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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 23-336, Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020
- D.C. Council schedules a public hearing on Bill 23-315, District Veteran Employment Grant Program Act of 2019
- Department of Consumer and Regulatory Affairs announces application deadline for Technical Advisory Group membership of the Construction Codes Coordinating Board
- Office of the State Superintendent of Education changes the application deadline for the District of Columbia Tuition Assistance Grant ("DCTAG") from June 30, 2020 to a date to be determined
- D.C. Board of Elections schedules a public hearing to review the initiative measure "Modern Day Criminal Justice and Cannabis Reform Act of 2020"
- D.C. Public Service Commission solicits public comments regarding the Commission's role in the regulatory framework of the District's microgrids
- Office of Victim Services and Justice Grants announces availability of grant funds for providing crisis intervention services for victims of sexual violence
- Office of Victim Services and Justice Grants announces funding for implementing Trauma Response Community Engagement Program (TRCEP) centers in Wards 7 and 8

The Mayor of the District of Columbia mandates requirement to self-quarantine after non-essential travel during the COVID-19 Public Health Emergency (Mayor's Order 2020-081)

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
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-335

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 22, 2020

To amend the District of Columbia Public Emergency Act of 1980, on an emergency basis, to authorize the Mayor to extend the 15-day March 11, 2020 emergency orders issued in response to the coronavirus through October 9, 2020.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public Health Emergency Authority Extension Emergency Amendment Act of 2020".

Sec. 2. Section 7 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2306), is amended by adding a new subsection (c-1) to read as follows:

"(c-1) Notwithstanding subsections (b) and (c) of this section, the Council authorizes the Mayor to extend the 15-day March 11, 2020, emergency executive order and public health emergency executive order ("emergency orders") issued in response to the coronavirus (SARS CoV-2) through October 9, 2020. After the extension authorized by this subsection, the Mayor may extend the emergency orders for additional 15-day period pursuant to subsection (b) or (c) of this section.".

Sec. 3. Repealers.

(a) Section 507(d) of the Coronavirus Support Temporary Amendment Act of 2020, enacted on July 7, 2020 (D.C. Act 23-334; 67 DCR ____), is repealed.

(b) Section 507(c) of the Coronavirus Support Congressional Review Emergency Amendment Act of 2020, effective June 8, 2020 (D.C. Act 23-328; 67 DCR 7598), is repealed.

Sec. 4. Applicability.

This act shall apply as of July 12, 2020.

Sec. 5. Fiscal impact statement.

ENROLLED ORIGINAL

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

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
July 22, 2020

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-336

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JULY 22, 2020

To provide, on an emergency basis, for comprehensive policing and justice reform for District residents and visitors, and for other purposes.

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ENROLLED ORIGINAL

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020".

TITLE I. IMPROVING POLICE ACCOUNTABILITY AND TRANSPARENCY

SUBTITLE A. PROHIBITING THE USE OF NECK RESTRAINTS

Sec. 101. The Limitation on the Use of the Chokehold Act of 1985, effective January 25, 1986 (D.C. Law 6-77; D.C. Official Code § 5-125.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 5-125.01) is amended to read as follows:

"Sec. 2. The Council of the District of Columbia finds and declares that law enforcement and special police officer use of neck restraints constitutes the use of lethal and excessive force. This force presents an unnecessary danger to the public. On May 25, 2020, Minneapolis Police Department officer Derek Chauvin murdered George Floyd by applying a neck restraint to Floyd with his knee for 8 minutes and 46 seconds. Hundreds of thousands, if not millions, of people in cities and states across the world, including in the District, have taken to the streets to peacefully protest injustice, racism, and police brutality against Black people and other people of color. Police brutality is abhorrent and does not reflect the District's values. It is the intent of the Council in the enactment of this act to unequivocally ban the use of neck restraints by law enforcement and special police officers.".

(b) Section 3 (D.C. Official Code § 5-125.02) is amended as follows:

(1) Paragraph (1) is repealed.

(2) Paragraph (2) is repealed.

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

"(3) "Neck restraint" means the use of any body part or object to attempt to control or disable a person by applying pressure against the person's neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting their blood flow or breathing.".

(c) Section 4 (D.C. Official Code § 5-125.03) is amended to read as follows:

"Sec. 4. Unlawful use of neck restraints by law enforcement officers and special police officers.

"(a) It shall be unlawful for:

"(1) Any law enforcement officer or special police officer ("officer") to apply a neck restraint; and

"(2) Any officer who applies a neck restraint and any officer who is able to observe another officer's application of a neck restraint to fail to:

"(A) Immediately render, or cause to be rendered, first aid on the person on whom the neck restraint was applied; or

"(B) Immediately request emergency medical services for the person on whom the neck restraint was applied.

"(b) Any officer who violates the provisions of subsection (a) of this section shall be fined no more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), or incarcerated for no more than 10 years, or both.".

Sec. 102. Section 3 of the Federal Law Enforcement Officer Cooperation Act of 1999, effective May 9 2000 (D.C. Law 13-100; D.C. Official Code § 5-302), is amended by striking the phrase "trachea and carotid artery holds" and inserting the phrase "neck restraints" in its place.

SUBTITLE B. IMPROVING ACCESS TO BODY-WORN CAMERA VIDEO RECORDINGS

Sec. 103. Section 3004 of the Body-Worn Camera Regulation and Reporting Requirements Act of 2015, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 5-116.33), is amended as follows:

(a) Subsection (a)(3) is amended by striking the phrase "interactions;" and inserting the phrase "interactions, and the results of those internal investigations, including any discipline imposed;" in its place.

(b) New subsections (c), (d), and (e) are added to read as follows:

"(c)(1) Notwithstanding any other law:

"(A) Within 5 business days after a request from the Chairperson of the Council Committee with jurisdiction over the Metropolitan Police Department, the Metropolitan Police Department shall provide unredacted copies of the requested body-worn camera recordings to the Chairperson. Such body-worn camera recordings shall not be publicly disclosed by the Chairperson or the Council;

"(B) The Mayor:

"(i) Shall, except as provided in paragraph (2) of this subsection:

"(I) Within 5 business days after an officer-involved death or the serious use of force, publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force; and

"(II) By August 15, 2020, publicly release the names and body-worn camera recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014; and

"(ii) May, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request.

"(2)(A) The Mayor shall not release a body-worn camera recording pursuant to paragraph (1)(B)(i) of this subsection if the following persons inform the Mayor, orally or in writing, that they do not consent to its release:

"(i) For a body-worn camera recording of an officer-involved death, the decedent's next of kin; and

"(ii) For a body-worn camera recording of a serious use of force, the individual against whom the serious use of force was used, or if the individual is a minor or unable to consent, the individual's next of kin.

"(B)(i) In the event of a disagreement between the persons who must consent to the release of a body-worn camera recording pursuant to subparagraph (A) of this paragraph, the Mayor shall seek a resolution in the Superior Court of the District of Columbia.

"(ii) The Superior Court of the District of Columbia shall order the release of the body-worn camera recording if it finds that the release is in the interests of justice.

"(d) Before publicly releasing a body-worn camera recording of an officer-involved death, the Metropolitan Police Department shall:

"(1) Consult with an organization with expertise in trauma and grief on best practices for creating an opportunity for the decedent's next of kin to view the body-worn camera recording in advance of its release;

"(2) Notify the decedent's next of kin of its impending release, including the date when it will be released; and

"(3) Offer the decedent's next of kin the opportunity to view the body-worn camera recording privately in a non-law enforcement setting in advance of its release, and if the next of kin wish to so view the body-worn camera recording, facilitate its viewing.

"(e) For the purposes of this subsection, the term:

"(1) "FOIA" means Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*);

"(2) "Next of kin" shall mean the priority for next of kin as provided in Metropolitan Police Department General Order 401.08, or its successor directive; and

"(3) "Serious use of force" shall have the same meaning as that term is defined in MPD General Order 901.07, or its successor directive.".

Sec. 104. Chapter 39 of Title 24 of the District of Columbia Municipal Regulations is amended as follows:

(a) Section 3900 is amended as follows:

(1) Subsection 3900.9 is amended to read as follows:

"3900.9. Members may not review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing.".

(2) Subsection 3900.10 is amended to read as follows:

"3900.10. (a) Notwithstanding any other law, the Mayor:

"(1) Shall, except as provided in paragraph (b) of this subsection:

"(A) Within 5 business days after an officer-involved death or the serious use of force, publicly release the names and BWC recordings of all officers who committed the officer-involved death or serious use of force; and

"(B) By August 15, 2020, publicly release the names and BWC recordings of all officers who have committed an officer-involved death since the BWC Program was launched on October 1, 2014; and

"(2) May, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General, publicly release any other BWC recordings that may not otherwise be releasable pursuant to a FOIA request.

"(b)(1) The Mayor shall not release a BWC recording pursuant to paragraph (a)(1) of this subsection if the following persons inform the Mayor, orally or in writing, that they do not consent to its release:

"(A) For a BWC recording of an officer-involved death, the decedent's next of kin; and

"(B) For a BWC recording of a serious use of force, the individual against whom the serious use of force was used, or if the individual is a minor or is unable to consent, the individual's next of kin.

"(2)(A) In the event of a disagreement between the persons who must consent to the release of a BWC recording pursuant to subparagraph (1) of this paragraph, the Mayor shall seek a resolution in the Superior Court of the District of Columbia.

"(B) The Superior Court of the District of Columbia shall order the release of the BWC recording if it finds that the release is in the interests of justice.

"(c) Before publicly releasing a BWC recording of an officer-involved death, the Department shall:

"(1) Consult with an organization with expertise in trauma and grief on best practices for creating an opportunity for the decedent's next of kin to view the BWC recording in advance of its release;

"(2) Notify the decedent's next of kin of its impending release, including the date when it will be released; and

"(3) Offer the decedent's next of kin the opportunity to view the BWC recording privately in a non-law enforcement setting in advance of its release, and if the next of kin wish to so view the BWC recording, facilitate its viewing.".

(b) Section 3901.2 is amended by adding a new paragraph (a-1) to read as follows:

"(a-1) Recordings related to a request from or investigation by the Chairperson of the Council Committee with jurisdiction over the Department;".

(c) Section 3902.4 is amended to read as follows:

"3902.4. Notwithstanding any other law, within 5 business days after a request from the Chairperson of the Council Committee with jurisdiction over the Department, the Department shall provide unredacted copies of the requested BWC recordings to the Chairperson. Such BWC recordings shall not be publicly disclosed by the Chairperson or the Council.".

(d) Section 3999.1 is amended by inserting definitions between the definitions of "metadata" and "subject" to read as follows:

""Next of kin" shall mean the priority for next of kin as provided in MPD General Order 401.08, or its successor directive.

""Serious use of force" shall have the same meaning as that term is defined in MPD General Order 901.07, or its successor directive.".

SUBTITLE C. OFFICE OF POLICE COMPLAINTS REFORMS

Sec. 105. The Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 *et seq.*), is amended as follows:

(a) Section 5(a) (D.C. Official Code § 5-1104(a)) is amended by striking the phrase "There is established a Police Complaints Board ("Board"). The Board shall be composed of 5 members, one of whom shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency." and inserting the phrase "There is established a Police Complaints Board ("Board"). The Board shall be composed of 9 members, which shall include one member from each Ward and one at-large member, none of whom, after the

expiration of the term of the currently serving member of the MPD, shall be affiliated with any law enforcement agency." in its place.

(b) Section 8 (D.C. Official Code § 5-1107) is amended as follows:

(1) A new subsection (g-1) is added to read as follows:

"(g-1)(1) If the Executive Director discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the complaint, the Executive Director may:

"(A) Initiate the Executive Director's own complaint against the subject police officer; and

"(B) Take any of the actions described in subsection (g)(2) through (6) of this section.

"(2) The authority granted pursuant to paragraph (1) of this subsection shall include circumstances in which the subject police officer failed to:

"(A) Intervene in or subsequently report any use of force incident in which the subject police officer observed another law enforcement officer, including an MPD officer, utilizing excessive force or engaging in any type of misconduct, pursuant to MPD General Order 901.07, its successor directive, or a similar local or federal directive; or

"(B) Immediately report to their supervisor any violations of the rules and regulations of the MPD committed by any other MPD officer, and each instance of their use of force or a use of force committed by another MPD officer, pursuant to MPD General Order 201.26, or any successor directive.".

(2) Subsection (h) is amended by striking the phrase "subsection (g)" and inserting the phrase "subsection (g) or (g-1)" in its place.

SUBTITLE D. USE OF FORCE REVIEW BOARD MEMBERSHIP EXPANSION

Sec. 106. Use of Force Review Board; membership.

(a) There is established a Use of Force Review Board ("Board"), which shall review uses of force as set forth by the Metropolitan Police Department in its written directives.

(b) The Board shall consist of the following 13 voting members, and may also include non-voting members at the Mayor's discretion:

(1) An Assistant Chief selected by the Chief of Police, who shall serve as the Chairperson of the Board;

(2) The Commanding Official, Special Operations Division, Homeland Security Bureau;

(3) The Commanding Official, Criminal Investigations Division, Investigative Services Bureau;

(4) The Commanding Official, Metropolitan Police Academy;

(5) A Commander or Inspector assigned to the Patrol Services Bureau;

(6) The Commanding Official, Recruiting Division;

(7) The Commanding Official, Court Liaison Division;

(8) Three civilian members appointed by the Mayor, pursuant to section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1- 523.01(e)), with the following qualifications and no current or prior affiliation with law enforcement:

(A) One member who has personally experienced the use of force by a law enforcement officer;

(B) One member of the District of Columbia Bar in good standing; and

(C) One District resident community member;

(9) Two civilian members appointed by the Council with the following qualifications and no current or prior affiliation with law enforcement:

(A) One member with subject matter expertise in criminal justice policy; and

(B) One member with subject matter expertise in law enforcement oversight and the use of force; and

(10) The Executive Director of the Office of Police Complaints.

Sec. 107. Section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), is amended as follows:

(a) Paragraph (38) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(b) Paragraph (39) is amended by striking the period and inserting the phrase "; and" in its place.

(c) A new paragraph (40) is added to read as follows:

"(40) Use of Force Review Board, established by section 106 of the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, passed on emergency basis on July 7, 2020 (Enrolled version of Bill 23-825).".

SUBTITLE E. ANTI-MASK LAW REPEAL

Sec. 108. The Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code § 22-3312 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 22-3312.03) is repealed.

(b) Section 5(b) (D.C. Official Code § 22-3312.04(b)) is amended by striking the phrase "or section 4 shall be" and inserting the phrase "shall be" in its place.

Sec. 109. Section 23-581(a-3) of the District of Columbia Official Code is amended by striking the phrase "sections 22-3112.1, 22-3112.2, and 22-3112.3" and inserting the phrase "sections 22-3112.1 and 22-3112.2" in its place.

SUBTITLE F. LIMITATIONS ON CONSENT SEARCHES

Sec. 110. Subchapter II of Chapter 5 of Title 23 of the District of Columbia Official Code is amended by adding a new section 23-526 to read as follows:

"§ 23–526. Limitations on consent searches.

"(a) In cases where a search is based solely on the subject's consent to that search, and is not executed pursuant to a warrant or conducted pursuant to an applicable exception to the warrant requirement, sworn members of District Government law enforcement agencies shall:

"(1) Prior to the search of a person, vehicle, home, or property:

"(A) Explain, using plain and simple language delivered in a calm demeanor, that the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to a search;

"(B) Advise the subject that:

"(i) A search will not be conducted if the subject refuses to provide consent to the search; and

"(ii) The subject has a legal right to decline to consent to the search;

"(C) Obtain consent to search without threats or promises of any kind being made to the subject;

"(D) Confirm that the subject understands the information communicated by the officer; and

"(E) Use interpretation services when seeking consent to conduct a search of a person:

"(i) Who cannot adequately understand or express themselves in spoken or written English; or

"(ii) Who is deaf or hard of hearing.

"(2) If the sworn member is unable to obtain consent from the subject, refrain from conducting the search.

"(b) The requirements of subsection (a) of this section shall not apply to searches executed pursuant to a warrant or conducted pursuant to an applicable exception to the warrant requirement.

"(c)(1) If a defendant moves to suppress any evidence obtained in the course of the search for an offense prosecuted in the Superior Court of the District of Columbia, the court shall consider an officer's failure to comply with the requirements of this section as a factor in determining the voluntariness of the consent.

"(2) There shall be a presumption that a search was nonconsensual if the evidence of consent, including the warnings required in subsection (a), is not captured on body-worn camera or provided in writing.

"(d) Nothing in this section shall be construed to create a private right of action.".

ENROLLED ORIGINAL

SUBTITLE G. MANDATORY CONTINUING EDUCATION EXPANSION; RECONSTITUTING THE POLICE OFFICERS STANDARDS AND TRAINING BOARD

Sec. 111. Title II of the Metropolitan Police Department Application, Appointment, and Training Requirements of 2000, effective October 4, 2000 (D.C. Law 13-160; D.C. Official Code § 5-107.01 *et seq.*), is amended as follows:

(a) Section 203(b) (D.C. Official Code § 5-107.02(b)) is amended as follows:

(1) Paragraph (2) is amended by striking the phrase "biased-based policing" and inserting the phrase "biased-based policing, racism, and white supremacy" in its place.

(2) Paragraph (3) is amended to read as follows:

"(3) Limiting the use of force and employing de-escalation tactics;".

(3) Paragraph (4) is amended to read as follows:

"(4) The prohibition on the use of neck restraints;".

(4) Paragraph (5) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(5) Paragraph (6) is amended by striking the period and inserting a semicolon in its place.

(6) New paragraphs (7) and (8) are added to read as follows:

"(7) Obtaining voluntary, knowing, and intelligent consent from the subject of a search, when that search is based solely on the subject's consent; and

"(8) The duty of a sworn officer to report, and the method for reporting, suspected misconduct or excessive use of force by a law enforcement official that a sworn member observes or that comes to the sworn member's attention, as well as any governing District laws and regulations and Department written directives.".

(b) Section 204 (D.C. Official Code § 5-107.03) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "the District of Columbia Police" and inserting the phrase "the Police" in its place.

(2) Subsection (b) is amended as follows:

(A) The lead-in language is amended by striking the phrase "11 persons" and inserting the phrase "15 persons" in its place.

(B) A new paragraph (2A) is added to read as follows:

"(2A) Executive Director of the Office of Police Complaints or the Executive Director's designee;".

(C) Paragraph (3) is amended to read as follows:

"(3) The Attorney General for the District of Columbia or the Attorney General's designee;".

(D) Paragraph (8) is amended by striking the period and inserting the phrase "; and" in its place.

(E) Paragraph (9) is amended to read as follows:

"(9) Five community representatives appointed by the Mayor, one each with expertise in the following areas:

"(A) Oversight of law enforcement;

"(B) Juvenile justice reform;

"(C) Criminal defense;

"(D) Gender-based violence or LGBTQ social services, policy, or advocacy; and

"(E) Violence prevention or intervention.".

(3) Subsection (i) is amended by striking the phrase "promptly after the appointment and qualification of its members" and inserting the phrase "by September 1, 2020" in its place.

(c) Section 205(a) (D.C. Official Code § 5-107.04(a)) is amended by adding a new paragraph (9A) to read as follows:

"(9A) If the applicant has prior service with another law enforcement or public safety agency in the District or another jurisdiction, information on any alleged or sustained misconduct or discipline imposed by that law enforcement or public safety agency;".

SUBTITLE H. IDENTIFICATION OF MPD OFFICERS DURING FIRST AMENDMENT ASSEMBLIES AS LOCAL LAW ENFORCEMENT

Sec. 112. Section 109 of the First Amendment Assemblies Act of 2004, effective April 13, 2005 (D.C. Law 15-352; D.C. Official Code § 5-331.09), is amended as follows:

(a) Designate the existing text as subsection (a).

(b) Add a new subsection (b) to read as follows:

"(b) During a First Amendment assembly, the uniforms and helmets of officers policing the assembly shall prominently identify the officers' affiliation with local law enforcement.".

SUBTITLE I. PRESERVING THE RIGHT TO JURY TRIAL

Sec. 113. Section 16-705(b)(1) of the District of Columbia Official Code is amended as follows:

(a) Subparagraph (A) is amended by striking the phrase "; or" and inserting a semicolon in its place.

(b) Subparagraph (B) is amended by striking the phrase "; and" and inserting the phrase "; or" in its place.

(c) A new subparagraph (C) is added to read as follows:

"(C)(i) The defendant is charged with an offense under:

"(I) Section 806(a)(1) of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22–404(a)(1));

"(II) Section 432a of the Revised Statutes of the District of Columbia (D.C. Official Code § 22–405.01); or

"(III) Section 2 of An Act To confer concurrent jurisdiction on the police court of the District of Columbia in certain cases, approved July 16, 1912 (37 Stat. 193; D.C. Official Code § 22–407); and

"(ii) The person who is alleged to have been the victim of the offense is a law enforcement officer, as that term is defined in section 432(a) of the Revised Statutes of the District of Columbia (D.C. Official Code § 22-405(a)); and".

SUBTITLE J. REPEAL OF FAILURE TO ARREST CRIME

Sec. 114. Section 400 of the Revised Statutes of the District of Columbia (D.C. Official Code § 5-115.03), is repealed.

SUBTITLE K. AMENDING MINIMUM STANDARDS FOR POLICE OFFICERS

Sec. 115. Section 202 of the Omnibus Police Reform Amendment Act of 2000, effective October 4, 2000 (D.C. Law 13-160; D.C. Official Code § 5-107.01), is amended by adding a new subsection (f) to read as follows:

"(f) An applicant shall be ineligible for appointment as a sworn member of the Metropolitan Police Department if the applicant:

"(1) Was previously determined by a law enforcement agency to have committed serious misconduct, as determined by the Chief by General Order;

"(2) Was previously terminated or forced to resign for disciplinary reasons from any commissioned or recruit or probationary position with a law enforcement agency; or

"(3) Previously resigned from a law enforcement agency to avoid potential, proposed, or pending adverse disciplinary action or termination.".

SUBTITLE L. POLICE ACCOUNTABILITY AND COLLECTIVE BARGAINING AGREEMENTS

Sec. 116. Section 1708 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-617.08), is amended by adding a new subsection (c) to read as follows:

"(c)(1) All matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable.

"(2) This subsection shall apply to any collective bargaining agreements entered into with the Fraternal Order of Police/Metropolitan Police Department Labor Committee after September 30, 2020.".

SUBTITLE M. OFFICER DISCIPLINE REFORMS

Sec. 117. Section 502 of the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031), is amended as follows:

(a) Subsection (a-1) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "subsection (b) of this section" and inserting the phrase "paragraph (1A) of this subsection and subsection (b) of this section" in its place.

(2) A new paragraph (1A) is added to read as follows:

"(1A) If the act or occurrence allegedly constituting cause involves the serious use of force or indicates potential criminal conduct by a sworn member or civilian employee of the Metropolitan Police Department, the period for commencing a corrective or adverse action under this subsection shall be 180 days, not including Saturdays, Sundays, or legal holidays, after the date that the Metropolitan Police Department had notice of the act or occurrence allegedly constituting cause.".

(3) Paragraph (2) is amended by striking the phrase "paragraph (1)" and inserting the phrase "paragraphs (1) and (1A)" in its place.

(b) Subsection (b) is amended by striking the phrase "the 90-day period" and inserting the phrase "the 90-day or 180-day period, as applicable," in its place.

Sec. 118. Section 6-A1001.5 of Chapter 10 of Title 6 of the District of Columbia Municipal Regulations is amended by striking the phrase "reduce the penalty" and inserting the phrase "reduce or increase the penalty" in its place.

SUBTITLE N. USE OF FORCE REFORMS

Sec. 119. Use of deadly force.

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

(1) "Deadly force" means any force that is likely or intended to cause serious bodily injury or death.

(2) "Deadly weapon" means any object, other than a body part or stationary object, that in the manner of its actual, attempted, or threatened use, is likely to cause serious bodily injury or death.

(3) "Serious bodily injury" means extreme physical pain, illness, or impairment of physical condition, including physical injury, that involves:

(A) A substantial risk of death;

(B) Protracted and obvious disfigurement;

(C) Protracted loss or impairment of the function of a bodily member or organ; or

(D) Protracted loss of consciousness.

(b) A law enforcement officer shall not use deadly force against a person unless:

(1) The law enforcement officer reasonably believes that deadly force is immediately necessary to protect the law enforcement officer or another person, other than the subject of the use of deadly force, from the threat of serious bodily injury or death;

(2) The law enforcement officer's actions are reasonable, given the totality of the circumstances; and

(3) All other options have been exhausted or do not reasonably lend themselves to the circumstances.

(c) A trier of fact shall consider:

(1) The reasonableness of the law enforcement officer's belief and actions from the perspective of a reasonable law enforcement officer; and

(2) The totality of the circumstances, which shall include:

(A) Whether the subject of the use of deadly force:

(i) Possessed or appeared to possess a deadly weapon; and

(ii) Refused to comply with the law enforcement officer's lawful order to surrender an object believed to be a deadly weapon prior to the law enforcement officer using deadly force;

(B) Whether the law enforcement officer engaged in de-escalation measures prior to the use of deadly force, including taking cover, waiting for back-up, trying to calm the subject of the use of force, or using non-deadly force prior to the use of deadly force; and

(C) Whether any conduct by the law enforcement officer prior to the use of deadly force increased the risk of a confrontation resulting in deadly force being used.

SUBTITLE O. RESTRICTIONS ON THE PURCHASE AND USE OF MILITARY WEAPONRY

Sec. 120. Limitations on military weaponry acquired by District law enforcement agencies.

(a) Beginning in Fiscal Year 2021, District law enforcement agencies shall not acquire the following property through any program operated by the federal government:

(1) Ammunition of .50 caliber or higher;

(2) Armed or armored aircraft or vehicles;

(3) Bayonets;

(4) Explosives or pyrotechnics, including grenades;

(5) Firearm mufflers or silencers;

(6) Firearms of .50 caliber or higher;

(7) Firearms, firearm accessories, or other objects, designed or capable of launching explosives or pyrotechnics, including grenade launchers; and

(8) Remotely piloted, powered aircraft without a crew aboard, including drones.

(b)(1) If a District law enforcement agency requests property through a program operated by the federal government, the District law enforcement agency shall publish notice of the request on a publicly accessible website within 14 days after the date of the request.

(2) If a District law enforcement agency acquires property through a program operated by the federal government, the District law enforcement agency shall publish notice of the acquisition on a publicly accessible website within 14 days after the date of the acquisition.

(c) District law enforcement agencies shall disgorge any property described in subsection (a) of this section that the agencies currently possess within 180 days after the effective date of this act.

SUBTITLE P. LIMITATIONS ON THE USE OF INTERNATIONALLY BANNED CHEMICAL WEAPONS, RIOT GEAR, AND LESS-LETHAL PROJECTILES

Sec. 121. The First Amendment Assemblies Act of 2004, effective April 13, 2005 (D.C. Law 15-352; D.C. Official Code § 5-331.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 5-331.02) is amended as follows:

(1) Paragraphs (1) and (2) are redesignated as paragraphs (2) and (4) respectively.

(2) A new paragraph (1) is added to read as follows:

"(1) "Chemical irritant" means tear gas or any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure, or any substance prohibited by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, effective April 29, 1997.".

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

"(3) "Less-lethal projectiles" means any munition that may cause bodily injury or death through the transfer of kinetic energy and blunt force trauma. The term "less-lethal projectiles" includes rubber or foam-covered bullets and stun grenades.".

(b) Section 116 (D.C. Official Code § 5-331.16) is amended to read as follows:

"Sec. 116. Use of riot gear and riot tactics at First Amendment assemblies.

"(a)(1) No officers in riot gear may be deployed in response to a First Amendment assembly unless there is an immediate risk to officers of significant bodily injury. Any deployment of officers in riot gear:

"(A) Shall be consistent with the District's policy on First Amendment assemblies; and

"(B) May not be used as a tactic to disperse a First Amendment assembly.

"(2) Following any deployment of officers in riot gear in response to a First Amendment assembly, the commander at the scene shall make a written report to the Chief of Police within 48 hours, and that report shall be available to the public.

"(b)(1) Chemical irritants shall not be used by MPD to disperse a First Amendment assembly.

"(2) The Mayor shall request that any federal law enforcement agency operating in the District refrain from the use of chemical irritants to disperse a First Amendment assembly.

"(c)(1) Less-lethal projectiles shall not be used by MPD to disperse a First Amendment assembly.

"(2) The Mayor shall request that any federal law enforcement agency operating in the District refrain from the use of less-lethal projectiles to disperse a First Amendment assembly.".

SUBTITLE Q. POLICE REFORM COMMISSION

Sec. 122. Police Reform Commission.

(a) There is established, supported by the Council's Committee of the Whole, a Police Reform Commission ("Commission") to examine policing practices in the District and provide evidence-based recommendations for reforming and revisioning policing in the District.

(b)(1) The Commission shall be comprised of 20 representatives from among the following entities:

(A) Non-law enforcement District government agencies;
(B) The Office of the Attorney General for the District of Columbia;
(C) Criminal and juvenile justice reform organizations;
(D) Black Lives Matter DC;
(E) Educational institutions;
(F) Parent-led advocacy organizations;
(G) Student- or youth-led advocacy organizations;
(H) Returning citizen organizations;
(I) Victim services organizations;
(J) Social services organizations;
(K) Mental and behavioral health organizations;
(L) Small businesses;
(M) Faith-based organizations; and
(N) Advisory Neighborhood Commissions.

(2) The Chairman of the Council shall:

(A) Appoint the Commission representatives no later than July 22, 2020; and

(B) Designate a representative who is not employed by the District government as the Commission's Chairperson.

(c)(1) The Commission shall submit its recommendations in a report to the Mayor and Council by December 31, 2020.

(2) The report required by paragraph (1) of this subsection shall include analyses and recommendations on the following topics:

(A) The role of sworn and special police officers in District schools;

(B) Alternatives to police responses to incidents, such as community-based, behavioral health, or social services co-responders;

(C) Police discipline;

(D) The integration of conflict resolution strategies and restorative justice practices into policing; and

(E) The provisions of the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, passed on emergency basis on July 7, 2020 (Enrolled version of Bill 23-825).

(d) The Commission shall sunset upon the delivery of its report or on December 31, 2020, whichever is later.

SUBTITLE R. METRO TRANSIT POLICE DEPARTMENT OVERSIGHT AND ACCOUNTABILITY

Sec. 123. Section 76 of Article XVI of Title III of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01(76)), is amended as follows:

(a) Subsection (f) is amended by adding a new paragraph (1A) to read as follows:

"(1A) prohibit the use of enforcement quotas to evaluate, incentivize, or discipline members, including with regard to the number of arrests made or citations or warnings issued;".

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

"(i)(1) The Authority shall establish a Police Complaints Board to review complaints filed against the Metro Transit Police.

"(2) The Police Complaints Board shall comprise eight members, two civilian members appointed by each Signatory, and two civilian members appointed by the federal government.

"(3) Members of the Police Complaints Board shall not be Authority employees and shall have no current affiliation with law enforcement.

"(4) Members of the Police Complaints Board shall serve without compensation but may be reimbursed for necessary expenses incurred as incident to the performance of their duties.

"(5) The Police Complaints Board shall appoint a Chairperson and Vice-Chairperson from among its members.

"(6) Four members of the Police Complaints Board shall constitute a quorum, and no action by the Police Complaints Board shall be effective unless a majority of the Police Complaints Board present and voting, which majority shall include at least one member from each Signatory, concur therein.

"(7) The Police Complaints Board shall meet at least monthly and keep minutes of its meetings.

"(8) The Police Complaints Board, through its Chairperson, may employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform its work, including the investigation of complaints.

"(9) The duties of the Police Complaints Board shall include:

"(A) Adopting rules and regulations governing its meetings, minutes, and internal processes; and

"(B) With respect to the Metro Transit Police, reviewing:

"(i) The number, type, and disposition of citizen complaints received, investigated, sustained, or otherwise resolved;

"(ii) The race, national origin, gender, and age of the complainant and the subject officer or officers;

"(iii) The proposed and actual discipline imposed on an officer as a result of any sustained citizen complaint;

"(iv) All use of force incidents, serious use of force incidents, and serious physical injury incidents; and

"(v) Any in-custody death.

"(10) The Police Complaints Board shall have the authority to receive complaints against members of the Metro Transit Police, which shall be reduced to writing and signed by the complainant, that allege abuse or misuse of police powers by such members, including:

"(A) Harassment;

"(B) Use of force;

"(C) Use of language or conduct that is insulting, demeaning, or humiliating;

"(D) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, matriculation, political affiliation, source of income, or place of residence or business;

"(E) Retaliation against a person for filing a complaint; and

"(F) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.

"(11) If the Metro Transit Police receives a complaint containing subject matter that is covered by paragraph (10) of this subsection, the Metro Transit Police shall transmit the complaint to the Police Complaints Board within 3 business days after receipt.

"(12) The Police Complaints Board shall have timely and complete access to information and supporting documentation specifically related to the Police Complaints Board's duties and authority under paragraphs (9) and (10) of this subsection.

