) days after receipt of written notice of a suspension or termination of shelter or housing services provided within the Continuum of Care shall continue to receive shelter or housing services provided within the Continuum of Care pending a final decision from the fair hearing proceedings. This right to continuation of shelter or housing services provided within the Continuum of Care pending appeal shall not apply in the case of a transfer pursuant to Section 2522 or an emergency action pursuant to Section 2525.

2550.7 If a client requests a fair hearing in accordance with Subsection 2550.6 but leaves the program as evidenced by unexplained absences from the program for more than thirty (30) minutes after lights out in low barrier shelter or forty-eight (48) hours in temporary shelter and supportive housing, or by informing the Provider that they are residing elsewhere, the Provider shall be allowed to give the client's bed or unit to another client. If the client leaves any property at the facility, the program shall be able to remove the property from the bed or unit, and store the property in accordance with Section 2520.

2550.8 If, following a client's successful appeal, the original placement has no available unit or bed the client shall receive the first available opening at the original placement. Until such time as a placement in the original program becomes available, the managing agency, whether the Department or its designee, shall give the client the highest priority for and offer to the client the most similar opening available in the Continuum of Care.

2551 ADMINISTRATIVE REVIEW PURPOSE AND APPLICABILITY

2551.1 The purpose of an administrative review is to determine, in a timely manner, whether the service Provider's or agency's position is legally valid and, if possible, to achieve an informal resolution of the appeal.

2551.2 An administrative review shall be granted to any client or client representative who wishes to appeal a decision or action subject to review under Subsection 2550.1 or

Subsection 2550.2 and who requests a fair hearing, orally or in writing, within ninety (90) days of receiving written notice of the adverse action or within ninety (90) days of an alleged violation.

2552 ADMINISTRATIVE REVIEW PROCEDURES

2552.1 Upon receipt of a fair hearing request, the Department shall offer the client or client representative an opportunity for an administrative review by the Department of the decision, action, or inaction that is the subject of the fair hearing request.

2552.2 A client may have a representative to assist him or her at the administrative review. The representative may be either an attorney or layperson. The representative shall not be a Department employee.

2552.3 The client or client representative shall have the right to review the Provider's or Department's records regarding the client, or the records of other related service Providers regarding the client, prior to the administrative review and throughout the fair hearing process.

2552.4 The client or client representative shall have the right to submit issues and comments in writing to the Department, prior to or at the time of the administrative review.

2552.5 At the administrative review, the client, or client representative, and the Provider or agency's representative may provide oral or written evidence and may bring witnesses to provide oral or written evidence to support their position.

2552.6 The administrative review officer may request that additional information or documentation be submitted after the administrative review, if such information or documentation is necessary to the administrative review decision.

2552.7 The client, Provider, or agency shall have the right to a continuance of the administrative review for good cause shown, as defined in Section 2599.

2552.8 If a client or client representative does not obtain a continuance prior to the scheduled administrative review and misses the review, it is within the administrative review officer's discretion to reschedule the review if good cause is provided after the fact.

2552.9 If a client or client representative has not requested that the administrative review be rescheduled for good cause, however, and the client fails to appear at the scheduled administrative review, the review shall not be held. The client's failure to appear shall not affect his or her right to the fair hearing he or she has previously requested.

2552.10 If the Provider or the Department has not obtained a continuance of the administrative review based on good cause, the Provider or the Department fails to appear at the scheduled administrative review, and the client appears, the administrative review officer shall proceed as scheduled.

2552.11 If an administrative review is conducted, the administrative review shall be completed before the Office of Administrative Hearings commences a fair hearing.

2552.12 The administrative review shall be completed and a decision shall be rendered within fifteen (15) days after receipt of a request for a fair hearing by the Department's Administrative Review Office, unless a continuance is granted. If a continuance has been entered, the administrative review decision shall be rendered no later than five (5) days from the date of the rescheduled review.

2552.13 An administrative review of a denial of an application for shelter following an interim eligibility placement, conducted pursuant to this section, shall be completed and a decision rendered no later than four (4) business days following receipt of the administrative review request, except upon a showing of good cause as to why such deadline cannot be met. If good cause is shown, a decision shall be rendered as soon as possible thereafter. If an extension of time for review is required for good cause, written notice of the extension shall be provided to the client or client representative prior to the commencement of the extension.

2552.14 At any time, a client or client representative may resolve with the Provider or the Department the matter that is the subject of the request for a fair hearing. If the matter is resolved after the administrative review has been convened, the client or client representative shall submit written notice to the administrative review officer of the resolution.

2552.15 If the client is satisfied with the administrative review decision, the client's request for a fair hearing shall be considered formally withdrawn upon submission by the client or the client representative of a signed statement to the Office of Administrative Hearings confirming such withdrawal.

2553 ADMINISTRATIVE REVIEW NOTICE REQUIREMENTS

2553.1 Upon receipt of a request for a fair hearing, the Department's Administrative Review Office shall schedule an administrative review. As soon as possible after receipt of the request for a fair hearing, the Department shall mail and, if possible, transmit by facsimile, a notice of the administrative review to the client, the client representative, if there is one, the Provider, and the Department's representative if there is a Department action at issue.

2553.2 The notice shall contain the following information:

(a) The date, time, and place of the review;

(b) The purpose of the review;

(c) That the client has the right to have an attorney or lay representative present at the administrative review;

(d) That the client or client representative has the right to submit issues and comments in writing to the Department, prior to or at the time of the administrative review;

(e) That the client or client representative has the right to review the Provider's or Department's records regarding the client, or the records of other related service Providers regarding the client at any time during the administrative review process;

(f) That the review will not be held unless the client appears and that the client's failure to appear will not affect the client's right to the fair hearing previously requested;

(g) That if an administrative review is conducted, the administrative review will be completed and a decision issued in writing within fifteen (15) days after the receipt by the Department's Administrative Review Office of the request for a fair hearing, unless good cause is shown;

(h) That if the request for fair hearing is related to an Interim Eligibility Placement, the administrative review and decision will be completed within four (4) business days of the receipt by the Department's Administrative Review Office of the request for a fair hearing;

(i) That if the client is not satisfied with the result of the administrative review, the fair hearing previously requested will be held; and

(j) That if the client is satisfied with the result of the administrative review, the client's request for a fair hearing shall be considered formally withdrawn upon the submission of a signed statement by the client or client representative to the Office of Administrative Hearings confirming such withdrawal.

2554 ADMINISTRATIVE REVIEW OFFICER

2554.1 Each administrative review shall be conducted by an administrative review officer who shall be an employee of the Department but shall not be the person, or a subordinate of the person, who made or approved any decision or action under review.

2554.2 The responsibilities of the administrative review officer shall include, but shall not be limited to, the following:

(a) Review the oral and documentary evidence submitted prior to or at the time of the administrative review in order to assess the factual and legal issues that are presented;

(b) Ascertain the legal validity of the action or decision that is the subject of the fair hearing request and, if possible, achieve an informal resolution of the appeal;

(c) Issue a written decision within fifteen (15) days after the receipt by the Department's Administrative Review Office of a request for a fair hearing, unless a continuance is granted for good cause, as defined in Section 2599, in which case the written decision shall be issued within five (5) days of the rescheduled review. Such decision shall include a clear and detailed description of:

(1) The action or decision by the Provider or the Department that is being appealed;

(2) The factual basis supporting the administrative review decision;

(3) The actions proposed by the administrative review officers that are intended to resolve the matter being appealed;

(4) A reference to the statute, regulation, Program Rule, or policy pursuant to which the administrative review decision is made; and

(5) A statement that if the client is not satisfied with the administrative review decision, a fair hearing shall be held;

(d) Email or mail a copy of the administrative review decision to the client, the client representative, the Provider, the Administrator of the Family Services Administration, and the Department's designee, if any;

(e) Email to the Office of Administrative Hearings a notice indicating when the administrative review was held and whether the administrative review officer upheld or denied the Provider or Department decision, action, or inaction at issue;

(f) If a matter has been resolved before a decision has been served on the parties, send a copy of the notice of settlement by email or mail to the client, the client representative, the Provider, the Administrator of the Family Services Administration, the Department's designee, if any, and the Office of Administrative Hearings. The administrative review officer shall send

this notice as soon as practicable, but no later than fifteen (15) days after the receipt by the Department's Administrative Review Office of a request for a fair hearing, or no later than five (5) days following a rescheduled administrative review;

(g) Prepare and file any status reports required by the Office of Administrative Hearings; and

(h) Review any request for a continuance of the scheduled administrative review. If good cause is shown, issue a written notice of the new date and time of the rescheduled review to the client or client representative, the Provider, and the Department, if applicable, prior to the commencement of the continuance.

2555 ADMINISTRATIVE REVIEW RECORD

2555.1 The Department shall maintain a record for each administrative review offered or held. Each administrative review record shall include:

(a) Documentation of the request for a fair hearing;

(b) Documentation of the notice of the administrative review;

(c) Evidence considered at the administrative review, if held;

(d) All status reports issued to the Office of Administrative Hearings; and

(e) All administrative review decisions issued.

2556 SPECIAL ELIGIBILITY CRITERIA FOR REFERRAL TO THE LOCAL RENT SUPPLEMENT PROGRAM – PURPOSE AND SCOPE

2556.1 The purpose of Sections 2556 and 2557 is to establish the special eligibility criteria by which individuals and families will be referred to the District of Columbia Housing Authority (DCHA) for consideration for inclusion in the tenant-based Local Rent Supplement Program as authorized by Chapter 95 of Title 14 of the District of Columbia Municipal Regulations (hereinafter "LRSP vouchers").