"(13) The Police Complaints Board shall have the authority to dismiss, conciliate, mediate, investigate, adjudicate, or refer for further action to the Metro Transit Police a complaint received under paragraph (10) of this subsection.

"(14)(A) If deemed appropriate by the Police Complaints Board, and if the parties agree to participate in a conciliation process, the Police Complaints Board may attempt to resolve a complaint by conciliation.

"(B) The conciliation of a complaint shall be evidenced by a written agreement signed by the parties which may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. No oral or written statements made in conciliation proceedings may be used as a basis for any discipline or recommended discipline against a subject police officer or officers or in any civil or criminal litigation.

"(15) If the Police Complaints Board refers the complaint to mediation, the Board shall schedule an initial mediation session with a mediator. The mediation process may continue as long as the mediator believes it may result in the resolution of the complaint. No oral or written statement made during the mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of the court or the rules of evidence.

"(16) If the Police Complaints Board refers a complaint for investigation, the Board shall assign an investigator to investigate the complaint. When the investigator completes the investigation, the investigator shall summarize the results of the investigation in an investigative report which, along with the investigative file, shall be transmitted to the Board, which may order an evidentiary hearing.

"(17) The Police Complaints Board may, after an investigation, assign a complaint to a complaint examiner, who shall make written findings of fact regarding all material issues of fact, and shall determine whether the facts found sustain or do not sustain each allegation of misconduct. If the complaint examiner determines that one or more allegations in the complaint is sustained, the Police Complaints Board shall transmit the entire complaint file, including the merits determination of the complaint examiner, to the Metro Transit Police for appropriate action.

"(18) Employees of the Metro Transit Police shall cooperate fully with the Police Complaints Board in the investigation and adjudication of a complaint. An employee of the Metro Transit Police shall not retaliate, directly or indirectly, against a person who files a complaint under this subsection.

"(19) When, in the determination of the Police Complaints Board, there is reason to believe that the misconduct alleged in a complaint or disclosed by an investigation of a complaint may be criminal in nature, the Police Complaints Board shall refer the matter to the appropriate authorities for possible criminal prosecution, along with a copy of all of the Police Complaints Board's files relevant to the matter being referred; provided, that the Police Complaints Board shall make a record of each referral, and ascertain and record the disposition of each matter referred and, if the appropriate authorities decline in writing to prosecute, the Police Complaints Board shall resume its processing of the complaint.

"(20) Within 60 days before the end of each fiscal year, the Police Complaints Board shall transmit to the Board and the Signatories an annual report of its operations, including any policy recommendations.".

TITLE II. BUILDING SAFE AND JUST COMMUNITIES

SUBTITLE A. RESTORE THE VOTE

Sec. 201. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 2(2) (D.C. Official Code § 1–1001.02(2)) is amended as follows:

(1) Subparagraph (C) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(2) Subparagraph (D) is repealed.

(b) Section 5(a) (D.C. Official Code § 1-1001.05(a)) is amended by adding new paragraphs (9B) and (9C) to read as follows:

"(9B) In advance of any applicable voter registration or absentee ballot submission deadlines, provide, to every qualified elector in the Department of Corrections' care or custody, and, beginning January 1, 2021, endeavor to provide to every qualified elector in the Bureau of Prisons' care or custody:

"(A) A voter registration form;

"(B) A voter guide;

"(C) Educational materials about the importance of voting and the right of an individual currently incarcerated or with a criminal record to vote in the District; and

"(D) Without first requiring an absentee ballot application to be submitted, an absentee ballot;

"(9C) Beginning January 1, 2021, upon receiving information pursuant to section 7(k)(3), (4), or (4A) from the Superior Court of the District of Columbia, the United States District Court for the District of Columbia, or the Bureau of Prisons, notify a qualified elector incarcerated for a felony of the qualified elector's right to vote;".

(c) Section 7(k) (D.C. Official Code § 1–1001.07(k)) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "registrant, upon notification of a registrant's incarceration for a conviction of a felony" and inserting the phrase "registrant," in its place.

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

"(4A) Beginning on January 1, 2021, at least monthly, the Board shall request from the Bureau of Prisons the name, location of incarceration, and contact information for each qualified elector in the Bureau of Prisons' care or custody.".

Sec. 202. Section 8 of An Act To create a Department of Corrections in the District of Columbia, effective April 26, 2019 (D.C. Law 22-309; D.C. Official Code § 24-211.08), is amended by adding a new subsection (b-1) to read as follows:

"(b-1) Within 10 business days after the effective date of the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, passed on emergency basis on July 7, 2020 (Enrolled version of Bill 23-825) ("act"), the Department shall notify eligible individuals in its care or custody of their voting rights pursuant to section 201 of the act.".

TITLE III. REPEALS; APPLICABILITY; FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 301. Repeals.

The Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, passed on emergency basis on June 9, 2020 (Enrolled version of Bill 23-774), is repealed.

Sec. 302. Applicability.

(a) Section 110 shall apply as of August 15, 2020.

(b) Section 123 shall apply after the enactment of concurring legislation by the State of Maryland and the Commonwealth of Virginia, the signing and execution of the legislation by the Mayor of the District of Columbia and the Governors of Maryland and Virginia, and approval by the United States Congress.

(c) Section 301 shall apply as of July 7, 2020.

Sec. 303. Fiscal impact statement.

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

Sec. 304. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
July 22, 2020

ENROLLED ORIGINAL

A RESOLUTION

23-458

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 7, 2020

To declare the existence of an emergency with respect to the need to provide for comprehensive policing and justice reform for District residents and visitors, and for other purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Comprehensive Policing and Justice Reform Second Emergency Declaration Resolution of 2020".

Sec. 2. (a) On June 9, 2020, the Council passed the Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020, passed on emergency basis on June 9, 2020 (Enrolled version of Bill 23-774) ("emergency act").

(b) This emergency legislation supersedes the emergency act and incorporates the intent stated in the Comprehensive Policing and Justice Reform Emergency Declaration Resolution of 2020, effective June 9, 2020 (Res. 23-430; 67 DCR 7743).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-473

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to approve Contract No. CW72868 and Modification No. 1 to Contract No. CW72868 with Genuine Parts Company (dba NAPA Auto Parts or NAPA) to provide operational and logistical management, inventory control, and vehicle parts, and to authorize payment for the goods and services received and to be received under the contract and the modification.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW72868 and Modification No. 1 to Contract No. CW72868 with Genuine Parts Company (dba NAPA Auto Parts or NAPA) Approval and Payment Authorization Emergency Declaration Resolution of 2020".

Sec. 2. (a) There exists an immediate need to approve Contract No. CW72868 and Modification No. 1 to Contract No. CW72868 with Genuine Parts Company (dba NAPA Auto Parts or NAPA) to provide operational and logistical management, inventory control, and vehicle parts and to authorize payment for the goods and services received and to be received under the contract and the modification.

(b) On August 6, 2019, the Office of Contracting and Procurement, on behalf of the Fire and Emergency Medical Services Department, awarded Contract No. CW72868 to Genuine Parts Company (dba NAPA Auto Parts or NAPA) for the period August 6, 2019, through August 5, 2020, in the amount of $950,000.

(c) Modification No. 1 is now necessary to increase the amount for the base year to $1.19 million.

(d) Council approval is necessary as this will increase the value of the contract to one of more than $1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Genuine Parts Company (dba NAPA Auto Parts or NAPA) cannot be paid for the goods and services provided in excess of $1 million for the period August 6, 2019, through August 5, 2020.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW72868 and Modification No. 1 to Contract No. CW72868 with Genuine Parts Company (dba NAPA Auto Parts or NAPA) Approval and Payment Authorization Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-474

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to approve Contract No. DCCB-2020-C-0020 with Edelson PC to provide outside legal counsel to assist with litigation against Juul Labs, Inc., and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCCB-2020-C-0020 with Edelson PC Approval and Payment Authorization Emergency Declaration Resolution of 2020".

Sec. 2. (a) There exists a need to approve Contract No. DCCB-2020-C-0020 with Edelson PC to obtain outside legal counsel to assist with litigation against Juul Labs, Inc., the dominant market player in a spiraling public health emergency of teenage e-cigarette use, as well as to assist with investigations of other e-cigarette manufacturers for violating the District's Consumer Protection Procedures Act in the design and marketing of e-cigarette products. District teenagers and the public need protection against Juul's deceptive and unfair trade practices. There is also a need to authorize payment for the goods and services to be received under Contract No. DCCB-2020-C-0020.

(b) Council approval is necessary to allow the Office of the Attorney General to obtain the services of outside legal counsel to assist with litigation against Juul Labs, Inc. Contract No. DCCB-2020-C-0020 is a multiyear contract, which has a 5-year base period calculated from the date of the contract's award.

(c) Council approval is also necessary because the contract could require the payment of more than $1 million during a 12-month period. The contract is a contingency fee contract with a cost reimbursement component, calculated as a percentage of any monetary award obtained by the Edelson PC on behalf of the District, payable only upon the District's receipt of such an award.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCCB-2020-C-0020 with Edelson PC Approval and Payment Authorization Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-475

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to approve Modification No. 9 and proposed Modification No. 10 to Contract No. CW50466 with KPMG, LLP to provide business and financial advisory services, and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification Nos. 9 and 10 to Contract No. CW50466 with KPMG, LLP Approval and Payment Authorization Emergency Declaration Resolution of 2020".

Sec. 2. (a) There exists an immediate need to approve Modification No. 9 and proposed Modification No. 10 to Contract No. CW50466 with KPMG, LLP, to provide business and financial advisory services and to authorize payment for the goods and services received and to be received under the modifications.

(b) By Modification No. 8, on March 31, 2020, the Office of Contracting and Procurement ("OCP"), on behalf of the Office of Public-Private Partnerships, exercised option year 3 of Contract No. CW50466 for the period April 3, 2020, through April 2, 2021, in the not-to-exceed amount of $1.45 million.

(c) By Modification No. 9, issued March 31, 2020, OCP increased the not-to-exceed amount for option year 3 by $750,000 to $2.2 million.

(d) By Modification No. 10, OCP proposes to increase the not-to-exceed amount for option year 3 by $2.75 million to $4.95 million.

(e) Council approval is necessary because these modifications increase the total contract amount by more than $1 million during a 12-month period.

(f) Council approval is necessary to allow the continuation of these vital services. Without this approval, KPMG, LLP cannot be paid for goods and services provided in excess of $2.2 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 9 and 10 to Contract No. CW50466 with KPMG, LLP Approval and Payment Authorization Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-476

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to approve Modification Nos. 3, 4, and 5 to Contract No. CW67661 with Sagitec Solutions LLC to provide a paid family leave tax system solution, and to authorize payment for the goods and services received and to be received under that contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification Nos. 3, 4, and 5 to Contract No. CW67661 with Sagitec Solutions LLC Approval and Payment Authorization Emergency Declaration Resolution of 2020".

Sec. 2. (a) There exists an immediate need to approve Modification Nos. 3, 4, and 5 to Contract No. CW67661 with Sagitec Solutions LLC, to provide a paid family leave tax system solution, and to authorize payment for the goods and services received and to be received under Modification Nos. 3, 4, and 5 to Contract No. CW67661.

(b) On January 23, 2020, by Modification No. 3, the Office of Contracting and Procurement ("OCP"), on behalf of the District's Department of Employment Services, exercised option year one of Contract No. CW67661 for the period February 21, 2020, through February 20, 2021, in the amount of $711,750.

(c) On April 2, 2020, by Modification No. 4, OCP increased the amount for option year one by $60,000, to a total estimated amount of $771,750.

(d) Modification No. 5 is now necessary to increase the amount for option year one to $1,071,300.

(e) Council approval is necessary because this will increase the value of the contract to more than $1 million during a 12-month period.

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, Sagitec Solutions LLC cannot be paid for goods and services provided in excess of $1 million for the period of February 21, 2020, through February 20, 2021.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. 3, 4, and 5 to Contract No. CW67661 with Sagitec Solutions LLC Approval and Payment Authorization Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-486

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to provide that expenditures on school-administered theatrical and music performances, including stipends for non-District of Columbia Public Schools employees, shall be an allowable expenditures from a school's Student Activity Fund.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Student Activity Fund Theatrical and Music Performance Expenditures Emergency Declaration Resolution of 2020".

Sec. 2. (a) On October 8, 2019, Councilmember Mary M. Cheh introduced the Student Activity Fund Theatrical and Music Performance Expenditures Act of 2019. The Committee on Education and the Committee of the Whole held a joint hearing on the legislation on March 10, 2020.

(b) On October 8, 2019, the Council passed the Student Activity Fund Theatrical and Music Performance Expenditures Emergency Act of 2019, effective October 23, 2019 (D.C. Act 23-130; 66 DCR 14296) ("emergency act"), which expired on January 21, 2020.

(c) On October 22, 2019, the Council passed the Student Activity Fund Theatrical and Music Performance Expenditures Temporary Act of 2019, effective January 10, 2020 (D.C. Law 23-44; 67 DCR 15339) ("temporary act"), which will expire on August 22, 2020.

(d) This emergency legislation is substantively identical to the emergency act and the temporary act.

(e) Immediate legislative action is necessary to prevent a gap in the law between the expiration of the temporary act and the effectiveness of permanent legislation.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Student Activity Fund Theatrical and Music Performance Expenditures Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-487

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 21, 2020

To declare the existence of an emergency with respect to the need to give the Mayor the authority to make a property ineligible for residential parking permits when it is a condition of a zoning order.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "RPP Voluntary Exclusion Emergency Declaration Resolution of 2020".

Sec. 2. (a) On April 20, 2020, the District Department of Transportation ("DDOT") submitted a memorandum in support of the developer to the District of Columbia Board of Zoning Adjustment ("BZA") for BZA Case No. 20266 – 3400 Connecticut Avenue, N.W., in regard to reducing the minimum number of parking spaces required at the site of a new housing development.

(b) As part of the memorandum in support, DDOT notes that the property owner will "prohibit residents at the property from participating in the Residential Parking Permit ("RPP") program."

(c) DDOT has no legal means to ensure the property owner abides by the requirement described in subsection (b) of this section.

(d) Without the requirement described in subsection (b) of this section being enforced, residents of the new development will be able to receive RPP for their vehicles, likely leading to insufficient street parking for existing residents in the neighborhood.

(e) In an April 16, 2020 memorandum on a study commissioned by the developer, the study team noted that during certain rush-hour periods parking in the neighborhood is at 98% of capacity.

(f) The BZA's hearing on the matter is scheduled for July 29, 2020.

(g) Emergency legislation is necessary to ensure that DDOT has the legal means to prohibit residents of properties that were subject to a condition of a zoning order that prohibits them from participating in the RPP program.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the RPP Voluntary Exclusion Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

B23-0859 RPP Voluntarily Exclusion Act of 2020

Intro. 07-20-2020 by Councilmember Cheh and referred to the Committee on Transportation and the Environment

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B23-0860 Power Line Undergrounding Program Certified Joint Venture Majority Interest Amendment Act of 2020

Intro. 07-23-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

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PR23-0892 Sense of the Council Woodrow High School Renaming Protocol Resolution of 2020

Intro. 07-20-2020 by Councilmembers Cheh, Grosso, R. White, Pinto, McDuffie, Gray, T. White, Bonds, Silverman, Nadeau, Todd, Allen, and Chairman Mendelson and referred to the Committee of the Whole

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PR23-0900 Commission on the Arts and Humanities Quanice Floyd Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0901 Commission on the Arts and Humanities Maggie Fitzpatrick Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0902 Commission on the Arts and Humanities Maria Hall Rooney Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0903 Commission on the Arts and Humanities Hector Torres Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0904 Commission on the Arts and Humanities Carla Sims Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0905 Commission on the Arts and Humanities Stacie Lee Banks Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee of the Whole

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PR23-0906 Health Benefit Exchange Authority Executive Board Gabriela Mossi Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Retained by the Council with comments from the Committee on Recreation and Youth Affairs

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PR23-0907 Real Estate Commission Frank Pietranton Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-0908 Real Estate Commission Joseph Borger Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-0909 Real Estate Commission Christine Warnke Confirmation Resolution of2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-0910 Board of Accountancy Mr. Joseph Seth Drew Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

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PR23-0911 Board of Physical Therapy Bernardine Evans Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Health

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PR23-0912 Domestic Violence Fatality Review Board Amelia French Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Judiciary and Public Safety

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PR23-0915 Council Period 23 Recess Rules Amendment Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Retained by the Council

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PR23-0916 Housing Production Trust Fund Board Victoria Pastushenko Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-0917 Housing Production Trust Fund Board Chapman Todd Confirmation Resolution of 2020

Intro. 07-27-2020 by Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization

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COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON GOVERNMENT OPERATIONS
NOTICE – PUBLIC HEARING

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 117 Washington, DC 20004

COUNCILMEMBER BRANDON T. TODD
COMMITTEE ON GOVERNMENT OPERATIONS

ANNOUNCES A PUBLIC HEARING ON

B23-315 - District Veteran Employment Grant Program Act of 2019

Thursday, September 17, 2020, 1:00 PM
Virtual hearing via Zoom
Broadcast on DC Cable Channel 13 and online at www.dccouncil.us

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Councilmember Brandon T. Todd, Chairperson of the Committee on Government Operations, announces a Public Hearing on ***B23-0315, the District Veteran Employment Grant Program Act of 2019***. The hearing will be held on Thursday, September 17, 2020, at 1:00 p.m., via Zoom.

B23-0315, the District Veteran Employment Grant Program Act of 2019, establishes a grant program to provide funding to District employers to hire and retain eligible veterans. Eligible veterans are District residents who were honorably discharged with a 50% or more service-related disability.

Persons wishing to provide oral testimony should contact Sam Stephens, Legislative Assistant of the Committee on Government Operations by e-mail at sstephens@dccouncil.us by before 9:00 a.m. on Monday, September 14, 2020. When sending an e-mail or leaving a voicemail, please provide Mr. Stephens with the following information:

- Your first and last name;
- The name of the organization you are representing (if any);
- Your title with the organization;
- Your e-mail address;
- Your phone number; and
- The specific bill/s you will be testifying about.

Mr. Stephens will e-mail a confirmation of your attendance with an agenda, witness list, and attached instructions for accessing the Zoom video conference hearing by 5:00 p.m. on September 14, 2020. Oral testimony will be strictly limited to three minutes to allow everyone an opportunity to testify. Due to technological limitations during the COVID-19 pandemic, only the first six hours

of the hearing will be broadcasted, however, the Zoom hearing will continue until all witnesses who have signed up have had an opportunity to testify.

Persons wishing to provide written testimony should e-mail their written testimony to Sam Stephens, Legislative Assistant of the Committee on Government Operations at sstephens@dccouncil.us before 5:00 p.m. on Monday, September 14, 2020. Any testimony provided after this time will not be made part of the hearing record. Please indicate that you are submitting testimony for this hearing in the subject line of the email. The Committee also welcomes e-mails commenting on the proposed legislation, however, this correspondence is not included in the official Committee report if it is not labeled as testimony.

For accommodation requests, including spoken language or sign language interpretation, please inform the Committee of the need as soon as possible but no later than five (5) business days before the proceeding. The Council will make every effort to fulfill timely requests, however requests received in less than five (5) business days may not be fulfilled and alternatives may be offered.

If you have any questions, please contact Manuel Geraldo, Committee Director, by either email or phone. mgeraldo@dccouncil.us or (202) 724-8035

cc: Office of the Council Secretary
Office of the General Council
Mayor's Office Policy and Legislative Affairs
Members and Council Staff

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 23-522, Closing a portion of Chesapeake Street, S.W., Magazine Road, S.W., and Keel Avenue, S.W… Act of 2019

Bill 23-562, Closing of Columbian Quarter Alley in Square 5860 Act of 2019

Bill 23-580, Closing of a Public Alley in Square 2892, S.O. 19-47478, Act of 2019

Bill 23-656, Closing of a Public Alley in Square 740, S.O. 18-41567, Act of 2020

Bill 23-784, Closing of Public Streets and Alleys and Dedication of Land for Public and Alley Purposes Adjacent to Squares 3039, 3040, and 3043, S.O. 17-21093 and S.O. 17-21094 Act of 2020

on

Thursday, September 17, 2020 at 10:00 a.m.

Live via Zoom Video Conference Broadcast
Council Channel 13 (Cable Television Providers)
DC Council Website (www.dccouncil.us)

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 23-522**, the "Closing a portion of Chesapeake Street, S.W., Magazine Road, S.W., and Keel Avenue, S.W… Act of 2019," **Bill 23-562**, the "Closing of Columbian Quarter Alley in Square 5860 Act of 2019," **Bill 23-580**, the "Closing of a Public Alley in Square 2892, S.O. 19-47478, Act of 2019," **Bill 23-656**, the "Closing of a Public Alley in Square 740, S.O. 18-41567, Act of 2020," and **Bill 23-784**, the "Closing of Public Streets and Alleys and Dedication of Land for Public and Alley Purposes Adjacent to Squares 3039, 3040, and 3043, S.O. 17-21093 and S.O. 17-21094 Act of 2020." The hearing will be held at **10:00 a.m. on Thursday, September 17, 2020** via Zoom virtual hearing.

The purpose of Bill 23-522 is to close a portion of Chesapeake St., S.W., Magazine Rd., S.W., and Keel Ave., S.W., in Ward 8, to transfer administrative jurisdiction to the Department of Navy, as this property lies within the fence line of the Navy's Bellevue Housing Complex. The

purpose of Bill 23-562 is to close a 15-foot wide public alley in Square 5860 bounded by Howard Rd., S.E., the Suitland Parkway, and the U.S. Botanic Garden Nursery in Ward 8. This will facilitate a private development. The purpose of Bill 23-580 is to facilitate a private development by closing a portion of a public alley in Square 2892, bounded by Lamon St., Georgia Ave., Kenyon St., and Sherman Ave. N.W. in Ward 1. The purpose of Bill 23-656 is to close a portion of a public alley in Square 740, bounded by K St., S.E., First St., S.E., L St., S.E., and New Jersey Ave. S.E. in Ward 6. This will facilitate a private development. The purpose of Bill 23-784 is to close a portion of Morton St., N.W., adjacent to Squares 3039 and 3040, close a portion of a public alley adjacent to Square 3039, to accept the dedication and designation of 6th St. N.W., Luray Place, N.W., and extension of Morton St., N.W., adjacent to Squares 3039, 3040, and 3043 for public street purposes, and to accept the dedication of land adjacent to Square 3039 for public alley purposes. This bill relates to the New Communities project at Park Morton in Ward 1.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or to call Blaine Stum, Legislative Policy Advisor, at (202) 724-8092, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by the close of business Tuesday, September 15, 2020. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding. We will make every effort to fulfill timely requests, although alternatives maybe offered. Requests received in less than five business days may not be fulfilled.

Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on September 15, 2020 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. The hearing will be limited to three hours. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us. Hearing materials, including a draft witness list, can be accessed at http://www.chairmanmendelson.com/circulation, 24 hours in advance of the hearing.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 1, 2020.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B23-854, RPP Voluntary Exclusion Temporary Act of 2020, and **B23-856**, Student Activity Fund Theatrical and Music Performance Expenditures Temporary Act of 2020 were adopted on first reading on July 23, 2020. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on September 22, 2020.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B23-858, Low Income Housing Tax Credit TOPA Exemption for Transfers of Interest Temporary Amendment Act of 2020, and **B23-871**, Protecting Business and Workers from COVID-19 Temporary Amendment Act of 2020 were adopted on first reading on July 28, 2020. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on September 22, 2020.

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 23-96: **FY 2020 Grant Budget Modifications as of July 8, 2020**

RECEIVED: 2-day review begins July 27, 2020

GBM 23-97: **FY 2020 Grant Budget Modifications as of July 9, 2020**

RECEIVED: 2-day review begins July 27, 2020

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	July 24, 2020
Protest Petition Deadline:	September 28, 2020
Roll Call Hearing Date:	October 13, 2020
License No.:	ABRA-025084
Licensee:	1801 Corporation
Trade Name:	Pupatella
License Class:	Retailer's Class "C" Restaurant
Address:	1801 18th Street, N.W.
Contact:	Stephen J. O'Brien: (202) 625-7700

WARD 2 ANC 2B SMD 2B01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 13, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Change of Hours for inside the premises and the sidewalk cafe.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES
Sunday 10am – 10pm, Monday 4pm – 10pm, Tuesday through Thursday 4pm – 11pm, Friday 11am – 12am, Saturday 10am – 12am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ
Sunday 10am – 10pm, Monday 5pm – 10pm, Tuesday through Thursday 5pm – 11pm, Friday and Saturday 11am – 12am

PROPOSED HOURS OF OPERATION FOR INSIDE PREMISES
Sunday through Thursday 7am – 11pm, Friday and Saturday 8am – 1am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES
Sunday through Thursday 8am – 11pm, Friday and Saturday 8am – 1am

PROPOSED HOURS OF OPERATION FOR SIDEWALK CAFE
Sunday through Thursday 7am – 11pm, Friday and Saturday 8am – 12am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ
Sunday through Thursday 8am – 11pm, Friday and Saturday 8am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	July 24, 2020
Protest Petition Deadline:	September 28, 2020
Roll Call Hearing Date:	October 13, 2020
License No.:	ABRA-025084
Licensee:	1801 Corporation
Trade Name:	Pupatella
License Class:	Retailer's Class "C" Restaurant
Address:	1801 18th Street, N.W.
Contact:	Stephen J. O'Brien: (202) 625-7700

WARD 2 ANC 2B SMD 2B01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 13, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Change of Hours for inside the premises and the sidewalk cafe.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES
Sunday 10am – 10pm, Monday 4pm – 10pm, Tuesday through Thursday 4pm – 11pm, Friday 11am – 12am, Saturday 10am – 12am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ
Sunday 10am – 10pm, Monday 5pm – 10pm, Tuesday through Thursday 5pm – 11pm, Friday and Saturday 11am – 12am

****PROPOSED HOURS OF OPERATION FOR INSIDE PREMISES AND FOR SIDEWALK CAFE**
Sunday through Thursday 7am – 11pm, Friday and Saturday 8am – 1am

****PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND FOR SIDEWALK CAFE**
Sunday through Thursday 8am – 11pm, Friday and Saturday 8am – 1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 31, 2020
Protest Petition Deadline:	October 5, 2020
Roll Call Hearing Date:	October 19, 2020
License No.:	ABRA-116352
Licensee:	Somtam Holdings 1 LLC
Trade Name:	SOMTAM
License Class:	Retailer's Class "C" Restaurant
Address:	1309 5th Street, N.E.
Contact:	Kwiince Lipscomb: (310) 906-8669

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 19, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to change the hours of operation and alcoholic beverage sales, service, and consumption.

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

Sunday through Thursday 11am – 8pm, Friday and Saturday 11am – 12am

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

Sunday through Saturday 9am – 1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	July 31, 2020
Protest Petition Deadline:	October 5, 2020
Roll Call Hearing Date:	October 19, 2020
Protest Hearing Date:	January 6, 2021

License No.:	ABRA-116925
Licensee:	GothWine Limited Liability Company
Trade Name:	TBD
License Class:	Retailer's Class "C" Restaurant
Address:	2622 P Street, N.W.
Contact:	Elizabeth Benchimol: (415) 370-5224

WARD 2 ANC 2E SMD 2E06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 19, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **January 6, 2021 at 4:30 p.m.**

NATURE OF OPERATION
A new Retailer's Class C Restaurant with a seating capacity of 85 and Total Occupancy Load of 150. Summer Garden with 32 seats.

HOURS OF OPERATION FOR INSIDE PREMISES
Sunday through Saturday 6am – 1am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES
Sunday through Saturday 11am – 1am

HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Saturday 6am – 12am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN
Sunday through Saturday 11am – 12am

DC BOARD OF ELECTIONS

NOTICE OF PUBLIC HEARING
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections shall consider in a public hearing whether the proposed measure, "Modern Day Criminal Justice and Cannabis Reform Act of 2020," is a proper subject matter for initiative at the Board's regular meeting on Wednesday, September 2, 2020 at 10:30 a.m., at 1015 Half Street SE, Suite 750, Washington DC 20003.

In making a subject matter determination, the Board does not consider the merits of a proposed measure. Instead, it may consider only whether the proposed measure meets the subject matter requirements set forth in District of Columbia law. Specifically, the Board must reject the proposed measure if it determines that:

- The measure conflicts with or seeks to amend the Title IV of the DC Home Rule Act ("the District Charter");
- The measure conflicts with the U.S. Constitution;
- The measure has not been properly filed;
- The verified statement of contributions (the measure committee's statement of organization and report of receipts and expenditures) was not timely filed;
- The measure would authorize discrimination in violation of the DC Human Rights Act;
- The measure would negate or limit a budgetary act of the DC Council; or
- The measure would appropriate funds

Those who wish to testify at the hearing on the propriety of the proposed measure in light of the above-referenced criteria should contact the Board's Office of the General Counsel at 202-727-2194 or ogc@dcboe.org and provide their name, address, telephone number, and name of the organization represented (if any) by no later than Friday, August 28, 2020, at 4:00 p.m.. Any written testimony or memoranda should be submitted for the record to the Board's Office of the General Counsel, 1015 Half Street SE, Suite 750, Washington, DC 20003 or at ogc@dcboe.org by that date and time as well. Individuals shall be permitted a maximum of three minutes for oral presentations. Representatives of organizations shall be permitted a maximum of five minutes for oral presentations.

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

SHORT TITLE

"Modern Day Criminal Justice And Cannabis Reform Act Of 2020"

SUMMARY STATEMENT

If enacted, this initiative would:

- Terminate all investigations and prosecutions regarding cannabis, as it applies to recreational use, legal cultivation, sales, and consumption.
- Make unlawful search, seizure, arrest of person or vehicle, pertaining to cannabis. Prohibit arrests, searches, seizures of citizens, property, based on reasonable suspicion, probable cause indicating the presence of cannabis.
- Initiative enacts retroactively. Persons currently arrested, previously convicted for possession, sale, purchase of cannabis be expunged.
- Constitution of Execution Board will propose amendments in existing law and rules for the execution of this initiative.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF THE COLUMBIA
Section 1. Title: Modern Day Justice And Cannabis Reform Act Of 2020
Section 2. Finding And Declarations
Recognizing the fact that **thousands of families have been affected** by runaway cannabis prohibition over 20 years ago with **overzealous search and seizure laws** that have **affected** mostly **minorities and poor Americans of any race,** tens of thousands of American citizens had their **rights violated**. With this Initiative, we propose to **roll back all Cannabis violations,** possessions, search, and seizures, from 20 years ago to reflect the current Cannabis climate of 2020.
Studies have shown that **smoking tobacco kills 480,000 people every year**, **88,000 die** from **alcohol-related deaths each year**, **1.5 million dead** from (**Type 2 Diabetes**) resulting from high **sugar intake and poor diet**. **Cannabis-related deaths are zero.** This Initiative will allow for the sale of cannabis by anyone 21 years of age who is a local D.C. resident, not currently on parole, and is a U.S. citizen.
Section 3 DECLARATION OF LAW
This initiative **legalizes the possession, to the extent possible by current law** the use, sale, and purchase of cannabis and CBD products for any person over the age of 21 years or older. Where not possible **the initiative will make police enforcement and prosecution the lowest priority.** Reverting to law automatically the soonest date possible in the future.
Any resources currently in use for the purposes of investigating and prosecuting cannabis & Cannabidiol (CBD) shall instantly be diverted towards violent crimes and murders.
No person over the Age 21, **vehicle,** or **dwelling shall be stopped,** searched, or seized with or without a warrant on the account of the possession, smell, sale or purchase of Cannabis and Cannabidiol (CBD)
No "stop and frisk", searches or seizures shall be **based on the possession**, sale, purchase, and smell of Cannabis and Cannabidiol (CBD)
Notwithstanding searches involving an individual's residence, dwelling, rental, hotels, Airbnb, vehicles, and property shall be preceded by a warrant issued by a magistrate and accompanied by an affidavit of known (maybe alleged) illegality, such an affidavit must be related to the same investigation within the previous 72 hours.

(a)This requirement may be waived by a suspect after they have been allowed to speak with an attorney.
(b)With the exception of explosive substance or guns in plain sight to an unregulated gun owner. (except the searches that led to solving murder, rape, and child abuse cases.)
(c) **Dogs previously trained to detect cannabis** will be **retrained** to detect explosives, weapons of mass destruction, and firearms so as to protect our schools, malls, mass gatherings, from foreign and domestic foreign terrorism.
Sec 3. Bar as to an investigation
The MPD/MD state agencies will not participate or help out in any investigation, with any other agencies that are initiated solely on the possession, sight, sale, or smell of cannabis in any way whatsoever.
Sec 4. Prerequisite For Sale Of Cannabis
(a)Anyone who is 21 years of age or older and is a LOCAL RESIDENT of two years or more, and currently on parole and is a US citizen will be allowed to sell cannabis regardless of onerous prerequisites placed on dispensaries in other states.
Sec 5. Registration And Taxes For Sale Of Cannnaprenuer
Every Cannapreneur will pay $2500 as registration fee, agree to a full panel and contaminants testing of products, pay scales, payroll taxes after every 3 months, and agree to donate or volunteer the equivalent of 4% of their revenue to the community. Sales tax shall be the same as for all other retail businesses.
Sec 7. Restoration Of Property
(a) The initiative made to seize, freeze, and forfeiture of property in relation to any cannabis investigations or prosecution shall be unlawful.
(b) Any past or recent seizure, freezing, and forfeiture of property, in furtherance of the investigation, prosecution, or judgment shall immediately be restored to the rightful owner. In the case the property is sold in furtherance of justice, the proceeds of that should render to the rightful owner.
Sec 8. No Vertical Integration
There shall be no vertical integration which will allow more competition across the board
Sec 9. Execution Board
If the proposed initiative got an affirmative vote by the citizens and is successful after due process of law, then an Executive Board of individuals shall be constituted which shall propose amendments in existing law and rules for implementation of this initiative in latter and spirit.
Sec 10. Execution Board Members
Execution Board Members shall not encompass more than half the individuals from government employees or non-civilian including past government employees and lobbyists and have worked or employed by the city in any manner.
Execution Board shall also include:
(a) One citizen whose life has been emphatically affected by the medical use of cannabis
(b) One citizen who has undergone imprisonment for possession or sale of cannabis
(c) One citizen whose property is seized or forfeited in the execution of the offense of cannabis
(d) One citizen getting welfare from taxes, donation, funds, and labors of cannabis-related business or charity
(e) An entrepreneur whose life has been improved being occupied in the cannabis field.

Sec 11. Effective Date
This act shall take effect after a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat; D.C Official Code 1-206.02(c)(1), and publication in the District of Columbia Register

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, AUGUST 5, 2020
Virtual Hearing 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.

WARD SIX

20249
ANC 6C

Application of Vincent Gallagher, as amended, 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 on the ground floor of an existing mixed-use building in the D-5 Zone at premises 22 M Street N.E. (Square 672, Lot 858).

WARD FOUR

20186
ANC 4B

Application of Elisabeth Hando, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the R-Use group requirements of Subtitle U § 203.1(h), under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.2, and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to convert an existing expanded child development home to a new child development center with 20 children, and to construct a three-story rear addition and a third story addition to the existing detached dwelling in the R-1-B Zone at premises 240 Quackenbos Street N.E. (Square 3719, Lot 24).

WARDS ONE and FIVE

20191
ANCs 1B, 5A, 5E

Appeal of DC for Reasonable Development, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on August 16, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue demolition permit D1600814, to permit the demolition of several aspect of the McMillan Sand Filtration Site, and from the decision made on August 27, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue foundation permit FD1800040 to permit the foundation of a new community center in the RA-2 Zone at premises 2940 North Capitol Street N.W. (Square 3128, Lot 800).

PLEASE NOTE:
This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of Zoning website and in the case record for each application or appeal by the Friday before the hearing date.

The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11, including the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

Individuals and organizations interested in any application may testify at the public hearing via WebEx or by phone and are strongly encouraged to sign up to testify 24 hours prior to the start of the hearing on OZ's website at https://dcoz.dc.gov/ or by calling Robert Reid at 202-727-5471. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board may impose time limits on the testimony of all individuals and organizations.

Individuals and organization may also submit written comments to the Board by uploading submissions via IZIS or by email to bzasubmissions@dc.gov. Submissions are strongly encouraged to be sent at least 24 hours prior to the start of the hearing.

Do you need assistance to participate?

Americans with Disabilities Act (ADA)

If you require an auxiliary aide or service in order to participate in the public hearing under Title II of the ADA, please contact Zelalem Hill at (202) 727-0312 or Zelalem.Hill@dc.gov. In order to ensure any requested accommodations can be secured by the scheduled hearing, please contact Ms. Hill as soon as possible in advance of that date.

Language Access

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

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption of a new Chapter 104 (Cost-Based Medicaid Reimbursement to Eligible Providers of Emergency Medical Ground Transportation Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF is establishing a cost-based reimbursement methodology for eligible governmental emergency medical ground transportation providers participating in the District of Columbia Medicaid Program. DHCF first published notice of the proposed methodology in the March 29, 2019 issue of the *D.C. Register* at 66 DCR 003925.

Under this new methodology, eligible providers will be able to receive annual payments for allowable costs in excess of total Medicaid fee-for-service payments. Under the prior fee schedule methodology, providers were experiencing shortfalls in payments for the costs associated with providing emergency services to Medicaid beneficiaries. This methodology ensures eligible providers will be reimbursed for the actual allowable costs associated with providing services to Medicaid beneficiaries. The estimated aggregate fiscal impact of the new reimbursement methodology is an increase of $ 975,000 in fiscal year (FY) 2019 and an increase of $ 1,950,000 in FY 2020.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 3, 2020 at 67 DCR 003862. DHCF received no comments. DHCF is proposing a technical edit to §10406.4, to clarify that DHCF may grant additional extensions for cost report submissions as appropriate. DHCF is also proposing a technical edit to define the term “cost allocation plan” as having the same meaning as set forth at 2 CFR § 200.27.

These rules were adopted on July 21, 2020 and are effective for services delivered on or after the effective date established in the corresponding State Plan Amendment (SPA). The SPA was approved by the Centers for Medicare and Medicaid Services with an effective date of April 1, 2019.

Chapter 104, COST-BASED MEDICAID REIMBURSEMENT TO ELIGIBLE PROVIDERS OF EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is added to read as follows:

CHAPTER 104 COST-BASED MEDICAID REIMBURSEMENT TO ELIGIBLE PROVIDERS OF EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES

10400 GENERAL PROVISIONS

10400.1 The purpose of this chapter is to establish principles of reimbursement for eligible providers of emergency medical ground transportation services participating in the District of Columbia Medicaid program.

10400.2 Medicaid reimbursement to eligible providers of emergency medical ground transportation services shall be consistent with the requirements of the cost-based reimbursement methodology set forth in this chapter.

10400.3 In order to receive Medicaid reimbursement, an eligible provider shall enter into a provider agreement with the Department of Health Care Finance (DHCF) for the provision of emergency medical ground transportation services and comply with the screening and enrollment requirements set forth in Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 of the District of Columbia Municipal Regulations (DCMR).

10400.4 Emergency medical ground transportation services shall be provided in accordance with the licensure, certification, and service delivery requirements set forth in Chapter 5 (Emergency Medical Services) of Title 29 DCMR.

10401 COST-BASED REIMBURSEMENT OF DISTRICT EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES

10401.1 DHCF will reimburse eligible providers enrolled to provide Medicaid emergency medical ground transportation services in the District of Columbia in accordance with the cost-based reimbursement methodology set forth in this chapter.

10401.2 Total Medicaid reimbursement to eligible providers shall equal the sum of:

(a) Medicaid fee-for-service reimbursement as described in § 10402.1; and

(b) Reimbursement for total allowable costs in excess of Medicaid fee-for-service reimbursement and reimbursement from other sources for emergency medical ground transportation services to Medicaid-eligible beneficiaries, or reconciled costs as defined in § 10405.

10401.3 DHCF will only provide cost-based reimbursement for allowable costs that are in excess of Medicaid fee-for-service reimbursement described in § 10402.1.

10401.4 Total Medicaid reimbursement shall not exceed one hundred percent (100%) of actual allowable costs. DHCF shall determine allowable costs in accordance with the reconciliation standards outlined in § 10405 and the cost reporting and auditing processes outlined in § 10406.

10401.5 An eligible provider shall certify costs attributable to services provided to Medicaid beneficiaries through submission of the annual cost report in accordance with the requirements set forth in § 10406.

10401.6 For each cost reporting period that an eligible provider's reconciled costs are greater than the sum of fee-for-service payments received from DHCF and reimbursement from other sources for emergency medical ground transportation services, DHCF shall make a payment to the eligible provider, following auditing of submitted cost reports and final determination of reconciled costs, equal to the amount of the difference, less the local Medicaid funding amount.

10401.7 For each cost reporting period that an eligible provider's reconciled costs are less than fee-for-service payments received from DHCF and reimbursement from other sources for emergency medical ground transportation services to Medicaid-eligible beneficiaries for the cost reporting period, the eligible provider shall make a payment to DHCF, following auditing of submitted cost reports and final determination of reconciled, equal to the amount of the difference.

10402 INTERIM PAYMENT METHODOLOGY

10402.1 DHCF will provide fee-for-service reimbursement of emergency medical ground transportation services provided to District Medicaid-enrolled beneficiaries to

eligible providers in accordance with the reimbursement rates set forth in the District of Columbia Medicaid Fee Schedule. The Medicaid Fee Schedule is located on the DHCF website at: https://www.dc-medicaid.com/dcwebportal/home. Medicaid fee-for-service reimbursement for emergency medical ground transportation services includes reimbursement for the services outlined below:

(a) Advanced Life Support 1;

(b) Advanced Life Support 2;

(c) Basic Life Support; and

(d) Ground Mileage.

10402.2 All claims paid using interim rates for services provided during the reporting period, shall be subject to the reconciliation process set forth in § 10405.

10402.3 Reconciliation of payments, pursuant to the process set forth in § 10405, may result in the identification and remittance of an additional payment owed to the eligible provider or identification and recoupment of any overpayment due to DHCF.

10402.4 Following the close of each reporting year, DHCF may utilize audited financial data in the cost report to update interim rates for covered emergency medical ground transportation services, as identified in § 10402.1, for eligible governmental providers.

10402.5 All future updates to the reimbursement rates for emergency medical ground transportation services shall comply with the public notice requirements set forth under § 988.4 of Chapter 9 of Title 29 DCMR and provide an opportunity for meaningful comment.

10402.6 A public notice of emergency medical ground transportation rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change and shall include a link to the Medicaid fee schedule and information on how written comments can be submitted to DHCF.

10403 ELIGIBLE EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICE PROVIDERS

10403.1 To be eligible for cost-based reimbursement, emergency medical ground transportation service providers shall be a part of, owned by, or operated by the District of Columbia government.

10403.2 Emergency medical ground transportation service providers that are not part of, owned by, or operated by the District of Columbia government are not eligible to receive cost-based reimbursement described in this chapter.

10403.3 Eligible emergency medical ground transportation services providers shall be enrolled with the District of Columbia Medicaid Program for the period claimed on the annual cost report.

10404 ALLOWABLE COSTS

10404.1 Allowable costs shall include expenses incurred by the eligible provider in provision of emergency medical ground transportation services as identified in the cost reporting template and audited by DHCF in accordance with the requirements set forth in § 10406.

10404.2 Allowable costs shall include items of expense incurred by the eligible provider within the following categories:

(a) Capital related (*i.e.*, expenditures associated with depreciation of buildings and equipment, leases and rentals, property insurance, and other capital related costs);

(b) Employee salary and fringe benefits;

(c) Administrative (*i.e.*, expenditures associated with general supplies, housekeeping, postage, and other administrative costs); and

(d) Operational (*i.e.*, expenditures associated with medical supplies, minor medical equipment, communications, and other operational costs).

10404.3 An eligible provider may request reimbursement of allowable costs, up to the reconciled costs, as determined in accordance with § 10405. Total Medicaid reimbursement to eligible providers shall not exceed one hundred percent (100%) of actual allowable costs.

10404.4 DHCF and eligible providers shall calculate and allocate allowable costs in accordance with the CMS Provider Reimbursement Manual (CMS Pub. 15-1), CMS non-institutional reimbursement policies, and 2 CFR Part 225 (Cost Principles for State, Local, and Indian Tribal Governments), which establish principles and standards for determining allowable costs and the methodology for allocating and apportioning those expenses to the District of Columbia Medicaid program.

10405 CALCULATION OF RECONCILED COSTS

10405.1 Reconciled costs shall be equal to an eligible provider's audited allowable costs less the sum of Medicaid fee-for-service payments and other sources of reimbursement.

10405.2 DHCF shall apportion an eligible provider's allowable costs per medical transport to calculate a cost per medical transport rate, as defined in § 10405.3. The cost per medical transport rate will be based on the allowable costs included in the submitted cost report.

10405.3 The cost per medical transport rate shall equal the sum of actual allowable direct and indirect costs of providing emergency medical ground transportation services and dry runs (or treat and refer services) to Medicaid-enrolled beneficiaries, divided by the number of actual medical transports in the applicable service period. Nonmedical consults that do not result in transportation to a medical facility are excluded from the numerator.

10405.4 Direct costs for the provision of emergency medical ground transportation services shall only include: the unallocated payroll costs for personnel who dedicate one hundred percent (100%) of their time to providing medical transport services; medical equipment and supplies; and other costs directly related to the delivery of covered services, such as first-line supervision, materials and supplies, professional and contracted services, capital outlay, travel, and training.

10405.5 Indirect costs shall be determined in accordance to one of the following options, as authorized by DHCF prior to the start of the reporting period:

(a) Eligible providers that receive more than thirty-five million dollars ($35,000,000.00) in direct federal awards must either have a Cost Allocation Plan (CAP) or a cognizant agency approved indirect rate agreement in place with its federal cognizant agency to identify indirect cost. If the eligible provider does not have a CAP or an indirect rate agreement in place with its federal cognizant agency and it would like to claim indirect cost in association with a non-institutional service, it must obtain one or the other before it can claim any indirect cost;

(b) Eligible providers that receive less than thirty-five million dollars ($35,000,000.00) of direct federal awards are required to develop and maintain an indirect proposal for purposes of audit. In the absence of an indirect rate proposal, the eligible provider may use methods originating from a CAP to identify its indirect cost. If the eligible provider does not have an indirect rate proposal on file or a CAP in place and it would like to claim indirect cost in association with a non-institutional service, it must obtain one or the other before it can claim any indirect cost;

(c) Eligible providers that receive no direct federal funding may use any of the following previously established methodologies to identify indirect cost:

(1) A CAP with DHCF or the District government;

(2) An indirect rate negotiated with DHCF or the District government; or

(3) Direct identification through use of a cost report; or

(d) If the eligible provider never established any of the above methodologies, it may do so, or it may elect to use the ten percent (10%) de minimis rate to identify its indirect cost.

10405.6 Total allowable costs, determined in accordance with the requirements of § 10404, shall equal the cost per medical transport, identified in §§ 10405.2 and 10405.3, times the total number of Medicaid fee-for-service transports.

10405.7 The primary source of paid claims data, managed care encounter data, and other Medicaid reimbursement data is the Medicaid Management Information System (MMIS). The number of paid Medicaid fee-for-service transports, as identified in is § 10405.6, is derived from and supported by the MMIS reports for services during the applicable reporting period.

10405.8 Payment of reconciled costs, by DHCF or the eligible provider, shall be made in accordance with the requirements set forth in §§ 10401.6 or 10401.7.

10406 COST REPORTING, AUDITS, AND RECORD MAINTENANCE

10406.1 Eligible providers shall submit an annual cost report to DHCF within one hundred eighty days (180) days of the close of the provider's cost reporting period, which shall be concurrent with the District of Columbia government’s fiscal year.

10406.2 Cost reports shall be submitted on the DHCF approved form and shall be completed according to the cost report instruction manual. If forms and instructions are modified, DHCF will provide advance notice in writing to each eligible provider and on the DHCF website.

10406.3 If an eligible provider does not submit the cost report within the timeframe indicated in § 10406.1 and has not received an extension of the deadline from DHCF based upon a showing of good cause for the delay, DHCF may issue a delinquency notice to the eligible provider.

10406.4 Only one (1) extension of time shall be granted to a provider for a cost reporting year and no extension of time shall exceed sixty (60) calendar days, unless DHCF determines that an additional extension is appropriate.

10406.5 Eligible providers shall submit one (1) original hard-copy and (1) one electronic copy (in excel format) of the cost report. The eligible provider shall submit an original hard copy to DHCF that is signed by an authorized representative.

10406.6 The requirements for cost reports shall be detailed in the DHCF Emergency Ground Medical Transportation Services cost report instruction manual. Each cost report shall meet the following requirements:

(a) Be properly completed in accordance with program instructions and forms and accompanied by supporting documentation; and

(b) Include copies of financial statements or other official documents submitted to a governmental agency justifying revenues and expenses.

10406.7 Eligible providers must ensure that computations included in the cost report are accurate and consistent with other related computations and the treatment of costs shall be consistent with the requirements set forth in this chapter.

10406.8 In the absence of specific instructions or definitions contained in these rules or cost reporting forms and instructions, DHCF's decision of whether a cost is allowable shall be determined in accordance with the Medicare Principles of Reimbursement and the guidelines set forth in the Centers for Medicare and Medicaid Services Provider Reimbursement Manual as identified in § 10404.4.

10406.9 All cost reports shall cover, at most, a twelve (12) month cost reporting period, which shall be the same as the District's fiscal year, unless DHCF has approved an exception.

10406.10 A cost report that is not complete shall be considered an incomplete filing and the eligible provider shall be notified of the deficiency and requested to submit a corrected and complete version.

10406.11 Each eligible provider shall maintain adequate financial records and statistical data for proper determination of allowable costs and in support of the costs reflected on each line of the cost report. The financial records shall include the provider's accounting and related records including the general ledger and books of original entry, all transactions documents, statistical data, lease and rental agreements and any original documents which pertain to the determination of costs.

10406.12 Eligible providers shall maintain the records pertaining to each cost report as described in § 10406.11 for a period of not less than ten (10) years after filing of the cost report. If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is completed.

10406.13 All records and other information may be subject to periodic verification and review. Each cost report may be subject to a desk review.

10406.14 Eligible providers shall:

(a) Use the accrual method of accounting; and

(b) Prepare the cost report in accordance with generally accepted accounting principles, the requirements of § 10404.4, and DHCF program instructions.

10407 ACCESS TO RECORDS

10407.1 Eligible providers shall allow appropriate DHCF personnel, representatives of the United States Department of Health and Human Services and other authorized agents or officials of the District of Columbia government and federal government full access to all records during announced and unannounced audits and reviews.

10408 APPEALS

10408.1 At the conclusion of each audit, an eligible provider shall receive an audited cost report including a description of each audit adjustment and the reason for each adjustment.

10408.2 Within thirty (30) calendar days of the date of receipt of the audited cost report, an eligible provider that disagrees with the audited cost report may request an administrative review by sending a written request for administrative review to DHCF.

10408.3 Any written request for an administrative review shall include an identification of the specific audit adjustment to be reviewed, the reason for the request for review of each audit adjustment and documentation supporting the request.

10408.4 DHCF shall mail a formal response to the eligible provider no later than forty-five (45) calendar days from the date of receipt of the written request for administrative review.

10408.5 Decisions made by DHCF and communicated in the formal response described in § 10408.4 may be appealed to the Office of Administrative Hearings within thirty (30) calendar days of the date of issuance of the formal response.

10499 DEFINITIONS

10499.1 When used in this chapter, the following terms shall have the meanings ascribed:

Accrual Method of Accounting - A method of accounting where revenue is recorded in the period earned, regardless of when collected and expenses are recorded in the period incurred, regardless of when paid.

Advanced Life Support - Special services designed to provide definitive prehospital emergency medical care, such as, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration with drugs and other medicinal preparations, and other specified techniques and procedures.

Basic Life Support - Emergency first aid and cardiopulmonary resuscitation procedures to maintain life without invasive techniques.

Cost Allocation Plan – Shall have the same meaning as set forth in Title 2 of the Code of Federal Regulations Part 200 Section 27.

Cognizant Agency – Shall have the same meaning as set forth in Title 2 of the Code of Federal Regulations Part 200 Section 19.

Direct Costs - Costs incurred for the sole objective of meeting emergency medical transportation requirements or delivering covered medical transport services, such as unallocated payroll costs for the shifts of personnel, medical equipment and supplies, professional and contracted services, travel, training, and other costs directly related to the delivery of covered medical transport services.

Dry Run - Services (basic and advanced life support services) provided by the eligible provider to an individual who is released on the scene without transportation by ambulance to a medical facility.

Indirect Costs - Costs incurred for a common or joint purpose benefitting more than one District entity which are allocated using an agency-approved indirect rate or an allocation methodology.

Reporting Period - The span of time from which financial information is gathered to be recorded in cost reports; typically October 1 through September 30 of each District of Columbia fiscal year.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING

RM1-2020-01, PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE; RM2-2020-01, UTILITY RATE CHANGES; RM3-2020-01, CONSUMER RIGHTS AND RESPONSIBILITIES; RM5-2020-01-E, FUEL ADJUSTMENT CLAUSE AUDIT AND REVIEW PROGRAM; RM6-2020-01, PAY TELEPHONES; RM8-2020-01, INTERCONNECTION WITH TELEPHONE COMPANY FACILITIES; RM9-2020-01, NET ENERGY METERING; RM13-2020-02, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980; RM14-2020-01, AGENCY FUND REQUIREMENTS; RM15-2020-01, RULES IMPLEMENTING THE PUBLIC UTILITIES AMENDMENT ACT OF 1989; RM16-2020-01, USE OF PUBLIC UTILITY FACILITIES; RM18-2020-01, NON-RESIDENTIAL CUSTOMER'S RIGHTS; RM20-2020-01, OFFICE OF THE PEOPLE'S COUNSEL AGENCY FUND; RM21-2020-01, PROVISIONS FOR CONSTRUCTION OF ELECTRIC GENERATING FACILITIES AND TRANSMISSION LINES; RM22-2020-01, PROCUREMENT REGULATIONS; RM23-2020-03-G, NATURAL GAS; RM24-2020-01, UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE CORPORATIONS; RM25-2020-01, CERTIFICATION OF LOCAL EXCHANGE SERVICE PROVIDERS; RM26-2020-01, RULES IMPLEMENTING SECTION 252 OF FEDERAL TELECOMMUNICATIONS ACT OF 1996; RM27-2020-01, REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS; RM28-2020-01, UNIVERSAL SERVICE; RM29-2020-03 RENEWABLE ENERGY PORTFOLIO STANDARD; RM35-2020-01, APPLICATION FOR AUTHORITY TO ISSUE OR AMEND TARIFFS OR ISSUE STOCK OR EVIDENCE OF INDEBTEDNESS; RM36-2020-02, ELECTRICITY QUALITY OF SERVICE STANDARDS; RM37-2020-01, NATURAL GAS QUALITY OF SERVICE STANDARDS; RM39-2020-01, AFFILIATE TRANSACTIONS CODE OF CONDUCT; RM40-2020-02, DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES; RM42-2020-02, FUEL MIX AND EMISSIONS DISCLOSURE REPORTS; RM43-2020-01, RULES FOR PURCHASE OF LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS BY THE ELECTRIC UTILITY; RM44-2020-02, SUBMETERING AND ENERGY ALLOCATION; RM46-2020-02-E, LICENSURE OF ELECTRICITY SUPPLIERS; and RM47-2020-02-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.) and § 34-802 (2019 Repl.), hereby gives notice of its intent to amend the existing waiver of rules provisions and adopt uniform waiver language in the respective chapters: 1 (Public Service Commission Rules of Practice and Procedure); 3 (Consumer Rights and Responsibilities); 6 (Pay Telephones); 9 (Net Energy Metering); 13 (Rules Implementing the Public Utilities Reimbursement Fee Act of 1980); 16 (Use of Public Utility Facilities); 21 (Provisions for Construction of Electric Generating Facilities and Transmission Lines); 25 (Certification of Local Exchange Service Providers); 26 (Rules Implementing Section 252 of Federal Telecommunications Act of 1996); 27 (Regulation of Telecommunications Service Providers); 28 (Universal Service); 29 (Renewable Energy Portfolio Standard); 35 (Applications for Authority to Issue or Amend Tariffs or Issue Stock or Evidences

of Indebtedness); 36 (Electricity Quality of Service Standards); 37 (Natural Gas Quality of Service Standards); 39 (Affiliate Transactions Code of Conduct); 40 (District of Columbia Small Generator Interconnection Rules); 42 (Fuel Mix and Emissions Disclosure Reports); 43 (Rules for Purchase of Liquid-Immersed Distribution Transformers by the Electric Utility); and 44 (Submetering and Energy Allocation) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR). In addition, the Commission is adding the standard waiver language to the respective chapters that currently do not have a waiver provision: 2 (Utility Rate Changes); 5 (Fuel Adjustment Clause Audit and Review Program); 8 (Interconnection with Telephone Company Facilities); 14 (Agency Fund Requirements); 15 (Rules Implementing the Public Utilities Amendment Act of 1989); 18 (Non-Residential Customer's Rights); 20 (Office of the People's Counsel Agency Fund); 22 (Procurement Regulations); 23 (Natural Gas); 24 (Uniform System of Accounts for Telephone Corporations); 46 (Licensure of Electricity Suppliers); and 47 (Licensure of Natural Gas Suppliers) of Title 15 DCMR. The Commission shall take action in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2. On May 29, 2020, the Commission published a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* seeking to amend the original "waiver of rules" language of Chapter 1 (Public Service Commission Rules of Practice and Procedure) Section 146, and add proposed "waiver of rules" provision to the following Chapters: 2 (Utility Rate Changes), Section 298; 5 (Fuel Adjustment Clause Audit and Review Program), Section 524; 14 (Agency Fund Requirements), Section 1498; 15 (Rules Implementing the Public Utilities Amendment Act of 1989), Section 1598; 18 (Non-Residential Customer's Rights), Section 1803; 20 (Office of the People's Counsel Agency Fund), Section 2098; 22 (Procurement Regulations), Section 2298; 23 (Natural Gas), Section 2398; 46 (Licensure of Electricity Suppliers), Section 4698; and 47 (Licensure of Natural Gas Suppliers), Section 4798.[1]

3. On June 26, 2020, the Office of the People's Counsel for the District of Columbia (OPC) filed comments requesting that the Commission retain the "notice" language found in Chapter 1.[2] On June 29, 2020, the Apartment and Office Building Association of Metropolitan Washington (AOBA), also filed comments recommending that all rules governing the waiver of a Commission regulatory provision retain or adopt the "notice" and "advisory" provision found in Chapter 1.[3]

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[1] 67 *DCR* 5594-5596 (May 29, 2020 – Part 1).

[2] *67 DCR 5594-5596*, *In the Matter of the Public Service Commission Rules of Practice and Procedure,* Comments of the Office of the People's Counsel of the District of Columbia in Response to Notice of Proposed Rulemaking, filed June 26, 2020.

[3] *67 DCR 5594-5596*, *In the Matter of the Public Service Commission Rules of Practice and Procedure,* Comments of the Apartment and Office Building Association of Metropolitan Washington in Response to Notice of Proposed Rulemaking, filed June 29, 2020.

4. After considering the comments, the Commission is issuing another proposed rulemaking that allows the Commission to waive any provisions on its own after notifying parties of its intent to do so, or upon request for good cause. The standard waiver provision language is added to Chapters 2, 5, 8, 14, 15, 18, 20, 22, 23, 24, 46, and 47 where there is currently no waiver provision. Also, the existing waiver provision in Chapters 1, 3, 6, 9, 13, 16, 21, 25, 26, 27, 28, 29, 35, 36, 37, 39, 40, 42, 43, and 44, is being amended to reflect the proposed standard waiver language. This Second NOPR supersedes the First NOPR published in the *D.C. Register* on May 29, 2020.

Chapter 1, PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 146, is amended to read as follows:

146 WAIVER

146.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 2, UTILITY RATE CHANGES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 298 to read as follows:

298 WAIVER

298.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 398, is amended to read as follows:

398 WAIVER

398.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 5, FUEL ADJUSTMENT CLAUSE AUDIT AND REVIEW PROGRAM, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 524 to read as follows:

524 WAIVER

524.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 6, PAY TELEPHONES, of Title 15 DCMR, PUBLIC UTILITIES, AND CABLE TELEVISION, § 616, is amended to read as follows:

616 WAIVER

616.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 8, INTERCONNECTION WITH TELEPHONE COMPANY FACILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 898 to read as follows:

898 WAIVER

898.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 9, NET ENERGY METERING, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 910, is amended to read as follows:

910 WAIVER

910.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 13, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 1307, is amended to read as follows:

1307 WAIVER

1307.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 14, AGENCY FUND REQUIREMENTS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 1498 to read as follows:

1498 WAIVER

1498.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 15, RULES IMPLEMENTING THE PUBLIC UTILITIES AMENDMENT ACT OF 1989, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 1598 to read as follows:

1598 WAIVER

1598.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 16, USE OF PUBLIC UTILITY FACILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 1605, is amended to read as follows:

1605 WAIVER

1605.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 18, NON-RESIDENTIAL CUSTOMER'S RIGHTS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 1803 to read as follows:

1803 WAIVER

1803.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 20, OFFICE OF THE PEOPLE'S COUNSEL AGENCY FUND, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 2098 to read as follows:

2098 WAIVER

2098.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 21, PROVISIONS FOR CONSTRUCTION OF ELECTRIC GENERATING FACILITIES AND TRANSMISSION LINES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2112, WAIVER, is amended as follows:

Subsection 2112.2 is amended to read as follows:

2112.2 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 22, PROCUREMENT REGULATIONS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 2298 to read as follows:

2298 WAIVER

2298.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 23, NATURAL GAS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 2398 to read as follows:

2398 WAIVER

2398.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 24, UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE CORPORATIONS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended by adding a new § 2498 to read as follows:

2498 WAIVER

2498.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 25, CERTIFICATION OF LOCAL EXCHANGE SERVICE PROVIDERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 2513, is amended to read as follows:

2513 WAIVER

2513.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 26, RULES IMPLEMENTING SECTION 252 OF FEDERAL TELECOMMUNICATIONS ACT OF 1996, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 2626, is amended to read as follows:

2626 WAIVER

2626.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 27, REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 2798, is amended to read as follows:

2798 WAIVER

2798.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 28, UNIVERSAL SERVICE, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 2821, is amended to read as follows:

2821 WAIVER

2821.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 29, RENEWABLE ENERGY PORTFOLIO STANDARD, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 2905, is amended to read as follows:

2905 WAIVER

2905.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 35, APPLICATIONS FOR AUTHORITY TO ISSUE OR AMEND TARIFFS OR ISSUE STOCK OR EVIDENCES OF INDEBTEDNESS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 3504, is amended to read as follows:

3504 WAIVER

3504.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 36, ELECTRICITY QUALITY OF SERVICE STANDARDS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 3605, is amended to read as follows:

3605 WAIVER

3605.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 37, NATURAL GAS QUALITY OF SERVICE STANDARDS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 3709, is amended to read as follows:

3709 WAIVER

3709.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 39, AFFILIATE TRANSACTIONS CODE OF CONDUCT, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 3910, is amended to read as follows:

3910 WAIVER

3910.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 40, DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4010, is amended to read as follows:

4010 WAIVER

4010.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 42, FUEL MIX AND EMISSIONS DISCLOSURE REPORTS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4202, is amended to read as follows:

4202 WAIVER

4202.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 43, RULES FOR PURCHASE OF LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS BY THE ELECTRIC UTILITY, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4303, is amended to read as follows:

4303 WAIVER

4303.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 44, SUBMETERING AND ENERGY ALLOCATION, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4498, is amended to read as follows:

4498 WAIVER

4498.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 46, LICENSURE OF ELECTRICITY SUPPLIERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4698, is amended to read as follows:

4698 WAIVER

4698.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

Chapter 47, LICENSURE OF NATURAL GAS SUPPLIERS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, § 4798, is amended to read as follows:

4798 WAIVER

4798.1 The Commission may upon request, or on its own initiative after notice to the parties of its intention do so, waive any provision of this chapter for good cause.

5. Any interested person may submit written comments on this NOPR not later than thirty (30) days after publication of this Notice in the *D.C. Register* addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 and submitted electronically on the Commission's website at https://edocket.dcpsc.org/public/publiccomments. Copies of the proposed rules may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-5150 or send an email to psc-commissionsecretary@dc.gov.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 20-10
(Text Amendment – Subtitle U of Title 11 DCMR)
(Restrictions on Fast Food Establishments and Prepared Food Shops)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations], to which all references are made unless otherwise specified).

The proposed text amendment eases restrictions on fast food establishments and prepared food shops in the MU Use Group D and E categories in the MU-3, MU-4, MU-17, M-24, MU-25, MU-26, and MU-27 zones, as follows:

- Subtitle U, Use Permissions
  Chapter 5, Use Permissions Mixed Use (MU) Zones
  - § 510.1 – removing current limitation of 18 seats for matter of right prepared food shops (MU-Use Group D)
  - § 511.1 – adding special exception relief for a fast food establishment (MU-Use Group D)
  - § 511.2 – limiting the ban on special exception relief for a fast food establishment to single-tenant detached buildings (MU-Use Group D)
  - § 512.1 – removing current limitation of 18 seats for matter of right prepared food shops (MU-Use Group E) and renumbering alphabetically
  - § 513.1 – clarifying the conditions for special exception relief for fast food or food delivery establishments (MU-Use Group E) and correcting cross-references
  - § 516.1 – correcting a cross-reference and renumbering alphabetically
  - § 518.1 – correcting a cross-reference and renumbering alphabetically

Setdown
On May 1, 2020, the Office of Planning (OP) filed a petition proposing the text amendment.

At its May 11, 2020, public meeting, the Commission voted to grant's OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing
OP filed a pre-hearing report on July 10, 2020, confirming that it had discussed the proposed text amendment with both the Department of Consumer and Regulatory Affairs and the District Department of Transportation (DDOT) and that both agencies supported the text amendment, with DDOT supportive of maintaining the current prohibition on drive-throughs.