2556.2 Sections 2556 and 2557 govern only the initial eligibility and referral of individuals and families to DCHA for the LRSP vouchers.

2556.3 DCHA shall make the final determination of an individual or family's eligibility for a LRSP voucher. Individuals and families referred to the DCHA for the LRSP vouchers are subject to all applicable eligibility and other requirements of the applicable Local Rent Supplement Program, as promulgated and administered by

DCHA, and in accordance with Chapter 95 of Title 14 of the District of Columbia Municipal Regulations.

2556.4 Nothing in these rules shall be construed to create an entitlement either direct or implied on the part of any individual or family to referral to or participation in the Local Rent Supplement Program.

2557 SPECIAL ELIGIBILITY CRITERIA FOR REFERRAL TO THE LOCAL RENT SUPPLEMENT PROGRAM – ELIGIBILITY REQUIREMENTS

2557.1 An applicant unit shall be eligible for referral to the DCHA for the LRSP vouchers if the applicant unit is an individual or family that:

(a) Is a resident of the District of Columbia as defined by Section 2(32) of the Act (D.C. Official Code § 4-751.01(32));

(b) Is, as defined in Section 2 of the Act (D.C. Official Code § 4-751.01), currently:

(1) Homeless;

(2) At risk of homelessness; or

(3) Participating in a permanent housing program; and

(c) Has significant barriers to increasing income or achieving housing stability as demonstrated by having at least one (1) of the following household characteristics:

(1) Head of household is, or both heads of household if a two (2)-parent household are, disabled and unable to work, as demonstrated by receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits, or other medical documentation; or

(2) Household includes a child with a moderate to severe physical, behavioral, developmental, or mental health disability that is a barrier to housing stability.

2557.2 Applicant units determined to be eligible pursuant to Subsection 2557.1 will be referred for placement through the appropriate CAHP protocol, as set forth in Sections 2505 and 2510.

2558 [DELETED]

2559 [RESERVED]

2560 [RESERVED]

2561 [RESERVED]

2562 LGBTQ HOMELESS YOUTH SHELTER BED GRANT PROGRAM

2562.1 In accordance with Section 28(c) of the Act (D.C. Official Code § 4-755.01(c)), a minimum of ten (10) beds shall be maintained for LGBTQ homeless youth through a two (2)-year grant program to establish and maintain facilities for these beds.

2562.2 LGBTQ-identified homeless youth shall have priority preference for the beds established through the two (2)-year grant program.

2562.3 If beds are not in use by an LGBTQ-identified homeless youth, they may be filled by a non-LGBTQ-identified homeless youth until an LGBTQ-identified homeless youth presents the need for a bed and the non-LGBTQ-identified homeless youth has been transferred pursuant to § 2521.2.

2562.4 To be eligible for the grant, an organization must:

(a) Be a community organization based in the District;

(b) Have expertise in systems of care for LGBTQ homeless youth; and

(c) Establish or maintain facilities through these grants that protect the safety of LGBTQ homeless youth through facilities that are specifically for LGBTQ youth and separate from any existing homeless services for the general population.

2562.5 Prior to award of grant funding, the Department or its designee shall issue a Request for Application (RFA) and Notice of Funding Availability (NOFA) through the District's Office of Partnerships and Grant Services for the two (2)-year grant program.

2562.6 The RFA for the two (2)-year grant program shall include but not be limited to information regarding the following:

(a) The Funding Opportunity Title;

(b) The Funding Opportunity Number;

(c) The target population of the grant program;

(d) Eligible organizations/entities for grant awards;

(e) The award period;

(f) The grant award amount or amounts;

(g) The use of grant funds;

(h) The point of contact for additional information and updates regarding the application process; and,

(i) The deadline date for applications.

2562.7 Subsequent to announcement and issuance of the RFA, the Department or its designee shall host a pre-application conference to inform applicants about the application process for the two (2)-year grant program.

2562.8 At least thirty percent (30%) of the grant funding shall be allocated to support proposals received for social innovation and other demonstration projects that may address the needs of this population with new, promising prevention and service-delivery models; provided that the number of beds established for LGBTQ youth is no lower than ten (10).

2562.9 This section shall be repealed if the Interagency Council on Homelessness determines that the needs of LGBTQ homeless youth are being met at a rate equal to or higher than the needs of homeless youth in the general population of the District of Columbia, pursuant to Section 5(b-1) of the Act (D.C. Official Code § 4-752.02(b-1)).

2563 LGBTQ YOUTH SERVICES AND DATA COLLECTION

2563.1 Homeless services provided by the Department or its designee shall include services specifically designed to alleviate the high risk of homelessness faced by LGBTQ youth.

2563.2 Year-round data collection on homeless youth and the annual Point-in-Time survey required by the U.S. Department of Housing and Urban Development shall include data regarding the sexual orientation and gender identity of each individual counted, subject to the individual's discretion to decline to provide that information.

2563.3 Services provided by the Department or its designee as well as data collection regarding sexual orientation and gender identity conducted pursuant to the annual Point-in-Time survey shall apply best practices for serving LGBTQ youth.

2564 [RESERVED]

2565 [RESERVED]

2566 [RESERVED]

2567 [RESERVED]

2568 [RESERVED]

2569 [RESERVED]

2599 DEFINITIONS

2599.1 In addition to the definitions provided in the Act, the following definitions shall apply to this chapter:

Act – the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-751.01 *et seq*, (2012 Repl. & 2019 Supp.)).

Americans with Disabilities Act or ADA – the act which prohibits discrimination based on disability in the provision of services offered by a public entity, approved July 26, 1990 (104 Stat. 328; 42 USC §§ 12101 *et seq.*), and the U.S. Attorney General's implementing regulation, 28 CFR Part 35.

Child and Family Services' Service Agreement – the casework document developed between the caseworker for the D.C. Child and Family Services Agency and the family that outlines the tasks necessary to achieve case goals and outcomes.

Client Advocate – a qualified professional, employed or contracted by or on behalf of the District of Columbia to provide case management and coordination services for families, who is independent of all direct service Providers, and who remains with the family through the duration of services within the Continuum of Care.

Family –

(a) Family means either of the following:

(1) A group of individuals with at least one (1) minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit. For the purposes of this definition, the term "dependent child" shall mean a minor or adult child that has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, and which substantially impedes his or her ability to live independently; or

(2) A pregnant woman in her third trimester.

(b) Minor children of the applicant adult are presumed to be part of the family unit, regardless of previous living arrangements, as long as they presently intend to remain together as a family unit; or

(c) The partner or significant other of the applicant adult that otherwise meets the definition of family set forth in subparagraph (a) or (b) is presumed to be part of the family unit, regardless of previous living arrangements, as long as the partner or significant other, and the remaining members of the family unit, presently intend to remain together as a family unit.

Good cause – For the purpose of administrative review, good cause means illness, an accident, a childcare problem, severe weather conditions, another emergency, a client's desire to obtain a representative for the administrative review, or other similar circumstances.

HUD Fair Market Rent – the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities, as set forth in 24 CFR § 5.100.

Local Rent Supplement Program (LRSP) – a locally funded housing assistance program operated by the District of Columbia Housing Authority (DCHA) as set forth in 14 DCMR §§ 9500 *et seq*.

Rent Reasonableness Standard – is defined by the United States Housing and Urban Development, and means that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.

Copies of these rules and related information may be obtained by writing to Laura Green Zeilinger, Director, Department of Human Services, 64 New York Avenue, N.E., Washington, D.C. 20002, or by calling the Department of Human Services at (202) 671-4200.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY RULEMAKING

RM23-2020-2-G, NATURAL GAS; RM46-2020-01-E, LICENSURE OF ELECTRICITY SUPPLIERS; and RM47-2020-01-G, LICENSURE OF NATURAL GAS SUPPLIERS,

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code § 2-505 (2016 Repl.), including its emergency rulemaking authority under § 2-505 (c), and § 34-802 (2012 Repl.), hereby gives notice of the adoption of the following amendments, on an emergency basis, to Chapters 23 (Natural Gas), 46 (Licensure of Electricity Suppliers), and 47 (Licensure of Natural Gas Suppliers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR) whereby, the Commission adds a waiver of rules provision in each of the respective chapters and is reflected in new Sections 2398, 4698, and 4798 (Waiver).

2. This emergency rulemaking provides the Commission with the authority to waive any or all of the specific requirements of Chapters 23, 46, and 47 that may relate to and may be necessary to protect the health, safety, and well-being of the residents of the District of Columbia as we respond to the COVID-19 global pandemic. The authority to waive certain rules will help facilitate and expedite any necessary Commission actions in response to any upcoming and unforeseen contingencies as a result of COVID-19.

3. This emergency rulemaking was adopted on April 15, 2020, and becomes effective immediately. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of adoption, expiring August 13, 2020, unless superseded beforehand.

Chapter 23, NATURAL GAS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2398, WAIVER, is added as follows:

2398.1 The Commission may, upon request with good cause shown, or upon its own initiative, waive any provision of Chapter 23 of this title.

Chapter 46, LICENSURE OF ELECTRICITY SUPPLIERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 4698, WAIVER, is added as follows:

4698.1 The Commission may, upon request with good cause shown, or upon its own initiative, waive any provision of Chapter 46 of this title.