At its July 21, 2020, hearing, the Commission heard testimony from OP in support of the proposed text amendment. No other person or entity testified or submitted comments prior to the hearing.

Great Weight" to the Recommendations of OP

The Commission must give "great weight" to the recommendations 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, 1087 (D.C. 2016).

The Commission finds OP's recommendation that the Commission take proposed action to adopt the proposed text amendment persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANCs

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 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).

As no ANC submitted any report or testified, there is nothing to which the Commission can give great weight.

At the close of the public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (July 21, 2020): **5-0-0** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May, Michael G. Turnbull to **APPROVE**)

The complete record in the case, including the OP reports and transcript of the public hearing, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at https://app.dcoz.dc.gov/Content/Search/Search.aspx.

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

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **~~bold and strikethrough~~** text; new text is shown in **bold and underline** text).

I. Proposed Amendments to Subtitle U, USE PERMISSIONS

Paragraph (g) of § 510.1 of § 510, MATTER-OF-RIGHT USES (MU-USE GROUP D), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended to read as follows:

510.1 The following uses shall be permitted in MU-Use Group D as a matter-of-right subject to any applicable conditions:

(a) Any use permitted as a matter of right in any R, RF, or RA zone …[1]

…

(f) Daytime care …

(g) Eating and drinking establishments uses, ~~except for~~ **subject to the following conditions**:

(1) A drive-through or drive-in operation and a food delivery service shall not be permitted; **and**

~~(2) A prepared food shop in Square 5912 shall have no limitation on seats; and~~

~~(3)~~ **(2)** A fast food establishment shall not be permitted **as a matter-of-right** in the MU-3 zone except ~~for a~~ **that** fast food ~~establishment~~ **establishments** with no drive-through shall be permitted in Square 5912, Square 3499 (Lot 3), and Square 3664 (Lot 820) as a matter of right;

(h) Emergency shelter …

…

Subsection 511.1 of § 511, SPECIAL EXCEPTION USES (MU-USE GROUP D), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by deleting paragraphs (c), (h), and (i), by adding a new paragraph (e); by renumbering accordingly and by revising current paragraph (l) / proposed paragraph (j), to read as follows:

511.1 The following uses in this section shall be permitted in as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section.

(a) College or university uses …

[1] The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

(b) Community-based institutional facilities …

~~(c) [DELETED]~~

~~(d)~~ **(c)** Emergency shelter for five (5) to fifteen (15) persons …

~~(e)~~ **(d)** Entertainment, assembly, and performing arts uses …

(e) Fast food establishment, subject to the following conditions:

(1) The establishment shall be located within a multi-tenant building or shopping center; it shall not be located in a single-tenant detached building;

(2) No more than thirty percent (30%) of the total gross floor area of the multi-tenant building or shopping center shall be occupied by fast food establishments;

(3) Any refuse dumpster used by the fast food use shall be housed in a three- (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face nor be within ten feet (10 ft.) of a R, RF, or RA zone;

(4) The use shall not include a drive-through;

(5) The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;

(6) The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7, to accommodate the needs of patrons and employees;

(7) The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and

(8) The Board of Zoning Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property;

(f) Gasoline service stations …

(g) Parking, for uses within this chapter …

~~**(h) Prepared food shop eating and drinking establishment uses with more than eighteen (18) seats for patrons;**~~

~~**(i) Retail uses otherwise permitted with conditions that do not comply with the conditions**~~

~~**(j)**~~ **(h)** Retail, large format, subject to …

~~**(k)**~~ **(i)** Service uses permitted as a matter of right …

~~**(l)**~~ **(j)** ~~**Utilities**~~ **Utility (basic)** uses, subject to the requirements …

~~**(m)**~~ **(k)** Veterinary office or hospital …

Subsection 511.2 of § 511, SPECIAL EXCEPTION USES (MU-USE GROUP D), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended to read as follows:

511.2 Any use permitted as a matter of right in MU-Use Group D that does not comply with the required conditions for MU-Use Group D may apply for permission as a special exception, except uses involving the installation of automobile accessories or fast food establishments **located in single-tenant detached buildings**.

Subsection 512.1 of § 512, MATTER-OF-RIGHT USES (MU-USE GROUP E), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by deleting current paragraph (c), by renumbering paragraphs alphabetically, and by revising current paragraphs (d) and (j) / proposed paragraphs (e) and (k), to read as follows:

512.1 The following uses in this section shall be permitted in MU-Use Group E as a matter of right subject to any applicable conditions:

(a) Uses permitted as a matter of right in any R, RF, and RZ zones …

~~**(l)**~~ **(b)** An animal boarding use located in a basement or cellar space subject to the following:

(1) The use shall not be located within twenty-five feet (25 ft.) of a lot within an R, RF, or RA zone. The twenty-five feet (25 ft.) shall be measured to include any space on the lot or within the building not used by the animal boarding use and any portion of a street or alley that separates the use from a lot within an R, RF, or RA zone. Shared facilities not under the sole control of the animal boarding use, such

as hallways and trash rooms, shall not be considered as part of the animal boarding use;

(2) There shall be no residential use on the same floor as the use or on the floor immediately above the animal boarding use;

(3) Windows and doors of the space devoted to the animal boarding use shall be kept closed and all doors facing a residential use shall not **be** solid core;

(4) No animals shall be permitted in an external yard on the premises;

(5) Animal waste shall be placed in a closed waste disposal containers and shall be collected by a licensed waste disposal company at least weekly;

(6) Odors shall be controlled by means of an air filtration or an equivalently effective odor control system; and

(7) Floor finish materials and wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor shall be impervious and washable;

~~(m)~~ **(c)** Automobile, truck, boat, or marine sales;

~~(b)~~ **(d)** College or university uses …

~~(c) [DELETED]~~

~~(d)~~ **(e)** Eating and drinking establishment uses, subject to the following conditions:

(1) A fast food establishment or food delivery service shall not be permitted within the MU-4, MU-17, MU-24, MU-25, MU-26, ~~and~~ **or** MU-27 zones; **and**

(2) A fast food establishment or food delivery service in all other MU-Use Group E zones, subject to …

~~(3) A prepared food shop in a MU-4, MU-17, MU-24, MU-25, MU-26, and MU-27 zone shall be limited to eighteen (18) seats for patrons;~~

~~(e)~~ **(f)** Education uses, private;

~~(f)~~ **(g)** Entertainment, assembly, and performing arts uses …

~~(g)~~ **(h)** Firearms retail sales establishments …

~~(h)~~ **(i)** Gasoline service station as an accessory use …

~~(i)~~ **(j)** Optical transmission node;

~~(j)~~ **(k)** Retail uses, except for ~~a~~ large format retail ~~use, subject to~~**; provided that** the off-premises beer and wine sales accessory use in the grocery store located in Square 2572, Lot 36, may continue, provided that it shall not occupy more than two thousand seventy-eight square feet (2,078 sq. ft.) of the store's gross floor area;

~~(k)~~ **(l)** Service (general) uses …

~~(n)~~ **(m)** Other accessory uses customarily incidental and subordinate ….

Subsection 513.1 of § 513, SPECIAL EXCEPTION USES (MU-USE GROUP E), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by reordering paragraphs alphabetically and correcting current paragraph (c) / proposed paragraph (d), to read as follows:

513.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

~~(m)~~ **(a)** Animal boarding uses not meeting the conditions of Subtitle U § 512.1(b), subject to …

~~(a)~~ **(b)** Animal care and animal sales uses …

~~(b)~~ **(c)** Emergency shelter for five (5) to twenty-five (25) persons …

~~(c)~~ **(d)** Fast food establishments or food delivery service eating and drinking establishments in the MU-4, MU-17, MU-25, ~~and~~ **or** MU-27 zones, subject to the following conditions:

(1) **If the use is a single tenant in a detached building;**

(a) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; **and**

~~(2)~~ **(b)** If any lot line of the lot abuts an alley …

~~(3)~~ **(2)** Any refuse dumpster **used by the establishment shall** be housed in a three- (3) sided enclosure equal in height to the dumpster or six

feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face **or be within ten feet (10 ft.) of** a ~~residential~~ **R, RF, or RA** zone;

~~(4)~~ **(3)** The use shall not include a drive-through;

~~(5)~~ **(4)** The use shall be designed and operated so as not to become objectionable …

~~(6)~~ **(5)** The use shall provide sufficient off-site parking …

~~(7)~~ **(6)** The use shall be located and designed so as to create no dangerous …

~~(8)~~ **(7)** The Board of Zoning Adjustment may impose conditions …

~~(d)~~ **(e)** Gasoline service station …

~~(e)~~ **(f)** Massage establishment …

~~(f)~~ **(g)** Motorcycle sales and repair;

~~(g)~~ **(h)** Parking, for uses within this chapter …

~~(h)~~ **(i)** Retail uses ~~otherwise permitted with conditions~~ that do not comply with the conditions **of Subtitle U § 512.1(k)**;

~~(i)~~ **(j)** Retail, large format, subject to the conditions of Subtitle U § 511.1~~(j)~~**(h)**;

~~(j)~~ **(k)** Service uses …

~~(k)~~ **(l)** ~~Utilities~~ **Utility (basic)** uses …

~~(l)~~ **(m)** Veterinary office or hospital …

(n) Any use permitted as a matter of right in MU-Use Group E …

Subsection 516.1 of § 516, SPECIAL EXCEPTION USES (MU-USE GROUP F), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by reordering paragraphs alphabetically and correcting a cross-reference in current paragraph (a) / proposed paragraph (f), to read as follows:

516.1 The following uses in this section shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:

~~(c)~~ **(a)** An Electronic Equipment Facility (EEF) …

~~(g)~~ **(b)** Where not permitted as a matter of right, a gasoline service station to be established or enlarged …

~~(d)~~ **(c)** Enlargement of an existing laundry or dry cleaning establishment …

~~(f)~~ **(d)** Where not permitted as a matter of right, any establishment that has as a principal use the administration of massages …

~~(e)~~ **(e)** Public utility pumping station …

~~(a)~~ **(f)** Retail, large format, subject to the conditions of Subtitle U § 511.1~~(j)~~**(h)**; **and**

~~(b)~~ **(g)** Sexually-oriented business establishment in the MU-9, MU-21, or MU-30 zone, subject to …

Paragraph (l) of § 518.1 of § 518, SPECIAL EXCEPTION USES (MU-USE GROUP G), of Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended to correct a cross-reference, to read as follows:

518.1 The following uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:

(a) Automobile or motorcycle sales or repair …

…

(l) Retail, large format, subject to the conditions of Subtitle U § 511.1~~(j)~~**(h)**;

…

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF FIFTH EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(c) (2012 Repl. & 2019 Supp.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, amends Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 810 (Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency) on an emergency basis.

On March 20, 2020, in response to the spread of COVID-19, the Mayor issued Mayor's Order 2020-050, Extensions of Public Health Emergency Coronavirus: (COVID-19) and Mayor's Order 2020-051, Prohibition on Mass Gatherings During Public Health Emergency – Coronavirus (COVID-19). These Orders serve to extend with some changes the two previous Mayor's Orders issued March 11, 2020, (Mayor's Orders 2020-045 and 2020-046) through April 24, 2020. On March 24, 2020, the Mayor issued Mayor's Order 2020-053, temporarily closing all non-essential businesses in the District, and further prohibiting large gatherings. On April 15, 2020, the Mayor extended the public emergency and public health emergency in the District through May 15, 2020. (Mayor's Order 2020-063). On May 13, 2020, the Mayor extended the public emergency and public health emergency in the District through June 8, 2020. (Mayor's Order 2020-066).

Recognizing that other types of ABC licensed establishments sought to offer alcoholic beverages for carry-out and delivery, the Board took further emergency action to allow hotels, multipurpose facilities, and private clubs to obtain temporary restaurant endorsements so that they also could offer alcoholic beverages for carry-out and delivery. The Board adopted a Notice of Emergency Rulemaking by a vote of six (6) to zero (0). *See* 67 DCR 4589 (March 27, 2020). The Board adopted a second emergency rulemaking on March 25, 2020, by a vote of seven (7) to zero (0), which superseded the emergency rulemaking that the Board had previously adopted. *See* 67 DCR 4130 (April 10, 2020).

On April 22, 2020, by a vote of seven (7) to zero (0), the Board took further emergency action in response to the Council of the District of Columbia's expansion of carry-out and delivery authorization to nightclubs. Specifically, the Notice of Third Emergency Rulemaking permitted nightclub licensees to obtain a temporary restaurant endorsement so that they can offer alcoholic beverages for carry-out and delivery with at least one (1) prepared food item. *See* 67 DCR 5600 (May 29, 2020).

After the Board adopted the third emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-067, dated May 27, 2020, implementing Phase 1 of Washington D.C.'s reopening. Among other things, Mayor's Order 2020-067 partially lifted the restriction prohibiting on-site dining by allowing restaurants, taverns, nightclubs, mixed-use facilities, and other licensed food establishments to offer table service to seated patrons on outdoor public or private space. The Board interpreted the phrase "mixed-use" facilities to include hotels, multipurpose facilities,

private clubs and other class CX and DX licensees, and licensed manufacturers that serve food and satisfy the requirements set forth below. Thus, on May 28, 2020, the Board adopted the Notice of Fourth Emergency Rulemaking, by a vote of six (6) to zero (0). This emergency rulemaking superseded the previously adopted emergency rulemaking. *See* 67 DCR 7930 (June 26, 2020).

Since adopting the fourth emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-075, dated June 19, 2020, implementing Phase Two of Washington, D.C.'s reopening. Mayor's Order 2020-075, among other things, allows restaurants, taverns, nightclubs, mixed-use facilities, and other licensed food establishments to: (1) offer on-site dining indoors; (2) limits indoor capacity to no more than fifty percent (50%), excluding staff and outdoor seating; and (3) allow bar seating provided the bar is not being staffed or utilized by a bartender.

Thus, on June 19, 2020, the Board, pursuant to the authority set forth in D.C. Official Code § 25-211(c) (2012 Repl. & 2019 Supp.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102 (July 23, 2001), adopted Notice of Fifth Emergency Rulemaking, by a vote of six (6) to zero (0). This emergency rulemaking amends Section 810 to modify the conditions under which licensees may sell, serve and allow the consumption of beer, wine, or spirits indoors or outdoors during the public emergency.

The Board finds that emergency action is necessary to ensure that alcoholic beverages continue to be sold and consumed under conditions that do not exacerbate the spread of COVID-19 during Phase Two of Washington, D.C.'s reopening. Accordingly, the Board finds this rule is necessary to continue the immediate preservation of public health.

This emergency rulemaking supersedes the previously adopted emergency rulemaking and shall remain in effect for the duration of the Extensions of Public Emergency and Public Health Emergency, but in no event longer than one hundred twenty (120) days from the Board's adoption; expiring on or before October 17, 2020, unless superseded. The emergency rulemaking shall take effect at 8:00 a.m. on Monday, June 22, 2020.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND VIOLATIONS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new § 810 to read as follows:

810 CONDITIONS OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DURING THE PUBLIC EMERGENCY

810.1 The sale and service of alcoholic beverages for on-premises consumption indoors and outdoors shall be permitted in the District of Columbia for the remainder of either or both the Mayor's Public Emergency and Public Health Emergency by authorized licensees provided they comply with the requirements set forth in § 810.2. Specifically, the sale and service of alcoholic beverages for on-premises consumption indoors and outdoors shall be permitted by the following license classes:

(a) The holders of a retailer's license class C or D, including licensed caterers;

(b) Class A or B manufacturers holding an on-site sales and consumption permit;

(c) Festival and temporary license holders; and

(d) Any other license or permit category set forth under Title 25 of the D.C. Official Code.

810.2 An on-premises retailer license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including a multipurpose facility or private club, and a manufacturer license, class A or B, holding an on-site sales and consumption permit may sell, serve and allow the consumption of beer, wine, or spirits indoors or on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio; provided that the licensee shall:

(a) Limit its indoor capacity to no more than fifty percent (50%) of the lowest indoor occupancy load or seating capacity on its certificate of occupancy, excluding employees and outdoor seating.

(b) Place indoor or outdoor tables on the sidewalk café or summer garden serving separate parties at least six feet (6 ft.) apart from one another;

(c) Ensure for non-movable communal tables that parties are seated at least six feet (6 ft.) apart from one another and that the communal table is marked with six-foot (6 ft.) divisions, such as with tape or signage;

(d) Ensure that all indoor and outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

(e) Prohibit events and activities that would require patrons to be standing or in cluster or be in close contact with one another, including dancing, playing darts, video games including games of skill, bowling, ping pong, pool, throwing axes, or indoor playgrounds;

(f) Prohibit patrons from bringing their own alcoholic beverages;

(g) Prohibit self-service buffets;

(h) Have a menu in use containing a minimum of three (3) prepared food items available for purchase by patrons;

(i) Require the purchase of one (1) or more prepared food items per table;

(j) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity

that has been approved to sell and serve food by the District of Columbia Department of Health;

(k) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 8:00 a.m. and midnight, Sunday through Saturday, unless further restricted by settlement agreement or Board Order;

(l) Not have more than six (6) individuals seated at a table or a joined table outside or inside;

(m) Require patrons to wait outside at least six feet (6 ft.) apart until they are ready to be seated;

(n) Not provide live music or entertainment except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

(o) Not serve alcoholic beverages or food to standing patrons;

(p) Prohibit standing at indoor and outdoor bars and only permit seating at indoor or outdoor bars that are not being staffed or utilized by a bartender;

(q) Require a minimum of six feet (6 ft.) between parties seated at indoor and outdoor bars, rail seats, or communal tables;

(r) Prohibit the placement of alcohol advertising, excluding non-contact menus, furniture and umbrellas, on outdoor public space;

(s) Provide and require that wait staff wear masks;

(t) Request that patrons wear masks when waiting in line inside or outside of the establishment or while traveling to use the restroom or until they are seated and eating or drinking;

(u) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by District of Columbia Department of Health;

(v) Implement sanitization and disinfection protocols including the provision of single use condiment packages;

(w) Be permitted to utilize an additional location registered for alcohol carry-out and delivery, pursuant to D.C. Official Code § 25-113(a)(3)(D) for indoor on-premises alcohol consumption provided the location has a valid

certificate of occupancy for a restaurant or other eating or drinking establishments. The use of outdoor space adjacent to or near the additional location shall be required to be registered pursuant to pursuant to D.C. Official Code § 25-113(a)(6) in order to be utilized for outdoor dining; and

(x) Have its own clearly delineated indoor and outdoor space and shall not share tables and chairs with another business.

810.3 A manufacturer's license, class A or B, with an on-site sales and consumption permit or a retailer's license class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the use of a menu containing a minimum of three (3) prepared food items available to patrons requirement set forth in § 810.2(f), provided patrons are seated when ordering and ordered food is delivered by the licensee to the seated patron.

810.4 A licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs that register with the Board may sell beer, wine or spirits in closed containers for individuals to carry-out to their home or deliver beer, wine or spirits in closed containers to the homes of District residents; provided that each such carry-out or delivery order is accompanied by one or more prepared food items.

810.5 Board approval shall not be required for registration; however, a restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs shall receive written authorization from ABRA prior to beginning carry-out or delivery of beer, wine or spirits.

810.6 A registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs may sell beer, wine or spirits for carry-out and delivery only between the hours of 7:00 a.m. and midnight, Monday through Sunday.

810.7 Except as provided in § 810.2, a registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs shall not permit the consumption of beer, wine or spirits on the licensed premises.

810.8 Any person delivering beer, wine or spirits to the homes of District residents shall be eighteen (18) years of age or older and shall take reasonable steps to ascertain that the person receiving the delivered beer, wine or spirits is twenty-one (21) years of age or older.

810.9 The Board, in its discretion, may immediately suspend or revoke without prior notice or advertisement, the ABC license of an establishment licensed under Title 25 of the District of Columbia Official Code that is in violation of this

section. Nothing in this subsection shall prohibit the Board or ABRA from issuing a written or verbal warning for a violation of this section.

810.10 The Board shall conspicuously post two (2) summary suspension or revocation notices at or near the main street entrance of the outside of the establishment.

810.11 A licensee may request a hearing within three (3) business days after service of a Notice of Suspension or Revocation for a violation of this section. The Board shall hold a hearing within two (2) business days of receipt of a timely request and shall issue a decision within three (3) business days after the hearing.

810.12 A licensee aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The State Superintendent of Education ("State Superintendent"), pursuant to authority set forth in Sections 3(f)(2) and 5(e)(2) of the District of Columbia College Access Act of 1999, approved November 12, 1999, (Pub. L. 106-98, D.C. Official Code §§ 38-2702(f)(2) and 38-2704(e)(4) (2012 Repl.)); Section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)) (2018 Repl.)); Section 402(b) of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001 (D.C. Law 14-28; 48 DCR 6981 (Oct. 19, 2001)); and Mayor's Order 2000-138, dated September 7, 2000, hereby amends, on an emergency basis, Chapter 70 (Tuition Assistance Grant Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations ("DCMR").

The purpose of this emergency and proposed rulemaking is to remove the existing District of Columbia Tuition Assistance Grant ("DCTAG") application deadline date and allow the Office of the State Superintendent of Education ("OSSE") to set the DCTAG application deadline date by publishing public notice in the *D.C. Register* and on its website a reasonable period of time prior to the application deadline date.

This emergency rulemaking is necessary to ensure the welfare of District residents by increasing the accessibility of funding for postsecondary education. DCTAG provides critical financial assistance awards to District residents to attend eligible out-of-state institutions of higher education. Without access to DCTAG funding, many District students' opportunities to enroll in a post-secondary educational path to complete a two- or four-year degree will be significantly reduced or denied. The current DCTAG application deadline is set by regulation at June 30 of each calendar year. A certified District of Columbia tax return is a commonly submitted application document necessary to verify District of Columbia domicile and, therefore, DCTAG eligibility. Due to the outbreak of the COVID-19 virus, the District of Columbia Office of Tax and Revenue extended the April 15, 2020 deadline to file and pay all District income tax returns until July 15, 2020. This extension is consistent with the extension provided by the U.S. Internal Revenue Service for federal income tax returns. Removing the regulatory application deadline and including a provision conferring OSSE with the ability to set the application deadline by administrative issuance provides OSSE the dexterity to adapt to immediate and ongoing practicalities created by the COVID-19 pandemic. Specifically, this emergency and proposed rulemaking will grant OSSE the flexibility to account for this year's income tax filing extension as well as accommodate the ongoing future uncertainties regarding postsecondary institutions' academic year calendars during the current COVID-19 national emergency and during potential future outbreaks of COVID-19. Such flexibility ensures that District residents receive the financial assistance crucial to attending an institution of higher education.

This emergency rulemaking was adopted on June 12, 2020 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring on October 10, 2020, or upon earlier amendment or repeal by the

State Superintendent of Education or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The State Superintendent of Education also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 70, TUITION ASSISTANCE GRANT PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsection 7000.4 of Section 7000, APPLICATION PROCESS AND ELIGIBILITY CRITERIA, is amended to read as follows:

. . .

7000.4 The applicant shall submit the application form and other records, documents or information required by § 7000.3 or 7003 to the Mayor after January 1st of the year preceding the award year the student will attend college. The Office of the State Superintendent of Education shall set the application deadline date by publishing public notice in the *D.C. Register* and on its website a reasonable period of time prior to the application deadline date.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register* via email addressed to: ossecomments.proposedregulations@dc.gov. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-081
July 24, 2020

SUBJECT: Requirement to Self-Quarantine After Non-Essential Travel During the COVID-19 Public Health Emergency

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); pursuant to the Coronavirus Support Congressional Review Emergency Amendment Act of 2020, effective May 19, 2020, D.C. Act 23-328, and any substantially similar subsequent emergency or temporary legislation; section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002, D.C. Law 14-194, D.C. Official Code § 7-2304.01 (2018 Repl.); section 1 of An Act To Authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases ("Communicable and Preventable Diseases Act"), approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq*. (2012 Repl.); and in accordance with Mayor's Order 2020-045, dated March 11, 2020; Mayor's Order 2020-046, dated March 11, 2020; Mayor's Order 2020-050, dated March 20, 2020; Mayor's Order 2020-063, dated April 15, 2020; Mayor's Order 2020-066, May 13, 2020; Mayor's Order 2020-067, dated May 27, 2020; and Mayor's Order 2020-079, dated July 22, 2020, it is hereby **ORDERED** that:

I. BACKGROUND

1. This Order incorporates the findings of prior Mayor's Orders relating to COVID-19.

2. Community transmission of COVID-19 remains throughout the District. Over 11,571 District residents have tested positive for COVID-19 and tragically, 581 District residents have lost their lives already due to COVID-19. After a promising period of decline, new daily cases exceeded one hundred (100) on July 22, 2020. Further, transmission is widespread in a majority of states around the country, as well as some countries internationally. Transmission is facilitated by persons who are asymptomatic or pre-symptomatic.

3. Travelers who adhere to a fourteen (14) day quarantine when entering the District from high-risk areas will mitigate the spread of COVID-19 in the District and protect the health, safety, and welfare of District residents, and will help return us to a downward trajectory of new cases. Reducing travel and abiding by this self-

quarantine requirement will help to prevent a projected surge on our hospital capacity in the coming weeks.

4. By contrast, tourism to and from high-risk areas without self-quarantining endangers District residents, will contribute to the District's new case count, and may burden local hospitals.

5. District residents are encouraged to take "staycations," to stay local, or only travel to places with low COVID-19 case counts, and to maintain physical distance from non-household members at all times.

6. This Order requires that persons self-quarantine for fourteen (14) days after traveling for non-essential purposes from high-risk areas to the District.

II. REQUIREMENT TO SELF-QUARANTINE AFTER NON-ESSENTIAL TRAVEL

1. All residents and persons traveling to or from "high-risk areas" within the prior fourteen (14) days for non-essential travel must self-quarantine for fourteen (14) days following their return or arrival to the District.

2. Persons who are self-quarantining after non-essential travel must:

   a. Stay at their residence or in a hotel room, leaving only for essential medical appointments or treatment or to obtain food and other essential goods when the delivery of food or other essential goods to their residence or hotel is not feasible;

   b. Not invite or allow guests, other than caregivers, into their quarantined residence or hotel room; and

   c. Self-monitor for symptoms of COVID-19 and seek appropriate medical advice or testing if COVID-19 symptoms arise.

3. Persons who are traveling through a "high-risk area," such as through an airport or by vehicle, shall not be subject to this quarantine requirement.

III. REQUIREMENTS FOR ESSENTIAL TRAVEL

Persons returning to the District after essential travel or arriving in the District for essential travel are required to do the following:

1. Self-monitor for symptoms of COVID-19 and to self-quarantine and seek medical advice or testing if they show symptoms of COVID-19; and

2. Limit their activities involving contact with other persons for fourteen (14) days to the purposes that exempted them from the self-quarantine requirement to the

extent possible.

IV. DEFINITIONS

1. For the purposes of this Order, "**high-risk areas**" are locations where the seven (7)-day moving average daily new COVID-19 case rate is ten (10) or more per one hundred thousand (100,000) persons. These locations will be identified by the Department of Health beginning on July 27, 2020 and will be posted and updated every two (2) weeks on coronavirus.dc.gov. Maryland and Virginia are exempt.

2. For the purposes of this Order, "**essential travel**" is defined by Mayor's Order 2020-054, dated March 30, 2020 and subsequent interpretative guidance, and in addition, includes travel to or through the District for any reason that lasts less than twenty-four (24) hours.

V. SUPERSESSION

This Order supersedes any prior Mayor's Order or guidance issued during the COVID-19 public health emergency to the extent of any inconsistency.

VI. ENFORCEMENT

1. Businesses and other employers, universities, apartments, condominiums, and cooperatives may require employees, students, clients, customers, guests, visitors, or other persons to affirm compliance with this Order before allowing entry or providing services.

2. This District of Columbia reserves the right to exercise provisions of the Communicable and Preventable Diseases Act, approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.*, if warranted.

VII. EFFECTIVE DATE AND DURATION

This Order shall be effective at 12:01 a.m. on Monday, July 27, 2020, and shall continue to be in effect through October 9, 2020, or until the date to which the state of emergency is extended, whichever is later.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-082
July 27, 2020

SUBJECT: Appointments — Juvenile Justice Advisory Group

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974, approved September 7, 1974, 88 Stat. 1119, Pub. L. 93-415, 34 U.S.C. § 11133, and Mayor's Order 2009-13, dated February 9, 2009, it is hereby **ORDERED** that:

1. The following persons are appointed as persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence members to the Juvenile Justice Advisory Group ("Advisory Group") for a term to end September 15, 2022:

   a. **JAKE HASKELL**,
   b. **JAMAL HOLTZ**,
   c. **DESTINY JACKSON**,
   d. **AARON WHITE**, and
   e. **KYLA WOODS**.

2. **BRITTANY MOBLEY,** is appointed as a representative from law enforcement and juvenile justice agencies member of the Advisory Group filling a vacant seat, for a term to end September 15, 2021.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-083
July 27, 2020

SUBJECT: Appointment — Child Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 4-1371.04 , (2019 Repl.), it is hereby **ORDERED** that:

1. **LATONYA CALLAWAY,** is appointed as a representative of a Department of Youth Rehabilitative Services member to the Child Fatality Review Committee, to serve at the pleasure of the Mayor.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST: _____
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

BREAKTHROUGH MONTESSORI PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Construction Project Manager, General Contractor, Architect

Breakthrough Montessori PCS plans to build out a second floor on our Takoma campus, located at 6923 Willow St. NW. We are seeking competitive bids for the following services:

1. **Construction project manager**: oversee the planning and construction, from its beginning to its end.

2. **General contractor**: manage the day-to-day oversight of construction, management of vendors and subcontractors, and communication with all parties involved.

3. **Architect**: design and plan the campus expansion.

To obtain a full copy of the RFPs, please contact Emily Hedin at emily.hedin@breakthroughmontessori.org. Please specify which RFP(s) you would like to receive.

Bids for all three services must be received no later than August 11, 2020 at 5:00PM.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

CONSTRUCTION CODES COORDINATING BOARD

Notice Regarding Application Deadline for Technical Advisory Group Membership for New Code Development Cycle

The Construction Codes Coordinating Board (CCCB) is commencing a new code development cycle, and will be reviewing the 2021 International Codes published by the International Code Council (2021 ICC Codes), the 2020 National Electrical Code published by the National Fire Protection Association (2020 NEC), and ASHRAE Standard 90.1-2019 -- Energy Standard for Buildings Except Low-Rise Residential Buildings, for adoption by the District of Columbia in 2023. Persons interested in participating in the code development process as a member of a Technical Advisory Group (TAG) should submit an application for TAG membership no later than 5 p.m. on September 15, 2020.

A TAG is a subcommittee of the CCCB that assists the CCCB in evaluating changes, additions or deletions to the ICC Codes, the National Electrical Code, and ASHRAE Standard 90.1. Each TAG is dedicated to a particular area of expertise that corresponds to a model code, codes, or standard and is chaired by a CCCB member. The following TAGs and Special Committee were established during the previous code development cycle:

- Accessibility
- Administration and Enforcement
- Building
- Electrical
- Elevator
- Existing Building
- Fire and Life Safety
- Green Construction and Energy - Commercial
- Mechanical (Boiler, Fuel Gas, Mechanical, and Plumbing)
- Property Maintenance
- Residential and Energy - Residential
- Structural and Special Inspections
- Flood Hazard Special Committee

To submit an application for TAG membership, complete the application form here: https://drive.google.com/file/d/0B_TftQHNUT_5OXlUeFNXbUl4clE/view?usp=sharing. Return the completed application with a resume or a biographical summary by email to:

Danielle Gurkin, Chairperson
Construction Codes Coordinating Board
Department of Consumer and Regulatory Affairs
EMAIL: cccbchair.dcra@dc.gov

DC SCHOLARS PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Property Management Services

DC Scholars Public Charter School (DCSPCS) intends to enter into a sole source contract with Building Pathways for contracted property management services in school year 2020-21, effective September 1, 2020. Building Pathways will provide property management services, including subcontracting facilities management, waste management, elevator maintenance, and other property operations services. DCSPCS anticipates that the consulting agreement will exceed $25,000.00 during its fiscal year 2021 (July 1, 2020 – June 30, 2021).

The decision to sole source is due to the fact that Building Pathways has provided Property Management services for DCSPCS since school year 2018-19 under the management of 5601 LLC/Building Pathways. Due to the ongoing transition and dissolution of the LLC, it would be financially burdensome for the school to oversee property management and all the contracts currently subcontracted by Building Pathways as soon as September 1, 2020, apart from Building Pathways. The costs for training and managing of new property and facilities subcontractors apart from Building Pathways would not be recovered through competition.

The Sole Source Contract will be awarded at the close of business on August 10, 2020. If you have questions or concerns regarding this notice, contact **Emily Stone** at **estone@dcscholars.org** no later than **5:00 pm on August 10, 2020.**

D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF PUBLIC MEETING

Homeland Security Commission

July 31, 2020

3:00 p.m. to 5:00 p.m.