Chapter 47, LICENSURE OF NATURAL GAS SUPPLIERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 4798, WAIVER, is added as follows:

4798.1 The Commission may, upon request with good cause shown, or upon its own initiative, waive any provision of Chapter 47 of this title.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-064
April 20, 2020

SUBJECT: Delegation of Authority to the Chief of Police Under the Firearms Control Regulations Act of 1975

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), it is hereby **ORDERED** that:

1. The Chief of Police of the Metropolitan Police Department is delegated the authority vested in the Mayor by section 410 of the Firearms Control Regulations Act of 1975, effective September 26, 2012, D.C. Law 19-170, D.C. Official Code § 7-2504.10, except for the authority set forth in subsection (b) of that section.

2. The Chief of Police may further delegate any of the authority delegated to him or her under this Order to subordinates under his or her jurisdiction.

3. **EFFECTIVE DATE:** The Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

D.C. PREPARATORY ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

D.C. Preparatory Academy, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995 hereby solicits proposals to provide:

- Accounting services
- Advertising and marketing services
- Advisory and consulting services
- Architectural and engineering services
- Assessment and instructional data support and services
- Background check services
- Business insurance
- Classroom furniture, fixtures, and equipment
- Computer hardware and software
- Construction/general contractor services
- Copy machine services
- Curriculum materials
- Elevator maintenance and repair services
- Employee medical benefits
- Facility management services
- Financial audit services
- Food services
- Instructional support services
- IT management services
- Janitorial services and supplies
- Legal services
- Mechanical services (boiler, HVAC, etc.)
- Office Furniture, fixtures and equipment
- Office supplies
- Payroll and HR information systems
- Playground furniture, fixtures, and equipment, and installation services
- Professional development and consulting services
- Project management and consulting services
- Security services (security guards, cameras, monitoring, alarm systems, etc.)
- Special education services
- Student data management systems
- Student transportation services
- Talent recruitment and development services
- Telecommunications equipment, infrastructure, and services

- Temporary staffing services
- Waste management services

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DISTRICT OF COLUMBIA

BOARD OF ELECTIONS

The District of Columbia Board of Elections, pursuant to D.C. Official Code, Section 1-1001.05(a)(5), 1-1021.01; 3 DCMR, Section 1201.1, hereby publishes the DC Voter Guide, which contains sample ballots for the June 2, 2020 Primary Election. The Guide can be accessed on the Board's website by using the following hyperlink:

https://www.dcboe.org/dcboe/media/PDFFiles/Voter-Guide-4-16-2020-Final-2.pdf

For more information, please contact the Board at:

1015 Half Street, SE
Suite 750
Washington, DC 20003
202-727-2525

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

AM/PM Bus Shuttle Services

KIPP DC is soliciting proposals from qualified vendors for AM/PM Bus Shuttle Services. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM ET on May 8, 2020. Questions should be addressed to barry.williams@kippdc.org.

Self-Contained Special Education Classroom Services Within a KIPP DC School

KIPP DC is soliciting proposals from qualified vendors for Self-Contained Special Education Classroom Services Within a KIPP DC School. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM ET on May 5, 2020. Questions should be addressed to nancy.meakem@kippdc.org.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools Petitioner	PERB Case No. 20-A-04
v.	Opinion No. 1740
Washington Teachers' Union, Local 6 American Federation of Teachers, AFL-CIO Respondent	

DECISION AND ORDER

I. Statement of the Case

Pursuant to a joint request for clarification of a Reinstatement Award, on December 28, 2019, the Arbitrator issued the award herein (Award). On January 21, 2020, the District of Columbia Public Schools (DCPS) filed this Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-605.02(6). DCPS argues that the Arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy. On February 13, 2020, the Washington Teachers' Union (WTU) filed an Opposition to the Arbitration Review Request (Request).[1]

Upon consideration of the Arbitrator's conclusions, applicable law, and the record presented by the parties, the Board concludes that the Arbitrator did not exceed his jurisdiction and that the Award is not contrary to law and public policy. Therefore, the Board denies DCPS's Request.

II. Arbitration Award

On July 9, 2018, an Arbitrator issued an award (Reinstatement Award), which granted a grievance filed by WTU. The Arbitrator ordered the Grievant reinstated to his former position with

[1] PERB granted WTU's consent motion for an extension of time to file an Opposition to the Arbitration Review Request.

back pay, including benefits, and awarded attorney fees to WTU. DCPS appealed the Reinstatement Award to the Board, arguing that the Reinstatement Award was contrary to law and public policy. On December 20, 2018, the Board denied DCPS's request for review.[2]

Following the Board's decision, DCPS and WTU went back to the Arbitrator who issued the Reinstatement Award and requested an extension of his jurisdiction to clarify the remedy.[3] The parties put the following questions before the Arbitrator:[4]

> (1) Whether the Grievant was required to mitigate losses and whether the back pay award should be reduced for interim earnings from employment and for the periods where the Grievant did not try to mitigate the losses.
>
> (2) Whether the damages should be apportioned between the parties.[5]
>
> (3) Whether WTU is entitled to attorney fees under the Back Pay Act.[6]

Before the Arbitrator, DCPS asserted that the Grievant was obligated to seek employment in order to mitigate the losses resulting from his termination. DCPS argued that the back pay award should have been reduced for periods in which the Grievant "failed to make sustained efforts to mitigate. . . ."[7] DCPS argued that the Grievant should not "reap a windfall" from the delayed pursuit of the grievance, and requested a reduction in the amount of back pay by two-thirds.[8]

DCPS also argued that the collective bargaining agreement (CBA) required each party to pay its own legal expenses and that the express language of the CBA constituted a waiver of any entitlement to attorney fees under the Back Pay Act.[9] DCPS requested a finding that WTU is responsible for its own attorney fees.[10]

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[2] *DCPS v. WTU, Local 6*, Slip Op. No. 1692, PERB Case No. 18-A-13 (2018). DCPS did not seek further review from the Board or the Superior Court of the District of Columbia, making the Reinstatement Award final and binding on DCPS. *E.g., WTU, Local 6 v. DCPS*, 60 D.C. Reg, 13718, Slip Op. No. 1417 at 4, PERB Case No. 05-U-14 (2013) ("[A]n agency waives its right to appeal an arbitration award when it fails to file a timely arbitration review request with the Board or otherwise appeal for judicial review of the award in accordance with D.C. Code § 1-617.13(c)."); *see also*, *MPD v. FOP/MPD Labor Comm.,* 65 D.C. Reg. 6416, Slip Op. No. at 8, PERB Case No. 18-A-08 (2018) ("The Arbitrator's retention of jurisdiction does not affect the finality of the First Award with respect to the issues it decided")).

[3] The Arbitrator retired before clarifying the remedy and the parties selected a new Arbitrator to clarify the remedy awarded in the Reinstatement Award.

[4] Award at 3.

[5] Award at 10-11. The Arbitrator found that the record was clear that the delay in reaching arbitration was not attributable to the Grievant or WTU. The Arbitrator denied the request for apportionment. This is consistent with the Board's decision in PERB Case 18-A-13, and not contrary to law and public policy.

[6] 5 U.S.C § 5596.

[7] Award at 3.

[8] Award at 3-4.

[9] Award at 4.

[10] Award at 4.

WTU argued that the Reinstatement Award was final. WTU argued that the Arbitrator lacked jurisdiction to grant relief because DCPS waived its arguments with respect to mitigation and attorney fees by failing to raise them in its post-hearing brief, in its appeal before PERB, and by failing to appeal to the Superior Court of the District of Columbia.[11] In addition, WTU argued that DCPS's arguments were without merit and should be rejected.[12]

WTU asserted that the attorney fees award was within the jurisdiction of the Arbitrator and that the parties' CBA did not operate as a clear and unmistakable waiver of remedies under the Back Pay Act.[13]

The Arbitrator determined that he had jurisdiction to resolve issues related to the remedy awarded in the Reinstatement Award. The Arbitrator determined that the argument for mitigation was subject to waiver and the burden rested with the employer. The Arbitrator found that at each stage of the litigation DCPS could have raised the issue of mitigation but failed to do so.[14] The Arbitrator found that DCPS did not present any persuasive excuse for its failure to raise the affirmative defense at an earlier stage of the proceedings.[15] The Arbitrator held that DCPS "waived its right to the affirmative defense of Grievant's failure to mitigate his damages."[16] The Arbitrator found that, even if DCPS had raised the defense, it lacked merit because "the grave injustices visited upon the Grievant could not but have interfered with his ability to obtain employment."[17]

Further, the Arbitrator found that DCPS waived its arguments challenging the attorney fees remedy by failing to assert the argument before PERB.[18] The Arbitrator found that the CBA did not constitute a clear and unmistakable waiver of the remedies under the Back Pay Act and denied DCPS's request to find the remedy contrary to law and public policy.[19]

The Arbitrator held that the remedy granted in the Reinstatement Award met the requirements for attorney fees under the Back Pay Act and that an award of attorney fees was in the interest of justice.