Virtual Meeting via WebEx: 1-650-479-3208; access code: 160 611 6294

On July 31, 2020 at 3:00 p.m., the Homeland Security Commission (HSC) will hold a meeting that may proceed into closed session pursuant to D.C. Code § 2-575(b), D.C. Code § 7-2271.04, and D.C. Code § 7-2271.05, for the purpose of discussing the annual report.

The meeting will be held remotely via WebEx. For additional information, please contact Dion Black, General Counsel, by phone at 202-481-3011 or by email at dion.black1@dc.gov.

D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF PUBLIC MEETING

Homeland Security Commission

August 6, 2020

3:00 p.m. to 5:00 p.m.

Virtual Meeting via WebEx: 1-650-479-3208; access code: 160 009 6215

On August 6, 2020 at 3:00 p.m., the Homeland Security Commission (HSC) will hold a meeting that may proceed into closed session pursuant to D.C. Code § 2-575(b), D.C. Code § 7-2271.04, and D.C. Code § 7-2271.05, for the purpose of discussing the annual report.

The meeting will be held remotely via WebEx. For additional information, please contact Dion Black, General Counsel, by phone at 202-481-3011 or by email at dion.black1@dc.gov.

HOPE COMMUNITY PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTE (RFQ)

Tablet Purchase

Hope Community Public Charter School is seeking a proposal from individuals or companies to provide the following services:

Tablet Purchase at the Lamond Campus located at: 6200 Kansas Avenue NE, Washington, DC 20011 *and* the Tolson Campus located at: 2917 8th Street, NE, Washington, DC 20017.

To request a full copy of the RFQ, send an email to hope.rfp@imagineschools.org.

Bids that do not address all areas as outlined in the RFQ or bids received past the deadline will not be considered. Hope PCS reserves the right to cancel this RFQ at any time.

Send proposal by 12:00PM, August 11, 2020 via e-mail to: hope.rfp@imagineschools.org. Bids received after this date and time will not be considered.

For additional information, please contact:

Trina McWilliams
hope.rfp@imagineschools.org

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF 2020 HOUSING PRODUCTION TRUST FUND (HPTF) MAXIMUM INCOME AND RENT LIMITS

The D.C. Department of Housing and Community Development, pursuant to the authority in Chapter 28 of Title 42 of the Code of the District of Columbia (§ 42-2801) and the HPTF regulations (DCMR 10-B 41) hereby gives notice that it has established the maximum income and rent limits for the use of HPTF to preserve and produce housing for extremely low-income, very low-income, and low-income households.

The income and rent limits have been determined based on the Median Family Income (MFI) of $126,000 as established by the U.S. Department of Housing and Urban Development for FY 2020 for the Washington Metropolitan Statistical Area. The maximum income limits have been calculated as required by DC Code Section 42-2801(1)(A-B) of the HPTF law. The maximum monthly rent limits have been calculated in compliance with DCMR 10-B 4107.3(b-c) of the HPTF regulations.

The HPTF Maximum Income and Rent Limits shall be effective as of August 1, 2020.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOUSING PRODUCTION TRUST FUND (HPTF)
MAXIMUM INCOME AND RENT LIMITS
Effective as of August 1, 2020

Housing Production Trust Fund (HPTF) Household Income Limits

	HOUSEHOLD SIZE							
Income Limit	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% of MFI	$26,450	$30,250	$34,000	$37,800	$41,600	$45,350	$49,150	$52,900
50% of MFI	$44,100	$50,400	$56,700	$63,000	$69,300	$75,600	$81,900	$88,200
60% of MFI	$52,900	$60,500	$68,050	$75,600	$83,150	$90,700	$98,300	$105,850
80% of MFI	$70,550	$80,650	$90,700	$100,800	$110,900	$120,950	$131,050	$141,100

Housing Production Trust Fund (HPTF) Monthly Maximum Rent Limits

	BEDROOM COUNT					
Unit MFI	**Efficiency**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**	**4 Bedroom**	**5 Bedroom**
30%	$660	$760	$850	$1,040	$1,230	$1,320
50%	$1,100	$1,260	$1,420	$1,730	$2,050	$2,210
60%	$1,320	$1,510	$1,700	$2,080	$2,460	$2,650
80%	$1,760	$2,020	$2,270	$2,770	$3,280	$3,530

IDEA INTEGRATED DESIGN AND ELECTRONIC ACADEMY PUBLIC CHARTER SCHOOL

NOTICE: FOR PROPOSALS FOR MULTIPLE SERVICES

IDEA Integrated Design and Electronic Academy PCS solicits proposals for the following services:

- Substitute Teaching Services
- Spanish Teaching Services

Full RFP available by request. Proposals shall be emailed as PDF documents no later than 5:00 PM on 8/12/2020. Contact: bids@ideapcs.org

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Dance Afterschool Programming Services

KIPP DC is soliciting proposals from qualified vendors for Dance Afterschool Programming 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 August 11, 2020. Questions can be addressed to kristin.jackson@kippdc.org.

LEE MONTESSORI PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Lee Montessori Public Charter Schools, an approved 501(c)3 organization, requests proposals for the following school related services:

General Contractor for a small-scale project involving the renovation of the existing Multipurpose Room; Before and/or Aftercare Services; Association Montessori International approved Montessori Primary Classroom Materials; Association Montessori International approved Montessori Elementary Classroom Materials; Classroom Furniture; Computers/Tablets for staff; Computers/Tablets for students; Data Analysis and Management; Financial Management and Analysis, including bookkeeping; Furniture Movers; Information Technology Maintenance / Support Services; Janitorial and Facilities Maintenance; Office Furniture; and Special Education Contracted Services.

Lee Montessori Public Charter Schools is seeking qualified professionals for the above services. Applications must include references, resumes exhibiting experience in said field, and estimated fees. Please email proposals or questions to procurement@leemontessori.org and include the service in the heading. Proposals are by 5:00 pm on Friday, August 7, 2020.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department	
Petitioner	PERB Case No. 20-A-01
v.	Opinion No. 1731
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On October 7, 2019, the District of Columbia Metropolitan Police Department (MPD) filed this Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-605.02(6).[1] MPD seeks review of an arbitration award (Award) issued on September 16, 2019, which granted, in part, the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP). MPD seeks review of the Award, asserting that the Arbitrator exceeded his jurisdiction.[2]

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

[1] The Board notes that MPD's Request was deficient, because it failed to provide "[a] statement of the reasons for appealing the award" as required by Board Rule 538.1. The Request merely asserted, without reasons, that the statutory criteria for review of an arbitration award had been met. MPD filed a motion for leave to cure the deficiency and show cause for an extension of time to cure the deficiency. In accordance with Board Rule 501.13, MPD timely cured its deficiency.

[2] In its deficient filing, MPD requested review on the basis that the award was contrary to law and public policy. In its Memorandum, MPD only addressed the Arbitrator's authority, thus waiving the argument that the award is contrary to law and public policy.

[3] D.C. Official Code § 1-605.02(6).

II. Award

A. Background

On the morning of October 28, 2014, the Grievant lectured at a conference.[4] The Grievant was paid $600 as an honorarium for the lecture.[5] Although the Grievant was scheduled to begin his MPD tour of duty at 2:30 p.m., the Grievant departed the conference between 2:30 and 3:00 p.m.[6] The Grievant arrived at his duty station at approximately 3:30 p.m.[7] Notwithstanding the Grievant's late arrival, the time-keeping report indicated that the Grievant worked his assigned schedule of 2:30 p.m. to 11:00 p.m.[8]

The Department of Justice investigated the Grievant for allegations of time and attendance fraud and issued a letter declining prosecution on March 25, 2015. On April 22, 2015, the Grievant was interviewed by the MPD Internal Affairs Department (IAD). During the interview, the Grievant claimed that he had called the duty station to report his late arrival and worked an hour later than scheduled. On July 24, 2015, the Grievant was served with a Notice of Proposed Adverse Action (NPAA).[9]

The NPAA contained two charges. Charge No. 1 alleged that the Grievant violated General Orders 120.21 and 201.26 by knowingly making an untruthful statement during the April 22, 2015 interview.[10] Charge No. 2 alleged that the Grievant violated General Orders 120.21 and 201.17 by engaging in outside employment without proper authorization, and while on duty.[11]

The Grievant appealed the NPAA to an Adverse Action Panel (Panel). The Panel found the Grievant guilty of Charge No. 1 and Charge No. 2 The Panel recommended termination for Charge 1 and for Specification 2 of Charge 2. The Panel recommended a 20-day suspension for the violation in Specification 1 of Charge 2, holding that the Grievant engaged in outside employment without obtaining prior approval.[12] The Grievant appealed the Panel's recommendation to the Chief of Police who denied the appeal. FOP subsequently moved for arbitration under the parties' collective bargaining agreement.[13]

[4] Award at 3.
[5] Award at 3. The Grievant split the $600 honorarium with an MPD Lieutenant who also lectured before the delegation at the recommendation of the Grievant.
[6] Award at 3.
[7] Award at 4.
[8] Award at 4.
[9] Award at 4.
[10] Award at 5.
[11] Award at 5.
[12] Award at 11.
[13] Award at 12.

B. Arbitration

The issues stipulated by the parties before the Arbitrator were:

1. Whether the evidence presented by MPD was sufficient to support Charge No. 1 against the Grievant for allegedly making an untruthful statement during his IAD interview that he worked late on October 28, 2014?

2. Whether the evidence presented by MPD was sufficient to support Charge No.2 against the Grievant for allegedly working outside employment on October 28, 2014, when he spoke at an academic seminar.

3. Whether termination was the appropriate penalty.[14]

Before the Arbitrator, MPD argued that the appropriate standard of review is whether the Panel's findings and conclusions were supported by substantial evidence in the record and not clearly erroneous as a matter of law.[15] MPD argued that the Panel's findings related to Charge No. 1 should not be disturbed because there was ample evidence in the record to demonstrate that the Grievant's statement about working late was untrue.[16] Further, MPD argued that the Panel's findings related to Charge No. 2 should not be disturbed because there was undisputed evidence in the record that the presentation at the seminar qualified as outside employment, that the Grievant received a payment, and that the outside employment overlapped with the Grievant's tour of duty for which he was paid by MPD.[17]

FOP argued that the standard of review is not whether the Panel's decision was clearly erroneous but whether the discipline was imposed for just cause.[18] FOP argued that the deferential standard of review applies only to an agency's review of decisions and that there is nothing to prevent an arbitrator from re-weighing the evidence.[19] FOP argued that Charge No. 1 was not proven by MPD because the evidence failed to demonstrate that the Grievant was not at work after 11:00 p.m. Further, for Charge No. 2, FOP argued that the evidence failed to support that the Grievant's presentation at the conference qualified as outside employment or that the Grievant's presentation overlapped with his tour of duty.[20] Finally, FOP argued that termination was not an appropriate penalty and that the Panel's analysis of the *Douglas*[21] factors was unsupported by the record.[22]

[14] Award at 2.
[15] Award at 15 (citing *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985)).
[16] Award at 15.
[17] Award at 16.
[18] Award at 17-18.
[19] Award at 17.
[20] Award at 18.
[21] *Douglas v. Veterans Admin.*, 5 MSPR 280, 5 MSPB 313 (1981). *Douglas* provides twelve factors as guidance to determine the appropriateness of discipline for public sector employees.
[22] Award at 20.

The Arbitrator determined that the standard of review advanced by FOP was appropriate for evaluation of the Panel's decision, which included re-weighing the evidence and the *Douglas* factors.

The Arbitrator found that the Panel's analysis of Charge No. 1 erroneously evaluated the factual evidence in the record for the charge. The Arbitrator explained the following:

> Based on what was explained in the record, it seems that, confronted with inconclusive evidence as to whether [Grievant's] account of working late was true or not, the Panel decided to invert the burden of proof. Its decision cited a lack of evidence to support the Grievant's position, ignoring the principle that it is the MPD's burden to prove that [the Grievant] was guilty of the charges.
>
> More importantly, the Panel's conclusion that the Grievant's claim to [IAD] that he worked past 11:00 p.m., "was knowingly made to the IAD agent, and was false," was a misstatement of the applicable standard. General Order 120.21, Attachment A, Part A-6, prohibits "Willfully and knowingly making an untruthful statement . . ." The Notice of Proposed Adverse Action correctly articulated the standard for a violation of this provision as, "You provided the investigating official with this information knowing it to be untrue." There is a significant distinction between these two specifications – "providing information knowing it to be untrue" was the correct standard to support this charge; regardless of whether it is true or not, a statement made voluntarily, or knowingly, is not necessarily a violation. A violation occurs when the maker knows the statement is untrue but says it anyway. The Panel's conclusion – which is what was eventually adopted by MPD for purposes of the final disciplinary decision – was based upon an erroneous articulation of the factual basis for Charge No. 1.
>
> The Panel erred in both its factual assessment and articulation of the standard for Charge No. 1. Consequently, its finding must be set aside. The charge of [the Grievant] "willfully and knowingly making an untruthful statement" to IAD . . . on April 22, 2015, was unsupported, both factually and legally, and is hereby dismissed.[23]

Therefore, the Arbitrator dismissed Charge No. 1 as unsupported in the record.

On Charge No. 2, the Arbitrator held that General Order 201.17 required the Grievant to request prior authorization before engaging in outside employment and that sporadic instructive employment qualifies as outside employment for the purpose of General Order 201.17.[24] The Arbitrator found that the Grievant violated General Order 201.17 because he did not receive proper authorization before engaging in outside employment.[25] The Arbitrator found that the Panel had no evidence from which to conclude that the outside employment extended past 2:30 p.m. to overlap with the Grievant's tour of duty.[26]

[23] Award at 24-25.
[24] Award at 26.
[25] Award at 26.
[26] Award at 27.

The Arbitrator dismissed Charge No. 1 and Specifications 2 and 3 of Charge No. 2. The Arbitrator dismissed the Panel's recommendations of termination. The Arbitrator found that MPD offered no *Douglas* analysis for the single violation of failing to obtain prior approval for outside employment. The Arbitrator found support in the record for the penalty of a 20-day suspension, which the Panel had imposed for engaging in outside employment without authorization.[27] The Arbitrator ordered the Grievant reinstated with a 20-day suspension and made whole.

III. Discussion

The Board has limited authority to review an arbitration award under D.C. Official Code § 1-605.02(6). When determining whether an arbitrator exceeded his authority in rendering an award, the Board analyzes whether the award "draws its essence from the parties' collective bargaining agreement."[28] The relevant questions in this analysis are whether the arbitrator acted outside his 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.[29]

MPD argues that the Board should set aside the Award because the Arbitrator exceeded his authority when he re-weighed the evidence and substituted his judgment for that of the Panel.[30] FOP counters that the Request does not present any legal authority in support of the position that the Arbitrator exceeded his authority.[31] FOP asserts that MPD's re-argument of the evidence is a mere disagreement with the Award and should be rejected.[32]

Here, the parties expressly charged the Arbitrator with the task of reviewing whether the evidence was sufficient to support a finding against the Grievant for Charge No. 1 and Charge No. 2, and whether termination was an appropriate remedy.[33] The Arbitrator determined that a case assigned pursuant to Article 19 of the collective bargaining agreement requires an arbitrator to consider evidence in the record and determine whether there is enough to support just cause for discipline, including review of the charges and analysis of the *Douglas* factors.[34] The Arbitrator based his decision on the record and briefs provided by the parties and determined that Charge No. 1 and Charge No. 2, in part, were unsupported by substantial evidence. The Arbitrator overturned the Grievant's termination and found that a 20-day suspension was an appropriate penalty.

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[27] Award at 28-29 (citing *Judy Waddy v. D.C. MPD*, OEA Matter No. 1601-0050-07 as reasonably on par with the instant case and finding that the Douglas analysis would have been substantially similar).
[28] *AFGE Local 2725 v. D.C. Housing Auth.*, 61 D.C. Reg. 9062, Slip Op. No. 1480 at 5, PERB Case No. 14-A-01 (2014).
[29] *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. No. 1258 at 4, PERB Case No. 10-A-09 (2012).
[30] Pet. Memo at 6.
[31] Opp. at 13.
[32] Opp. at 14.
[33] Award at 2.
[34] Award at 22-23 (crediting MPD's argument as prevailing which includes citations to *MPD v. FOP/MPD Labor Comm. ex. rel. Bell,* 62 D.C. Reg. 9189, Slip Op. No. 1517, PERB Case No. 15-A-06 (2015); *MPD v. FOP/Labor Comm. ex. rel. Fowler*, 64 D.C. Reg. 10115, Slip Op. No. 1635, PERB Case No. 17-A-06 (2017)).

MPD does not cite to any legal authority requiring deferential review in its Request. MPD makes the same argument before the Board as it made before the Arbitrator, citing *Stokes v. District of Columbia*.[35] The Board has repeatedly held that *Stokes v. District of Columbia* is not the correct standard to apply to an arbitrator's review of an agency's decision because an arbitrator's authority arises out of the parties' contractual agreement to submit the case to arbitration rather than the statutes creating the Office of Employee Appeals interpreted in *Stokes*.[36] The Board has found that by submitting a matter to arbitration, "the parties also agree to be bound by the Arbitrator's decision which necessarily includes the Arbitrator's interpretation of the parties' agreement and related rules and/or regulations as well as his evidentiary findings and conclusions upon which the decision is based."[37] The Board will not substitute its own interpretation for that of the duly designated arbitrator.[38] MPD presents an argument to the Board that was previously presented to and rejected by the Arbitrator. MPD disagrees with the finding that substantial evidence did not exist to support the termination. Disagreement with the Arbitrator is not a sufficient reason to modify, set aside, or remand an Award.[39] The Board finds that MPD has not me the standard to find that the Arbitrator exceeded his jurisdiction.

IV. Conclusion

The Board rejects MPD's arguments and finds no cause to modify, set aside, or remand the Arbitrator's Award. Accordingly, MPD'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 vote of Board Chairperson Charles Murphy and Board members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.
December 18, 2019

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[35] Award at 15.
[36] *E.g., MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6734, Slip Op. No. 1705 at 5, PERB Case No. 19-A-02 (2019).
[37] *MPD v. NAGE Local R3-5 ex. rel. Burrell*, Slip Op. No. 785 at 4, PERB Op. No. 03-A-08 (2006) (citing *UDC v. UDCFA*, 39 DCR 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).
[38] *FEMS v. AFGE, LOCAL 3721,* 51 D.C. Reg. 4158, Slip Op. 728, PERB Case No. 2-A-08 (2004).
[39] *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253 at 3, PERB Case No. 90-A-04 (1990).

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 20-A-01, Slip Op.1731, was sent by File and ServeXpress to the following parties on this the 30th day of December 2019.

Milena Mikailova
Assistant Attorney General
Personnel and Labor Relations Section
441 Fourth Street, NW, Suite 1180N
Washington, D.C. 20001

Daniel J. McCartin
Conti Fenn, LLC
36 South Charles Street, Suite 2501
Baltimore, Maryland 21201

_____/s/_____
Sheryl Harrington
Public Employee Relations Board

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Washington Teachers' Union, Local #6, American Federation of Teachers, AFL-CIO	
Petitioner	PERB Case No. 20-U-06
v.	Opinion No. 1734
District of Columbia Public Schools	
Respondent	

DECISION AND ORDER
ON MOTION FOR PRELIMINARY RELIEF

I. Statement of Case

On December 12, 2019, the Washington Teachers' Union, Local # 6, American Federation of Teachers (WTU) filed an Unfair Labor Practice Complaint (Complaint) against the District of Columbia Public Schools (DCPS), alleging violations of the Comprehensive Merit Personnel Act (CMPA)[1] by DCPS' implementation of the Missed Related Services Sessions, Truancy, and Due Diligence Summary (Missed Related Services Sessions Policy) for school year (SY) 2019-2020.

Contemporaneously with the Complaint, WTU filed a Request for Preliminary Relief (Motion) pursuant to PERB Rule 520.15.[2] On January 14, 2020, DCPS filed an answer to the Complaint and an opposition to the Motion.[3] Pursuant to PERB Rule 520.15, the Board denies the Motion for the reasons stated herein.

[1] D.C. Official Code § 1-617.04(a)(1), (3), and (5).
[2] WTU requests that the Board temporarily stop DCPS from implementing the Missed Related Services Sessions policy during litigation of the Complaint.
[3] DCPS was granted an extension of time to file its response to the Complaint and Motion.

II. Background

WTU alleges that on August 20, 2019, DCPS implemented a new Missed Related Services Sessions policy for SY 2019-2020.[4] The newly implemented policy replaced the Missed Related Services Sessions Policy for SY 2018-2019.[5] WTU alleges that the new policy (1) requires bargaining unit employees to work extended hours without additional compensation, (2) creates new standards for performance evaluations, and (3) subjects bargaining unit employees to discipline, including termination, for failure to meet the new performance standards.[6]

III. Position of Parties

In its Motion, WTU requests an order from the Board directing DCPS to retract its decision to implement the Missed Related Services Sessions Policy for SY 2019-2020. WTU argues that the bargaining unit employees may be disciplined or terminated before a hearing on the Complaint.[7] WTU argues that the potential discharge of bargaining unit employees affects schools, students, and families.[8]

DCPS opposes WTU's Motion, arguing that WTU is not entitled to preliminary relief because the request does not comply with PERB Rule 520.15.[9] DCPS argues that the alleged wrongdoing is neither clear-cut nor flagrant and only affects a relatively small number of bargaining unit employees.[10] DCPS also argues that the public interest is not seriously affected by the alleged wrongdoing and the Motion should be denied.[11]

IV. Discussion

Motions for preliminary relief in unfair labor practice cases are governed by PERB Rule 520.15, which provides:

> The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.[12]

[4] Req. for Prelim. Relief at 1.
[5] Req. for Prelim. Relief at 1.
[6] Req. for Prelim. Relief at 2.
[7] Req. for Prelim. Relief at 2.
[8] Req. for Prelim. Relief at 2.
[9] Resp't Answer at 5.
[10] Resp't Answer at 5.
[11] Resp't Answer at 6.
[12] *NAGE, Local R3-07 v. OUC*, 60 D.C. Reg. 9251, Slip Op. No. 1393 at 6, PERB Case No. 13-U-20 (2013).

In determining whether to exercise its discretion to order preliminary relief, the Board need not find irreparable harm.[13] Notwithstanding, the Board looks to the supporting evidence, which must "establish that there is reasonable cause to believe that the [CMPA] has been violated and that the remedial purpose of the law will be served by *pendente lite* relief."[14] Where the Board has determined that the standards for exercising its discretion have been met, the basis for relief is restricted to the existence of the prescribed circumstances in Board Rule 520.15.[15]

WTU's did not submit any affidavits or other evidence to support its Motion. Therefore, WTU fails to meet its burden to demonstrate that the remedial purposes of the law would be served by *pendente lite* relief.[16]

The Board finds that WTU has failed to meet its burden to show that DCPS' conduct was clear-cut and flagrant. Here, DCPS' implementation of the Missed Related Services Sessions Policy for SY 2019-2020 cannot be described as a clear-cut or flagrant violation of the CMPA. DCPS argues that the implementation of the Missed Related Services Sessions Policy for SY 2019-2020 was an exercise of management's rights under D.C. Official Code § 1-617.08 and WTU failed to request bargaining.[17] Based on these contested issues, the Board finds there is not enough evidence without further development of the record to determine that DCPS' conduct was clear-cut and flagrant in violation of the statute as required by PERB Rule 520.15.

Further, the Board finds that WTU has failed to meet its burden to show that the effects of the alleged unfair labor practice are widespread. WTU fails to present any affidavits or evidence that demonstrates concrete harm. Instead, WTU speculates about bargaining unit employees that "may" face discipline and the "potential" effects of discharge.[18]

Likewise, WTU has failed to meet its burden to show that the public interest is seriously affected. WTU's argument is unpersuasive because the potential discharge of teachers and its effect on schools, students, and families is too ambiguous. WTU presents no arguments on the adequacy of a future remedy or DCPS' interference with the Board's processes.

Based on the foregoing, the Board denies WTU's Request for Preliminary Relief.

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[13] *Id*.
[14] *Id*.
[15] *Id*. (citing *Clarence Mack, Shirley Simmons, Hazel Lee, and Joseph Ott v. FOP/DOC Labor Committee*, *et al*, 45 D.C. Reg. 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997)).
[16] *Durant v. DOC*, 59 D.C. Reg. 3900, Slip Op. No. 914 at 3, PERB Case No. 07-U-43 (2012) (finding that the complainant's request for preliminary relief, which made allegations repetitious of those in the unfair labor practice complaint that were unsupported by affidavits or other documentation, did not satisfy any of the criteria prescribed by Board Rule 520.15).
[17] Resp't Answer at 6-7.
[18] Req. for Prelim. Relief at 2.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Washington Teachers' Union Request for Preliminary Relief is 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 Washof, Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler

February 20, 2020

Washington, D.C.

Certificate of Service

This is to certify that the attached Decision and Order in PERB Case No. 20-U-06, Slip Op.1734, was sent by File and ServeXpress to the following parties on this the 25th day of February 2020.

Lee W. Jackson
Alice Hwang
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, D.C. 20036

Stephanie T. Maltz
Michael D. Levy
D.C. Office of Labor Relations &
Collective Bargaining
441 4th Street, NW, Suite 820N
Washington, D.C. 20001

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department	
Petitioner	PERB Case No. 20-A-02
v.	Opinion No. 1737
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On October 28, 2019, the District of Columbia Metropolitan Police Department (MPD) filed this Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-605.02(6).[1] MPD seeks review of an arbitration award (Award) dated October 1, 2019, in which the Arbitrator found that MPD violated the parties' collective bargaining agreement (CBA) when MPD terminated the Grievant. MPD seeks review on the grounds that the Arbitrator exceeded her jurisdiction and that the Award is contrary to law and public policy.

Upon consideration of the Arbitrator's conclusions, applicable law, and record presented by the parties, the Request is denied for the reasons stated herein.

II. Award

A. Background

On May 6, 2014, the Grievant was scheduled to work an overtime shift at the Potomac Electric Power Company (PEPCO) from 6:30 p.m.-12:00 a.m.[2] The shift was overstaffed, and the Grievant volunteered to leave.[3] The Grievant returned the police cruiser to the police station

[1] MPD filed a consent Motion for Extension of Time to submit Reasons Appealing the Award. On November 8, 2019, MPD filed it Statement of Reasons for Arbitration Review Request. Citations to "Pet'r Memo" are to this filing.
[2] Award at 4.
[3] Award at 4.

and left work at approximately 7:00 p.m.[4] At approximately 9:00 p.m., the Grievant received a call from her husband about a voicemail message accusing the Grievant of infidelity.[5] The Grievant later recognized a co-worker's voice on the voicemail message.[6] The next day, on May 7, 2014, the Grievant filed a Form 1130 and requested four (4) hours of overtime pay despite voluntarily leaving the overtime detail at PEPCO.

Thereafter, the Grievant reported to the MPD Internal Affairs Division (IAD) the co-worker's voicemail message that she heard on May 6, 2014.[7] IAD interviewed the Grievant. During the interview, the IAD agent described the Grievant as "very melancholy" and "tearful and emotional."[8] The Grievant reported to the IAD agent that she was working overtime at PEPCO when she received the voicemail message, but she also reported that she had left the overtime detail early.[9] The IAD agent did not question the Grievant's time discrepancy because the Grievant was being questioned as a complainant. The IAD agent decided to leave the time discrepancy issue for the next IAD agent to clarify.[10]

On July 9, 2014, IAD interviewed the Grievant related to the time discrepancy found during the Grievant's first IAD interview.[11] The Grievant denied that she told the first IAD agent that she was at the overtime detail when she heard the voicemail message that she had reported.[12] In a follow-up interview on August 5, 2014, the Grievant acknowledged that she left the overtime detail and returned the police cruiser to the police station but refused to provide an estimated time for those activities.[13] The Grievant also refused to disclose where she was on May 6, 2014, during the reported overtime hours because it was a "personal matter."[14] The Grievant told the interviewing agent that she did not recall why she told the first IAD agent that she heard the voicemail message before she left the overtime detail.[15]

On August 7, 2014, IAD found that the Grievant violated MPD orders and directives by claiming four (4) hours of overtime although she did not work, providing untruthful statements, and engaging in deceptive behavior by refusing to divulge her whereabouts on May 6, 2014.[16]

On September 14, 2014, MPD served the Grievant with the Notice of Proposed Adverse Action. MPD charged the Grievant with the following:

[4] Award at 4.
[5] Award at 5.
[6] Award at 5.
[7] Award at 5.
[8] Award at 5.
[9] Award at 5.
[10] Award at 5.
[11] Award at 6.
[12] Award at 6.
[13] Award at 7.
[14] Award at 7.
[15] Award at 7.
[16] Award at 8.

> Charge No. 1: Violation of General Order Series 120.21, Attachment A, Part A-17 (Fraud in securing appointment or falsification of official records or reports.) Specification No. 1: This violation was due to [the Grievant] filing of Form 1130 for overtime pay when she left the PEPCO detail voluntarily.
> Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-6 (Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to official duties.) Specification No. 1: This violation was due to [the Grievant] presenting Form 1130 for approval to [Sergeant] and indicating she worked the PEPCO detail knowing this was false. Specification No. 2: This violation was due to the Grievant falsely stating to [IAD agent] that she was at the PEPCO detail when her husband called after which immediately, she left work. . . . Specification No. 3: This violation was due to [the Grievant] falsely stating in her July 9, 2014, interview that she was alone on Pennsylvania Avenue when she was with another person whom she refused to identify.
> Charge No. 3: Violation of General Order Series 120-21, Attachment A, Part A-12 (conduct unbecoming an officer. . . .) Specification No. 1: This violation was due to [the Grievant] submitting Form 1130 for payment of overtime when she did not work. Specification No. 2: This violation was due to [the Grievant] providing untruthful and evasive answers to IAD agents.[17]

The Grievant requested a hearing, and on March 13 and 14, 2015, an Adverse Action Panel (Panel) convened. After the hearing, the Panel found the Grievant "Not Guilty" on Charge No. 2, Specifications Nos. 1 and 3.[18] The Panel found the Grievant "Guilty" on Charge No. 3, Specification No.1, but imposed no penalty.[19] The Panel found the Grievant "Guilty" on Charge No. 1, Specification No. 1 and imposed a 30-day suspension without pay.[20] The Panel found the Grievant "Guilty" on Charge No. 2, Specification No. 2 and imposed the penalty of termination.[21] Finally, the Panel found the Grievant "Guilty" on Charge No. 3, Specification No. 2 and imposed a 15-day suspension without pay.[22]

On May 8, 2015, the Grievant appealed to the Chief of Police. The appeal was denied. On June 16, 2015, the Fraternal Order of Police/ Metropolitan Police Department Labor Committee (FOP) invoked arbitration.[23]

[17] Award 8-9.
[18] Award at 10.
[19] Award at 10.
[20] Award at 10.
[21] Award at 10.
[22] Award at 11.
[23] Award at 10.

B. Arbitrator's findings

The parties' agreed to limit arbitral review to the existing testimony and evidence in the administrative record and the briefs submitted by the parties.[24] The issues before the Arbitrator were (1) whether the charges against the Grievant were supported by substantial evidence and (2) whether termination was the appropriate discipline. Additionally, the Arbitrator resolved a preliminary dispute regarding the introduction of comparable discipline cases.

MPD argued that FOP could not introduce new evidence of comparable discipline in its brief because an arbitration is limited to the record compiled during an administrative action.[25] The Arbitrator found that an arbitrator's authority arises out of the parties' contractual agreement to submit the case to arbitration and that the parties' collective bargaining agreement required discipline to be imposed only for cause.[26] The Arbitrator found that the reason FOP presented the cases in its brief was to show "that some employees engaged in similar or far worse behavior than the Grievant, yet received lesser penalties.[27] The Arbitrator held that the cases would be considered because they provided insight into the "proper penalty for objectionable workplace behaviors."[28]

Thereafter, the Arbitrator determined that the charges against the Grievant were supported by substantial evidence.[29] The Arbitrator then reviewed the Panel's weighing of the *Douglas*[30] factors to determine whether termination was the appropriate penalty.[31] FOP argued that the Panel was not objective in its analysis of the *Douglas* factors.[32] MPD argued that the Panel properly reviewed and applied each *Douglas* factor even though only relevant factors needed to be considered to determine if a penalty is reasonable.[33] The Arbitrator found that there were enough mitigating circumstances to return the Grievant to work and found that termination was not the appropriate penalty.[34]

> Regarding the specific charges which are at issue: Charge No. 1, Specification No. 1 - The MPD is correct. [the Grievant] said she "worked" the detail knowing it to be untrue; Charge No. 2, Specification No. 2 - This is moderated by the fact that [the Grievant] was tearful and upset in her first interview with [the IAD agent] but, [the Grievant] also lied in subsequent interviews when she had adequate time to correct her conflicting statements; Charge No. 3, Specification

[24] Award at 11.
[25] Award at 12. There was no hearing before the arbitrator, the arbitration was based solely on the administrative record and briefs submitted by the parties.
[26] Award at 13.
[27] Award at 14.
[28] Award at 14.
[29] Award at 19.
[30] *Douglas v. Veterans Admin*., 5 M.S.P.R. 280, 5 MSPB 313 (1981). Douglas provides twelve factors as guidance to determine the appropriateness of discipline for public sector employees.
[31] Award at 28.
[32] Award at 28.
[33] Award at 28.
[34] Award at 33.