III. Discussion

Section 1-605.02(6) of the D.C. Official Code permits the Board to modify, set aside, or remand a grievance arbitration award in only three narrow circumstances: (1) if an arbitrator was without, or exceeded, his or her jurisdiction; (2) if the award on its face is contrary to law and

[11] Award at 5.
[12] Award at 5.
[13] Award at 7.
[14] Award at 10.
[15] Award at 10.
[16] Award at 10.
[17] Award at 10.
[18] Award at 12.
[19] Award at 12.

public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[20] DCPS requests review on the grounds that the Award is contrary to law and public policy and that the Arbitrator exceeded his jurisdiction.

DCPS argues that the Arbitrator misapplied the Back Pay Act,[21] and exceeded his jurisdiction by ignoring the language in the CBA dealing with legal expenses.[22] Moreover, DCPS argues that the Arbitrator erred in applying the Back Pay Act without analysis of the interest of justice standards.[23]

A. The Arbitrator's clarification of the Award under the Back Pay Act does not violate law and public policy

DCPS asserts that the "Back Pay Act does not apply to this case."[24] DCPS cites to the parties' CBA, in which Article VI(5)(9) states that "DCPS and WTU shall have the right, at their own expense, to legal and or/ stenographic assistance at [arbitration]."[25] DCPS argues that Article VI(5)(9) has been interpreted by an arbitrator to "ensure that there would be no fee shifting award" and that the "union waived its right to recover attorney fees under the Back Pay Act."[26] DCPS argues that the prior arbitral interpretation of Article VI(5)(9) is binding precedent on the parties and the Board.[27]

Overturning an arbitration award on the basis of public policy is an "extremely narrow" exception to the rule that reviewing bodies must defer to the arbitrator's interpretation of the contract.[28] "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of 'public policy.'"[29] A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well-defined, public policy grounded in law or legal precedent.[30] Furthermore, DCPS has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result."[31] The D.C.

[20] D.C. Official Code § 1-605.02(6).
[21] Request at 5.
[22] Request at 7.
[23] Request at 8.
[24] Request at 5.
[25] Request at 5.
[26] Request at 7 (citing American Arbitration Association Case #16-390-629-06, Grievant Jerry Fluellen, 2008 (Wolf, Michael)).
[27] Request at 6-7.
[28] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No.1702 at 4, PERB Case No. 18-A-17 (2019) (citing *Am. Postal Workers Union v. U.S. Postal Service*,789 F.2d 1, 8 (D.C. Cir. 1986), a*ccord MPD v. FOP/MPD Labor Comm. ex rel. Pair*, 61 D.C. Reg. 11609, Slip Op. No. 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. No. 925 at 11-12, PERB Case No. 08-A-01 (2012)).
[29] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No.1702 at 4, PERB Case No. 18-A-17 (2019).
[30] *Id.*
[31] *MPD v. FOP/MPD Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000).

Court of Appeals has reasoned, "Absent a clear violation of law[,] one evident on the face of the arbitrator's award, the [Board] lacks authority to substitute its judgment for the arbitrator's."[32]

Here, DCPS's argument is unpersuasive. The Board has held that each arbitration stands on its own and that "arbitrations do not create binding precedent even when based upon the same collective bargaining agreement."[33] Moreover, the Board has previously upheld an arbitrator's interpretation that language identical to Article VI(5)(9) did not constitute a clear waiver of the rights afforded under the Back Pay Act.[34] DCPS disagrees with the Arbitrator's application of the Back Pay Act to the remedy, but fails to identify a violation of any specific law and public policy, which mandates a different result. Therefore, the Arbitrator's decision is not contrary to law and public policy.

B. Attorney Fees Award

DCPS argues that the Arbitrator exceeded his jurisdiction by looking outside of the CBA to provide a remedy of attorney fees in the Reinstatement Award.[35] DCPS argues that Article VI(5)(9) of the CBA provides that each party shall have the right, at their own expense, to legal and or/ stenographic assistance at arbitration.[36] DCPS asserts that the plain language of Article VI(5)(9) requires the parties to be responsible for their own legal expenses. DCPS contends that the Arbitrator exceeded his jurisdiction by ignoring the plain language of the CBA and awarding attorney fees.[37]

DCPS waived this argument by not presenting it in its appeal of the Reinstatement Award. The Arbitrator awarded attorney fees in the Reinstatement Award. The argument presented by DCPS in the instant case challenges the merits of awarding attorney fees rather than challenging the clarification of the attorney fees award. The Reinstatement Award was appealed to the Board. The Board issued its decision in PERB Case No. 18-A-13. DCPS did not appeal the Board's decision. The Reinstatement Award is final and binding. Thus, DCPS's challenge to the merits of an award of attorney fees is waived.[38] Notwithstanding the Board's finding that the argument has been waived by DCPS, the Board also finds that the argument also fails as a matter of law.

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[32] *Fraternal Order of Police/Dep't of Corr. Labor Comm. v. District of Columbia Pub. Emp. Relations Bd.*, 973 A.2d 174, 177 (D.C.2009).
[33] *DCPS v. WTU*, Local 6, Slip Op. No. 1692 at 5, PERB Case No. 18-A-13 (2018) (quoting *MPD v. FOP/MPD Labor Comm.*, 59 D.C. Reg. 6881, Slip Op. No. 1210 at 3, PERB Case No. 10-A-11a (2012);*See generally*, Elkouri & Elkouri: How Arbitration Works 575-78 (Ruben ed., BNA Books 6th ed. 2013) ("Prior labor arbitration awards that interpreted the existing terms of a contract between the same parties are not binding in exactly the same sense that authoritative legal decisions are. . . .").
[34] *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg.12702, Slip Op. No. 1326 at 5-6, PERB Case No. 10-A-14 (2012) (interpreting Article 10 §6(B) of the DOC/FOP collective bargaining agreement, which stated that all parties shall have the right, at their own expense, to legal and/or stenographic assistance at the hearing).
[35] Request at 7.
[36] Request at 7.
[37] Request at 7.
[38] *Battle v. District of Columbia*, 80 A. 3d 1036, n. 2 (2013) (citing *Speights v. 800 Water St., Inc.*, 4 A.3d 471, 476 (D.C.2010) ("points not raised on appeal are deemed waived")).

The Board has previously upheld an arbitrator's interpretation of language identical to Article VI(5)(9) and found that the arbitrator did not exceed his jurisdiction by applying the Back Pay Act and awarding attorney fees.[39] The Arbitrator did not exceed his authority in determining the remedy. When determining if an arbitrator exceeded their authority in rendering an award, the Board analyzes whether the award "draws its essence from the parties' collective bargaining agreement."[40] The relevant questions in this analysis are whether the arbitrator acted outside their authority by resolving a dispute not committed to arbitration, and whether the arbitrator was arguably construing or applying the contract in resolving legal and factual disputes.[41] The Board has held that an arbitrator does not exceed his or her authority by exercising his or her equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreements.[42]

In the case of the Reinstatement Award, the remedy drew its essence from the parties collective bargaining agreement. The Arbitrator provided a "make whole" remedy, which put the Grievant back in the position he would have been in if he had not been terminated. The Award did not modify or delete provisions of the CBA, and the remedy was not expressly restricted by the parties' collective bargaining agreement.

By submitting a grievance to arbitration, parties agree to be bound by the arbitrator's interpretation of the contract, rules, and regulations; and agree to accept the arbitrator's evidentiary findings and conclusions.[43] The Board finds that the remedy in the Award was within the Arbitrator's jurisdiction to order.

C. The Award of attorney fees under the Back Pay Act is not contrary to law and public policy

DCPS argues that the Award of attorney fees under the Back Pay Act requires a showing that the award is in the interest of justice.[44] DCPS contends that the Arbitrator in the Reinstatement Award took "a broad-brush" approach and found that the Grievant was discharged without cause and awarded DCPS attorney fees.[45] DCPS contends that WTU failed to make a showing that attorney fees are in the interest of justice.[46]

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[39] *DOC v. FOP/DOC Labor Comm.*, 59 D.C. Reg.12702, Slip Op. No. 1326 at 5-6, PERB Case No. 10-A-14 (2012) (interpreting Article 10 § 6(B) of the DOC/FOP collective bargaining agreement which stated that all parties shall have the right, at their own expense, to legal and/or stenographic assistance at the hearing).
[40] *AFGE Local 2725 v. DCHA.*, 61 D.C. Reg. 9062, Slip Op. No. 1480 at 5, PERB Case No. 14-A-01 (2014).
[41] *Mich. Family Resources, Inc. v. Serv. Emp' Int'l Union, Local 517M*, 475 F.3d 746, 753 (2007), quoted in *FOP/DOC Labor Comm. v. DOC*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. 1258 at 4, PERB Case No. 10-A-09 (2012).
[42] *See, e.g., MPD v. FOP/MPD Labor Comm. ex rel. Wigton*, 64 D.C. Reg. 133394, Slip Op. No. 1643 at 3, PERB Case No. 17-A-07 (2017).
[43] *MPD v. FOP/MPD Labor Comm. ex rel. Sims*, Slip Op. No. 633 at 3, PERB Case No. 00-A-04 (2000).
[44] Request at 8.
[45] Request at 9.
[46] Request at 9.

Back pay is authorized under the Back Pay Act when (1) an employee was affected by an unjustified or unwarranted personnel action; (2) the unjustified or unwarranted personnel action resulted in a withdrawal or reduction in the pay, allowances, or differentials of the employee; and (3) the withdrawal or reduction would not have occurred but for the unjustified action.[47] Furthermore, the Back Pay Act requires that an award of attorney fees follow the standards established by § 5 U.S.C. 7701(g), meaning that an award of attorney fees must be in the interest of justice.

The D.C. Court of Appeals and the Board have accepted the non-exhaustive, illustrative list of examples in *Allen v. U.S. Postal Service*[48] to aid in determining whether an award of attorney fees is in the interest of justice.[49] *Allen* introduced factors to consider in determining whether attorney fees under the Back Pay Act are in the interest of justice.[50] *Allen* held that attorney fees may be awarded where: (1) the agency engaged in a prohibited personnel practice; (2) the agency's actions are clearly without merit or wholly unfounded, or the employee is substantially innocent of charges brought by the agency; (3) the agency's actions are taken in bad faith; (4) the agency committed gross procedural error; or (5) the agency knew or should have known that it would not prevail on the merits when it brought the proceeding.[51]

DCPS's argument is not supported by the record. The Arbitrator clarified the Reinstatement Award and found that "the Union meets the requirements of entitlement to attorney fees under the Back Pay Act."[52] The Arbitrator made the specific findings that satisfied the test under *Allen*:

> The Back Pay Act clearly establishes the Union's entitlement to such fees: Grievant was subject to an unwarranted and unjustified personnel action which resulted in loss of pay. The Union was the prevailing party in the action which protested that action. The Employer was held responsible for the payment of lost wages and benefits. An award of such fees is, by any reasonable assessment, in the interest of justice.[53]

In reviewing the record, the Arbitrator determined that the refusal to undo the termination "after the errors in the appraisals which led to Grievant's termination and after the performance appraisal system was discredited" worsened the stigma of termination.[54] The Arbitrator found that DCPS caused "the grave injustices" experienced by the Grievant .[55]

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[47] *Fed. Aviation Admin., Washington, D.C.* & Prof'l *Airways Sys. Specialists, MEBA*, 27 FLRA 230, 234–35 (May 29, 1987).
[48] 2 MSPR 420 (1980).
[49] *AFGE, Local 1975 v. DMV*, Slip Op. No. 1697 at 3, PERB Case No. 18-A-18 (2019) (citing *Surgent v. District of Columbia,* 683 A. 2d 493, 495 (D.C. 1996)).
[50] *Allen v. U.S. Postal Service*, 2 MSPR 420 (1980).
[51] *Allen* at 429.
[52] Award at 14.
[53] Award at 12.
[54] Award at 10.
[55] Award at 10.

Here, DCPS disagrees with the Arbitrator's conclusion concerning the clarification of the remedy. The Board has held that a disagreement with an arbitrator's choice of remedy does not render the Award contrary to law and public policy.[56] Therefore, the Board finds that the Award is not contrary to law and public policy.

IV. Conclusion

The Board rejects DCPS's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, DCPS's Request is denied and the matter is dismissed in its entirety.

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 a unanimous vote of Board Chairperson Douglas Warshof, Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

March 19, 2020
Washington, D.C.

[56] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6734, Slip Op. No. 1705 at 7, PERB Case No. 19-A-02 (2019) (citing *DCHA v. Bessie Newell*, 46 D.C. Reg. 10375, Slip Op. No. 600, PERB Case No. 99-A-08 (1999)).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 20-A-04, Slip Op. No. 1740 was sent by File and ServeXpress to the following parties on this the 26th day of March 2020.

Lee W. Jackson
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/s/ Royale Simms
Public Employee Relations Board

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
National Association of Government Employees	)	PERB Case No. 19-RC-01
Petitioner	)	
	)	Opinion No.1741
and	)	
District of Columbia Department of Forensic Sciences	)	
Respondent	)	

SUPPLEMENTAL DECISION AND ORDER AMENDING DIRECTION OF ELECTION

I. Statement of the Case

On January 16, 2020, the Board ordered an on-site election to determine whether a majority of eligible employees at the Department of Forensic Sciences (DFS) desire to be represented by the National Association of Government Employees (NAGE) or no representative.[1] On March 4, 2020, the American Federation of Government Employees, Local 2978 (AFGE Local 2978) filed a document styled Motion to Intervene Out of Time (Motion to Intervene). On March 11, 2020, NAGE filed an Opposition to AFGE Local 2978's Motion to Intervene.[2]

II. Background

On July 24, 2019, NAGE filed a Petition for Recognition (Petition), seeking to represent a proposed bargaining unit of professional and nonprofessional employees at DFS for the purpose of collective bargaining.[3] On September 4, 2019, after receiving DFS's comments to the recognition petition, PERB issued a notice of the recognition petition for DFS to post where notices to employees are customarily posted, pursuant to PERB Rule 502.6.

The purpose of the notice was to ensure that all employees, labor organizations, and agencies associated with the performance of work at DFS were aware that a recognition petition was filed regarding the proposed bargaining unit. The notice included the proposed unit description

[1] *NAGE and DFS*, Slip Op. No. 1732, PERB Case No. 19-RC-01 (January 16, 2020).
[2] On March 16, 2020, AFGE Local 2978 filed a Motion for Leave to Reply to Petitioner's Opposition. The motion is denied because it is rendered moot by the Board's decision to grant the motion to intervene.
[3] PERB notified NAGE that the Petition filed on July 24, 2019, was deficient. NAGE cured all deficiencies on August 9, 2019, and PERB granted NAGE's motion to correct the filing date in accordance with PERB Rule 501.3.

and listed possible current representatives. Specifically, the notice stated, "Employees in the proposed unit may be represented by the American Federation of Government Employees Local 2978 and the Service Employees International Union District 1199-UHE."[4] The notice also contained instructions to intervene in the proceedings for any affected labor organization. PERB ordered DFS to post the notices for a period of fourteen consecutive days. On September 9, 2019, DFS verified its compliance with the notice posting. No labor organization disputes the length of time the notice was posted and PERB received no intervention petitions or comments in response to the notice.

On November 8, 2019, a hearing was held to determine which employees belonged in the bargaining unit. As stated in Opinion 1732, DFS and NAGE resolved the issue of which employees would be covered by the proposed unit description. The Hearing Examiner concluded that the Petition met all the requirements of PERB Rule 502.[5]

On January 16, 2020, the Board issued a Decision and Order finding that the following unit was an appropriate unit for collective bargaining over terms and conditions of employment.

> All employees of the Public Health Laboratory, both professional and nonprofessional, and all other professional employees of the Department of Forensic Sciences, excluding all management officials, supervisors, confidential employees or any employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.[6]

The Board ordered an on-site election.

Following the Board's Direction of Election, DFS, NAGE and PERB agents discussed an election agreement. On February 26, 2020, NAGE and DFS submitted an election agreement, which included an election date of March 9, 2020. The notice of election was posted at DFS on February 28, 2020. The notice included the unit description, as well as the date, time, and location of the election.

On March 4, 2020, AFGE Local 2978 filed a Motion to Intervene. Based on the issues raised in the Motion to Intervene and the supporting evidence, PERB postponed the election and issued a notice of election postponement to DFS, which was posted on March 6, 2020, as well as emailed to affected employees.

III. Discussion

[4] Notice at 1.
[5] Report at 7.
[6] Petition at 1-2.

AFGE Local 2978 stated in its Motion to Intervene that it became aware of the Petition on February 17, 2020, and had not seen the notice issued by PERB notifying all employees, employers, and labor organization of the petition.[7] AFGE Local 2978 claims to represent at least eight employees who are currently employed at DFS.[8] NAGE argues that AFGE Local 2978's Motion to Intervene is untimely by over five months and that, even if the Board permitted AFGE Local 2978 to intervene, NAGE would still prevail on the merits.[9] According to NAGE, the Petition was filed during an open period after AFGE Local 2978's contract had expired.[10] Furthermore, NAGE argues that a contract bar does not exist because AFGE Local 2978's certification is with the District of Columbia Department of Human Services and not DFS. NAGE asserts that AFGE Local 2978 failed to file a unit modification to reflect a change in agency identity.[11]

As stated earlier, the first notice sent by PERB to DFS on September 4, 2019, specifically stated that members of the proposed bargaining unit may be represented by AFGE Local 2978 or the Service Employees International Union District 1199-UHE (SEIU). Despite the notice, PERB did not receive any intervention petitions from any labor organization within the time period specified by the notice nor receive any motions to intervene prior to AFGE Local 2978's Motion to Intervene.[12]

A hearing was held to specifically determine whether employees in the proposed bargaining unit were represented by any other labor organization. Both DGS and NAGE agreed that the employees in the proposed unit were not currently represented. The Hearing Examiner specifically stated that DFS and NAGE stipulated at the hearing that neither AFGE Local 2978 nor SEIU had collective bargaining agreements currently applicable to these employees.[13]

Looking to the National Labor Relations Board (NLRB) for guidance, the NLRB's Casehandling Manual on Representation Proceedings states that "if no preconsent or prehearing notice was ever given to a union – say, because its interest in the situation was unknown – its intervention should be permitted after approval of an election agreement or after the close of a hearing, only to the extent that its evidence of interest predates the approval of the election agreement or the close of the hearing, whichever applies."[14] AFGE Local 2978 raises in its motion that it did not receive notice of the recognition petition until February 17, 2020. Additionally, PERB Rule 502.8 states that "the incumbent labor organization shall be allowed to intervene as a matter of right without submitting any showing of interest." Although AFGE Local 2978 failed to file a timely request to intervene, timeliness is one factor the Board may consider in granting an intervention petition. PERB Rule 501.15 states that the Board "shall have the discretion to grant

[7] Motion to Intervene at 1.
[8] Motion to Intervene at 2.
[9] Opposition to Motion to Intervene at 5.
[10] Opposition to Motion to Intervene at 6.
[11] Opposition to Motion to Intervene at 6.
[12] As of the date of this Decision, SEIU has not filed an intervention petition in this matter.
[13] Report at 5.
[14] NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11026.2

or deny a request for intervention, basing the decision on the nature of the interests of the intervenor, whether those interests will be adequately protected by the existing parties, and the timeliness of the intervenor's request." AFGE Local 2978 asserts that it did not receive notice of the recognition petition and currently represents at least eight employees in the proposed bargaining unit. Although the motion to intervene is untimely, the Board finds that, in this particular case, the nature of AFGE Local 2978's interest, which would not be protected by NAGE or DFS, requires allowing it to intervene. The Board finds that AFGE Local 2978's motion to intervene is granted and AFGE Local 2978 should be added to the ballot.