> No. 1 -This is moderated by the fact that there was no written policy for PEPCO overtime and there were differing opinions from other officers about overtime payment; Charge No. 3, Specification No. 2 -The MPD is correct. [the Grievant] did provide evasive and untruthful answers.[35]

The Arbitrator held that the evidence supported the charges of misconduct, but that termination was not the appropriate penalty. The Arbitrator ordered the Grievant reinstated with no back pay. Moreover, the Arbitrator provided, should the Grievant decide to return to MPD, "her seniority and whatever pension benefits she is entitled to from the date of her termination to her return to work should be restored. Her salary should be that which she would have received as of the date of this Award had she not been terminated."[36] The Arbitrator ordered the revocation of termination to be reflected in the Grievant's personnel file. Finally, the Arbitrator ordered the cost of the case split, finding no prevailing party.[37]

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) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means. [38] MPD contends that the Arbitrator exceeded her jurisdiction and that the Award is contrary to law and public policy.

A. The Arbitrator did not exceed her jurisdiction.

MPD asserts that the Arbitrator exceeded her jurisdiction and authority by issuing a remedy requiring action by a third party.[39] MPD argues that exclusive jurisdiction over its employees' retirement benefits rests with the District of Columbia Retirement Board (DCRB). MPD argues that DCRB is solely responsible for awarding and paying retirement benefits.[40] Therefore, MPD contends that requiring the Grievant's pension benefits to be awarded in a specific manner should be set aside or remanded to the Arbitrator for clarification.[41]

FOP argues that the remedy provided in the Award does not direct the DCRB to provide specific pension benefits. FOP contends that the Arbitrator properly exercised her equitable powers and restored the Grievant's benefits to the point they would have been had she not been terminated.[42] FOP argues that the Arbitrator properly exercised her authority in reducing the

[35] Award at 33.
[36] Award at 33.
[37] Award at 33.
[38] D.C. Official Code § 1-605.02(6).
[39] Pet'r Memo at 6.
[40] Pet'r Memo at 6.
[41] Pet'r Memo at 9.
[42] Opp'n at 16.

termination and reinstating the Grievant.[43] FOP asserts that the Award is clear and should not be remanded for clarification.[44]

The Arbitrator did not exceed her 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."[45] 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.[46] The Board has held that an arbitrator does not exceed their authority by exercising their equitable powers, unless these powers are expressly restricted by the parties' collective bargaining agreements.[47]

In this case, the remedy draws its essence from the parties collective bargaining agreement.[48] The Arbitrator provides a "make whole" remedy, putting the Grievant back in the position that she would have been in if she had not been terminated, less back pay. The disputed language in the remedy carries no requirement for any specific actions by DCRB, but rather requires that MPD provide "whatever pension benefits [the Grievant] is entitled to from the date of her termination."[49] Further, this remedy is not 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.[50] The Board finds that the remedy in the Award was within the Arbitrator's jurisdiction to order. Further, the Board finds that the remedy is clear, and does not require the Board to remand the Award to the Arbitrator for clarification.

B. The Award is not contrary to law and public policy.

MPD argues that the Award is contrary to law and public policy because the District has made those who have falsified documents ineligible to serve as police officers.[51] MPD asserts that the instant matter is analogous to a case from the Massachusetts Supreme Judicial Court, in which the court vacated an arbitration award that reinstated an officer who made a false police

[43] Opp'n at 18.
[44] Opp'n at 18.
[45] *AFGE Local 2725 v. DCHA.*, 61 D.C. Reg. 9062, Slip Op. No. 1480 at 5, PERB Case No. 14-A-01 (2014).
[46] *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).
[47] *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).
[48] Article 19(E), Section 5(5) (stating "Arbitration awards shall not be made retroactive beyond the date of the occurrence of the event upon which the grievance or appeal is based.").
[49] Award at 33.
[50] *MPD v. FOP/MPD Labor Comm. ex rel. Sims*, Slip Op. No. 633 at 3, PERB Case No. 00-A-04 (2000).
[51] Pet'r Memo at 5.

report, on the grounds that the arbitration award was contrary to law and public policy.[52] Further, MPD argues that 6-B DCMR § 873.11(m) makes any person "who knowingly made any false statement or falsified any document concerning any matter" ineligible to serve as a police officer.[53] MPD contends that the Arbitrator reinstated the Grievant after the Arbitrator found that the Grievant falsified a document. MPD argues any remedy to reinstate the Grievant is void as contrary to public policy.[54]

FOP counters MPD's arguments and asserts that MPD presents a mere disagreement with the Award, which is not a valid basis for challenging or overturning the Award.[55] FOP argues 6-B DCMR §873.11 pertains to the "Processing of Entry-Level Candidates for Police Officer Positions."[56] FOP argues that the regulation does not apply to tenured officers being reinstated into the position.[57]

The Award is not contrary to law and public policy. The law and public policy exception is "extremely narrow."[58] The narrow scope limits potentially intrusive judicial reviews under the guise of public policy.[59] MPD has the burden to demonstrate that the Award itself violates established law or compels an explicit violation of "well defined public policy grounded in law and or legal precedent."[60] The violation must be so significant that law and public policy mandate a different result.[61] The Board may not modify or set aside the Award as contrary to law and public policy in the absence of a clear violation on the face of the Award.[62]

Here, MPD fails to identify any specific law and public policy that has been violated. The cited Massachusetts court decision is not binding on the Board. Further, the regulations in 6-B DCMR §873.11 do not prevent the reinstatement of police officers by arbitrators. The regulation applies to processing entry-level police officer candidates before their qualification for a probationary position.[63] MPD disagrees with the Arbitrator's conclusion concerning the appropriate penalty to be imposed. The Board has held that a disagreement with an arbitrator's

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[52] Pet'r Memo at 4 (citing *City of Bos. C. Bos. Police Patrolmen's Ass'n*, 824 N.W.2d 855, 862 (2005)).
[53] 6-B DCMR § 873.11(m).
[54] Pet'r Memo at 5.
[55] Opp'n at 7.
[56] Opp'n at 10.
[57] Opp'n at 10.
[58] *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)).
[59] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No.1702 at 4, PERB Case No. 18-A-17 (2019).
[60] *Id.*
[61] *Id*.
[62] *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).
[63] 6-B DCMR §873.4.

choice of remedy does not render the Award contrary to law and public policy.[64] Therefore, the Board finds that the Award is not contrary to law and public policy.

IV. Conclusion

The Board rejects MPD's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, MPD'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.

February 20, 2020

Washington, D.C.

[64] *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-02, Op. No. 1737 was sent by File and ServeXpress to the following parties on this the 26th day of February 2020.

Connor Finch
Office of the Attorney General
Personnel and Labor Relations Section
441 4th Street NW, Suite 1180 North
Washington, D.C. 20001

Marc L. Wilhite
Pressler Senftle & Wilhite, P.C.
1432 K Street, Twelfth Floor
Washington, D.C. 20005

/s/ Royale Simms
Public Employee Relations Board

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department	
Petitioner	PERB Case No. 20-A-03
v.	Opinion No. 1738
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On November 25, 2019, the District of Columbia Metropolitan Police Department (MPD) filed this Arbitration Review Request (Request) pursuant to the Comprehensive Merit Personnel Act (CMPA), D.C. Official Code § 1-605.02(6), seeking review of an arbitration award (Award) ,dated October 31, 2019.[1] The Award sustained, in part, the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (Union) on behalf of an employee (Grievant) who had been removed from service. The Arbitrator ordered that the Grievant's termination be reduced to a ninety-day suspension without pay and that the Grievant be reinstated and made whole. The issue before the Board is whether the Award is contrary to law and public policy.[2]

[1] On November 25, 2019, MPD filed Petitioner's Arbitration Review Request contemporaneously with a Motion for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award. On December 4, 2019, FOP filed an opposition to MPD's request for additional time. After reviewing MPD's arbitration review request, in a letter dated December 10, 2019, the Executive Director determined that the filing was deficient, pursuant to PERB Rule 501.13, and requested that MPD submit an amended arbitration review request. MPD timely filed an amended arbitration review request on December 18, 2019. FOP timely filed an amended opposition to MPD's arbitration review request on January 2, 2020.

[2] In its deficient arbitration review request, MPD requested review on the basis that the arbitrator exceeded their jurisdiction and that award was contrary to law and public policy. In the Amended Arbitration Review Request, MPD only addresses the argument that the award is contrary to law and public policy, thus waiving the argument that the arbitrator exceeded their jurisdiction.

Upon consideration of the Arbitrator's conclusions, applicable law, and record presented by the parties, the Board concludes that the Award is not contrary to law and public policy. Therefore, the Board denies MPD's Request.

II. Arbitration Award

A. Background

At the time of the Grievant's removal, the Grievant had been employed by MPD as a police officer for approximately twenty-one (21) years.[3] On November 28, 2011, the Grievant informed MPD of several boxes of evidence that were stored by the Grievant's spouse in the Grievant's garage.[4] At the time of the Grievant's removal, Grievant's spouse was employed by MPD as a police officer. In an initial interview on November 29, 2011, the Grievant admitted to being aware of the evidence prior to November 28, 2011. In a second interview on January 24, 2012, the Grievant initially denied being aware of the evidence prior to November 28, 2011, then clarified the answer.[5]

MPD issued a Notice of Proposed Adverse Action (Notice) on March 8, 2012.[6] The Notice contained two charges: (1) "Failure to obey orders or directives issued by the Chief of Police" and (2) "Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her duties . . . . "[7] The Notice proposed termination.[8]

On March 8, 2012, the Grievant requested an Adverse Action Hearing.[9] On March 21, 2012, the Grievant filed a motion requesting that an Adverse Action Panel (Panel) member be removed from the Panel because of the Panel member's previously-held position involving MPD discipline.[10] The Motion was denied.[11] The charges were heard before a Panel on March 23, 2012.[12] The Panel determined that the Grievant was guilty of both charges.[13] The Panel recommended termination.[14] On July 10, 2012, Grievant received the Final Notice of Adverse Action.[15]

[3] Award at 9.
[4] Award at 10.
[5] Award at 10; Pet'r Am. Req. at 3.
[6] Award at 10.
[7] Award at 11.
[8] Award at 11.
[9] Award at 11.
[10] Award at 11.
[11] Award at 11.
[12] Award at 11.
[13] Award at 11.
[14] Award at 11.
[15] Award at 11.

The Grievant appealed the Panel's decision to the Chief of Police, who denied the appeal.[16] The Grievant's employment was terminated.[17] Thereafter, the parties proceeded to arbitration.[18]

B. Arbitrator's Findings

At arbitration, the Arbitrator considered the following issues:

(1) Whether [MPD's] actions violated due process?

(2) Whether the evidence presented by [MPD] was sufficient to support the alleged charges?

(3) Whether termination is the appropriate penalty?[19]

Before the Arbitrator, the Union contended that MPD violated Grievant's due process rights when (1) evidence was forwarded to the Panel and Grievant's counsel the day before the hearing and (2) the MPD retained a member of the Panel over Grievant's objection.[20] The Arbitrator found that the evidence presented the day before the hearing was improper, but did not prejudice Grievant's case.[21] The Arbitrator found nothing in the record to support the Union's contention that the Panel member was not neutral or acted in an inappropriate manner at trial.[22] Therefore, the Arbitrator found that MPD's actions at trial did not result in harmful error.[23]

The Arbitrator found that the evidence submitted by MPD was sufficient to support both charges.[24] First, the Arbitrator found that Grievant's initial interview "may reasonably be understood to include an admission from Grievant that [Grievant] had noticed some evidence being improperly stored in [Grievant's] garage prior to [Grievant's] November 2011 report."[25] Further, the Arbitrator determined that Grievant's second interview response as to whether Grievant was aware of the improper storage of evidence in Grievant's garage "may reasonably lead to the conclusion that Grievant made false statements."[26]

In addressing the Grievant's termination, the Arbitrator concluded that the Panel's recommendation of termination for both charges was not a reasonable penalty based on the

[16] Award at 11-12.
[17] Award at 12.
[18] Award at 12. By agreement of the parties, the arbitration was based solely on the administrative record and briefs submitted by the parties.
[19] Award at 5.
[20] Award at 21.
[21] Award at 21.
[22] Award at 22.
[23] Award at 22.
[24] Award at 23.
[25] Award at 23.
[26] Award at 23.

Panel's application of the 12-factor test in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981) (*Douglas* Factors).[27] The Arbitrator found the record reasonably supported only four of the eight aggravating factors advanced by MPD.[28] With respect to mitigating *Douglas* factors, the Arbitrator determined they were: the Grievant's past work record, including the Grievant's twenty-one years of service and prior performance; the mitigating circumstances surrounding the events, particularly the fact that the Grievant discovered the improperly stored evidence and reported the Grievant's spouse for misconduct; and the adequacy and effectiveness of alternative sanctions to deter such conduct in the future, given the unusual circumstances present in the current matter.[29] The Arbitrator's review of the *Douglas* factors found that the factors were equally divided among aggravating, neutral, and mitigating factors.[30]

Based on his conclusions regarding the Panel's application of the *Douglas* factors, the Arbitrator determined that termination was not the appropriate penalty.[31] The Arbitrator found that the Grievant engaged in "serious misconduct" by not initially reporting the evidence and making an untruthful statement as to when the Grievant first saw the evidence in the Grievant's garage.[32] Therefore, the Arbitrator determined that the appropriate remedy was a ninety (90)-day suspension without pay.[33] The Arbitrator directed MPD to reinstate the Grievant to her former position and to make her whole, less the period of suspension.[34]

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 public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[35] MPD requests review on the grounds that the award is contrary to law and public policy.

[27] Award at 23-28.
[28] Award at 28.
[29] Award at 28.
[30] Award at 29.
[31] Award at 29.
[32] Award at 29.
[33] Award at 29.
[34] Award at 30. The Arbitrator ordered MPD to make Grievant whole, "less the period of suspension, with an amount equal to all or any part of the pay, allowances, or differentials, including reimbursement of payments made by Grievant to retain health insurance benefits, as applicable, which Grievant normally would have earned or received during the period of removal less the amount forfeited as a result of the suspension and any amount earned by Grievant through other employment during that period."
[35] D.C. Official Code § 1-605.02(6).

A. The Award is not contrary to law and public policy.

MPD argues that the Award is contrary to law and public policy because the Arbitrator determined that termination was not the appropriate remedy notwithstanding the Arbitrator's finding that Grievant was guilty of knowingly making a false statement.[36] MPD asserts that the instant matter is analogous to a case from the Massachusetts Supreme Judicial Court, in which the court vacated an arbitration award that reinstated an officer who made a false police report, on the grounds that the arbitration award was contrary to law and public policy.[37] MPD asserts, similarly, that the District of Columbia Municipal Regulations make "any person who knowingly makes any false statement or falsified any document concerning any matter" ineligible to serve as a police officer.[38] Accordingly, MPD contends that the Award is contrary to law and public policy because the Arbitrator reduced Grievant's termination to a suspension despite the Arbitrator's finding that Grievant "committed serious misconduct" for not initially reporting Grievant's spouse's misconduct and for making untruthful statements.[39] MPD requests that the Award be overturned and that the Grievant's termination be affirmed.[40]

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.[41] "[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.'"[42] A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well-defined, public policy grounded in law or legal precedent.[43] Furthermore, MPD has the burden to specify "applicable law and public policy that mandates that the Arbitrator arrive at a different result."[44] The D.C. 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."[45]

Here, MPD fails to identify any specific law and public policy that has been violated. MPD relies on 6-B DCMR § 873.11(m), which states that an entry-level candidate for a police officer position is ineligible to become a police officer if the candidate has "knowingly made a false statement or falsified any document concerning any matter."[46] The Award does not compel

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[36] Pet'r Am. Req. at 6.
[37] Pet'r Am. Req. at 7 (citing *City of Bos. C. Bos. Police Patrolmen's Ass'n*, 824 N.W.2d 855, 862 (2005)).
[38] Pet'r Am. Req. at 8; 6-B DCMR § 873.11(m).
[39] Pet'r Am. Req. at 8.
[40] Pet'r Am. Req. at 2.
[41] *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)).
[42] *MPD v. FOP/MPD Labor Comm.*, 66 D.C. Reg. 6056, Slip Op. No.1702 at 4, PERB Case No. 18-A-17 (2019).
[43] *Id*.
[44] *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).
[45] *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)
[46] 6-B DCMR § 873.11(m).

the violation of the cited regulation as that regulation is only applicable to entry-level candidates. Further, the cited Massachusetts court decision is not binding on the Board. Therefore, MPD has failed to point to any clear law or public policy that the Award contravenes.

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.[47] MPD disagrees with the arbitrator's conclusion concerning the appropriate penalty to be imposed. This is not a sufficient basis for concluding that the Award is contrary to law and public policy. For the aforementioned reasons, MPD's Request is denied.

IV. Conclusion

The Board rejects MPD's arguments and finds no cause to modify, set aside, or remand the Award. Accordingly, MPD'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 the unanimous vote of Board Chairperson Douglas Warshoff, Board members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler

February 20, 2020

Washington, D.C.

[47] *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-03, Op. No. 1738 was sent by File and ServeXpress to the following parties on this the 26th day of February 2020.

Andrea G. Comentale, Esq.
Office of the Attorney General
441 4th Street, NW, Suite 1180 North
Washington, DC 20001

Daniel J. McCartin, Esq.
Conti Fenn LLC
36 South Charles Street, Suite 2501
Baltimore, MD 21201

/s/ Royale Simms
Public Employee Relations Board

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE OF VIRTUAL COMMUNITY HEARING

FORMAL CASE NO. 1156, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA:

and

FORMAL CASE NO. 1165, IN THE MATTER OF THE PETITION FOR IMPLEMENTATION OF RELIEF FOR THE 202 AREA CODE,

1. Through this Public Notice, the Public Service Commission of the District of Columbia ("Commission") schedules a virtual community hearing to discuss both the Application of Potomac Electric Power Company's ("Pepco") Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia ("Pepco Application")[1] in *Formal Case No. 1156* and the Petition of the North American Numbering Plan Administrator ("NANPA") on Behalf of the District of Columbia Telecommunications Industry ("NANPA Petition") for relief for the 202 numbering plan area ("NPA" or "area code") in *Formal Case No. 1165*.[2] The virtual community hearing for *Formal Case Nos. 1156* and *1165* is scheduled for September 1, 2020 at 2:00 p.m.

2. On May 30, 2019, Pepco filed its Application requesting authority to increase rates and charges for electric service through the implementation of a Multiyear Rate Plan for its electric distribution service in the District of Columbia for the years 2020 through 2022. Pursuant to D.C. Code § 34-1504 (d) the Commission can adopt an alternative form of regulation if the Commission finds that the alternative form of regulation: (A) protects consumers; (B) ensures the quality, availability, and reliability of regulated electric services; and (C) is in the interest of the public, including shareholders of the electric company.[3] By Order No. 20273,[4] as amended by Order Nos.

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[1] *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia,* filed May 30, 2019.

[2] *Formal Case No. 1165, In the Matter of the Petition for Implementation of Relief for the 202 Area Code*, Petition of the North American Numbering Plan Administrator on Behalf of the District of Columbia Telecommunications Industry, filed June 16, 2020 ("NANPA Petition").

[3] D.C. Code § 34-1504 (d) (2001).

[4] *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia ("Formal Case No. 156")*, Order No. 20273, rel. December 20, 2019.

20293,[5] 20349,[6] and 20375,[7] the Commission set forth the procedural schedule in this matter. The rate case hearings will be conducted virtually on September 10, 11, and 14-16, 2020.

3. In the Petition, NANPA, on behalf of the District of Columbia telecommunications industry, requests the Commission to approve a new area code with an all-services overlay throughout the entire District of Columbia as relief for number exhaust in the 202 NPA. Absent this relief, NANPA represents that the supply of telephone numbers in the 202 area code is projected to run out during the Third Quarter of 2022. In order to ensure that the District of Columbia has enough telephone numbers for customers, NANPA requests that the Commission approve the Petition no later than the Fourth Quarter of 2020 and approve a 13-month implementation schedule for the new area code. NANPA asserts that by adhering to this schedule, the new NPA will be implemented six months prior to the exhaust of the 202 area code as required by industry guidelines.[8] NANPA asserts that a new area code with an all-services overlay is the only form of relief that will meet industry guidelines in the District of Columbia.[9]

4. NANPA explains that the proposed all-services overlay for the 202 area code would superimpose a new area code over the entire geographic area of the 202 area code. NANPA represents that all existing customers with a 202 area code would retain the 202 area code and would not have to change telephone numbers. All calls within the 202 area code and between the new area code and the 202 area code would be dialed using (ten) 10 digits.[10] NANPA proposes a 13-month implementation schedule for implementation of the new area code, divided into (three) 3 stages. The first stage includes (six) 6 months of network preparation. The second stage is (six) 6 months of a customer education period in which customers would be permitted to use both (seven) 7-digit and (ten) 10-digit dialing within the 202 area code ("permissive dialing period"). The third stage is for one month after the end of the permissive dialing period when (ten) 10-digit dialing becomes mandatory in the 202 area code before numbers can be assigned in the new area code.[11] The Commission is requested to approve the Petition and the implementation schedule in order to facilitate the transition to having a second area code in the District of Columbia.[12]

5. Those who wish to testify at either or both portions of the virtual community hearing should contact the Commission Secretary by the close of business, five (5) business days

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5 *Formal Case No. 1156,* Order No. 20293, rel. February 5, 2020.

6 *Formal Case No. 1156,* Order No. 20349, rel. May 20, 2020.

7 *Formal Case No. 1156,* Order No. 20375, rel. July 8, 2020.

8 NANPA Petition at 1.

9 NANPA Petition at 2.

10 NANPA Petition at 3.

11 NANPA Petition at 4.

12 State public service commissions have the authority to review and approve NPA relief plans. *See*, 47 C.F.R. § 52.19 (2020).

prior to the date of the hearing by sending an email to PSC-CommissionSecretary@dc.gov. Representatives of organizations shall be permitted a maximum of five (5) minutes for oral presentations. Individuals shall be permitted a maximum of three (3) minutes for oral presentations. If an organization or an individual is unable to offer comments at the virtual community hearing, written statements may be submitted by email to PSC-CommissionSecretary@dc.gov, or through the Commission's eDocket system at https://edocket.dcpsc.org/public/public_comments until September 4, 2020, referencing either the *Formal Case No. 1156* Docket or the *Formal Case No. 1165* Docket. Additional instructions will be provided before the hearing to persons who have provided notice of their intent to participate.

6. Any person who is deaf or hard-of-hearing, who cannot readily understand or communicate in spoken English, or persons with disabilities who need special accommodations in order to participate in the hearing, must contact the Commission Secretary by the close of business, seven (7) days prior to the date of the community hearing. Persons who wish to testify in Spanish, Chinese, Amharic, French, Vietnamese, or Korean must also contact the Commission Secretary by close of business five (5) business days before the date of the hearing. **The number to call to request special accommodations and interpretation services is (202) 626-5150.**

7. Copies of the Pepco Application may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket System" tab, click on "Search Current Dockets" and input "FC 1156" as the case number and "1" as the item number. Copies of any comments filed on the Application may be obtained by opening the "eDocket System" tab, clicking on "Search Current Dockets" and inputting "FC 1156" as the case number.

8. Copies of the NANPA Petition may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket System" tab, click on "Search Current Dockets" and input "FC 1165" as the case number and "1" as the item number. Copies of any comments filed on the Petition may be obtained by opening the "eDocket System" tab, clicking on "Search Current Dockets" and inputting "FC 1165" as the case number.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF INQUIRY

FORMAL CASE NO. 1163, IN THE MATTER OF THE INVESTIGATION INTO THE REGULATORY FRAMEWORK OF MICROGRIDS IN THE DISTRICT OF COLUMBIA,

1. As part of our DC PowerPath proceeding, the Microgrid Working Group ("MWG") was initially tasked to review microgrids as directed in Order No. 19432,[1] to look into microgrid development in the District of Columbia ("District"), benefits and costs of microgrids, and provide recommendations addressing among other things, microgrid ownership, operation, standards, and regulations.[2] Some of the recommendations offered by the MWG were:

- Single, behind-the-meter microgrids that serve one customer or building's load that can island on-demand and is on contiguous property should be exempt from full Commission regulation;
- Microgrids serving multiple customers are unregulated monopolies and should be subject to Commission regulations addressing customer protection and consumer rights and responsibilities that apply to electricity suppliers;
- For all multi-customer microgrids, a private contract with microgrid-specific disclosure provisions is sufficient for retail choice and should be subject to compliance review regarding such provisions by the Commission; if review determines that those provisions are sufficient for customer choice, then there should be "safe harbor" from advanced review from the Commission;
- If a microgrid operator imports electricity, it should be subject to similar renewable portfolio standards applicable to electricity suppliers in Title 15 of the DCMR;
- If the microgrid has existing or new utility distribution assets, then the microgrid operator should be subject to electricity quality of service standards parallel to the standards applicable to electric companies as outlined in Title 15 of the DCMR;
- If the microgrid has low-voltage distribution assets below 13.8 kV, it should be held to existing Department of Consumer and Regulatory Affairs ("DCRA") construction codes; if not, it must be required to file a Notice of Construction and Certificate of Public Convenience and Necessity for consideration by the Commission;

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[1] *Formal Case No. 1130*, *In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability ("Formal Case No. 1130")*, Order No. 19432, ¶ 6, rel. August 9, 2018 ("Order No. 19432).

[2] *Formal Case No. 1130*, Final Report v1.0 of the DCPSC MEDSIS Stakeholder Working Groups at pp. 167-203, filed May 31, 2019 ("Final WG Report").

- All microgrids should be held to existing safety and performance standards;
- The Commission should establish a microgrid tariff for microgrid services that do not fall under the existing net energy metering rules;
- Distributed assets that are owned by the utility should be subject to cost recovery through the utility's rate base; assets built for the purposes of adding a resiliency benefit should also be recovered through rate base; and,
- Interconnection rules should be amended to address islanding capabilities.

2. Upon review of the specified questions, the MWG recognized that given the large variances of microgrid types, the current statutory framework of the Commission presents challenging issues.[3] The Commission Staff Proposed Order recognized the Commission's authority to regulate microgrids if it determines that they are acting within the definition of a "public utility."[4] By Order No. 20286,[5] the Commission opened *Formal Case No. 1163* to further investigate microgrid ownership and operation structures, business models and value propositions, benefits and costs of microgrids, and the different microgrid variances, which lead to appropriate microgrid classifications and regulatory treatments.

3. By this Notice of Inquiry ("NOI"), the Public Service Commission of the District of Columbia ("Commission") solicits public comments regarding the Commission's role in the regulatory framework of microgrids in the District.[6] The goal of seeking stakeholder input to further develop this framework is to provide a higher level of regulatory certainty and transparency into the decision-making process. To aid in the formulation of responsive comments, the Commission provides the following:

Potential Regulatory Framework

4. *Clean Energy DC*[7] states that an electricity distribution system with a high number of local renewable energy systems will require a modernized electricity system. *Clean Energy DC* also recommends that the District explore changes to the current Standard Offer Service ("SOS") that would increase the purchase of renewable energy and explore where neighborhood-scale

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[3] Final WG Report at 178.

[4] *Formal Case No. 1130*, Order No. 19984, rel. August 2, 2019.

[5] *Formal Case No. 1130*, Order No. 20286, rel. January 24, 2020.

[6] *Formal Case No. 1163*, *In the Matter of the Investigation into the Regulatory Framework of Microgrids in the District of Columbia*.

[7] Department of Energy & Environment, *Clean Energy DC: The District of Columbia Climate and Energy Action Plan*, rel. August 2018, *available at* https://doee.dc.gov/sites/default/files/dc/sites/ddoe/page_content/attachments/Clean%20Energy%20DC%20-%20Full%20Report_0.pdf ("Clean Energy DC").

energy systems such as microgrids and thermal energy districts could be expanded or installed.[8] With that backdrop, the Commission understands that various regulatory frameworks could be employed to assist the Commission's goal of enabling microgrids to operate in the District, like the one adopted by the New York Public Service Commission ("NY PSC"); a seven-factor test, like the one used in Maine; or a two-pronged approach, like the one proposed in Maryland.

5. For the most part, the regulatory framework for microgrid operations is prescribed with discretion through state utility commission decisions. For example, in an Order approving the transfer of ownership in Eastman Business Park ("Eastman Park") in Rochester,[9] the NY PSC laid out the standards it would consider when agreeing to lightly regulate a microgrid. Since Eastman Park would: (i) allow customers to leave the bounds of the microgrid for competitive alternative locations (which would necessarily affect prices for electricity and gas); (ii) enable customers to avail themselves of the full range of competitive alternatives to service, including self-supply options or the seeking out of alternative providers; and (iii) be managed by experienced gas, electric, steam, and water facility operators, be sufficiently capitalized, and continue the existing arrangements for maintaining water facilities—this was enough for the NY PSC to lightly regulate Eastman Park. Additionally, the Maine Public Utilities Commission developed a seven-factor test to determine whether the Kimball Lake Shores microgrid is devoted to serving the public in general (as a public utility) or particular individuals (as a microgrid). The seven factors are: (1) the size of the enterprise; (2) whether the enterprise is operated for profit; (3) whether the system is owned by the user(s); (4) whether the terms of service are under the control of its user(s); (5) the manner in which the services are offered to prospective user(s); (6) limitation of service to organization members or other readily identifiable individuals; and (7) whether membership in the group (e.g., whether taking service) is mandatory.[10]

6. Similarly, the Public Service Commission of Maryland ("MPSC") proposes to use the seven-factor test in conjunction with a two-pronged approach to determine whether the MPSC should approve light-touch regulation for a microgrid. MPSC's proposed two-pronged approach focuses on whether a microgrid utilizes new, non-utility distribution assets or is operated by third parties utilizing existing electric distribution company assets.[11] This two-pronged approach is strikingly similar to some of the MWG's recommendations. If any of the approaches here or in the preceding paragraphs, or any other approach, should be used by the Commission, then we seek input on how to implement these approaches when considering how to regulate microgrids.

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8 Clean Energy DC at p. 159.

9 *Case No. 13-M-0028*, *Red-Rochester LLC and Eastman Kodak Company*, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental Regulation, Approval of Financing and Authorization, to the Extent Necessary, for Submetering, pp. 31-33, issued May 30, 2013.

10 *Kimball Lake Shores Association*, M.221, Issuance of Show Cause Order (Me. P.U.C. Jan. 31, 1980).

11 Abigail Ross Harper, Maryland Resiliency through Microgrids Task Force Report 45-55 (2014), https://energy.maryland.gov/Documents/MarylandResiliencyThroughMicrogridsTaskForceReport_000.pdf (last visited Jul 7, 2020).

7. The above frameworks are merely examples of how the Commission can structure an analytical framework that appropriately addresses the various considerations we must make when considering how we should regulate microgrids. They are in no way meant to limit stakeholders' comments as the Commission will consider any proposals that help us comply with the District's public climate commitments.

Commission Authority/Action to Date

8. The Commission has recently defined the term "microgrid" as a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that act as a single controllable entity with respect to the grid.[12] A microgrid can connect and disconnect from the grid to enable it to operate in both a grid-connected or island mode.[13] Due to the vast differences in how microgrids are used, the question of whether we have jurisdiction to regulate a particular microgrid as a public utility necessarily turns on the individual circumstances of each case.

9. The Commission notes at the outset that "the Public Service Commission is an administrative body possessing only such powers as are granted by statute, and it may make only such orders as the Public Utilities Act authorizes."[14] The D.C. Code states that the Commission has the authority to regulate all "public utilities" in many specific instances.[15] It is clear that the Commission has the authority to regulate microgrids if we determine they are acting within the definition of a public utility. A "public utility," according to D.C. Code § 34-214, is any "gas plant, gas company, electric company, telephone corporation, … and pipeline company." An "electric company," according to D.C. Code § 34-207, includes:

> [E]very corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. **The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants.** The term also excludes a person

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12 15 DCMR § 4099.

13 15 DCMR § 4099.

14 *Washington Gas Light Co. v. Pub. Serv. Comm'n of D.C.*, 982 A.2d 691, 718 (D.C. 2009). *See also*, *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 378 A.2d 1085, 1089 (D.C. 1977) ("The Commission is a creature of statute and has only those powers given to it by statute.").

15 *See, e.g.,* D.C. Code § 34-401 (2001) (investigation of accidents); § 34-402 (2001) (enforcement of all laws relating to public utilities); § 34-502 (2001) (issuance of securities); and § 34-901 (regulation of public utility rates).

> or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.[16]

A "customer," as defined by D.C. Code § 34-1501(12), is a "purchaser of electricity for end use in the District of Columbia."