IV. Conclusion

Based on the foregoing, AFGE Local 2978's motion to intervene is granted. The Board orders an election to determine the will of the eligible employees in the unit described above to be represented by NAGE, AFGE Local 2978, or no representative. In accordance with PERB Rule 510.5, all professional employees must be given two ballots: one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any. Furthermore, the Board finds that based on the changes to D.C. Government's operating status as a result of COVID-19, a mail ballot election is most appropriate in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE Local 2978's Motion to Intervene is granted.

2. A mail ballot election shall be held in accordance with the provisions of D.C. Official Code § 1-617.10 and PERB Rules 510, 511, 513, 514, and 515 in order to determine whether a majority of eligible employees in the above-described unit desire to be represented for the bargaining on terms and conditions of employment by the National Association of Government Employees; the American Federation of Government Employees, Local 2978; or no union.

3. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

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

Washington, D.C.

March 19, 2020

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-RC-01, Opinion No. 1741 was sent by File and ServeXpress to the following parties on this the 30th day of March, 2020.

Lateefah S. Williams
National Association of Government Employees
1020 N. Fairfax Street
Suite 200
Alexandria, VA 22314

Michael Kentoff
D.C. Office of Labor Relations and
Collective Bargaining
441 4th Street NW
Suite 820 North
Washington, D.C. 20001

Hampton H. Stennis
American Federation of Government Employees
80 F Street NW
Washington, D.C. 20001

/s/ Merlin M. George
PERB

RICHARD WRIGHT PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

RICHARD WRIGHT PCS, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide the following services for SY2020-2021 at 475 School Street, SW, Washington, DC 20024:

- Accounting Services
- Business Insurance
- Classroom furniture, fixtures, and equipment
- Commercial Cleaning Supplies
- Computer Hardware and Software
- Employee Medical Benefits
- Elevator Service
- Facility Management services
- Financial Audit Services
- Food Services
- HR Specialist Support Services
- Instructional Support Services
- IT Management Services
- Janitorial services and supplies
- Legal Educational Services
- Mechanical services (boiler, HVAC, etc.)
- Moving and Storage Services
- Office furniture, fixtures, and equipment
- Office Supplies
- School Information System Support Services
- Security Services
- Special Education Services (Psychologist, Teachers and other Support Services)
- Student transportation services (Sports and Field Trips)
- Textbooks Grades 8-12
- Waste management services

Please email BIDS@RICHARDWRIGHTPCS.ORG for more details about requirements.

Bids are DUE **BY MAY 8, 2020**.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after May 15, 2020.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on April 10, 2020. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

Aponte-Smith	Dena	Mortgage Bankers Association 1919 M Street, NW, 5th Floor	20036
Darrah	Jeffrey	District Title, A Corporation 1150 Connecticut Avenue, NW, #201	20036
Diaz Gonzalez	Rosario	U.S House of Representatives 15 Independence Avenue, SE	20515
Fitzgerald	Mark	Stewart Title & Escrow, Inc. 1707 L Street, NW, Suite 240	20036
Fraley	Toya S.	Debevoise & Plimpton 801 Pennsylvania Avenue, NW, Suite 500	20004
Gentile	Joseph	Federal Title & Escrow Company 5335 Wisconsin Avenue, NW, Suite 700	20015
Gross-Bethel	Jean M.	Office of the People's Counsel 1133 15th Street, NW, Suite 500	20005
Khan	Faizul Rahaman	Self 2122 Massachusetts Avenue, NW, Suite 503	20008
Mitchell	Patricia Ellis	Columbia Enterprises, Inc 1018 7th Street, SE	20003
Rivera	Javier F	Office of the Attorney General, Child Support Services Division 441 4th Street, NW, Suite 550N	20001
Simms	Janice Michelle	National Academy of Sciences 2101 Constitution Avenue, NW	20418
Thiessen	Gary R.	US House of Representatives 1 First Street, SE	20004
Webster	Nicole D.	Metropolitan Police Department 300 Indiana Avenue, NW, Room 5114	20001

TWO RIVERS PUBLIC CHARTER SCHOOL

INTENT TO AWARD A SOLE SOURCE CONTRACT

Apple MacBook Airs, iPads and iMacs

Two Rivers Public Charter School intends to enter into a sole source contract with Apple, Inc. to provide technology equipment consisting of MacBook Air laptops, iMac desktops, and iPad tablets. The cost of this contract will be approximately $94,208. The decision to sole source was made because Apple, Inc is uniquely qualified to provide technology equipment due to proprietary design of their equipment. Two Rivers' existing technology is Apple-product based and the organization wants to continue with the current infrastructure. Please contact Gail Williams with any questions at procurement@tworiverspcs.org.

TWO RIVERS PUBLIC CHARTER SCHOOL

INTENT TO AWARD A SOLE SOURCE CONTRACT

Environmental and Character Education Program

Two Rivers Public Charter School intends to enter into a sole source contract with NorthBay to provide a week-long sleep-away environmental and character education program to 6th graders**.** The cost of this contract will be approximately $30,600. The decision to sole source was made because NorthBay is uniquely qualified to provide a week-long sleep-away program that matches Two Rivers' emphasis on experiential learning and social-emotional education. Please contact Liz Riddle with any questions at procurement@tworiverspcs.org.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, May 7, 2020 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 120 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 the Board of Directors Calendar on DC Water's website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

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

DRAFT AGENDA

1.	Call to Order	Board Chairman
2.	Roll Call	Board Secretary
3.	Approval of April 2, 2020 Meeting Minutes	Board Chairman
4.	Committee Reports	Committee Chairperson
5.	Chief Executive Officer's Report	Chief Executive Officer
6.	Action Items Joint-Use Non Joint-Use	Board Chairman
7.	Other Business	Board Chairman
8.	Adjournment	Board Chairman

BOARD OF ZONING ADJUSTMENT
PUBLIC MEETING NOTICE
WEDNESDAY, APRIL 29, 2020
Virtual Meeting via WebEx

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

TIME: 9:30 A.M.

I. DECISIONS

1) Application No. 20201 of DC Superpack LLC
Pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the Downtown-Use requirements of Subtitle I § 303.1(a), and pursuant to Subtitle X, Chapter 10, for a variance from the MU-Use Group E requirements of Subtitle U § 513.1(a)(2), to permit an animal care and boarding use in an existing mixed use building in the D-4-R Zone at premises 450 Massachusetts Avenue, N.W. (Square 517, Lot 50).

2) Application No. 20222 of Jack Spicer Properties LLC
As amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the lot dimension requirements of Subtitle D § 302.1, to subdivide the existing record lot into two separate lots of record and to internally divide the existing detached principal dwelling unit in two separate, semi-detached, principal dwelling units in the R-2 Zone at premises 5104-5106 Jay Street, N.E. (Square 5176, Lot 369).

3) Application No. 20194 of Hamilton St NW, LLC
Pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 and Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a third story and a three-story rear addition to an existing principal dwelling unit and convert it to a flat in the RF-1 Zone at premises 752 Lamont Street N.W. (Square 2892, Lot 45).

II. CONSENT CALENDAR

A. Motion for Modification of Consequence

Application No. 19466-A of Beresford Davis
Pursuant to 11 DCMR Subtitle Y § 704, for a modification of consequence to the plans approved by BZA Order No. 19466 to include a third story addition to the approved three-unit apartment house in the RF-1 Zone at premises 1215 Holbrook Terrace, N.E. (Square 4057, Lot 195).

III. MOTIONS

A. Motion to Waive 40-Day Notice Requirement

Application No. 20240 of Schmidt Development, LLC
As amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the residential conversion regulations of Subtitle U § 320.2 with waivers from the rear addition requirements of Subtitle U § 320.2(e) and the rooftop architectural requirements of Subtitle U § 320.2(h), under U § 301.1(g) from the requirements of U § 301.1(c)(2), and under Subtitle E § 5201 from the accessory building lot occupancy provisions of Subtitle E § 5003.1, and pursuant to Subtitle X, Chapter 10, for an area variance from the accessory building access requirements of Subtitle U § 301.1(c)(4) to construct a third story and a rear addition to convert a single-family dwelling unit into two dwelling units and to expand an accessory building for a third residential unit in the RF-1 Zone at premises 1330 K Street, S.E. (Square 1046, Lot 145).

PLEASE NOTE:

This public meeting will be held virtually through WebEx for the Board to deliberate on or decide the items listed on the agenda. Information for the public to view or listen to the public meeting will be provided on the Office of Zoning website and in the case record for each application or appeal as soon as possible in advance of the meeting date.