Conclusion

10. For microgrids that may fall under our regulatory authority, the threshold question is whether and to what extent we should employ a different paradigm such as "lightened regulation" or "light touch or light-handed" oversight to facilitate deployment. These terms are used interchangeably to refer to exempting a microgrid from traditional Commission regulations such as keeping accounts, records and books, from making annual reports, and from filing rate schedules and tariffs.[17]

11. Therefore, to better understand the benefits, or potential impacts, that microgrids bring to the customers they serve or the distribution system as a whole and the appropriate regulatory framework for microgrids, we invite interested persons to comment on the following questions:

(1) What regulations or policies should the Commission consider for microgrids? Should a light touch regulatory framework be considered? What components would be included in such framework?
(2) What specific standards should microgrids follow to ensure safe design and operation?
(3) Should microgrids be subject to the existing Consumer Bill of Rights ("CBOR") rules? If not, how can the Commission ensure that customer protections and safeguards will be maintained, including the right to choose an electricity supplier?
(4) If the microgrid is connected to Pepco's distribution system, how would the Commission's existing interconnection rules apply?
(5) For the customers who are served by a microgrid, should the retail Standard Offer Service rates apply to those customers who are not selecting the third-party competitive suppliers? Under what conditions should the microgrid customers be subject to non-tariffed rates through special agreements?

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[16] D.C. Code § 34-207 (2001) (emphasis added).

[17] *See generally Case No. 14-M-0101*, Order Adopting Regulatory Policy Framework and Implementation Plan, pp. 109-110, issued Feb. 26, 2015.

12. All persons interested in commenting on the questions set forth in this NOI are invited to submit written comments by August 31, 2020, and replies no later than September 15, 2020. Comments may be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 and submitted electronically on the Commission's website at https://edocket.dcpsc.org/public/public_comments. Persons with questions concerning this Notice should call the Commission Secretary's Office at 202-626-5150.

ROOTS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

3RD-5TH Grade Teacher

Roots Public Charter School is seeking a multi-grade level classroom teacher for approximately 20 students between 3rd and 5th grade. Applicants must be proficient in the implementation of blended classrooms (i.e. distance/virtual learning) and a variety of online resources. Experience with teaching in African Centered School and/or teaching an African-centered pedagogy is highly preferred but required. Applicants must have a degree in Elementary Education and/or proof that you have passed the Praxis II for Elementary Education. Resumes will be received until July 31, 2020 at 5 p.m. Applicants may submit resume & cover letter to Principal, RPCS, 15 Kennedy St. NW, Wash., DC 20011. (202) 270-3266 or email to bthompson@rootspcs.org.

ROOTS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

Special Education Teacher

Roots Public Charter School is seeking a Special Education Teacher/Coordinator with knowledge of IDEA and the expertise required to design and implement student IEPs and record data for OSSE and the DC Charter Board in the HUB or SEDS, etc. In addition, applicants will be expected to communicate/collaborate with the faculty and parents regarding student progress and academic goals; prepare and implement student-centered lesson plans which are informed by data and the student's IEP; participate in IEP meetings; and confer with SPED consultants. Applicants must have a Master's degree in Special Education, experience working with multiple disabilities, and possess the ability to evaluate students accurately and objectively. Resumes will be received until July 31, 2020 at 5 p.m. Submit resume & cover letter to Principal, RPCS, 15 Kennedy St. NW, Wash., DC 20011. (202) 270-3266 or email to bthompson@rootspcs.org

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 1, 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 March 27, 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.

Bonilla	Edwin D.	Citibank 3241 14 Street, NW	20010
Bowen	Jo Ann	Difede Ramsdell Bender, PLLC 900 7th Street, NW, 810	20001
Bradford	Carl	Self 1846 Valley Terrace, SE	20032
Carnahan	Terri L.	Buckley LLP 2001 M Street, NW, Suite 500	20036
Carter	Jennifer L	Self (Dual) 4041 Benning Road, NE	20019
Chaffin	Stacey L.	Baker Donelson Bearman Caldwell & Berkowitz 920 Massachusetts Avenue, NW, 900	20001
Cheatham	Carla R.	Hollingsworth, LLP 1350 I Street, NW	20005
Cherisca	Anoucheka C.	Baker Botts, LLP 700 K Street, NW, 9th Floor	20001
Ford	Carol Owens	Greater Mt Calvary Holy Church 610 Rhode Island Avenue, NE	20002
Garrison	Cheron Hunt	Service Employees International Union (SEIU) 1800 Massachusetts Avenue, NW	20036
Gold	Judi	Self (Dual) 1901 Ingleside Terrace, NW, 201	20010
Goldman	Judith R.	Greenstein DeLorme & Luchs, P.C. 1620 L Street, NW, Suite 900	20036
Greely	Pamela L.	Buckley LLP 2001 M Street, NW, Suite 500	20036
Harris	Yvonne Wyatt	Office of Contracting and Procurement 441 4th Street, NW	20001

Hector	Golda A.	Raymond James & Associates 1717 Pennsylvania Avenue, NW, Suite 1050	20006
Manning	Lisa	Schertler & Onorato, LLP 901 New York Avenue, NW, Suite 500	20001
Martin	TinaLouise	U.S. Commission on Civil Rights 1331 Pennsylvania Avenue, NW, 1150	20425
McLean	Ann Trisha	Willkie Farr & Gallagher LLP 1875 K Street, NW, Suite #100	20006
Minick	Kyra	Wells Fargo Bank 3200 Pennsylvania Avenue, SE	20001
Ponder	Patricia A	National Endowment for Democracy 1025 F Street, NW, 800	20004
Pope	Nicole Marie	Mathematica, Inc. 1100 First Street, NE	20002
Reynolds	Angelica	National Association of Consumer Advocates 1215 17th Street, NW, 5th Floor	20036
Rufino	Amy Dawn	Self 1312 Dexter Terrace, SE	20020
Tate	Bernadette E.	Cafritz Interests LLC 1660 L Street, NW, 600	20036
Waiters	Sheila Y.	District of Columbia Office of Zoning 441 4th Street, NW	20001
Washington	Jean O.	Department Of Housing & Community Development 1800 Martin Luther King Jr. Avenue, SE	20020
Williams	Hermione Reina	Polsinelli,PC 1401 Eye Street, NW, 8th Floor	20005

Zurawski	Paulina Maria	Brookfield Properties 301 Water Street, SE, Suite 201	20003

OFFICE OF VICTIM SERVICES

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2021 Sexual Assault Victims Rights' Amendment Act Of 2019 Implementation

Announcement Notice for the Funding Alert

Office of Victim Services and Justice Grants
Executive Office of the Mayor
Government of the District of Columbia
http://opgs.dc.gov and DC Register

Notice of Funding Availability

Victim Services FY 2021 Sexual Assault Victims' Rights Amendment Act of 2019 (SAVRAA) Implementation
The Office of Victim Services and Justice Grants announces the availability of grant funds under the Fiscal Year 2021 local funds to implement crisis intervention services for victims of sexual violence pursuant to the Sexual Assault Victims Rights' Amendment Act of 2019 (SAVRAA).

The Request for Applications (RFA) will be available electronically beginning **Monday, August 3, 2020** at http://ovsjg.dc.gov and https://zoomgrants.com/gprop.asp?donorid=2121&limited=1902. The deadline for applications is **11:59 p.m. on Friday, September 4, 2020**. For more information, contact *Cheryl Bozarth, Deputy Director of Victim Services*, Office of Victim Services and Justice Grants at *202-374-6109 or Cheryl.Bozarth@dc.gov.*

OFFICE OF VICTIM SERVICES

NOTICE OF FUNDING AVAILABILITY

Announcement Notice for the Funding Alert

Office of Victim Services and Justice Grants
Executive Office of the Mayor
Government of the District of Columbia
http://opgs.dc.gov and DC Register

Notice of Funding Availability

Fiscal Year 2021 (FY21) Trauma Response Community Engagement Program Funding

The Office of Victim Services and Justice Grants (OVSJG) announces availability of FY 2021 grant funds for development of two Place-Based Trauma Response Community Engagement Program (TRCEP) centers. The purpose of this RFA is to implement TRCEP centers at two sites located in Wards 7 and 8.

Request for Application (RFA) **Release Date: Monday, August 3, 2020**

Period of Award: Fiscal Year 2021 (October 1, 2020 – September 30, 2021)

Available Funding: OVSJG will award one or more grants. Eligible Applicants: Any public or private, community-based non-profit agency, organization or institution located in the District of Columbia is eligible to apply. For profit organizations are eligible but may not include profit in their grant application. For-profit organizations may also participate as subcontractors to eligible agencies.

Application Submission Deadline: Monday September 4, 2020. The Request for Applications (RFA) will be available electronically beginning Monday, August 3, 2020 at http://ovsjg.dc.govand https://zoomgrants.com/gprop.asp?donorid=2121&limited=2998.

All applications are to be submitted via ZoomGrants™. For additional information regarding this grant competition, please email ovsjg@dc.gov with the subject line reference “FY 2021 TRCEP Program Funding”.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20172(1) of Sunvest LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, including a waiver from the rear addition requirement of Subtitle U § 320.2(e), to construct a third-story addition and a two-story rear addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house in the RF-1 Zone at premises 4315 New Hampshire Avenue, N.W. (Square 3244, Lot 34).

HEARING DATE: February 5, 2020
DECISION DATE: February 5, 2020

CORRECTED[1] SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 4C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 11, 2019, at which a quorum was present, the ANC voted 6-2-0 to oppose the application. (Exhibit 33.) However, after the Applicant agreed to certain revisions and conditions raised by the ANC, the ANC met again on January 8, 2020, and voted 10-0-0 to rescind the resolution of opposition and voted 9-0-1 to support the application. (Exhibit 40, 41.) The ANC's support was conditioned on the Applicant's agreement to construct the addition with certain dimensions; provide contact information for the adjacent neighbor; pay for and fix damages to neighbors' property; refrain from blocking the public alley or constructing during certain hours; to limit sound of construction to certain days/hours; to locate dumpsters at the rear; provide notice related to planned electrical, water shut-offs, or road accessibility or parking; and

[1] This order has been revised to reflect that the relief requested and approved in this application included a request for waiver from the rear addition requirement of Subtitle U § 320.2(e). No other changes have been made to the order.

to close and lock all entrances and windows. Further conditions addressed environmental, safety, and financial contributions to affordable housing.

The Board did not adopt the proposed conditions, finding that the conditions were either unenforceable as written or outside the Board's jurisdiction. The Board notes that the Applicant has nonetheless agreed to abide by these conditions. At the hearing, the ANC Representative testified that the ANC remained in support even if the Board did not adopt the conditions as part of the Order.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 26.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 27.)

Persons in Opposition. Two letters were submitted in opposition to the application from residents of 4321 New Hampshire Avenue, N.W. (Exhibits 35, 36.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle U § 320.2, , including a waiver from the rear addition requirement of Subtitle U § 320.2(e), to construct a third-story addition and a two-story rear addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[2] AT EXHIBIT 39A –**

[2] In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

REVISED ARCHITECTURAL PLANS AND ELEVATIONS, EXHIBIT 43A – SHADOW STUDY, AND EXHIBIT 46 – UPDATED SIDE ELEVATION PLAN.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; no other Board members participating).

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

FINAL DATE OF ORDER: February 11, 2020

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

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

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

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

HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20245 of Christopher Astilla, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and from the rear addition requirements of Subtitle E § 205.4, to construct a two story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 216 14th Place, N.E. (Square 1055, Lot 31).

HEARING DATE: July 8, 2020[1]
DECISION DATE: July 15, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 12, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 34.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 28.)
Persons in Support. The Board received four letters in support from neighbors and a letter in support from Capitol Hill Restoration Society. (Exhibits 8, 9, 26, 27, and 38.)

[1] This application was originally scheduled for public hearing on April 8, 2020 but was rescheduled for a virtual public hearing on July 8, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and from the rear addition requirements of Subtitle E § 205.4, to construct a two story rear addition to an existing attached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 7.**

VOTE: **3-0-2** (Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Frederick L. Hill not participating; one Board seat vacant.)

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

FINAL DATE OF ORDER: July 17, 2020

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y

[2] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

§ 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20247 of Reneau Randolph LLC,[1] pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the conversion of an existing attached principal dwelling unit into a three-unit apartment house in the RF-1 Zone at premises 1317 Randolph Street, N.W. (Square 2824, Lot 6).

HEARING DATE: July 8, 2020[2]
DECISION DATE: July 15, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 4C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 10, 2020, at which a quorum was present, the ANC voted to support the application subject to conditions dealing with the development and construction, parking, environmental impacts, and affordable housing. (Exhibit 35.) The Board did not adopt the conditions as part of this order, as the provisions were either outside the Board's jurisdiction, unrelated to the specific relief requested, or already included in the Applicant's proposal. The Board notes, however, that the Applicant has agreed to abide by the ANC's conditions.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 29.)

[1] The applicant was originally listed as Andrew McGuire and Barbara Rutland, the owners at the time of filing, but was subsequently updated based on a change of ownership.

[2] This application was originally scheduled for public hearing on April 8, 2020 but was rescheduled for a virtual public hearing on July 8, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 30.)

Persons in Support. The Board received letters in support from two abutting neighbors. (Exhibits 14 and 31.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exception under the RF-use requirements of Subtitle U § 320.2, to permit the conversion of an existing attached principal dwelling unit into a three-unit apartment house in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[3] at **EXHIBIT 6.**

VOTE: **3-0-2** (Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Frederick L. Hill not participating; one Board seat vacant.)

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

FINAL DATE OF ORDER: July 17, 2020

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

[3] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20248 of Hilary Hansen, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing semi-detached principal dwelling unit in the RF-1 Zone at premises 1006 10th Street, N.E. (Square 931, Lot 25).

HEARING DATE: July 8, 2020[1]
DECISION DATE: July 15, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 12, 2020 at which a quorum was present, the ANC voted to support the application. (Exhibit 38.)

OP Report. The Office of Planning submitted a report, dated March 26, 2020, recommending approval of the application. (Exhibit 30.)

DDOT Report. The District Department of Transportation submitted a report, dated March 10, 2020, indicating that it had no objection to the application. (Exhibit 28.)

[1]This application was originally scheduled for public hearing on April 8, 2020 but was rescheduled for a virtual public hearing on July 8, 2020, based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Persons in Support. The Board received three letters from neighbors in support of the application. (Exhibits 11, 12, and 26.) The Board also received a letter in support of the application from the Capitol Hill Restoration Society. (Exhibit 32.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing semi-detached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 6.**

VOTE: **3-0-2** (Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Frederick L. Hill not participating; one Board seat vacant.)

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

FINAL DATE OF ORDER: July 17, 2020

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

[2]Self-Certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20250 of William and Karen Quarles, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the rear addition requirements of Subtitle E § 205.4, from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing attached flat in the RF-1 Zone at premises 216 9th Street N.E. (Square 917, Lot 113).

HEARING DATE: July 8, 2020[1]
DECISION DATE: July 15, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 12, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 40.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 29.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 30.)

Persons in Support. The Board received letters in support from four adjacent neighbors. (Exhibits 11, 27, 41, 42.)

[1] This application was originally scheduled for public hearing on April 22, 2020 but was rescheduled for a virtual public hearing on July 8, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Persons in Opposition. The Board received a letter in opposition from the Capitol Hill Restoration Society. (Exhibit 32.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201, from the rear addition requirements of Subtitle E § 205.4, from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing attached flat in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 6.**

VOTE: **3-0-2** (Carlton E. Hart, Peter G. May, and Lorna L. John to APPROVE; Frederick L. Hill not participating, one Board seat vacant.)

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

FINAL DATE OF ORDER: July 20, 2020

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

[2] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC MEETING NOTICE
WEDNESDAY, AUGUST 5, 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 decide items on the agenda out of turn.

TIME: 9:30 A.M.

I. DECISION

Application No. 20256 of 3905 Kansas LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the RF-use requirements of Subtitle U § 320.2, and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to permit the conversion of an existing semi-detached principal dwelling into a three-unit apartment house in the RF-1 Zone at premises 3905 Kansas Avenue, N.W. (Square 2906, Lot 830). (ANC 4C)

II. CONSENT CALENDAR

A. Request for Modification of Consequence

Application No. 20014-A Addisleigh Park Washington Properties, LLC, pursuant to 11 DCMR Subtitle Y § 703, for a **modification of consequence** to the conditions of BZA Order No. 20014, to allow a redesign and a change in uses in the approved building at premises in the MU-4 Zone at premises 1803 Rhode Island Avenue, N.E. (Square 4209, Lot 5). R-16 Zone at premises 5331 Colorado Avenue, N.W. (Square 2718, Lot 804). (ANC 5C)

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12E
Z.C. Case No. 14-12E
Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street, LLC
(Second-Stage PUD @ Square 3591 [1329 5th Street, N.E.])
January 13, 2020

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 25, 2019, to consider an application (the "Application") from Clarion Gables Multifamily Trust, L.P. and EAJ 1309 5th Street, LLC (collectively, the "Applicant") for review and approval of a second-stage planned unit development ("PUD") pursuant to the first-stage PUD (the "First-Stage PUD") approved by the Commission in Z.C. Order No. 14-12 (the "First-Stage Order") for Lots 809, 810, 7020, 7022, 7024-7030, 7032, and 7035 in Square 3591, with an address of 1329 5th Street, N.E. (the "North Parcel").[1]

The Commission considered 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

I. BACKGROUND

NOTICE

1. On June 6, 2019, the Office of Zoning ("OZ") sent notice of the public hearing to: (Exhibit ["Ex."] 19.)
   - The Advisory Neighborhood Commission ("ANC") 5D (the "affected" ANC pursuant to Subtitle Z § 101.8);
   - The affected ANC Single Member District 5D01;
   - The Office of Planning ("OP");
   - The District Department of Transportation ("DDOT");
   - The Department of Consumer and Regulatory Affairs ("DCRA");
   - The Office of the Attorney General;
   - The District Department of Energy and Environment ("DOEE");
   - The DC Housing Authority – Relocation Committee;
   - The DC Council's At-Large Councilmembers;
   - Councilmember McDuffie; and
   - Property owners owning property within 200 feet of the Overall PUD Site (as hereinafter defined).

[1] These lots are the portions of Record Lot 5 in Square 3591 north of and including the urban plaza space located at the south of the building approved by this Order. The North Parcel also has an address of 1325 5th Street, N.E.

2. OZ also published notice of the November 25, 2019 public hearing in the *D.C. Register* on October 11, 2019, as well as through the calendar on OZ's website. (66 DCR 13369; Ex. 17.)

3. The Applicant posted notice of the Property pursuant to the Zoning Regulations. (Ex. 22.)

PARTIES

4. The parties to the case were the Applicant and ANC 5D. The Commission received no requests for party status.

THE FIRST-STAGE PUD

5. In the First-Stage Order, the Commission approved:
   - The First-Stage PUD for the North Parcel;
   - A consolidated PUD for Lots 802, 808, 7004-7005, 7011-7013, 7034, and 7036-7038 in Square 3591 (the "South Parcel," and collectively with the North Parcel, the "Overall PUD Site"); and
   - A related map amendment for the Overall PUD Site, which is Record Lot 5 in Square 3591, to the C-3-C Zone District (the current MU-9 zone).

6. The First-Stage PUD established the height and massing, program of uses, and vehicular access considerations for the mixed-use building (the "North Building") to be constructed on the North Parcel, its below-grade parking garage, and related exterior improvements, within the following parameters:
   - A maximum height of 120 feet;
   - A total floor area of up to approximately 325,000 square feet of gross floor area ("GFA");
   - A floor area ratio ("FAR") of 3.78 (6.3 for the Overall PUD Site); and
   - A lot occupancy of approximately 77% (84% for the Overall PUD Site).

7. In Z.C. Order No. 14-12A, the Commission approved a two-year time extension for the filing of building permits for the South Parcel Consolidated PUD and Map Amendment until May 9, 2019. (Ex. 2G.)

8. In Z.C. Case No. 14-12B, the Applicant requested a second-stage PUD approval for the North Parcel and a modification of the South Parcel Consolidated PUD. However, the application was subsequently withdrawn by the Applicant. (Ex. 2G.)

9. In Z.C. Order No. 14-12C, the Commission approved a modification of consequence for the South Parcel to allow interim conditions. (Ex. 2G.)

10. In Z.C. Order No. 14-12D, the Commission approved a one-year time extension to file for building permits for the South Parcel Consolidated PUD and Map Amendment until May 9, 2020. (Ex. 2G.)

II. THE APPLICATION

THE SECOND-STAGE PUD

11. The Application requested second-stage PUD approval to construct the following (the "Project"):
    - A new 11-story mixed-use building (the "North Building"), with approximately 317,950 gross square feet and a FAR of 3.71, containing street-activating ground-floor retail/commercial and "PDR/Maker" uses (defined below), a ground-floor residential lobby and residential amenity uses, and upper-story multifamily residential uses;
    - A new urban plaza (the "Plaza") that separates the North Building from the South Parcel and its proposed buildings (the Plaza was sometimes referred to as the "Urban Plaza" in the First-Stage Order); and
    - Three-and-a-half levels of below-grade parking with approximately 310 parking spaces (plus or minus 10%) to serve the North Building, the South Parcel, and surrounding properties. (Ex. 2.)

12. The North Building's approximately 287,530 square feet of residential uses includes a mix of studio, one-bedroom, two-bedroom, and two-bedroom-plus-den units for a total of approximately 300 units. The Project has dedicated amenity space for resident events as well as numerous private outdoor balconies and terraces. The penthouse of the North Building also contains approximately 15,568 square feet of amenity space for residents. (Ex. 2.)

13. At the ground-floor level, the North Building contains approximately 23,053 square feet of retail/commercial space (including PDR/Maker space, defined below), plus a residential lobby, residential amenity areas, and back-of-house functions. The retail/commercial area includes a space potentially accessible from the Plaza and 5th and 6th Streets, N.E. and will be able to be further divided as necessary to accommodate particular tenants. The ground-floor layout can accommodate numerous pedestrian entrances in order to activate the Plaza and the surrounding streets. (Ex. 2.)

14. At least five percent of the approximately 23,053 square feet of non-residential uses on the ground floor of the Project shall be dedicated to "PDR/Maker" uses, which include:
    - Production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user);
    - Food incubators and food hubs;
    - Robotics and 3-D manufacturing;
    - Small-scale production, distribution or repair of goods and related accessory sales;
    - Curation and sale of small-scale production goods;
    - New and locally-owned small businesses as certified with the Department of Small & Local Business Development;
    - "Creative economy" uses including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green businesses and sustainable design,

specialty sports and recreation uses, and media/communications production and distribution; and

- "Arts" uses including the arts, design, and creation uses as defined in Subtitle B § 200.2(e) and the entertainment, assembly, and performing arts as defined in Subtitle B § 200.2(m).

(Ex. 2 at 7.)

15. The Application asserted that the Project's architectural design, materials, and detailing are a contemporary interpretation of Union Market's mercantile heritage and serve to relate the Project to the surrounding development, as well as to activate the surrounding public realm. (Ex. 2.)

16. The Application asserted that the hardscaped public Plaza will separate the North and South Parcels. The Plaza is intended to be an active, pedestrian-friendly space that is both a public amenity and community-gathering place for area residents and workers in the Union Market District and ANC 5D, as well as a destination for visitors from Ward 5, the District, and the broader metro region. (Ex. 2.)

17. The Application provided a conceptual rendering of the Project's retail/commercial and building signage, which is intended to be contextual in scale and character while still in keeping with modern design. (Ex. 2)

18. The Project features a variety of landscaping improvements at street level, at the second-story terrace level, and on the various rooftop areas of the building, including on the streetfront canopies. The 5th and 6th Street, N.E. frontages adjacent to the Project feature wide sidewalks with outdoor seating/café spaces, planting areas, street trees, and unique, large canopies, with green plantings atop. Vegetation is also included at the rooftop level as a green amenity for building occupants and for the environmental and stormwater benefits. The Project's lighting plan ensures pedestrian comfort and safety and also serves as an organizing and distinctive design element. The design of the public spaces adjacent to the North Parcel is in accordance with Union Market Streetscape Guidelines, which the Applicant has worked to finalize with DDOT and OP. (Ex. 2.)

19. The Project contains three-and-a-half levels of below-grade parking to serve the residential and retail/commercial uses. The residential spaces will be access-controlled, but the retail/commercial spaces will be available to the public generally. The Project is anticipated to include up to approximately 310 parking spaces (plus or minus 10%), which significantly reduces and narrows the 300-475 parking spaces range approved by the First-Stage PUD. As established in the First-Stage PUD, the Project's garage includes parking spaces for the uses on the South Parcel and potentially elsewhere in the Union Market District. (Ex. 2.)

20. In addition, the first below-grade level of the garage includes a secure bicycle storage room with capacity for approximately 111-119 long-term bicycle spaces. The bicycle storage room also has access via the parking ramp from 6th Street, N.E., the retail jump elevator from 5th Street, N.E., and the pair of residential elevators from 5th Street, N.E. An additional approximately 17-27 short-term bicycle parking spaces are provided in public areas around

the North Parcel. In accordance with the First-Stage PUD, the Project's garage includes long-term bicycle parking for the future retail/commercial uses in the South Building. (Ex. 2.)

21. The Project contains a total of two 30-foot loading berths with adjacent platforms and one smaller retail/commercial trash compactor space. The two fully-enclosed loading spaces serving both the retail/commercial and residential uses are located on the ground level on the north side of the North Building via a shared entry area with the parking garage entrance. As discussed below, the Application requested flexibility from the loading requirements. (Ex. 2.)

22. The Project is designed to LEED Silver v4 (the functional equivalent of LEED Gold 2009 in effect at the time the First-Stage PUD became effective). As discussed further below, the Project's level of sustainability exceeds that required under the First-Stage PUD. Specific sustainable design features include, among other things, provision of photovoltaic solar panels on the penthouse roof. (Ex. 2, 20D.)

CHANGES FROM FIRST-STAGE

23. The Application asserted that the Project is consistent with the First-Stage PUD and does not request modifications of either:
    - The building envelope parameters established by the First-Stage PUD and the plans approved thereby, specifically:

North Building	First-Stage PUD	Proposed Second-Stage PUD
Lot Occupancy	77% (84% overall)	77% (84% overall)
GFA – Total	325,000 square feet ("sf")	317,950 sf
Retail/Non-Residential	35,000 sf	23,053 sf
Residential	290,000 sf of office or residential (no residential penthouse)	287,530 sf (including 15,568 sf residential penthouse) with approximately 300 units
Service/BOH/Loading	Included in retail and residential sf above	7,367 sf
FAR	3.78 (North Parcel)	3.71 (North Parcel)
Height	120 feet	120 feet
Parking (Below Grade)	300-475 spaces	310 spaces (+/- 10%)

    - Or, the conditions of the First-Stage Order applicable to the North Parcel. (Ex. 2, 20D, 35A.)

24. The Application proposed the following changes, which are all within the parameters of the First-Stage PUD:
    - Changes to approved uses and plans, including committing to residential instead of potential office space and reduced GFA, as well as new residential amenity space in the penthouse;
    - Changes to zoning flexibility; and
    - Additional public benefits.

Changes to Approved Uses and Plans

25. The Application requested to withdraw the flexibility approved by the First-Stage PUD to provide either office or residential uses above the lower-floor retail, because the Application committed to providing only residential uses in the upper stories of the North Building.

26. The Application proposed to reduce, by approximately 7,050 square feet, the 325,000 square feet of GFA approved in the First-Stage PUD to a total of approximately 317,950 square feet. This reduced GFA is the result of the Applicant providing appropriately scaled floor plates, articulation, and an over-sized court on the north side of the Project, all of which together create interesting exterior architecture and improve access to light and air. (Ex. 2.)

27. This 317,950 residential square feet included approximately 15,568 square feet of shared building amenity space in the North Building's penthouse that was not permitted at the time the Commission approved the First-Stage PUD.

28. The Application reduced the amount and range of parking from the 300-475 approved by the First-Stage PUD to 310, plus or minus 10% and has committed to deliver this parking earlier than anticipated by the First-Stage PUD (i.e., with the North Building that had been anticipated to be built after the South Building).

Changes to Approved Development Flexibility – Relief from Zoning Requirements

29. The Application requested to withdraw the relief granted for a non-compliant closed court on the north side of the Project because the Application proposed to make that court compliant. (Ex. 2.)

30. The Application requested the Commission to approve relief from the loading requirements of the 1958 Zoning Regulations, under which the Commission reviewed and approved the First-Stage PUD, to provide:
    - Two 30-foot loading berths,
    - Two 100 square foot loading platforms; and
    - A trash compactor space.

    Absent relief, the 1958 Zoning Regulations would require:
    - A 55-foot loading berth,
    - A 200 square foot loading platform, and
    - A 20-foot delivery space.

    The Application noted that this loading relief would not be required by the current Zoning Regulations and asserted that the First-Stage Order contemplated this relief because:
    - The First-Stage PUD application for the North Parcel had stated that flexibility from the loading requirements likely would be requested as part of the second-stage PUD application for the North Parcel;
    - The plans approved by the First-Stage Order that stated that loading was "TBD in North Building Phase [*sic* - Stage] 2 Application"; (Ex. 35A1, p. 10, reproducing Sheet Z1 of Ex. 2A6 of First-Stage Order.)

- The First Stage Order specified that "[l]oading for the North Building will be approved as part of its Phase [*sic* - Stage] 2 approval"; and (First-Stage Order, Condition No. A.5.);
- The Consolidated PUD approved by the First-Stage Order granted loading flexibility for the South Building and noted that "the Applicant will likely include a request for additional loading relief for its North Building as part of its Phase [*sic* - Stage] 2 PUD application." (First-Stage Order Finding of Fact ["FF"] 37(a), Note 2.)

31. The Application proposed to retain the relief approved by the First-Stage PUD from providing penthouse screening walls of equal height in order to provide penthouse walls ranging from one foot to 20 feet in height. (Ex. 2.)

Additional Public Benefits

32. The Application did not propose to reduce or change any of the public benefits approved by the First-Stage PUD, and initially offered to add the following new public benefits: (Ex. 2.)
    - Enhanced Housing and Affordable Housing:
        - Provide 8% of residential GFA for affordable housing; and
        - Provide deeper affordability level for 20% of this affordable housing, which shall be reserved for households earning up to 50% of the median family income ("MFI"), with 80% reserved for households earning up to 80% MFI; and
    - Enhanced Sustainable Design:
        - Increase the LEED commitment to LEED Silver v4 (the equivalent of LEED Gold 2009) from the LEED Silver 2009 required by the First-Stage PUD; and
        - Investigate possibility of roof solar panels; and
    - Maker Space:
        - Build out 50% of the 23,053 square feet of ground-floor non-residential space to specifications for PDR/Maker uses and devote five percent of this 23,053 square feet to such uses for five years.

APPLICANT'S JUSTIFICATION

The Project Is Not Inconsistent with the Comp

33. The Application asserted that the Project is consistent with the First-Stage PUD and therefore is not inconsistent with the Comprehensive Plan or other adopted and applicable public policies. (Ex. 2.)

Consistency with the First-Stage PUD

34. The Application before the Commission and factored into the Commission's analysis that resulted in the First-Stage PUD. Nonetheless, the Applicant significantly increased the public benefits approved asserts that the Project's requested zoning and design flexibility is minor and was generally by the First-Stage PUD.

The Project Has No Unacceptable Impacts Not Reviewed by the First-Stage PUD

35. The Applicant prepared a detailed analysis of the potential impacts of the Project, including a Comprehensive Transportation Review ("CTR") and an Analysis of Potential Impact of the Development on Displacement, Rents, Property Values, and Gentrification. (Ex. 2, 18A, 27.)

36. The Project is expected to have favorable impacts in terms of land use and urban design. The Project will provide a mix of residential and retail uses, along with extensive improvements to the public realm in the form of the Plaza which will serve the overall planning objectives of the Union Market area and the First-Stage PUD.

37. The Application asserted that the Project would not result in potential adverse impacts in terms of displacement of current residents due to its location on a "underdeveloped predominantly vacant warehouse site." The Project was also expected to help mitigate increasing prices and rents in the area by providing housing in a range of prices. The Project was also expected to have an overall positive impact on housing by providing 300 units, including IZ, close to mass transit and supporting commercial uses. (Ex. 27.)

38. The Project is not anticipated to have any adverse impacts with respect to transportation. The Application notes that the North Parcel is well served by transit and vehicular infrastructure. Further, the Applicant's CTR concluded that the vehicular trips generated by the residential use will be significantly less than the maximum trips generated under the First-Stage PUD for the office use. As noted in the CTR, the Project is expected to decrease its morning peak hour trip generation by 115 vehicular trips versus the office uses approved by the First-Stage PUD, and its evening peak hour trip generation by 120 vehicular trips. (Ex. 18A at 6-7.) Nevertheless, the Applicant has committed to mitigate any such impacts through a comprehensive set of parking, loading, and transportation demand management ("TDM") conditions as well as providing addition transportation demand management public benefits. (Ex. 2, 18A.)

Applicant's Submissions

39. The Application as detailed above was the result of a total of six submissions to the record. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing: (Ex. 1-2J11.)
    - A prehearing submission dated September 19, 2019, responding to OP's requests from setdown (the "First Prehearing Submission"); (Ex.14-14E.)
    - A second prehearing submission dated November 5, 2019, further responding to OP and DDOT (the "Second Prehearing Submission"); (Ex. 20-20D5.)
    - A third prehearing submission dated November 22, 2019, providing additional responses to OP and DDOT (the "Third Prehearing Submission"); (Ex. 25.)
    - A post-hearing submission responding to specific requests made by the Commission at the public hearing (the "Post-Hearing Submission"); and (Ex. 32.)
    - A draft order and complete set of final plans. (Ex. 33, 35A.)