Do you need assistance to participate?

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

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

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

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

Vietnamese

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

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC MEETING NOTICE
WEDNESDAY, MAY 6, 2020
Virtual Meeting via WebEx

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

TIME: 9:30 A.M.

I. DECISIONS

1) Application No. 19557A of Government of the Commonwealth of Australia
Pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by BZA Orders No. 19557 to refine several components of the architectural elements and open spaces of the Australian embassy building in MU-15 Zone at 1601 Massachusetts Avenue N.W. (Square 181, Lot 162). (ANC 2B-05)

2) Application No. 19134C of The Embassy of Zambia
Pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the time limit conditions of BZA Order No. 19134-B to allow the temporary location of a chancery in the in the R-3 Zone at premises 2200 R Street N.W. (Square 2512, Lot 808). (ANC 2D-02)

3) Appeal No. 20183 of The Residences of Columbia Heights, a Condominium
Pursuant to 11 DCMR Subtitle Y § 302, from the decision made on September 30, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1908601, to permit a new building with 50 residential apartments for the Short Term Family Housing (STFH), in the MU-5A Zone at premises 2500 14th Street, N.W. (Square 2662, Lot 205). (ANC 1B-06)

PLEASE NOTE:

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LORNA L. JOHN, MEMBER
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NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 10-03D
Z.C. Case No. 10-03D
H Street Residential, LLC
(Modification of Significance to Approved Consolidated PUD @ Square 912, Lot 55)
January 30, 2020

At its properly noticed public hearing held on January 30, 2020, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of H Street Residential, LLC (the "Applicant") for a modification of significance to permit a veterinary hospital use in the planned unit development ("PUD") originally approved by Z.C. Order No. 10-03 (the "Original Order") for Lot 55 in Square 912 (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the "Zoning Regulations"] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Notice

1. On October 24, 2019, the Office of Zoning ("OZ") sent notice of the public hearing to: (Exhibit ["Ex."] 18.)

   - Advisory Neighborhood Commissions ("ANC") 6A and 6C, the "affected" ANCs pursuant to Subtitle Z § 101.8;
   - The ANC Single Member District ("SMD") 6A01;
   - The Office of Planning ("OP");
   - The District Department of Transportation ("DDOT");
   - The District Department of Consumer and Regulatory Affairs ("DCRA");
   - The Ward 6 Councilmember;
   - The At-Large Councilmembers; and
   - Property owners within 200 feet of the Property.

2. OZ published a description of the proposed development and the notice of the public hearing in this matter in the *D.C. Register* on November 8, 2019. (Ex. 9, 10.)

Waiver

3. The Applicant requested to waive Subtitle Z § 400.9 in order to hold a public meeting less than 35 days after the Application was filed. (Ex. 3.)

4. Pursuant to Subtitle Z § 400.10, the Applicant provided evidence that the affected ANCs and OP agreed to support the waiver request. (Ex. 3K2, 3L, 10.)

Background

5. Pursuant to the Original Order, the Commission granted approval for a consolidated PUD (the "Approved PUD") to develop the Property with a mixed-use building comprised of retail and residential uses.[1]

6. Pursuant to Z.C. Order No. 10-03A, the Commission granted a two-year extension of the time period to file a building permit application for the Approved PUD.

7. Pursuant to Z.C. Order No. 10-03B, the Commission granted a further one-year extension of the time period to begin construction of the Approved PUD.

8. The Applicant filed Z.C. Case No. 10-03C, requesting a modification of consequence to request approval to permit a veterinary hospital use and a special exception to permit a veterinary hospital use in an NC-17 zone. When the Commission determined at its public meeting on July 29, 2019, that this was properly a modification of significance, the Applicant withdrew Z.C. Case No. 10-03C and filed this Application.

Parties

9. The only parties to Z.C Case No. 10-03, other than the Applicant, were ANCs 6A and 6C, the "affected" ANCs pursuant to Subtitle Z § 101.8.

The Application

10. On October 16, 2019, the Applicant filed the Application requesting a modification of significance to the Approved PUD to authorize:

- Modifications to the plans and conditions approved by the Original Order to replace the retail uses originally approved for a portion of the ground floor with a veterinary hospital use of 5,365 square feet directly abutting (i.e., directly below) four residential units and portions of three others; and (Ex. 3 at 5.)

- Special exception relief from the requirement of Subtitle H § 1101.4(g)(1)(C), that a matter-of-right veterinary use not directly abut a residential use pursuant to Subtitle H §§ 1200 and 1202 and Subtitle X § 901.

11. The Application stated that the proposed veterinary hospital use will meet the special exception requirements of Subtitle H § 1200 as follows:

- The proposed use will substantially advance the purposes of the NC zones to provide a stable mixed-use area with a range of commercial and multiple dwelling unit residential uses, by creating a new service establishment at ground level on the commercial H Street, N.E. corridor. The veterinary hospital will be located and designed such that it will not create any objectionable conditions to adjacent properties related to animal odor, noise, or waste. The Application noted that the veterinary hospital will offer limited grooming, sale of pet supplies, and supervised daytime care of pets during

[1] The PUD was approved under the 1958 Zoning Regulations.

business hours, but will not board or hospitalize animals overnight or after hours; (Subtitle H § 1200.1(a).)

- The Application does not propose any changes to the exterior of the building of the Approved PUD, that was carefully designed and articulated to be consistent with the character and fabric of the H Street, N.E. corridor; (*See* Finding of Fact ("FF") No. 29(a) of the Original Order; Ex. 3 at 8-9; Subtitle H § 1200.1(b).)

- An exceptional circumstance exists because the NC-17 zone permits a veterinary hospital use as a matter of right, but locating one on the ground floor of a mixed-use building requires special exception relief from the location requirements governing proximity to residential uses; (Subtitle H § 1200.1(c).)

- The proposed use does not necessitate changes to the approved vehicular access and egress provisions of the Approved PUD; (Subtitle H § 1200.1(d).)

- Per the Applicant's transportation memorandum (Ex. 3D), the proposed use will require fewer parking spaces and generate fewer trips during peak afternoon travel hours, with only minimal increase in in morning peak hour trips; and (Ex. 3D; Subtitle H § 1200.1(e).)

- The veterinary hospital space has been designed to mitigate potential noise impacts to the abutting residential uses. The Application asserts that the mitigations will result in lower sound levels than those generated by a typical retail tenant. The Application also stated that the veterinary hospital use will have no external facilities. (Subtitle H § 1200.1(e).)

Applicant's Public Hearing Testimony

12. At the public hearing held on January 30, 2020, the Applicant provided a presentation describing the proposed services provided in the veterinary hospital space, supported by two experts:

- George Spano of Acoustics2, accepted by the Commission as an expert in Acoustics Engineering; and

- Erwin Andres of Gorove Slade Associates, accepted by the Commission as an expert in Transportation.

(January 30, 2020 Public Hearing Transcript ["Jan. 30 Tr."] at 3-6.)

13. In response to concern about potential noise impacts raised by a neighbor, Leslie Mick, the Applicant explained that there would be no overnight boarding of animals; that the dogs would not be taken on walks in the neighborhood; that there was no exterior space for the animals, only a play area inside the veterinary hospital; and that sound mitigation measures taken by the Applicant would ensure that noise from the proposed use would be no louder

to abutting residents outside the building than a regular retail use. The Applicant also stated that the location would house 26 to 29 dogs. (Jan. 30 Tr. at 11-15.)

Responses to the Application

OP Reports

14. On October 25, 2019, OP submitted a report ("OP Setdown Report") recommending that the Commission set down the Application for a public hearing on the requested modifications and special exception. (Ex. 10.)

15. On January 17, 2020, OP submitted a report (the "OP Final Report") recommending that the Commission approve the Application. (Ex. 23.) The OP Final Report stated that the Application met the matter-of-right standards for an animal care use, except that the proposed veterinary hospital would abut a residential use and would therefore require special exception relief from Subtitle H § 1101.4(g)(1)(C). The OP Final Report concluded that the Application had provided sufficient evidence that it met the standards for special exception relief.

DDOT Report

16. On January 9, 2020, DDOT submitted a report (the "DDOT Report") stating that it had no objection to the approval of the Application, based on DDOT's determination that:

- The Applicant's trip generation analysis correctly concluded that the veterinary hospital use might lead to a minor increase in vehicle trips during the weekday morning peak hours, but that it would also lead to a reduction in vehicle trips during the weekday evening peak hours; and

- The proposed use might result in changes to pick-up and drop-off patterns and availability of on-street parking, but these impacts would be minor. (Ex. 22.)

ANC 6A Report

17. ANC 6A submitted a written report (the "ANC 6A Report") stating that at its duly noticed public meeting of September 12, 2019, at which a quorum was present, it voted to support the Application because the addition of a veterinarian and pet services company would provide a desired service to the community and the ANC concluded that the Applicant had taken precautions to mitigate any negative impacts. (Ex. 14F.)

ANC 6C Report

18. ANC 6C submitted a written report (the "ANC 6C Report") stating that at its duly noticed public meeting of November 13, 2019, at which a quorum was present, it voted to support the Application, noting that the Applicant had offered detailed information about soundproofing and the anticipated lack of acoustic impact on nearby residents, including those upstairs from the proposed use. (Ex. 12.)