Responses to OP

40. The First Prehearing Submission mainly responded to the requests in the OP Setdown Report, including:
    - Increasing affordable housing from 8% to 9% of residential GFA
    - Increasing the affordability of the affordable housing by reserving with 30% (instead of the initial proffer of 20%) at no more than 50% AMI and 70% at no more than 80% MFI;

- Increasing the size of affordable units - reserving 10 units with two or more bedrooms, including four of five units with two-bedrooms-plus-a-den layout;
- Providing fewer, but larger units to provide more family-sized units of two-bedrooms-plus-a den, even though the Project's configuration rendered it impossible to provide "true" three-bedroom units;
- Providing additional information regarding the location, number, and unit type for the IZ units;
- Providing between 1,300 and 2,300 square feet of solar panels;
- Providing seven electric vehicle charging stations in the garage;
- Identifying the location of the 50% of non-residential ground floor GFA to be built for PDR/Maker uses;
- Providing additional details of the plans for the Plaza;
- Committing to redesign the Project such that retail entrances can be located on 5th and 6th Streets, N.E.;
- Retaining the residential lobby in its originally proposed location;
- Redesigning the canopies and loggia as shown in the Approved Plans (as hereinafter defined);
- Revising the lighting treatments and other design details as shown in the Approved Plans; and
- Provide a knock-out panel in garage's first level on north side to allow an internal connection to a future garage on the JBGS-Gallaudet Property.

41. The Applicant provided a further response to the OP Setdown Repot in the Second Prehearing Submission in which it responded to comments raised by DC Water, DOEE, Department of Parks and Recreation ("DPR"), Department of Housing and Community Development ("DHCD"), and DDOT at the October 24, 2019, interagency meeting hosted by OP, many of which were addressed by the First Prehearing Submission, as well as agreeing to OP's request to consider installing solar panels over green roofs over a portion of the penthouse above the green roof. (Ex. 20 at 3-10.)

42. The Applicant provided a further response to OP in its Third Prehearing Submission in which it:
- Explained its refusal to lower the 80% AMI threshold to 60% AMI;
- Explained its refusal to extend the five-year period for which five percent of the non-residential ground floor GFA would be reserved for PDR/Maker uses;
- Updated the plans to specify the 50% of the non-residential ground-floor GFA to be built for PDR/Maker uses;
- Provided a copy of its First Source Employment Agreement with the Department of Employment Services; and
- Noted that it had indicated in its first-stage application that it would likely seek loading flexibility as part of the second stage. (Ex. 25 at 9.)

Responses to DDOT

43. The Applicant provided its responses to the DDOT Report in its Third Hearing Submission in which it committed to:

- DDOT's additional standard TDM measures, except for DDOT's proposed three year bike share membership for each tenant, which it proposed to address instead by providing a $14,000 for car share or bikeshare memberships for tenants of the North Building in addition to a similar fund for tenants of the South Building established by the First-Stage Building;
- Provide an electronic transportation information screen;
- Work to obtain a letter from the neighboring property owner confirming potential internal connection through knockout panel in garage to a future garage on the neighboring property;
- Continue to work with DDOT during the building permit and construction phases of the Project; and
- Further coordinate with DDOT regarding the Project's projections.

Public Hearing of November 25, 2019

44. At the November 25, 2019, public hearing the Applicant presented two witnesses on behalf of the Applicant, and three experts: Mr. Frank Andre as an expert in architecture, Mr. Robert Schiesel as an expert in transportation analysis and engineering, and Mr. Matt Renaud as an expert in landscape architecture. The Commission had previously accepted Messrs. Andre and Schiesel as experts in their respective fields and newly elected to accept Mr. Renauld as an expert. (November 25, 2019, Public Hearing Transcript ["Nov. 25 Tr."] at 6-7.) Thereafter, the Applicant's representatives and the experts presented testimony about the Project. (Ex. 26A; Nov. 25 Tr. at 9-31.)

Post Hearing Submissions

45. Following the public hearing, the Applicant filed a statement responding to the questions and concerns of the Commission, OP, and DDOT by: (Nov. 25 Tr. at 31-71, 76-77.)
    - Improving the LEED level of the Project to LEED Gold v 4 (from the initial proffer of LEED Silver v4);
    - Increasing the solar panel commitment to 2,000 square feet of solar panels (from the initial offer of 1,300 square feet of panels);
    - Enhancing the Project's car share or bicycle share membership commitment to $40,000 for the North Building (from the initial proffer of $14,000) in addition to the $14,000 required for the South Building by the First-Stage Order;
    - Providing electrical outlets in the long-term bicycle storage room to accommodate future e-bicycle usage;
    - Providing precedent examples of existing buildings using the same light brick materials proposed for the Project;
    - Providing more information and alternative designs for the north façade of the Project;
    - Providing more information about the controls and use of the Plaza;
    - Providing a code compliant alternative design for the "surround" on the west façade of the Project;
    - Revising and providing more information regarding the lighting program for the Project;
    - Revising the design of the trellis on the Project's rooftop;
    - Providing more detail in the Project's signage plans; (Ex. 32F.)

- Providing the letter of acknowledgement from the owner of the JBGS-Gallaudet Property regarding the knock-out panels in the Project's garage as requested by DDOT's public hearing testimony; and (Ex. 32, 32L.)
- Modifying the requested design flexibility to reflect the Commission's request.

III. RESPONSES TO THE APPLICATION

OP REPORTS

46. OP submitted two reports to the record in addition to testimony at the public meeting for setdown and at the public hearing:
    - A July 19, 2019, setdown report recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application (the "OP Setdown Report"); and (Ex. 12.)
    - A November 15, 2019, hearing report that requested additional information but did not make a final recommendation regarding approval (the "OP Hearing Report"). (Ex. 21.)

The OP Setdown Report

47. The OP Setdown Report noted the Commission had completed the Comprehensive Plan ("CP") analysis in the First-Stage PUD and did not require revisiting as part of the Commission's review of the Application.

48. The OP Setdown Report recommended that the Application be set down for a public hearing but with the suggested following changes to the Application:
    - Increasing the amount of affordable housing in the proposal;
    - Providing three-bedroom units;
    - Providing permanent retail entrances on 5th and 6th Streets, N.E.;
    - Providing solar panels on the roof and locating solar panels on the green roof;
    - Identifying on the plans the 11,527 square feet (50%) proposed for PDR/Maker Space on the ground floor and dedicating that entire space to PDR/Maker use for the life of the Project;
    - Exploring moving the lobby to the southeast corner of the property along 6th Street, N.E. and the Plaza to free up additional retail space along 5th Street, N.E.;
    - Exploring redesigning the canopies and the loggia on 5th Street, N.E. to make such canopies a more visible and prominent feature of the façade and impose minimum dimensional standards; and
    - Reviewing lighting treatments for the underside of the canopies, and the addition of repeating horizontal support beams to punctuate a procession along the building frontage similar to the precedent image shown on the Applicant's package.

49. The OP Setdown Report requested the following information:
    - Affordable housing, including floor plans showing the location, number, and types of IZ units and depth of affordability;
    - The IZ requirement for the North Building;

- The streetscape plans and the use of public space in compliance with the Union Market Streetscape Guidelines; the anticipated tenants of the ground floor and how the tenants would meet the goals of the Ward 5 Industrial Land Transformation Study;
- How the street space can be enhanced with artwork, parklets, café seating adjacent to the street edge;
- The sidewalk transition along the curbless 5th Street, N.E.;
- The Plaza including identifying specific hardscape materials to be used, images of outdoor furniture, including benches, and any landscaping that would be incorporated into the space;
- The types of materials to be used;
- Window details illustrating window mullions and depth from the façade;
- The use of bolder color and pattern on the building, particularly in the black metal cladded portion;
- Sign plan, including sign types, illumination, and building locations;
- The rooftop, including proposed structures; and
- The number and location of electric vehicle charging stations.

50. The Applicant responded to all of these requests in its subsequent filings. (Ex. 14, 20, 25, 26A, 32.)

The OP Hearing Report

51. The OP Hearing Report did not make a final written recommendation on the Application as a whole but:
    - Reiterated OP's conclusion that the Application was generally consistent with the First-Stage PUD which the Commission had concluded that was not inconsistent with the CP; and
    - Recommended approval of the requested penthouse amenity space.

52. The OP Hearing Report noted that the Application was providing several public benefits in the area of affordable housing, environmental features, open space improvements, the inclusion of the maker-space, transportation benefits, and the provision of a First Source Employment Agreement, but nonetheless encouraged the further specific enhancement of the public benefits:
    - Ensuring the rental IZ units (other than those proffered at 50% MFI) comply with the 60% MFI requirement for IZ rental units;
    - Extending the commitment for the PDR/Maker use from five years to 20 years; and
    - Recommending that the Commission impose as a condition of approval that the industrial specifications be included on the plans for the Second-Stage PUD approval.

53. The OP Hearing Report also requested the following information:
    - Clarification regarding the required level of affordability (MFI) for affordable housing in the North Building, as Z.C. Order 14-12 did not specifically address the affordable housing requirement for the North Building and the Zoning Regulations have since been amended to require 60% MFI for rental buildings;

- Clarification regarding the loading flexibility that has been requested for the North Building, since it did not appear that relief was requested for the North Building as part of the First-Stage PUD; and
- An update on the status of the First Source Employment Agreement. (Ex. 12, 21.)

Public Hearing Testimony

54. At the public hearing, OP testified in support of the Project but encouraged the Applicant to:
    - Include more affordable housing and at deeper levels of affordability in the Project; and
    - Commit to reserve the space dedicated to PDR/Maker uses for a period longer than five years. (Nov. 25 Tr. at 71-73.)

55. OP noted that the Applicant had already responded to a number of OP's comments and had submitted additional materials to the record which appeared to further address OP's outstanding questions but which OP could review further at the Commission's discretion. (Nov. 25 Tr. at 73.)

DDOT REPORT AND TESTIMONY

56. DDOT filed a November 20, 2019, report (the "DDOT Report") that stated DDOT had no objections to the Application based on the following findings: (Ex. 25.)
    - There was no need to perform an additional traffic capacity analysis as part of the Project because the transportation analysis in the First-Stage PUD was performed on the basis of office use on the North Parcel, and office use generates more vehicle trips than the residential use proposed as part of the Application;
    - The vehicle parking supply is within the range of the First-Stage PUD;
    - The Project's access is consistent with DDOT standards;
    - The Applicant's loading management plan ("LMP") sufficiently mitigates the request for loading relief;
    - The bicycle parking satisfies the Zoning Regulations;
    - The Project's TDM plan is a strong basis for achieving the proposed transportation mode split identified in the CTR, but additional financial incentive for bikeshare membership was likely appropriate;
    - The Project's public space improvements are consistent with the Union Market Streetscape Guidelines; and
    - The Applicant proposes to design into the Project the ability to construct knock-out panels along the north edge of the Project's garage in order to facilitate access to the JBGS-Gallaudet Property to the extent necessary. (Ex. 23.)

57. The DDOT Report's recommendation was conditioned on the inclusion of additional TDM measures and follow-up items including:
    - Standard TDM measures such as provision of information and further coordination with DDOT;
    - Provision of an electronic transportation information screen;
    - Enhanced bicycle sharing memberships;

- A commitment to designing the Project to accommodate the aforementioned knock-out panel in the garage to the extent necessary;
- An acknowledgement letter from the owner of the JBGS-Gallaudet Property, which lot would be the beneficiary of such knock-out panels;
- Installation of electric vehicle charging stations;
- Continued coordination with DDOT on sequencing and construction-period matters; and
- Coordination with DDOT on the Project's projections into public space.

58. The Applicant responded to the items in DDOT's report in the Second and Third Prehearing Submissions. (Ex. 20, 25.)

Public Hearing Testimony

59. At the public hearing, DDOT stated that the Applicant's written filings and presentation responded to all of DDOT's concerns and requests for information, but requested an acknowledgement from the owner of the JBGS-Gallaudet Property regarding the Applicant's efforts to provide vehicular access to the JBGS-Gallaudet Property via knock-out panels in the Project's garage. (Nov. 25 Tr. at 73.)

ANC 5D Report

60. ANC 5D filed two letters in this proceeding:
- A June 21, 2019, letter stating its support for the Application with no issues or concerns; and (Ex. 11.)
- A December 10, 2019, letter stating that the ANC had reviewed and appreciated the Applicant's revised proffers and voted to support the Application with no issues or concerns. (Ex. 32A)

Other Agencies/Persons/Groups

61. No persons or organizations other than the Applicant, OP, and ANC 5D filed written comments in the record or testified at the public hearing. (Nov. 25 Tr. at 79.)

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to Subtitle X, Chapter 3 for a Second-Stage PUD. The Commission is authorized under the Zoning Act to approve a Second-Stage PUD consistent with the requirements set forth in Subtitle X §§ 302, 304 and 309.

2. Subtitle X § 300.1 establishes that:
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.

3. Subtitle X §§ 304.3 and 304.4 specify that:

"*In deciding a PUD application, the Zoning Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case*" based on the Commission finding that the application:

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;

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."

FIRST-STAGE PUD APPROVAL

4. Subtitle X § 302.2(a) establishes that for a two-stage PUD:
"*The first-stage application involves general review of the site's suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project*…" (emphases added).

5. For a modification of an approved first-stage PUD, Subtitle Z § 704.4 establishes that:
"*The scope of the hearing conducted pursuant to this section 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.*" (emphasis added).

6. The Commission notes that it had approved the First-Stage PUD based on its conclusion, as elaborated in the First-Stage Order, that the First-Stage PUD met the PUD balancing tests of §§ 2400.2, 2400.3, and 2403.8 of the 1958 Zoning Regulations under which the Commission approved the First-Stage PUD (equivalent to Subtitle X §§ 300.1, 304.3, and 304.4 of the 2016 Zoning Regulations) including that the First-Stage PUD was not inconsistent with the CP and that the First-Stage PUD did not create unacceptable adverse impacts and provided sufficient public benefits to balance out the requested development flexibility and the potential adverse impacts for which the proposed mitigation was not sufficient. Therefore, unless the Commission determines that the Application materially changes the First-Stage Order's conclusion that the First-Stage PUD met the PUD balancing tests and CP consistency, that analysis is complete and not part of the second-stage PUD review. If the Commission determines that the Application materially changes the First-Stage PUD's analysis and its conclusion, then the Commission only reviews the impact of the proposed changes to this analysis and does not revisit the overall analysis.

7. The Commission concludes, as detailed below, that the Application does not materially change the First-Stage PUD's conclusion that it met the PUD balancing test including the CP consistency analysis.

Not Inconsistent with the Comprehensive Plan (Subtitle X §§ 304.3(a))

8. The Commission concludes that the Application does not materially change the conclusion of the First-Stage Order that the First-Stage PUD, including the related Zoning Map amendment, was not inconsistent with the CP because the Application does not propose to change the uses or building envelope from what was approved by the First-Stage PUD. The Commission therefore concludes that the First-Stage PUD's CP consistency analysis and conclusion remains unchanged and effective. The Commission credits OP's conclusion that the Commission completed the CP consistency analysis in approving the First-Stage PUD and does not require revalidation because the Application is generally consistent with the First-Stage PUD as regards consistency with the Comprehensive Plan and furthers several specific Comprehensive Plan principles and policies. (FF 47, 51.)

Requested Development Flexibility (Subtitle X § 304.3)

9. The Commission concludes that the Application does not require additional development flexibility beyond what was granted by the First-Stage PUD because the Application, to the extent it modifies the development parameters approved by the First-Stage PUD, is governed by the current Zoning Regulations pursuant to Subtitle A § 102.4 and so both the proposed penthouse habitable space and loading arrangement are evaluated against the current Zoning Regulations with which both comply.[2] The Commission also notes that the Application actually reduces the First-Stage PUD's development flexibility by withdrawing the approved closed court relief. (FF 29.)

Potential Adverse Impacts - How Mitigated or Outweighed (Subtitle X §§ 304.3 & 304.4(b))

10. The Commission concludes that the potential adverse impacts of the Project do not exceed those reviewed by the Commission in approving the First-Stage PUD because the proposed uses and building envelope remain within the First-Stage PUD's parameters. The Commission notes that the First-Stage Order (Condition No. A.5) specified that the North Building's loading would be reviewed as part of the Commission's evaluation of the second-stage PUD application for the North Building, which evaluation is detailed below. That evaluation also addresses changes to the First-Stage PUD's transportation impact analysis as Subtitle X § 302.2(b) specifies.

Public Benefits Sufficient to Balance the Requested Development Flexibility and Unmitigated Potential Adverse impacts (Subtitle X § 304.3)

11. The Commission concludes that the Application does not change or reduce the public benefits approved by the First-Stage PUD, but instead provides additional public benefits, including:
    - An additional one percent residential GFA for affordable housing beyond the eight percent required by IZ;

[2] Pursuant to Subtitle A § 102.3(a), the First-Stage PUD is vested under the substantive provisions of the 1958 Zoning Regulations under which the Commission reviewed and approved it. Pursuant to Subtitle A § 102.4, an application to the Commission for a modification to a vested project, other than a minor modification, shall conform with the current Zoning Regulations to the extent that they apply to the modification. Thus the Application is subject to the current Zoning Regulations to the extent the proposed second-stage PUD differs from that approved by the First-Stage PUD.

- A deeper affordability level (50% MFI) for 30% of the affordable housing instead of the 60% AMI required by IZ;
- Higher LEED standard (LEED Gold v4) than the LEED Silver 2009 approved by the First-Stage PUD;
- Dedicating five percent of the non-residential GFA of the ground floor for PDR/Maker Uses for five years not required by the First-Stage PUD;
- Providing 2,000 sf of rooftop solar panels not required by the First-Stage PUD;
- Providing electric vehicle and bicycle charging facilities not included in the First-Stage PUD; and
- Providing $40,000 for car share or bicycle share memberships for Project tenants in addition to the $14,000 contribution for care and bike share memberships for tenants of the South Building required by the First-Stage PUD.[3]

12. The Commission notes that the First-Stage Order concluded that the First-Stage PUD's public benefits balanced out the requested development flexibility and the unmitigated potential adverse impacts. The Commission concludes that the Application does not diminish, but instead improves this conclusion, based on the Commission's determination that the Application:
    - Does not increase, but instead decreases, the development flexibility granted in the First-Stage PUD;
    - Does not create potential adverse impacts beyond those reviewed in the First-Stage PUD other than transportation management impacts that are addressed in the second-stage PUD evaluation conducted below; and
    - Does not decrease or change, but instead increases, the public benefits approved by the First-Stage PUD.

SECOND-STAGE PUD APPROVAL

13. Subtitle X § 302.2(b) establishes that:
"*The second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.*" (emphasis added).

14. Subtitle X § 309.2 further requires that:
"*If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.*" (emphasis added).

Accordance of Second-Stage Application with the First-Stage Approval

[3] Although the First-Stage Order classified the similar contribution for the South Building as a mitigation in the Consolidated PUD, the DDOT-reviewed and approved CTR concluded that the Application's choice of residential use on the upper floors would have a reduced transportation impact than that approved by the First-Stage PUD and so DDOT did not require this contribution as a mitigation. The Commission therefore classifies this $40,000 contribution as a public benefit.

15. The Commission concludes that the Application is in accordance with the intent and purpose of the First-Stage PUD because the Project complies with the parameters, including proposed uses and building envelope, approved by the First-Stage PUD.

16. The Commission concludes that the Application includes multiple architectural and urban design benefits that make the Project a higher quality development that exceeds a project developed under the matter-of-right standards.

17. The Commission concludes that the Application accords with the PUD process based on the Commission's above determinations that the Application is a superior, high-quality development and that the Application's additional public benefits, decreased development flexibility, and no change to the potential adverse impacts strengthened the First-Stage PUD's conclusion that the PUD balancing test was satisfied.

18. The Commission therefore concludes that the Application is in accordance with the Zoning Regulations because the Application complies with the Zoning Regulations, including the PUD requirements and the First-Stage Order.

Transportation Management and Mitigation

19. The Commission concludes that the Application provides sufficient mitigation of the potential adverse transportation impacts, including parking and loading, based on DDOT's finding that the Applicant's proposed parking, loading, and TDM plans as detailed in the CTR are sufficient to mitigate any potential adverse impacts and the Applicant's agreement to all of DDOT's suggested conditions. The Commission particularly notes the CTR's findings, as confirmed by DDOT, that the Project's proposed residential use will result in considerably fewer vehicle trips than the office use that had been approved by the First-Stage PUD. The Commission credits the analyses of DDOT, OP, and the Applicant that the Project would not have unmitigated potential adverse effects. Nonetheless, the Commission concludes that any unmitigated potential adverse transportation impacts would be outweighed by the additional public benefits, particularly the additional vehicle and bicycling charging infrastructure and $40,000 contribution for car and bike share memberships for residents of the Project.

"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP

7. 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, 1087 (D.C. 2016).)

20. The Commission finds the recommendations of the OP Setdown and Hearing Reports and of OP's public hearing testimony to improve the Project persuasive and concludes that the Application, as finalized, included many of OP's suggested improvements. The Commission notes that OP recognized that not all of its suggested improvements could be accommodated but that OP still supported the Application in its public hearing testimony, and the Commission concurs in that judgement. (FF 46-55.)

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

21. 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 Reply); see 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).)

22. The Commission notes that ANC 5D's reports supported the Application without any specific issues or concerns and concurs in the ANC's recommendation of approval.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a second-stage PUD, subject to the following guidelines, conditions, and standards, with terms to be interpreted as defined in this Order or in the Zoning Regulations:

A. PROJECT DEVELOPMENT

1. The Project and the Plaza shall be constructed in accordance with the plans prepared by HCM and Mahan Rykiel, dated December 16, 2019, and included in the record at Ex. 35A1-35A6, except that the Project shall not include the plaza control bollard option shown on Ex. 32H2, and described as "Plaza Control Option E2" (the "Approved Plans"), subject to the following design flexibility from the Approved Plans (as modified by the guidelines, conditions, and standards herein):

   a. To provide a range in the number of residential units in the Project of plus or minus 10% relative to the number depicted on the Approved Plans and accordingly adjust the type and location of affordable units to reflect the final unit mix of the Project, provided the location and proportionality of affordable units is consistent with Sheet A45 of the Approved Plans;

   b. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

   c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make

minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;

d. To vary the final design of retail frontages, including locations of doors, design of show windows, and size of retail units and signage, to accommodate the needs of specific retail tenants;

e. To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the Approved Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;

f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Approved Plans do not change;

g. To revise the design of the public space surrounding the North Parcel and the landscape and/or streetscape design of the Project, including, without limitation, the gate element(s) between the Plaza and the adjacent sidewalks (in accordance with the Approved Plans), to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines;

h. To make refinements to the approved parking configuration, including layout and number of parking spaces plus or minus 10%;

i. To vary the amount, location and type of green roof, solar panels, planted canopies (over the Plaza only), and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, provided that the Project achieves a minimum GAR of 0.2 based on the area of the North Parcel only and provides a minimum of 2,000 square feet of roof area containing solar panels and related equipment;

j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, provided that such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse setback requirements;

k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time;

l. To vary the final design of the ground-floor frontage, including the number, size, design, and location of windows and entrances, signage, awnings, canopies, and similar storefront design features, to accommodate the needs of the specific tenants within the parameters set forth in the Storefront and Signage Plans;

m. To vary the final condition of the north façade of the Project (including without limitation modifying or removing windows and/or masonry) in accordance with the alternative design as shown on Sheet A22 or A50 of the Approved Plans, or within the areas dashed in red on Sheet A22 of the Approved Plans in the event a structure is approved to be built to the JBGS-Gallaudet Property line where the portions of such adjacent structure exist;

n. To utilize the ground-floor space for any uses in the retail; service; eating and drinking establishment; PDR/Maker uses; arts, design, and creation; daycare; entertainment, assembly, and performing arts; office/research lab use categories; or any other lawful use in the C-3-C Zone District/MU-9 zone;

o. To change the location and dimensions of the knock-out panels in the garage in order to accommodate, on terms reasonably acceptable to the Applicant, an internal connection to a future building on the JBGS-Gallaudet Property; and

p. To vary the design of the window "surround" on the upper stories of the 5th Street, N.E., façade of the Project to allow construction of a projection-compliant design in accordance with the Alternative Option as shown on Sheet A49 of the Approved Plans;

2. The Project shall be constructed with:

a. A maximum lot occupancy of 77%;

b. A maximum FAR of 3.71; and

c. A maximum height of 120 feet as measured from 6th Street, N.E.

3. The Property shall be subject to the requirements of the C-3-C Zone District/MU-9 zone except as set forth or modified by the Approved Plans or by the conditions of this decision.

B. PUBLIC BENEFITS

1. **Prior to the issuance of a building permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed First Source Agreement for the Project.

2. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with information showing that solar panel systems installed on the Project occupy no less than 2,000 square feet of roof area.

3. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold v4 certification or higher from the U.S. Green Building Council.

4. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall convert the intersection of 4th and Morse Streets, N.E., from two-way controlled stop to all-way controlled stop in accordance with DDOT standard requirements.

5. **For a minimum of five years after the date of issuance of the first certificate of occupancy for the Project**, the Applicant shall reserve a minimum of five percent of the non-residential gross floor area of the ground floor of the Project for one or more of the following PDR/Maker uses:

    a. Production, sale, and/or distribution of food and beverages (provided that the onsite consumption of food and beverages shall only be permitted when associated with such production, sale, and/or distribution user);

    b. Food incubators and food hubs;

    c. Robotics and 3-D manufacturing;

    d. Small-scale production, distribution or repair of goods and related accessory sales;

    e. Curation and sale of small-scale production goods;

    f. New and locally-owned small businesses as certified with the Department of Small & Local Business Development;

    g. "Creative economy" uses, including incubators, graphic design, product or industrial design, engineering and design, technology design and production, design and product curation, fashion design, horticultural design, green

businesses and sustainable design, specialty sports and recreation uses, media/communications production and distribution; and

h. "Arts" uses including arts, design and creation uses, as defined in Subtitle B, Section 200.2(e), and entertainment, assembly and performing arts uses, as defined in Subtitle B § 200.2(n).

6. **For the life of the Project**, the Project shall provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet A45 of the Approved Plans, subject to Condition A.1.a, and the Project's total residential Gross Floor Area ("GFA") shall not exceed the total residential GFA shown here; provided, however, that any reduction in the total amount of residential GFA (and/or number of units) in the Project shall be accompanied by a corresponding reduction in the amount of market rate GFA (and number of units) and affordable housing GFA (and number of units) in proportion to the percentages listed here:

Residential Unit Type	Total Residential GFA (Percentage of Total Residential GFA)	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
Total	287,530 sf (100%)	300	N/A	N/A	N/A
Market Rate	261,652 sf (91%)	276	N/A	N/A	N/A
Affordable Housing	18,113 sf (6.3%)	17	60% MFI	Life of Project	Rental
	7,763 sf (2.7%)	7	50% MFI		

The covenant required by D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl) shall include a provision or provisions requiring compliance with this Condition.

7. **For the life of the Project**, the Applicant shall install and maintain:

a. Electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time, and

b. At least five electrical outlets in each of the long-term bicycle storage rooms to supply power to electric bicycles.

C. MITIGATION

1. **Prior to the issuance of a building permit for the Project**, the Applicant shall demonstrate that the plans contained in the building permit application for the Project satisfy the PDR/Maker use construction specifications as follows:

a. A structural slab load (ground floor) live load of 125 pounds per square inch;

b. Clear height of approximately 16 feet from ground-floor slab to bottom of structure above;

c. An electrical supply of 50 watts per square foot;

d. A loading dock that includes a 48-inch raised loading dock and/or levelers;

e. An open floor plan layout;

f. A sound attenuation for mixed-use that satisfies NC-25 minimum noise criteria and includes seven-inch-thick minimum concrete podium slab; and

g. HVAC designed for one ton per 300 square feet; and (h) ventilation (Fresh Air/Make-Up Air) louvers at façade.

2. **During the period of construction of the Project**, the Applicant shall maintain access on and across the Property to loading facilities and operations for the South Building; provided, however, that the Applicant shall not be prohibited from loading the South Building from adjacent rights-of-way during the periods of paving, surfacing, and/or subsurface work on the Plaza subject to applicable public space permitting requirements.

3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall incorporate into the parking garage design the ability to remove a portion of the garage demising wall as knock-out panels ("Knock-Out Panels") connecting the adjacent property at 1331 5th Street, N.E. (Parcel 129/112) (the "Neighboring Property") to its garage ramp and a related curb cut on 6th Street, N.E. as shown on Sheet A25 of the Approved Plans. The Applicant shall work cooperatively with the Neighboring Property owner and/or developer to enter into an agreement on terms reasonably acceptable to the Applicant to provide the Neighboring Property with the Knock-Out Panels no less than 22 feet wide which will provide vehicular access to the Neighboring Property's garage through the Project's garage; provided, however, that such vehicular access to the Neighboring Property's garage shall be only a secondary entrance to the Neighboring Property, and such Neighboring Property garage shall have a primary entrance elsewhere, and it being understood that the Applicant shall have the right to insist that as part of any such agreement terms providing for, without limitation, commercially reasonable insurance, indemnity, and cost-sharing obligations from the owner or developer of the Neighboring Property.

4. **For the life of the Project**, the Applicant shall implement the following measures with respect to the Project's loading management:

a. The Project's property manager shall designate a loading facility manager ("Loading Manager"). The Loading Manager shall coordinate with

tenants/residents to schedule deliveries and will be on duty during delivery hours;

b. The Loading Manager shall schedule deliveries so as to not exceed the Project's loading facility capacity and, in the event that an unscheduled delivery vehicle arrives while the Project's loading facility is full, the Loading Manager shall direct the driver of such vehicle to return at a later time when the loading facility has adequate capacity;

c. The Loading Manager shall require all loading activity to take place on private property and not in public right-of-way and shall provide notice to all retail and residential tenants of this requirement;

d. The Project's property manager shall provide all tenants and residents with information regarding loading dock restrictions, rules, and suggested truck routes at lease signing and shall encourage tenants and residents to utilize trucks 30 feet or shorter in length;

e. The Project's property manager shall require all residential tenants to schedule move ins/move outs in advance of the occurrence of same and in a manner that coordinates with the retail delivery schedule;

f. The Loading Manager shall not permit trucks using the loading facility to idle and shall require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to 20 DCMR § 900 (Engine Idling), the requirements set forth in DDOT's "Freight Management and Commercial Vehicle Operations" document, and the primary access routes listed in DDOT's "Truck and Bus Route System" as applicable from time to time; and

g. The Loading Manager shall disseminate to drivers from delivery services that frequently utilize the loading facility: (1) suggested truck routing maps; and (2) other applicable materials as needed to encourage compliance with District law and DDOT's truck routes and shall post such documents in a prominent location within the service area.

5. **For the life of the Project**, the Applicant shall implement the following with respect to the Project's transportation demand management:

a. The Applicant shall identify a "TDM Leader" (for planning, construction, and operations), who shall distribute and market to the residents and tenants of the building various transportation alternatives and options in existence from time to time, which materials shall include TDM materials to new residents and tenants in a welcome package;

b. The Applicant shall provide the TDM Leader's contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;

c. The TDM Leader shall receive TDM training from goDCgo to learn about and implement the TDM conditions for this Project;

d. The Applicant shall post all TDM commitments online, publicize the availability of the same, and allow the public to see what commitments have been promised;

e. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on Project-related websites;

f. The Applicant shall offer for lease, at market rates and on market terms, at least two parking spaces in the Project to a car-sharing service in the Project's underground parking garage

g. The Applicant shall unbundle the fee it charges for parking from the base rent under a lease or the purchase price of a residential unit and shall set the minimum parking fee at the average market rate, where the market rate is determined by the average price in garages within one quarter mile of the Project;

h. The Applicant shall install a "Transportation Information Center Display" on an electronic screen within the residential lobby of the Project, which Display shall contain information related to local transportation alternatives;

i. The Applicant shall meet or exceed the Zoning Regulations' requirements for bicycle parking, including the requirement to provide secure interior bicycle parking and short-term exterior bicycle parking around the perimeter of the Property, and long-term bicycle storage rooms pursuant to the Approved Plans; and

j. The Applicant shall provide all new tenants of the North Building with a car share or bicycle share membership up to the maximum value of $40,000 cumulative for the Project.

D. MISCELLANEOUS

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant binding the North Parcel in the land records of the District of Columbia by the Applicant for the benefit of the District of Columbia that is satisfactory to the Office of the Attorney General and to the Zoning Administrator (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the North Parcel in accordance with this Order, as may be

amended by the Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning.

2. The change of zoning to the C-3-C Zone District (current MU-9 zone) with respect to the North Parcel shall be effective upon the recordation of the PUD Covenant.

3. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.

VOTE (Jan. 13, 2020): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, 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 July 31, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

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