Other Responses

19. At the public hearing held on January 30, 2020, Leslie Mick, who lives across the street from the Property, testified that she was concerned about the noise due to her residence's

proximity to the proposed use. Upon hearing the Applicant's testimony about its mitigations to limit potential noise impacts, Ms. Micks confirmed that she felt more comfortable about the proposed use. (Jan. 30 Tr. at 10-11, 15.)

CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:

   (a) Results in a project superior to what would result from the matter-of-right standards;
   (b) Offers a commendable number or quality of meaningful public benefits; and
   (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.

2. Pursuant to Subtitle X § 304.4, the Commission shall evaluate a proposed PUD to determine that the proposed development:

   (a) Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
   (b) Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
   (c) Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

3. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 6A and 6C.

4. Subtitle Z § 704.4 stipulates that the scope of a hearing on a modification of significance "shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision."

5. The Commission concludes that the Application is consistent with the Approved PUD, as authorized by the Original Order, because the modification is minor, does not change the exterior of the Approved PUD, and does not change the Commission's analysis in granting the Approved PUD under Subtitle X § 304.4. The Application proposed no changes affecting the Approved PUD's:

   - Consistency with the Comprehensive Plan;
   - Mitigation or balancing any potential adverse impacts to ensure no unacceptable impacts; or

- Proffered public benefits.

6. Subtitle X § 303.13 authorizes the Commission to grant special exception relief as part of a PUD, upon demonstration of compliance with the special exception standards.

Special Exception Review Standards

7. The Commission is authorized to grant special exceptions where, in the judgment of the Commissions, the special exceptions:

(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
(c) Will meet such special conditions as may be specified in this title.

8. For the Application's requested special exception relief from Subtitle H § 1101.4(g)(1)(C), the specific conditions are those of Subtitle H §§ 1200 and 1202.

Specific Special Exception Criteria – Veterinary Hospital Use (Subtitle H §§ 1200 and 1202)

9. The Commission concludes that the Application satisfies the specific special exception criteria of Subtitle H §§ 1200 and 1202 as detailed below.

10. The Commission concludes that the Application meets the criteria for a veterinary hospital use in a NC zone as allowed as a matter of right by Subtitle H §§ 1101.2 and 1101.4, except for the provision of Subtitle H § 1101.4(g)(1)(C), as follows:

(A) The proposed veterinary hospital will devote less than 50% of the gross floor area to boarding animals; (FF No. 11.)

(B) The proposed veterinary hospital has been designed to minimize objectionable conditions to adjacent properties resulting from animal noise, odor, or waste, including by use of soundproofing materials, a waste removal system connected to water and sewer lines or waste collection in closed containers, and an HVAC system designed to mitigate any potential odors created by the veterinary hospital use; (FF Nos. 11, 13; Jan. 30 Tr. at 5.)

(C) [the subject of the Application];

(D) The Application does not propose external yards or other facilities for the keeping of animals; and (FF Nos. 11, 13; Jan. Tr. at 12.)

(E) Pet boarding, pet grooming, and the sale of pet supplies are accessory uses secondary to the primary veterinary hospital use, will take up less than half the square footage of the space, and will not produce the majority of the income from the location. (FF No. 11.)

11. The Commission concludes that the Application meets the criteria of Subtitle H § 1200.1 for special exception relief from Subtitle H § 1101.4(g)(1)(C) as detailed below:

(a) The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC zones, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity;

The excepted use or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC zones, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity by encouraging the establishment of a variety of retail and personal service establishments at ground level to meet the needs of surrounding area residents; (FF No. 11; Ex. 3 at 8.)

(b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board of Zoning Adjustment shall include review by the Historic Preservation Office and a status of the project's review by the Historic Preservation Review Board;

The Application proposes no changes to the exterior design of the project approved by the Approved PUD, which was determined to enhance the urban design features of the immediate vicinity of its location; (FF No. 11.)

(c) Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver.

The proposed location of the otherwise matter-of-right veterinary hospital use in a mixed-use building constitutes exceptional circumstances justifying the relief; (FF No. 11.)

(d) Vehicular access and egress are located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

The Application proposes no change to the vehicular access and egress approved by the Approved PUD which was determined to be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; (FF No. 11.)

(e) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.

The parking and traffic conditions associated with the proposed use are less intense than those associated with the approved retail use. The veterinary hospital would result in a few more morning peak hour trips but would result in significantly fewer vehicular peak hour trips in the afternoon. The veterinary hospital use requires fewer dedicated parking spaces than the approved retail use. The peak parking demand for the veterinary hospital use is less than the peak parking demand for the approved retail use; (FF Nos. 11, 16; Ex. 3D.)

(f) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.

The veterinary hospital has been designed to minimize the adverse effect to the nearby and abutting residences through sound mitigation measures that will reduce the maximum sound generated by the veterinary hospital use to a level comparable with that generated by a retail tenant. There will be a seven-inch-thick concrete floor above the veterinary hospital, sealed penetrations and double layer drywall ceiling with batt and hanging isolators, and acoustic tiles below the drywall ceiling and as wall panels; and (FF No. 11; Ex. 3E.)

(g) The [Commission] may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC zone.

The Commission concludes that the Application minimizes the potential adverse impacts of veterinary hospital use without any additional conditions.

12. The Commission concludes that the Application complies with the requirement of Subtitle H § 1202.1 because it proposed no changes to the exterior design approved by the Approved PUD as consistent with the design intent of the requirements of Subtitle H § 909 and the H Street N.E. Strategic Development Plan. (FF No. 11.)

General Special Exception Criteria – Subtitle X § 901.2

13. The Commission concludes that the Applicant has satisfied its burden of proof under the general special exception criteria for the veterinary hospital use because:

(a) A veterinary hospital use is expressly permitted in the NC-17 zone and the zone encourages ground floor commercial development, including animal care and boarding. (Subtitle H § 1101.2.) Therefore the Commission concludes that the veterinary hospital use is in harmony with the general purpose and intent of the Zoning Regulations; (Ex. 3 at 14.)

(b) The proposed veterinary hospital use has been designed to minimize impacts to the neighboring residential uses, including the incorporation of design elements to mitigate noise and odors. The proposed use will also result and in fewer traffic and

parking impacts than the approved retail use as demonstrated by the Application's traffic analysis and as confirmed by DDOT; and (FF Nos. 11, 13, 16.)

(c) The Commission concludes that the Application meets the specific conditions of Subtitle H as detailed above.

"Great Weight" to the Recommendations of OP

14. The Commission must give "great weight" to the recommendations of OP pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

15. The Commission finds OP's recommendation persuasive that the Commission approve the Application and concurs in that judgment.

"Great Weight" to the Written Report of the ANC

16. The Commission must give "great weight" to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

17. The Commission finds the ANC 6A Report and the ANC 6C Report persuasive in their support of the Application, particularly their statements that their concerns about potential noise and other operational impact had been addressed by the Applicant, and concurs in that judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant's request for a modification of significance to modify Decision Nos. A.1 and A.2 of Z.C. Order No. 10-03, which are hereby revised to read as follows (deletions shown in **bold** and ~~**strikethrough**~~ text; additions in **bold** and **underlined** text):

A.1. The PUD shall be developed in accordance with the plans prepared by Torti Gallas and Partners, Inc., dated November 8, 2010, marked as Exhibit 58 in the record **of Z.C. Case No. 10-03** (the "Approved Plans") ~~**and**~~ as further modified by the guidelines, conditions, and standards herein, **and as further modified by the**

architectural drawings marked as Exhibit 3C in the record of Z.C. Case No. 10-03D.

A.2. The PUD shall have a maximum density of 5.0 FAR and a gross floor area of 435,265 feet. **Of that, the PUD shall have approximately 51,420 square feet of retail use, of which approximately 5,365 square feet may also be devoted to veterinary hospital use.**

All other conditions in Z.C. Order No. 10-03 remain unchanged and in effect.

VOTE (Jan. 30, 2020): **5-0-0** (Peter A. Shapiro, Peter G. May, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 10-03D shall become final and effective upon publication in the *DC Register*; that is, on April 24, 2020.

COUNCIL OF THE DISTRICT OF COLUMBIA
Office of the Budget Director

Jennifer Budoff
Budget Director

Notice of Applicability of Legislation

Pursuant to section 3 of D.C. Law 22-228, the Boxing and Wrestling Commission Amendment Act of 2018, effective February 22, 2019 (D.C. Law 22-228; 66 DCR 200) ("the Act"), the Council hereby provides notice of the attached funding certification by the Office of the Chief Financial Officer and confirms that the fiscal effect of the Act has been included in the Fiscal Year 2020 approved budget and financial plan.

Jennifer Budoff
Budget Director
Council of the District of Columbia

April 14, 2020
Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER

Jeffrey S. DeWitt
Chief Financial Officer

To: Jennifer Budoff, Budget Director, Council of the District of Columbia

From: Jeffrey S. DeWitt, Chief Financial Officer

Date: April 9, 2020

Re: Certification of Inclusion in Approved Budget and Financial Plan

The fiscal effect of the Boxing and Wrestling Commission Amendment Act of 2018, effective February 22, 2019 (D.C. Law 22-228; D.C. Official Code § 3-601 et seq.), has been included in the Fiscal Year 2020 approved budget and financial plan pursuant to Fiscal Year 2020 Local Budget Act of 2019, effective August 31, 2019 (D.C. Law 23-11; 66 DCR 12340).